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HOME OWNERS ADVISORY AND ADVOCACY SERVICE

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Response to the Issues Paper for Stakeholder Discussion

Draft version for information of and feedback from members

Note: *This is a shortened version of the current draft of ARPQ's proposed response to the Issues Paper.*

In the full version the arguments in relation to many of the topics discussed are more detailed and this is available on the bulletins page of our web site.

Our purposes in sharing this version at this time are:

- i. To give homeowners an insight into the way ARPQ is going to respond to the Issues paper and of the reforms we are aiming to achieve in order to address the problems we focus upon in our response. We think that Home Owners Committees and individuals intending to submit response of their own might find this useful.
- ii. To provide homeowners with an opportunity to give us feedback and have some input into the final form of our response to the Issues paper on behalf of home owners through the state. **Please use the contact details above to send any feedback to us.** Try to do this by the end of July so that we have time to consider it and finalise our submission before the deadline date for submitting responses to the Department on 15th August 2022.

RESPONSE

ARPQ believes that the great majority of homeowners believe themselves to be victims of systemic injustice by current practices in relation to site rent increases and sales of homes. We believe that the Issues Paper fails to recognise the deeper issues involved some of which are articulated below.

Part 1: Site Rent Increases

Market Rent Reviews to determine site rent increases

We believe that the above is the main concern of the great majority of home owners. It is the view of ARPQ that **a site rent increase based on a market valuation determined by a market rent review is not fit for purpose in the way it is currently utilised and must be abandoned.**

We believe that increases in rents should be directly related to any increases in the costs of operating the park. We do not accept market valuations determined by market rent reviews as accurate and reliable indicators of increases in these costs.

The use of market valuations depends upon the idea that the market should determine the price paid for site rents. We submit that there is not a free market in residential manufactured home parks. 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. ARPQ firmly believes that there is a need to link increases in site rents to increases in the operating costs of the park and market rent reviews are not fit for that purpose

Increasing Unaffordability of Site Rents

ARPQ recognises the veracity of the points made in section 1.1 of the issues paper about this. The core of the problem is that there is a history of site rents increasing at a greater rate than the incomes of homeowners who in the main are reliant on full or part age pensions. Increases in pensions are not keeping pace with increases in site rents.

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 and many home owners are approaching this threshold.

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

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 homeowners' rent and income.

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

It has long been assumed that increases in CPI are a reasonable metric to use to calculate site rent increases on the grounds that it is a measure of inflation. There are good reasons to challenge this assumption.

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

Diminishing Levels of Service and Standards of Maintenance of Communal Facilities

A concern expressed by many homeowners which is not articulated in the Issues Paper is that they believe that they are not getting value for money in the standard of the maintenance work being done in their parks.

Homeowners point to the problem of there being no standards set for the services they are paying for with their rents. Concerns frequently voiced by homeowners 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),
- The absence of minimum qualifications for persons appointed to the role of park manager.
- The refusal of park owners to share with homeowners any details of maintenance budgets.

In summary ARPQ believes that the above are the core problems related to the way increases in site rent are determined which need to be taken into account when reviewing the current legislation

Reforms ARPQ Would Like to See

Site Rent Increases

A mandated two level regime for increases to site rents under which:

- There be no more than one site rent increase per year and that be equal to the latest annual percentage increase in aged pensions prior to the increase date for the park.*
- If a park owner wishes to increase site rents on any general increase day by more than the annual percentage increase in the CPI they may apply to do so by the use of s 71 of the current Act and providing evidence of actual increases in operational; costs*

Assurance of Value for Money for Site Rents

- That it be mandated in the Act that there be Maintenance Reserve and Capital Replacement Funds for each park*
- That it be mandated that the park owner must each year adopt a day to day maintenance program after consultation with home owners.*
- That a licensing regime, with minimum criteria for registration, be established for persons appointed as park/community managers.*
- 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).*

Other Issues Related to Site Rent Increases

Pre-Contractual Advice

We concur with the points made in section 1.3 of the paper. We would add that there are no guidelines on what advice is appropriate. This should include both legal and financial advice with a suitable check list of items to be covered.

