



# **ASSOCIATED RESIDENTIAL PARKS QUEENSLAND INC.**

**ABN 24359567567**

**HOME OWNERS ADVISORY AND ADVOCACY SERVICE**

**PO BOX 1124 PARK RIDGE QLD 4215**

## **Response to the Issues Paper for Stakeholder Discussion**

It is the firmly held view of ARPQ that, notwithstanding the amendments made to it in 2017, the Manufactured Homes (Residential Parks) Act, 2003 is largely failing to meet its objective of providing protection to home owners from unfair business practices. Our many interactions with home owners in residential parks around the state have convinced us that this is a view shared by the vast majority of them.

We commend the government for listening and responding to this sentiment and for its commitment in the Queensland Housing and Homelessness Action Plan 2021-25 to address the concerns of home owners in respect site rent increases and sale of homes. We welcome the opportunity to express our views on what those concerns are by responding to this Issues Paper.

In our response below we have endeavoured to convey the perspective of the large numbers of home owners we meet and interact with around the state on the matters of concern that are discussed in the issues paper. We have also sought to point out a number of issues of concern that we don't believe were mentioned in the Issues Paper.

In addition to writing about matters of concern to home owners we have also shared ideas on options for reform that we believe, based upon our interactions with so many of them, that home owners would like given serious consideration in the next stages of the reform process as foreshadowed in the introduction to the Issues Paper,

## Part 1: Issues Related to Site Rent Increases

ARPQ acknowledges the veracity of just about all of the issues and concerns related to site rents and site rent increases which are articulated in the issues paper. However, we believe that for the most part the problems are discussed at the surface, presenting level and do not capture the scale or the depth of home owners concerns.

The great majority of home owners believe themselves to be victims of systemic injustice by current practice in relation to site rent increases. ARPQ believe that the issues paper fails to recognise and fully articulate the deeper features of that practice which many home owners see as the cause of the injustices perpetrated against them.

ARPQ submits that the priority concern of home owners is that the methods used to calculate site rent increases in our park have proved over many years to be unfair and inequitable. They believe that the methods currently used always produce outcomes which favour the park owner by increasing their profits and the same time they disadvantage them as home owners by forcing them to pay more than is needed to cover the costs of maintaining the land upon which our homes are situated, the communal facilities of the village and the services provided to us by the park owner.

Our responses below to the section of the paper dealing with site rent increases aims to articulate the concerns of home owners about features of current practice more fully, in particular those around the methods used for determining site rent increases.. We submit our response with a view to making it easier to identify ways to mitigate and address these concerns.

### Market Valuation and Market valuation Reviews

It is noted that three of the problem areas identified in the issues paper (sections 1.10, 1.11 and 1.12) refer to aspects of carrying out a market valuation review in order to determine a market valuation price.

While ARPQ acknowledges the veracity of problems highlighted, what is extremely disappointing to us is that the paper fails to recognise the core problem that home owners see with market valuation reviews. That is, that **in the context of the manufactured homes, residential parks market, market valuation determined by a market valuation review is not fit for purpose as the key metric for determining increases in site rents.**

As is pointed out in the introduction to the paper under the heading of 'Context', one of the objectives of the Manufactured Home (Residential Parks) Act, 2003 (the Act) is supporting the growth and viability of the residential parks industry. In alluding to this objective section 1.2 of the paper highlights the fact that the key factor in assuring the financial viability of a park is ensuring that increases in site rent are sufficient to cover increases in the costs of maintaining and operating the park.

ARPQ believe that home owners accept and are comfortable with this proposition. They see site rent as being a payment to the park owners to cover the costs of use of the land on which their homes are located, the use of the facilities that are provided in the park and the services the parks owners provide to them. They recognise that an important element in those costs is ensuring a dividend to the owners or their shareholders on the investment they have made in the park which is reasonable and fair when compared to other investments with similar risks and levels of security.

Home owners believe that the main factors that should be taken into account in determining increases (or decreases) in site rents is increases (or decreases) in the actual costs of maintaining the land on which their home is located, the communal facilities of the park and the services provided to them by the park owner, and the impact this has on the operational profit margins of the park. **What home owners are not comfortable with, and do not accept, is that market valuations determined by market reviews are an accurate and reliable way of determining increases (or decreases) in those actual costs and margins. Thus they are not fit for purpose as a metric for determining site rent increases**

Residents have good reason to refute market price as the basis for changes in site rent. Basing increases in site rents on increases on estimates of “market valuation” is grounded in the assumption that market forces are the best way of setting a fair and equitable price for the product that the rent is paying for. Essentially, this assumption is grounded in the idea that a fair and equitable rent is that which the renter is prepared to pay and that in a free market home owners will refuse to pay rents they consider to be too high and move on to find an alternative provider of the same or similar products (sites in parks for homes) elsewhere at a price they think is appropriate.

Section 1.5 of the issues paper points out the obvious problem with accepting this market rationale in relation to site rents in residential parks. The market for sites in residential parks does not in practice operate as a free market. The main constraint on it doing so is that demand for sites is extremely inelastic. That is, demand by home owners for the land on which the manufactured home is to be sited plus the use of the facilities and services provided in the park remains unchanged even when the site rent changes.

