



QUEENSLAND
MANUFACTURED HOME OWNERS
ASSOCIATION INC.

Draft Response to the Consultation Regulatory Impact Statement

Addressing concerns about site rent increases and sale of homes

Summary Version

This response will consider the proposals and recommendations of the Consultation Regulatory Impact Statement (C-RIS) as they relate to the following topics which we believe are of greatest concern to home owners

- Affordability and Fairness of Site Rent Increases.
- Ensuring that the Quality and Standard of Services, Facilities and Amenities in Parks are maintained.
- Ensuring that the process of selling homes does not disadvantage home owners unnecessarily.
- Other improvements to strengthen consumer protection in the Manufactured Home (Residential Parks) Act and associated regulations

We will respond first to the three introductory sections of the C-RIS

Key Problems

We accept the summaries of the issues outlined in the C-RIS as being reasonably accurate and comprehensive.

Causes / Contributors

We agree that the 6 causes described in the C-RIS are major contributors to the concerns of home owners about the problems outlined.

However, we also believe that there is a seventh underlying problem that leads to and exacerbates all of them. That is, the failure of the current Act and regulatory systems to provide adequate consumer protection to home owners. In particular, it fails to mitigate the effects of an imbalance in power between individual citizen home owners and corporate park owners; and to ensure the ongoing affordability of retirement living in residential parks.

Policy Objectives

We agree with these three policy objectives as stated in these headings.

However, we are extremely disappointed to note that in expanding on the third of them, "Residential parks which are sustainable for home owners and parks owners", there is significant difference between the way the interests of home owners and park owners are viewed. Ensuring that park owners are able to meet costs and make a profit are specifically mentioned, but ensuring that home owners are able to afford to pay for site rent increases is not. We have expressed the same concern about the objectives of the current Act and hope to see them addressed under the relevant Additional Recommendation of this C-RIS.

Affordability and Fairness of Site Rent Increases

In our submission to the Department's 2022 Issues Paper, we stated that the two 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

These requirements provide criteria by which we can judge the proposals and recommendations put forward in the C-RIS in respect to how site rent increases are calculated. Below are our responses to the 7 proposals that relate to them.

Additional Recommendation – That the Act should be amended to specify a definition for CPI that must be used for a CPI-based increase of site rent in the future.

We welcome and strongly support this recommendation to specify which of the indices that measure inflation must be used.

Of the versions of CPI commonly cited, our strong preference is for the one which is used in the indexing of the aged pension because that would help to ensure that site rent increases are approximately the same as increases in the income of pensioner home owners.

Mandating the use of the Brisbane All Groups CPI would not be acceptable to us.

Most preferable to us would be the creation and mandated use of a Residential Park Industry Costs Index (RPICI) which would focus upon the inflation of the costs of operating a park. As we pointed out in our submission to the Issues Paper, CPI measures the increases in the costs of a typical household and includes items such as food, fuel, medical and pharmaceutical costs and is therefore not really an appropriate measure of the increase in costs of operating a park. There is evidence that increases in the costs of operating a park are usually not as high as increases in the household costs which are measured by CPI. Thus, we believe that use of CPI will generally lead to home owners paying more than they should and to increases in the profits of park owners.

Option 6 - Prohibit market rent reviews

We very much welcome and strongly support this proposal. We are pleased to see that it is included in those preferred by the writers of the C-RIS.

Option 5 - Improve the market rent review process

We are strongly opposed this option. It would not be acceptable to us. We wish to see market rent reviews prohibited rather than improved.

Option 7 - Limit (Cap) site rent increases to the higher of CPI or a fixed percentage (for example, 3.5%)

We strongly support the concept of having site rents capped to limit the size of any increases that result from the calculation method included in new site agreements or existing ones minus market reviews.

However, we believe that setting a cap at the higher of CPI or 3.5%. as suggested in the C-RIS, would disadvantage home owners while benefiting park owners. When CPI is low it would mean increases in rent would exceed those in the aged pension. When CPI is high it would mean home owners would be paying more than is needed to cover increases in park costs.

We will advocate strongly for setting any cap in a way which does not disadvantage home owners.

It would be acceptable to us if the cap was set to be the same as either:

- The average of increases in the costs of running a park over the past 5, 10 or 15 years as calculated drawing on previous CPI data (see reference to an RPICI above);
- The CPI that is used to index the aged pension; or
- A combination of the two, e.g., the lower of the CPI used to calculate pensions and a fixed percentage based on the average increase in park costs.

Option 8 - Limit site rent increases to CPI

We understand this proposal to be the mandating of CPI as the only method of calculating site rent increases that can be used in any new or existing site agreement.

We cannot support this proposal. Along with the problems it would pose for home owners outlined in the C-RIS, we also believe that it would disadvantage those who currently have agreements to increase site rents at a fixed percentage in years when CPI is above that fixed rate.

Option 9 - Require expense-based calculations for increases above CPI

We do not support this option.

Any measure which increases site rents at a greater rate than CPI will disadvantage the majority of home owners due it being greater than the increase they will get in their aged pension. We also believe that in practice it would be very difficult for home owners to verify that the costs being claimed for any individual park were fair and accurate.

Option 4 – Limit site rent increases to a prescribed basis

We support this measure.

We believe that this would prevent park owners creating new bases for increasing site rent which disadvantage home owners as they have done in the past.

Our acceptance of such a measure would be conditional upon the range of methods that were prescribed.

Ensuring that the Quality and Standard of services, Facilities and Amenities in Parks

Option 10 - Require maintenance and capital replacement plans

We welcome and strongly support this proposal.

