

# ***Manufactured Homes Amendment Bill 2010***

## **Summary of amendments**

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Department of Employment, Economic Development and Innovation

### **Definition of ‘manufactured home’ - modified caravans:**

- The Act is not intended to apply to caravans occupying a site in a residential park. The proposed amendments clarify that caravans which have been subject to structural and other modifications are not ‘manufactured homes’ for the purposes of the Act.
- However, the draft Bill also provides residential park owners and the owners of modified caravans with the flexibility to agree to enter into a site agreement and to have their relationship regulated by the Act.
- It is intended that this arrangement would only apply where the parties freely choose to enter into such an arrangement. Therefore, it is proposed that a home owner or park owner’s decision not to enter into a site agreement in relation to a modified caravan will not be reviewable by the Tribunal.
- Importantly, the proposed amendments are not intended to impact on any existing site agreements between a modified caravan owner and a residential park owner.

### **Proposed ‘plain language’ requirements for the presentation of site agreements:**

- The draft Bill contains a number of possible amendments to improve the presentation of site agreements, including a new requirement for agreements to be easily legible and clearly expressed in plain language. The proposed amendments provide the Tribunal with authority to resolve disputes about whether site agreements comply with the new requirements.
- The proposed amendments also clarify that site agreements must include a business hours telephone number for the park owner (or manager) and introduce a new requirement that park owners must notify home owners of any change to the telephone number within 7 days.

### **Proposed amendments to special terms in site agreements which are ‘unfair’:**

- The proposed amendments aim to enhance consumer protection by including provision in the Act for particular types of unfair special terms to be prohibited by regulation. It is anticipated that a regulation setting out prohibited unfair special terms will be developed after the commencement of the amendments to the Act.

### **Proposed changes in relation to the termination of site agreements:**

- The proposed amendments aim to better balance the interests of manufactured home owners and residential park owners by expanding the types of orders the Tribunal may make to assist home owners faced with termination of their site agreements, on the basis that the park owner wishes to use the land for another purpose.
- Specifically, the amendments allow the Tribunal to consider making an order postponing the termination date for up to one year, or an order requiring the park owner to offer the home owner another comparable site, provided one is available and the home owner wishes to remain in the park.

### **‘Fixed-term’ site agreements:**

- Site agreements under the Act are intended to operate for an indefinite period of time. The proposed amendments aim to strengthen the intended purpose of the Act by specifically prohibiting the establishment of fixed term agreements. The proposed amendments are intended to apply to both future and existing site agreements.

### **Site rent variations and market reviews of site rent:**

- The proposed amendments contained in the draft Bill are intended to improve the operation of the Act by providing more certainty and transparency in relation to site rent variations.
- The Act currently allows residential park owners to apply to the Tribunal for an order confirming a proposed increase in rent outside the express terms of the site agreement, including on the basis of a 'market review' of rent.
- The proposed amendments limit the ability of the Tribunal to approve rent increases based on market review outside the terms of the site agreement. For agreements entered into after the commencement of the amendments, it is proposed to remove the ability of park owners to seek an increase in rent based on market review, if that variation in rent is not expressly provided for in the site agreement.
- For existing agreements entered into before the commencement of the amendments, it is proposed that park owners will not be permitted to seek increases in site rent based on market review if the site agreement states or implies that the rent will only increase in accordance with the Consumer Price Index (CPI). However, to balance the impacts of the new restrictions on existing site agreements, the proposed amendments provide park owners with the opportunity to revisit and amend a 'CPI only' clause in a site agreement upon assignment of the agreement to a new home owner.
- The draft Bill also contains proposed amendments to strengthen consumer information requirements and current prohibitions on unconscionable, fraudulent and misleading conduct with specific reference to site rent issues.

### **Home owners committees:**

- The proposed amendments aim to clarify the operation of the Act by specifically providing that there is to be only one home owners committee established for a residential park. It is proposed that if there is more than one home owners committee in a park, the home owners must establish a single home owners committee within 3 months of the commencement of the amendments.

### **Proposed miscellaneous amendments:**

- The draft Bill also contains a number of more minor, technical amendments to clarify and improve the operation of the Act.

### **Effect of amendments on existing site agreements:**

- The proposed amendments are not intended to have any affect on decisions made by a Court or Tribunal prior to the commencement of the Bill.

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