Home owners faced with a demand to pay a higher rent have few options for seeking an alternative to paying the increase as envisaged in a free market scenario. An aging resident who has been in his or her home in a park for a number of years and who has diminishing financial resources is not well placed to move to another park in search of a lower rent. Their options are also restricted by the substantial emotional, physical and financial burdens associated with buying and selling a house and moving one’s home. When asked to pay increases in site rent which they believe are higher than they should be, and are aware in their hearts do not reflect changes in the costs to the park owners operating the park, home owners are left with little option to accepting them on the grounds that they feel powerless to resist.

Home owners’ distrust of market price and market valuation reviews as an accurate and reliable metric for determining increases (or decreases) in the actual costs of operating a park is exacerbated considerably by the lack of tangible evidence of a direct relationship between them. Home owners accepting the argument cited in section 1.2 of the issues

paper that site rents have to keep increasing in order to maintain the viability of a park without verifiable evidence to support the assertion would be naive and unwise. The most obvious way that park owners could satisfy home owners that proposed increases in rent as indicated by a change in the market valuation would be to share verifiable details of what the actual changes in costs have been. However, it is the universal practice to refuse to do this on the grounds that it is commercially sensitive information. ARPQ is not aware of any instances of park owners being prepared to share data on actual costs with home owners on a “commercial in confidence” basis. Lack of transparency always leads to distrust. Sadly distrust of market valuations and market valuation reviews is a prominent feature in conversations between home owners. In a great many instances it has led to a souring of relationships between them and their park owners.

ARPQ believes that it is the view of a majority of home owners that park owners are taking advantage of the problematic features of the market valuation review processes referred to in sections 1.10, 1.11 & 1.12 of the issues paper to maximise their profits. It is common for home owners to see park owners as profiteers, taking advantage of the site rent regime featuring market valuation reviews and the failure of the Act to control it.

A major indicator of the distrust home owners have for market price and market valuation reviews is the fact that a high proportion of the disputes referred to QCAT are about site rents. ARPQ note that this situation contrasts greatly with that in NSW where market valuation reviews are no longer a key metric in determining site rent increases.

It is clear to us that the fact that market valuation determined by a market valuation review is not suitable to be used as the key metric for determining increases in site rents is the core problem that needs to be addressed rather than just the aspects of the market review process referred to in the issues paper.

As is stated above, ARPQ believes that home owners want a key principle governing site rent increases is that they must be governed any change in the costs and operational margins involved in the management of the park. Because it is a measure of inflation, using the Consumer Price Index is often seen as way to do this. This assumption is however open to question.

### **Brisbane All Groups CPI as the metric for determining Site Rent Increases**

ARPQ acknowledges the validity of the mention in section 1.4 of the issues paper of home owner concerns about unpredictability and scale of CPI based increases. However, we believe that home owners have deeper concerns about the way in which CPI is adopted as a metric for determining Site Rent Increases which are not fully articulated.

It has long been assumed that increases in CPI are a reasonable metric to use on the grounds that it is a measure of inflation and thus likely to be an approximate guide to both increases in the costs of running a park and any increases in the aged pension and the income of most home owners. However, many home owners are questioning this assumption on a number of fronts.

As Australia moves from a 20 year period of low inflation into what is expected to be times of higher annual increases in the rate over the next few years it is clear that there are grounds for challenging the notion that the All Groups CPI in Brisbane is a fair indication of increases in the costs of operating a residential parks.

A key problem is that CPI is a measure of increases in cost for five categories of household and many of the contributors to increases in cost to households do not impact upon the costs of operating a residential park.

In its analysis of the annual CPI increase of 5.1% nationally and 6.0% in Brisbane in the year to 31st March 2022, the Australian Bureau of Statistics identified that the largest contributors to the rises were:

- Food and non-alcoholic beverages and Transport
- Supply chain disruptions, high transport, fertiliser, packaging and ingredient costs, and floods affected several Food series, notably Fruit and vegetables and Meat and seafood.
- The Automotive fuel series reached record levels in the March 2022 quarter, due to higher global oil prices amid economic recovery and Russia's invasion of Ukraine.
- Health was the next largest contributor to rises
- Pharmaceutical products and Medical and hospital services rose due to the cyclical decline in the proportion of consumers qualifying for subsidies under the Pharmaceutical Benefits Scheme (PBS) and Medicare safety net.

ARPQ submits that three of these factors (food, health costs and pharmaceutical costs) are likely to have had very little impact on the cost of operating a residential park and a fourth (automotive fuel) would have had only a marginal effect. The relevance of them and of a measure based upon them as a metric used to determine site rents is therefore questionable to say the least.

Our argument in relation to this is supported by research cited in a draft of their intended response to the Issues paper shared with ARPQ by the home owners association at Natures Edge community in Buderim. It shows that only 24.9% of the measured changes in prices included in the CPI has any relevance at all to the expenses incurred by park owners.

The assumption that the Brisbane All Groups CPI in particular is a good guide to increases in the aged pension and thus to the affordability of site rent increases for home owners is also very much open to being challenged by and of concern to home owners.