It is a measure we suggested in our response to the 2022 Issues Paper, as a means of addressing a major concern of many home owners - Diminishing levels of service and standards of maintenance of communal facilities in parks whilst rents are increasing.

In advocating for its inclusion in the amendments to the Act we strongly believe that it should be mandated that:

- i. Homeowners have a significant role in the development of the plans and monitoring how they are being implemented;
- ii. Details of the plans be included in the comparison documents published by parks which are suggested in Option 2.

Option 2 - Require residential parks to publish a comparison document

We welcome and strongly support this concept.

The benefits it would offer to new and prospective home owners are clear, but we believe that it would also be advantageous to existing residents in that it will foster greater competition between park owners to attract residents and thus encourage them to maintain higher quality of facilities and service. Such documents would also enhance the capacity of home owners to hold their park owners accountable to maintain the standards outlined in their comparison document.

In voicing our support, we note that the effectiveness of this measure will depend heavily upon both what information is included in the comparison documents and the accuracy of it. We strongly urge that how both of these aspects of the proposal are to be addressed be made clear in the wording of the amendments to the Act which are finally adopted, including the means by which the latter will be assured.

Ensuring that the process of selling homes does not disadvantage home owners unnecessarily

Option 3 - Simplify the sales and assignment process

Under this option, all site agreements for prospective home owners will be new agreements with updated terms and information. However, buyers' agreements must carry over prescribed terms (such as site rent) from sellers' agreements.

We strongly support this proposal.

One of the major concerns of home owners in relation to the sale of homes process, which we highlighted in our submission in response to the 2022 Issues Paper, is that park owners we doing all they can to ensure that new site agreements were adopted rather than the seller assigning existing site agreements, in order to impose conditions such as higher site rents and reduced levels of service than had been provided for the same home previously.

Additional Recommendation - The presentation of information in pre-contractual disclosure documents and site agreements should be improved, particularly in relation to the future costs of site rent.

We strongly support this recommendation.

A major concern raised frequently with QMHOA by home owners is that they were not aware of the ramifications of aspects of their site agreement until after it had been signed, sometimes not until some years after. The clauses in the contract contributing to increasing unaffordability of site rent being the most frequent example of this.

If they are implemented well, we see this recommendation together with Option 2 – the publication of comparison documents by parks, as helping to mitigate these concerns.

Option 11 - Establish a limited buyback and site rent reduction scheme

We will respond to the two aspects of this proposal separately.

Site Rent Reduction Scheme

We are strongly in favour of site rent reductions when homes are unoccupied...

We believe that it is unfair, unjust and unwarranted that home owners should be asked to pay full site rent which covers the cost not only of the rent for the use of the land their home is situated on, but also services and facilities/amenities provided in the park that they can no longer avail themselves of.

For this reason, we believe strongly that reductions should be applied after a much shorter period of time than 12 months, as is proposed here, and apply to all non-occupied homes.

We are also in favour of the idea of buy backs of homes which parks owners fail to sell on behalf of home owners.

We believe that it is a measure which will address a major concern of home owners, that when they wish to sell their home in a park, there will be longer than necessary delays in them being able to do so due to the fact that the park owner is favouring the sale of newly developed homes rather than used ones because of the greater financial benefits to themselves.

However we have significant concerns about the ways proposed to do this in the C-RIS, particularly the minimum 18 month timelines suggested.

Other improvements to strengthen consumer protection in the Manufactured Home Residential Parks Act and associated regulations

Additional Recommendation - The objects of the Act should be amended to include protecting home owners from unfair site rent increases and to preserve security of tenure for home owners.

We support this recommendation.

We believe a major flaw of the current objectives of the Act is that specific mention is given to maintaining the financial viability of parks as a business, whilst no such commitment is made in relation to home owners. In giving our support we will be looking to make sure that the wording of amendments to the objectives of the Act include protecting the financial wellbeing of home owners by ensuring site rents remain affordable as well as calculated fairly

Additional Recommendation - The Act should be amended to require registration and suitability requirements for residential parks and park owners, similar to those applying to retirement villages

We support this recommendation.

We would like to see a requirement for qualification standards for park managers included in some way.

Additional Recommendation - A registration system for manufactured homes should be developed which allows home owners to register ownership of manufactured homes, and supports buyers to confirm that the seller of their home is the legal owner.

We strongly support this recommendation.

At present there is no similar means available to home owners in residential parks to prove ownership of their home to that provided by the titles register available to owners of homes and other properties in the rest of the community.

Additional Recommendation - The Act should be amended to allow a manufactured home owner to sell their home where their site agreement is terminated by QCAT under s.38 of the Act, for example where there are un-remedied breaches of the site agreement. This would allow a home owner to recover their investment in the home as positioned on the site rather than being required to give vacant possession of the site.

We support this recommendation.

This is a measure that addresses a recognised loophole in the Act which has the potential to disadvantage home owners.

Additional Recommendation - The Act should be amended to clarify that where a site agreement is terminated because the park owner is seeking to use the land for another lawful purpose, the compensation order by QCAT may consider the reasonable purchase price for the home if it was sold as positioned on the site.

We strongly support this recommendation.

This is also a measure that addresses a recognised loophole in the Act which has the potential to disadvantage home owners.

Additional Recommendation - The Act should be amended to resolve any ambiguity around retirement village-style exit fees and clarify that such fees are prohibited

We strongly support this recommendation.

It would address the issue of some park owners managing to find legal loopholes which enable them to get around the intentions of the current Act to prohibit any kind of exit fees in residential parks.

Additional Recommendation - The Act should be amended to provide a more contemporary definition of a 'manufactured home'.

We strongly support this recommendation.

We believe that that the current definition in the Act is extremely outdated and does not reflect the reality of the nature of homes in contemporary parks.