Reforms ARPQ Would Like to See

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 as form to be outlined in the Act or by regulation.

Site Rents for Homes Unoccupied Due to Death of Homeowner or Going into Care.

Under the current legislation it is the practice that homeowners must continue to pay indefinitely the full rent for an unoccupied home and ARPQ considers this to be a clearly unfair and unjust arrangement.

Reforms ARPQ Would Like to See

That the site rent be considerably reduced to reflect the non-use of facilities and services no longer required

Objectives of the Act

A problem identified by ARPQ is the way the interests of homeowners and park owners are treated in the objectives and subsequently throughout the Act.

One of the objects of the Act specifically focuses upon the financial viability of the park owners by encouraging the continued growth and viability of the residential park industry in the State”.

The Act articulates no objective in relation to the protection of the financial viability of home owners.

Reforms ARPQ Would Like to See

That a clause be added to the objects of the Act to the effect that it aims to mitigate any negative impacts upon the financial security and quality of life of homeowners

Part 2: Sale of Homes

Transfer of Ownership

a) Assignment / versus New Site Agreement

ARPQ submits 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 homeowners generally.

Experience leads us to believe that the complexity of buying a home in a residential park provides an opportunity for park owners to take advantage of buyers and sellers. We believe that site agreements should be assigned unchanged at the time of sale. If either party wishes to renegotiate a new agreement they should do it separately and transparently at another time.

Reforms ARPQ Would Like to See

That where necessary the Act be amended to make it clear that when a pre-owned is sold the site agreement must be assigned to the buyer by the seller.

b) Gaps in Disclosure Requirements

Section 1.10 of the Issues Paper discusses the practice of increasing site rents for incoming home owners. It is our belief that once a site rent has been agreed under the terms of the Act or Site Agreements there should be no further increases in the park for one year.

Reforms ARPQ Would Like to See

That the above be incorporated in the Act and that the initial disclosure document 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.

The Issues Paper makes the point that sometimes park managers selling homes behave illegally and unethically because of their ignorance or misunderstanding of the Act and Site Agreements. ARPQ notes that there are currently no requirements for park owners/managers to obtain any appropriate qualifications to adequately administer a residential park.

Reforms ARPQ Would Like to See

That a registration/education regime be established for park owners/managers or other park employees acting as agents selling homes to have qualifications similar to those existing for all real estate sales persons in Queensland and to provide a good working knowledge of relevant legislation.

Other Issues Related to Sale of homes

Home Ownership and Deceased Estates

Continued payment of site rent for services and facilities that are no longer being provided or used is an aspect of this issue that concerns ARPQ and homeowners greatly.

Reforms ARPQ Would Like to See

As per response in Part 1 of the Issues paper - That the site rent be reduced for unoccupied homes to reflect the non-use of facilities and services.

Use of Exit Fees

Exit fees are in ARPQ's view totally against the intentions of the current Act. Any uncertainties about those intentions should be eliminated.

Reforms ARPQ Would Like to See

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 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.

Reforms ARPQ Would Like to See

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

Recognition of Residential Manufactures Home Parks as Senior's Accommodation

ARPQ views this as an issue that is of concern to homeowners 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 homeowners 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.

Reforms ARPQ Would Like to See

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 value of homes and the wellbeing of homeowners.

Reforms ARPQ Would Like to See

That the Act be amended in such a way that ensures that homeowners in Residential (Manufactured Home) Parks are guaranteed security of tenure for the site on which their home is situated

Compensation

We also have concerns and would like to see investigation of whether the arrangements in the Act for compensation in the event of the termination of a site agreement by the park owner to enable change of use of the land are adequate and fit for purpose.