As is explained above, increases in aged pensions are in fact not directly linked to increases in CPI but to calculations made taking into account the CPI, PBLCI and MTWAE. Most importantly the CPI used in these calculations is not the Brisbane All Groups one, but the Weighted Average of Eight Capital Cities version. In the year to June 30th 2022 the Brisbane CPI increase was 7.3% with the one used in calculating pension increases was only 6.1%, thus causing a disparity between likely increases in site rents and those in pensions.

The use of the actual rate of increase in aged pension as a metric for increasing site rents would overcome any concerns home owners have about the use of the Brisbane All Groups CPI.

## **Increasing Unaffordability of Site Rents**

ARPQ recognises the veracity of the points made in section 1.1 of the issues paper about the concerns home owners have over the affordability for them of living in a residential park given the trend for site rents to keep increasing.

As the paper points out the core of the problem is that there is a history of site rents increasing at a greater rate than the incomes of home owners. The paper also points out that the latest data available on the demographics of residential parks from the 2013 home owner survey showed that 90% of home owners relied upon the full or part aged pension for their income.

Increases in the aged pension are made twice each year by the greater of the average increase in CPI across Australia's eight capital cities or the Pensioner and Beneficiary Living Cost Index (PBLCI) which are then benchmarked against the Male Total Average Weekly Earnings (MTAWE) . The combined couple pension rate is benchmarked to 41.76% of MTAWE and the single rate to around 27.7% of MTAWE. Benchmarking means that if for example the combined couple pension rate calculated as the greater of CPI and PBLCI is less than 41.76% of MTAWE then it is increased to that amount.

ARPQ does not have data comparing increases in site rents over time against the actual increases in pensions. However, in research done by ARPQ in 2020 a survey of members found that in the six years from 2014 to 2020 increases in site rents, calculated using a combination of the CPI for Brisbane and market valuation reviews, had been almost double those in CPI which was taken to be an approximation of increases in pensions.

The compounding effect over time of this disparity between increases in home owners' incomes and the increases in their site rents means that an increasing proportion of their income is being taken up by paying their rent. The widely accepted criteria set by ACOSS (Australian Council of Social Services) for people living in housing stress is that they need to devote 30% or more of their income to cover their housing costs.

Research undertaken by ARPQ shows that home owners solely reliant upon the single aged pension are likely to have crossed this threshold already in many Queensland parks based just on the site rent they are paying. The situation is likely to be much more widespread if other housing costs for home owners in residential parks such as insurance and maintenance are taken into consideration.

A factor exacerbating the disparity between the incomes of pensioners and their housing costs is that the rental rebate assistance they receive from the Federal Government is capped and in many instances their site rents are at or approach the level of the cap. This means that they are already receiving the maximum rebate based on their existing rents. Thus, when their rent is increased they will get no increase in the rebate to help mitigate the impact upon them.

ARPQ is very concerned that if the disparity between pensioner incomes and site rent increases in residential parks continues in the future increasing numbers of home owners will be forced into deeper housing stress. That is, more and more of them will find themselves having to make choices to reduce their spending on essential like food,

medications and other health costs and heating and cooling their homes in order to be able to afford to keep their home.

### **“CPI Plus a % or a Fixed Amount” as the Metric for Determining Site Rent Increase**

ARPQ submits that a major concern of many home owners that is not articulated in the issues paper is about the impact that the use of CPI plus a percentage or CPI plus a fixed amount has on the affordability of their site rent.

As is explained above CPI is not likely to be an accurate indication of any rise home owners are likely to have in their income. It is however likely that any increases will be close to CPI. Clearly the use of a metric which automatically adds a percentage or fixed amount above CPI to site rent will widen the gap between increases a home owners' rent and income. The effect of this will be compounded year by year. As argued above, the impact will be increasing numbers of home owners moving into housing stress with consequent negative effects on their financial and overall wellbeing.

### **A Fixed % as the Metric for Determining Site Rent Increase**

ARPQ is aware of some park owners adopting the practice of asking home owners to agree to amend their site agreements so that site rents are increased each year by a fixed percentage. Often it is stipulated that this will apply for a certain number of years. E.g. the site agreement will be amended to state that site rents will increase by 3.5% per year for the next 10 years. Arguments put forward by park owners to support such an idea include that it eliminates the uncertainty of the outcome of future market rent reviews and that there is a likelihood of inflation and CPI being much higher in the future than in the past.

ARPQ has grave concerns about this practice. We note that the arguments in favour of it play on the fears of many vulnerable home owners of the market rent review system and of the current high rates of inflation in the community. The reality is that over the last 20 years our national CPI has risen by an average of 2.4% p.a. and over the last 10 years, our national CPI was 1.9% p.a. Furthermore the RBA target range for inflation is between 2.5% and 3.5%. No doubt the accountants and economists employed by park owners will be taking data like this into consideration when calculating what offers to make to home owners.

We also note that it asks home owners to accept, without any guarantees, that the percentage increase they agree to will be matched by the park owners' expenditure over the years in meeting the costs of operating the park.

For these reasons ARPQ believe that this approach to determining site rent increases could lead to outcomes which favour park owners in the shape of guaranteeing increased profits by ensuring that the increase in their costs remain below the fixed increase in their income from rent, and disadvantage home owners when compared to methods of determining increase based on increases in costs or ensuring they are aligned with increases in their incomes.

## **Diminishing Levels of Service and Standards of Maintenance of Communal Facilities**

A concern expressed by many home owners to the ARPQ which is not articulated in the Issues Paper is that they believe that they are getting less value for the money they pay in site rents because over time the levels of service being provided and the standard of the maintenance work being done in their parks is falling even though they are paying higher site rents.

Home owners with concerns about these matters do not see the current provisions of the Act in section 72 as offering them sufficient protection from park owners seeking to cut back on costs by not maintaining standards. A key problem often cited is that the burden of proof lies with the home owner and the difficulty of assembling evidence of substantial decrease in the standard of communal facilities when there are no agreed criteria for what the standards should be or what a substantial decrease in them would look like . It should also be noted that in relation to services, action can only be taken if they are withdrawn rather than the standard of them reduced.

Concerns frequently voiced by home owners are:

- That there is no Code of Best Practice for the Management of a Residential Park, (similar to the Property Council's Retirement Living Code of Conduct), which park owners can be expected or required to adhere to.
- The absence in the residential parks industry of minimum qualifications for persons appointed to the role of park manager.
- The refusal of park owners to share with home owners any details of: the budgets allocated; operational plans for maintenance of services and facilities; the steps they will take to assure quality control in relation to service delivery and the maintenance of facilities.

## **Increasing Site Rents - Summary**

Many home owners see park owner as benefiting from excessive windfall profits at their expense as a result of the way site rent increases are currently determined.. This view is not without justification. ARPQ noted that when their purchase of Halcyon was confirmed, Stockland Corporation reported to its investors and the stock exchange on 19 July 2021, that the Halcyon business generated "High Quality Recurring Income For Occupied Portfolio" and an "**Operating Margin of approximately 65%**". This is an exceptional profit level for any business, particularly a low risk business. Stockland described the Halcyon Business as having "High quality income characteristics", including:

- Long average lease tenure
- Minimal vacancy risk
- High tenant diversification and strong tenant covenant
- Nil or low incentives
- Low capex requirements
- Government rental support

In contrast, home owners have great concerns that steep increases in rents are forcing them closer to, and in some cases deeper into, what ACOSS defines as housing stress, as their housing costs approach or exceed 30% of their income. And at the same time they are becoming increasingly convinced that they are getting less value for the money they pay in site rents because over time the levels of service being provided and the standard of the maintenance work being done in their parks is falling.

ARPQ submits that the three core problems that need to be taken into account and addressed when designing legislation that sets out to ensure a fair and equitable approach to determining site rent increases and thus address the concerns of home owners are:

- i. The failure in the past of increases in site rents which are calculated using market valuation reviews, CPI and CPI plus a percentage or a fixed amount as key metrics to reflect increases in the actual costs of operating parks;
- ii. The lack of parity in the past between site rent increases and increases in aged pensions
- iii. Diminishing levels of service and standards of maintenance of communal facilities in parks whilst rents are increasing

### ***Reform Option(s) That ARPQ Would Like To Be Given Serious Consideration Site Rent Increases***

*The mandating of one of the following three options for determining site rent increases::*

- 1. The use of independently verified actual increases in costs*
- 2. A state-wide cap based on a Site Rent Index to be established that would be calculated according ABS data on the changes in the costs of a key selected items relevant to the operations of a park.*

*Note1: Both of the above are discussed and explained in Appendix A which is extracted from the response to the Issues Paper prepared by the HOC of the Natures Edge, Buderim residential park*

- 3. A mandated two level regime for increases to site rents under which:*
  - i. There be no more than one site rent increase per year and that it be equal to the latest annual percentage increase in aged pensions prior to the increase date for the park.*
  - ii. If a park owner wishes to increase site rents on any general increase day by more than the annual percentage increase in the CPI for Brisbane they may apply to do so by providing verifiable evidence that the increase is justified by an increase in the costs of operating the park in a similar way now prescribed in Division 3 s 71 of the current Act*

*Note 2: The adoption of any of these options would mean that the provisions of Part 11 Division 3 Increase in site rent to cover special costs, of the Act would only be needed in the event of proposals for significant upgrades to the common areas or communal facilities in the park.*

### **Assurance of Value For Money for Site Rents**

- a. *That it be mandated in the Act that there be Maintenance Reserve and Capital Replacement Funds for each park which operate in a similar way to those in Retirement Villages in Queensland. The maintenance reserve fund to be used to ensure the maintenance and repair of the park's capital items; and the capital replacement fund for the replacement of capital items if and when it is necessary. For each fund a 10 year budget forecast would be maintained and updated annually and residents would have access to details of the budgets in a similar manner to the procedures adopted in retirement villages.  
The core of this proposition is so that the expenditure on maintenance and repair is clear and transparent.*
- b. *That it be mandated in the Act that the park owner must each year adopt a day to day maintenance budget for each park that residents are given full access to and an opportunity to have input into.*
- c. *That it be mandated in the Act that parks owners provide guarantees of the standards they intend to adhere to in fulfilling their responsibilities under s17 of the current Act. That is "to maintain the common areas and communal facilities in a reasonable state of cleanliness and repair, and fit for use by the home owner or the home owner's tenant"  
  
And that penalties be prescribed in the Act for park owners not maintaining the standards they guarantee in a reasonable manner.*
- d. *That a licensing regime, with minimum criteria for registration, be established for persons appointed as park/community managers.*
- e. *That a Code of Best Practice for the Management of a Residential Park be established, (similar to the Property Council's Retirement Living Code of Conduct), which park owners can be expected or required to adhere to.*

### **Pre-Contractual Advice**

We note and concur with the points made in section 1.3 of the paper. We would add that there are no guidelines for either prospective home owners or for that matter for solicitors and financial advisors, on what any advice given should cover. We acknowledge that normally it could be assumed that this would be reliant on the professional knowledge and expertise of the solicitor. However, in our experience this assumption is often not valid. ARPQ suggests that some sort of check-list guidelines outlined in the Act or by regulation be considered.

### **Reform Option(s) That ARPQ Would Like To Be Given Serious Consideration**

*That it be made mandatory under the Act that in order to purchase a home in a residential park the buyer must obtain a certificate signed by a qualified lawyer and themselves the*

*contents of which outline the financial and legal check-list of advice they the buyer has received from the lawyer.*

*The details of the content of such a form to be outlined in the Act or by regulation.*

### **Site Rents for Homes Unoccupied Due to Death of Home owner or Them Going Into Care.**

Under the current legislation it is the practice that home owners or in many cases the estates of deceased home owners must continue to pay indefinitely the full rent for an unoccupied home including the parts of that rent that cover access to and use of facilities, amenities and services they are not using. ARPQ considers this to be a clearly unfair and unjust arrangement.

We note that this situation contrasts greatly with that faced by the landlord of commercial or residential property on losing a tenant. They forgo collecting rent on an ongoing basis, even though they are required to maintain the property, pay rates, insurance etc. Why are park owners quarantined from this business risk by legislation?

We would point out that whilst this situation persists park owners may have minimal interest in pursuing the sale of pre-loved homes particularly in those parks where they have new homes for sale returning far greater returns than sale commissions. Thus it contributes to the causes of the problems identified in sections 2.4 and 2.6 of the Issues paper.

#### ***Reform Option(s) That ARPQ Would Like To Be Given Serious Consideration***

*That the site rent be reduced so that it covers only the cost of the home occupying the land it is situated on (e.g. Council Rates) but not the provision of any services or access to and use of facilities.*

### **Objectives of the Act**

A problem identified by ARPQ which we see as related to the matter of site rent increases that is not discussed at all in the Issues paper is the way the interests of home owners and park owners are treated in the objectives and subsequently throughout the Act.

ARPQ concurs with the widely held view that a major and problematic feature of the Residential Manufactured Home Park industry is the imbalance in power between the individual home owner and corporate well-resourced park owners. It is also a widely held view that the Act is designed to help mitigate problems arising from this imbalance. However ARPQ notes a significant difference in the way the interests of home owners and park owners are viewed in the objectives of the Act.

Section 4(1) of the Act focuses upon protecting home owners from unfair business practices by park owners and ensuring they are aware of their rights and responsibilities. However there is a lack of any focus in the objectives, and indeed throughout the Act, on either the financial viability and wellbeing of home owners or upon assisting residential parks to be well-functioning harmonious communities.

Sections 4(3) (a) & (b) of the Act focus upon the financial viability of the park owners. They state the objectives to include:

- encouraging the continued growth and viability of the residential park industry in the State;
- providing a clear regulatory framework to ensure certainty for the residential park industry in planning for future expansion.

The proliferation of residential parks in recent years points to success in achieving these aims. Further evidence is provided by the incursion into the industry of large and often multi-national corporations obviously attracted to invest in residential parks given the very high returns provided coupled with the legislative protections afforded by the Act. These protections include no loss of income due to un-occupancy, guaranteed increased income year on year and a legislative framework that provides them with a dominant position over home owners.

On the other hand the Act articulates no such objective in relation to the protection of the financial viability of home owners. Furthermore the objectives of the Act make no direct reference at all to ensuring that by entering into a business partnership agreement with a park owner, home owners will be assured of living in a well-functioning harmonious community that provides the sort of amenities, services and communal life they desire.

***Reform Option(s) That ARPQ Would Like To Be Given Serious Consideration***  
*That a clause be added to the objects of the Act (Part 1 Division 2[4]) to the effect that it aims to mitigate any negative impacts caused by the way residential parks operate upon the financial security and quality of life of home owners*  
*E.g. Add a clause to section 4 (1) to read: "To ensure that the business practices adopted in the operations of parks safeguard the financial security and quality of life of home owners."*

## **Part 2: Issues Related to Sales**

### **Transfer of Ownership**

#### **a) The Assignment / New Contract Option**

ARPQ acknowledges and can confirm the veracity of the points made on this topic in section 2.2 of the Issues paper. We note however that the paper does not fully capture the concerns we have as representatives of home owners.

We submit that this area is one where there is great scope for park owners to adopt practices which are unfair and designed to advantage themselves at the expense of not only the home owners directly involved in a sale, but also others in the park and in other parks.

The key issue we see is that a new site agreement option on the resale of a home provides a clear opportunity to the park owner to both ensure that the income they receive in the form of site rents is increased and at the same time that the inclusions and services they are required to provide are reduced when compared to the site agreement

contract that existed previously for the same home. Examples include park owners ensuring that new contracts require home owners to pay charges for water usages not previously charged separately and to be responsible for mowing lawns adjacent to their homes where old ones did not.

These changes clearly advantage the park owner and disadvantage the buyer of the home in that they are paying more and getting less than if they had taken over the old site agreement contract via an assignment. They also disadvantage the seller of the home in that they make the prospect of buying their home less attractive that it could have been. Such changes in new contracts also disadvantage other home owners in the park in that they contribute to a “ratchetting-up” of the site rents in the park whilst at the same time leading to a diminution of the norms of service expected to be provided. Finally, the changes can disadvantage home owners in other parks where market reviews which compare rents in their park with those in parks where site rents have been ratcheted-up are a key metric in determining a market valuation.

ARPQ acknowledges the argument that changes to contracts are both necessary and can be in the best interests of both parties. Also in theory they are freely signed by home owners. However, experience leads us to believe that the complexity of buying a home in a residential park, which is even greater than that of buying a home in the rest of the community, provides opportunities for unwitting buyers (and sellers) of homes to be taken advantage of by park owners.

***Reform Option(s) That ARPQ Would Like To Be Given Serious Consideration***

*That where necessary the Act be amended so it categorically confirms that when a pre-owned home in a residential park is resold, the site agreement must be assigned to the buyer by the seller.*

**b) Gaps in Disclosure Requirements**

A problem related to the ones discussed above that frequently causes anger amongst purchasers of home in a park is that shortly after arriving in the new home they discover that they are paying higher, often much higher, site rent fees than their neighbours for the use of the same facilities and sometimes less services. APRQ notes that notwithstanding previous attempts to assure pre-contractual disclosure in respect to site rents and services, they focus upon the individual home and do not provide buyers with information about how their contractual arrangements will compare with others in the park. We note that NSW legislation and regulations address this problem more effectively than ours in Qld.

***Reform Option(s) That ARPQ Would Like To Be Given Serious Consideration***

*That the initial disclosure document as prescribed under Schedule 1 Part 1(1) of the Act be amended to include details of the range of site rents being paid in the park over the past 3 years in addition to details of the site rents paid for the particular site.*

**c) Qualifications of Park Owner Employees to Sell Homes.**

We note the observations made in section 2.10 of the Issues papers in relation to unethical and sometimes illegal practice by park managers and other park owner employees selling homes possibly resulting from misunderstanding or misapprehension about the law of site agreements.

ARPQ notes that there are currently no requirements of park owners in relation to the qualifications of their park owners or other employees and thus no formal code of conduct requirements or expectations of them. It is our view that this is a problem not only in relation to the aspects of a park manager's role in the selling of home but in all aspects of their work.

***Reform Option(s) That ARPQ Would Like To Be Given Serious Consideration***

*That a registration regime be established for park managers or other park owners' employees acting as agents selling homes in parks. The registration method should be the same, or similar to the one existing for all real estate sales persons in Queensland.*

**Home Ownership and Deceased Estates**

Whilst we generally concur with the points made on this topic in section 2.9 of the Issues paper, ARPQ would emphasise that we see the continued payment of site rent for services and facilities no longer being provided or used as an aspect of the issue that concerns home owners greatly. Please refer to comments made on this in our response to Part 1 of the Issues paper.

***Reform Option(s) That ARPQ Would Like To Be Given Serious Consideration***

*As per response in Part 1 of the Issues paper - That the site rent be reduced so that it covers only the cost of the home occupying the land it is situated on (e.g. Council Rates) but not the provision of any services or access to and use of facilities.*

**Use of Exit Fees**

ARPQ can confirm that this is a practice currently adopted by some park owners. Though they do not call them exit fees, some park owners are still imposing charges which operate as exit fees. We have reported instance of it to the regulatory services unit. It is in our view totally against the intentions of the current Act. Any uncertainties about those intentions should be eliminated.

***Reform Option(s) That ARPQ Would Like To Be Given Serious Consideration***

*That the relevant provisions of the Act be reviewed to ensure that any uncertainties about the intention that there be no form of exit fees imposed and if necessary penalties be imposed and/or strengthened to ensure compliance*

**Lack of Clarity around Proof of Ownership**

We concur with the points made in section 2.11 of the issues paper. ARPQ would also point out that this issue has the potential to impact upon both the ease with which a home can be sold and upon its value.

***Reform Option(s) That ARPQ Would Like To Be Given Serious Consideration***

*That a register of home ownership in residential parks be established so that all sales and site agreements are registered by the park owner.*

**Recognition of Residential Manufactures Home Parks as Senior's Accommodation**

We note that this issue is mentioned in section 2.9 of the Issues paper as a complicating factor in the problems around home ownership and deceased estates. ARPQ views it as an issue that is of concern to home owners in its own right. We believe that it has the potential to impact upon the value of homes in parks. It is also seen by many home owners in as a threat to aspects of the lifestyle that attracted them to residential parks as an option to spend their senior years living in.

***Reform Option(s) That ARPQ Would Like To Be Given Serious Consideration***

*That the Act be amended in such a way that ensures that Residential (Manufactured Home) Parks are exempt from anti-discrimination laws on the grounds of age.*

**Security of Tenure**

We note that this is a topic that is not raised in the Issues paper. It is however something that has been brought to our attention by legal advisers as an area which poses potential threats to the wellbeing of home owners. We see the lack of clarity about security of tenure as a potential threat to the value of homes in residential parks and to the overall wellbeing of home owners.

A major concern that is not mentioned in the issues Paper is the question of what the status of home owners with site agreements with a park owner would be if the park owners was to declare bankruptcy and go into receivership. This situation is not covered at all in the Act. Preliminary investigation of other legislation has led the ARPQ to fear that in this situation home owners would become unsecured creditors. Clearly this is an issue that we would like to see clarified, with a strong measure of security for home owners guaranteed, as part of the process of reviewing legislation

We also have concerns and would like to see investigation of whether the arrangements for compensation in the event of the termination of a site agreement in the Act are fit for purpose in the current context.

***Reform Option(s) That ARPQ Would Like To Be Given Serious Consideration***

*That the Act be amended in such a way that ensures that home owners in Residential (Manufactured Home) Parks are guaranteed security of tenure for the site on which their home is situated, including in a situation where the park owners enters into insolvency or other such arrangement.*

### **Role of Home Owners Committee (HOC)**

The current Act defines the role of the HOC as being:

*To deal with the park owner on behalf of the home owners about—*

*(a) The day-to-day running of the park; and*

*(b) Any complaint or proposal about the operation of the park raised by the home owners*

(Part 15, section 102)

A concern of the ARPQ is that “day to day running of the park” and “operational matters” can be interpreted in ways that exclude HOCs from exercising their role in organising, leading and representing home owners in relation to some issues which are of common concern to their members. A specific example is where home owners have concerns relating to the quality to work and warrantee matters in new homes purchased from the park owner. In situations like this some park owners have refused to deal with HOCs seeking to represent their members on the grounds that they are not “day-to-day” or “operational” matters.

### ***Reform Option(s) That ARPQ Would Like To Be Given Serious Consideration***

*That the Act be amended in such a way as to affirm the right for HOCS to deal with their park owner on any matter of concern to home owners.*

## Appendix A:

# Discussion and Explanation of Ways of Increasing Site Rents based upon Increases in Costs

## Extracted from a Submission by the HOC of Natures Edge Buderim Residential Park.

### OPTIONS FOR A DIFFERENT APPROACH TO SETTING ANNUAL SITE RENT INCREASES

The Nature's Edge HOA believes there are two main options that should be considered as alternatives to the use of CPI as the basis for making annual site rent increases.

First is base annual site rent increases on the actual changes in the costs borne each year by park owners in park operating expenses.

Second is for the Government to set a single cap for annual site rent increases to apply for all parks in Queensland, taking into account rises in a proposed Site Rent Index. This Index could be constructed by the Government using the few selected components of the CPI that materially relate to park operating costs and information collected from a sample of park owners about the relative importance of these CPI items to total park operating costs.

#### Using actual increases in site operating costs

The Nature's Edge HOA believes that the fairest approach to setting site rent increases to adequately cover price rises in park operational expenditures would be to require park owners to provide independently-verified figures and information about their actual operating expenditures in any given year compared to those in the previous year.

This would enable park owners to set an annual increase in site rent reflecting rises (and falls) in costs they actually incurred, thus ensuring ongoing viability of parks. It would exclude price gouging or a windfall increase in profits simply because the cost of unrelated items in the CPI are rising so fast in the Australian economy at the moment.

A formula for increasing site rents on this basis would be as follows:

$$\text{Percentage Rent Increase} = \frac{\text{Operating Expenditure Year 2} - \text{Operating Expenditure Year 1}}{\text{Operating Expenditure Year 1}} \times 100$$

Park operating expenditure should include the total expenditure on park running costs in each year on the following items:

- (a) Wages and salaries
- (b) Other administration costs including IT, phones and stationary
- (c) Taxes and property rates

- (d) Water and sewerage charges by the local council
- (e) Electricity and gas charges
- (f) Maintenance and repairs of community
- (g) Insurance costs
- (h) Security costs
- (i) Cleaning costs (other than wages)
- (j) Gardening costs (other than wages)
- (k) Vehicle running costs and fuel
- (l) Garbage collection costs to park owner additional to garbage collection service already included in property rates.
- (m) Expenditure on community activities and events made by the park owner
- (n) A sinking fund (similar to those of Bodies Corporate) that could make annual provision towards the major upgrade/replacement of equipment that is required in the long run.
- (o) Expenditure on items not elsewhere included

The sum of expenditures would of course exclude any profits being made by park owners.

This would produce an annual increase in site rent for homeowners that would be based on full transparency of the actual costs incurred by park owners.

The drawback with this approach is that it is administratively complex and an independent verification process would have to be developed to ensure that home owners could have complete confidence in the figures being produced by park owners. The process would also need to ensure that park owners are able to retain reasonable profit margins.

Reliance alone on figures being audited by private sector auditors/accountants paid for by park owners is unlikely to be a sufficient basis to convince home owners to have full confidence in the figures being compiled for use to determine annual site rent (and any other ) increases.

The Government would need to introduce a process of independent scrutiny of these figures through a process of scrutiny of the veracity of the expenditure figures by people completely separate from any financial relationship with or commissioning by park owners.

**Set a statewide mandated cap for annual site increases according to a new Site Rent Index.**

A simpler alternative could be for the Government to set a single cap each year to apply to annual site rent rises in all parks across Queensland each year. This figure would be mandated by the Government to be the cap for actual site rent price rises in any given year. Figures in existing site agreements between a park owner and a home owner could continue provided site rent rise in the site agreement did not exceed the mandatory cap each year **(This should include pre-existing and new contracts on first and subsequent homeowners)** The mandated cap would serve to void any other basis for site rent rises in a site agreement that exceed the cap.

The site rent index could be calculated according to a number of key selected items which are material to park operational costs from ABS indices for which data exists about annual price rises.

We propose that the key items to calculate such an index could be the annual percentage rise in wages and salaries in Australia (for the ABS Wage Price Index) and the annual percentage rise in insurance, building repairs and maintenance, property rates, water and sewerage and electricity (5 of the 87 categories contained in the ABS CPI figures).

The formula for the Site Rent Index would be:

$$\begin{aligned}
 \text{Site Rent Index} = & \quad \% \text{ increase in wages} \times \text{wages proportion of park operating costs;} \\
 & + \% \text{ increase in Insurances} \times \text{proportion of insurance in park costs;} \\
 & + \% \text{ increase in repairs/maintenance} \times \text{proportion of} \\
 & \quad \text{repairs/maintenance in park costs} \\
 & + \% \text{ increase in rates} \times \text{proportion rates in park costs} \\
 & + \% \text{ increase water/sewerage} \times \text{proportion water/ sewerage in park} \\
 & \quad \text{costs} \\
 & + \% \text{ increase electricity prices} \times \text{proportion electricity in park costs}
 \end{aligned}$$

This approach would necessitate the Department collecting some data from time to time from a small sample of park owners about the proportion of their total operating costs was spent on each of the six items included in the index, namely on wages and salaries, building repairs and maintenance, property rates, water and sewerage and electricity.

This could be done through an anonymous polling sample to protect park owner confidentiality, and scrutinised for accuracy by a representative body consisting of park owners, homeowners and government.

An estimation of such a Site Rent Index (SRI) is outlined in Table 4. According to this estimation, the annual SRI would be 3.2% , noting that we have data on annual price rises of the six items included in the SRI, but we don't have hard data on the proportion of expenditure on the six elements in the total operating costs of parks.

***Table 4: Site Rent Index (SRI) for Residential Parks***

Key park	A	B	C	D	SRI
cost items	% of total park costs	% of 6 key costs	Weighting	Annual increase	C X D
(a)	(b) %	(c) %	(d)	(e) %	(f) %
Wages/salaries	30.0	50.0	0.50	2,4	1.200
Insurance	6.0	10.0	0.10	3.1	0.310
Build Maintenance	3.0	5.0	0.05	1.3	0.065
Rates	15.0	25.0	0.25	3.5	0.875
Water/Sewerage	3.0	5.0	0.05	2.0	0.100
Electricity	3.0	5.0	0.05	12.6	0.630
All other costs	40.0	-	-	-	-
<b>Total</b>	<b>100.00</b>	<b>100.00</b>	<b>1.00</b>		<b>3.180</b>

Explanatory notes for Table 4.

- (a) Selected key park operating cost element. Wages and salaries (Wage Price Index); Insurance (CPI); Building Maintenance and Repairs (CPI); Property Rates (CPI); Water and Sewerage (CPI) ; and Electricity (CPI)

- (b) Column A shows an estimate of the proportion of each item to total park costs . Our estimate is that the 6 items amount to a total of 60% of all park costs. Wages and salaries do not appear in CPI, but we have estimated they contribute to 30% of total park costs. Insurance accounts for 1.2% of CPI, but we have estimated it amounts to 6% of total park costs. Building repairs and maintenance accounts for 2.3% of CPI, Water and sewerage for 1.0% of CPI and Electricity for 2.5% of CPI but we have estimated each amounts to 3.0% each of total park costs. Property rates amounts to 1.6% of CPI but we have estimated it contributes to 15% of total park costs. Electricity is 2.5% of CPI, but we have estimated it for common areas only and to contribute to 3.0% of total park costs.
- (c) Column B shows the portions that each of the 6 selected operating cost items contribute to the total of the 6 selected operating costs items. (i.e. the % of each item in the items total of 100%)
- (d) The weighting factor in Column C is simply turning the percentages shown in Column B to fractions of 1.000 so they can be used to calculate the SRI.
- (e) Column D shows the annual percentage wage and price increase in each of 6 key cost items. Annual rises in wages and salaries for Australia come from the ABS Wage Price Index. Annual increased for the other 5 items can come from detailed ABS CPI data on annual price increases broken down for the 87 categories that make up CPOI. However, we did not have detailed CPI annual price increase data available to us for the rates, water, sewerage and electricity items. So in this table we have used the rates and water and sewerage increase recently announced by the Sunshine Coast Council for the 2022/23 year, which is 3.5% for property rates and 2.0% for water and sewerage. We have used an increase of 12.6% for electricity which is a projection of expected electricity increases for the next year in South East Queensland, recently reported by the Australian Energy Regulator and the Queensland Competition Authority.