

Public Benefit Test

Proposals arising from a Review of the Manufactured Homes (Residential Parks) Act 2003

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Disclaimer

This Report does not represent any policy of the Queensland Government. It discusses possible policy proposals to improve the operation of the *Manufactured Homes (Residential Parks) Act 2003* in Queensland.

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Part 1 Introduction

1.1 Purpose

1. This report sets out the analysis and findings of a Public Benefit Test (PBT) undertaken in relation to proposed amendments to the *Manufactured Homes (Residential Parks) Act 2003* (the MHRP Act). The proposed amendments are the result of a legislative review process conducted in 2007-2008 (the review of the MHRP Act) and subsequent consultation undertaken in 2009-2010 following the release of a draft *Manufactured Homes (Residential Parks) Amendment Bill 2010* (the MHRP Bill) and the release of the draft PBT report.
2. The full findings and recommendations of the review of the MHRP Act are detailed in the Review of the *Manufactured Homes (Residential Parks) Act 2003 Outcome Report* (the Outcome Report), which was published in May 2008. In addition to legislative amendments recommended in the Outcome Report, a number of further changes were developed following targeted stakeholder consultation conducted in accordance with, and after publication of the Outcome Report.
3. Further legislative amendments were proposed following an analysis of the key concerns raised by stakeholders in the consultation undertaken following the release of the draft MHRP Bill and the release of the draft PBT report, and are outlined during the assessment of each proposed restriction in Part 7 of the PBT report.
4. This PBT report:
 - sets out the purpose and methodology of the PBT
 - presents an overview of the residential parks sector
 - identifies current MHRP Act requirements impacting on competition in the residential parks sector
 - states the policy objectives of proposed amendments to the MHRP Act
 - assesses proposed amendments which may impose restrictions on competition, including reference to the likely impacts of the amendments for residential park owners, manufactured home owners and other stakeholders
 - describes and analyses possible alternatives to meet the policy objectives
 - draws conclusions regarding the net costs and benefits of the proposed amendments

1.2 Reasons for the PBT

5. The review of the MHRP Act has resulted in proposed legislative amendments, which are intended to enhance the capacity of the legislation to meet its consumer protection objectives, balanced with the need to promote continued growth and viability of the residential parks sector. The policy objectives of the proposed amendments are set out in more detail at Part 5, paragraph 113.
6. A number of the proposed amendments to the MHRP Act may amount to business conduct restrictions on competition. Proposals identified as having potential impacts on competition are described at Part 6, paragraph 115.

7. Under National Competition Policy, departments and agencies seeking to introduce legislation restricting competition must conduct a PBT.

1.3 PBT methodology

8. The Department of Employment, Economic Development and Innovation has conducted the PBT in consultation with Queensland Treasury and pursuant to the Queensland Treasury *Public Benefit Test Guidelines* (PBT Guidelines). The guiding principle for the PBT is that legislation should not restrict competition unless it can be demonstrated that the:
 - benefits of the restriction to the community as a whole outweigh the costs and
 - objectives of the legislation can only be achieved by restricting competition.
9. The PBT has been conducted as a 'reduced review' on the basis that the MHRP Act was primarily developed to meet social rather than economic objectives, including by assisting in the protection of consumers and the facilitation of alternative, affordable housing and accommodation options. However, in assessing the proposed restrictions, consideration has been given to both commercial and economic interests as well as social justice and consumer protection principles.
10. In 2002, and prior to its passage by the Queensland Parliament, the Manufactured Homes (Residential Parks) Bill 2003 was subject to a PBT. The current PBT builds on the findings and analysis contained in the report of the earlier PBT and identifies a number of changes and issues that have arisen since that time. The information and options contained in this PBT report were also informed by:
 - an extensive consultation process undertaken in 2007 and 2008 as part of the review of the MHRP Act which was included consultation with manufactured home owners, residential park owners, industry and community groups and government agencies, as well as an analysis of consumer complaints and correspondence to the Office of Fair Trading, and a review of the relevant issues considered by courts and tribunals.
 - targeted stakeholder consultation conducted in accordance with, and after publication of the Outcome Report
 - feedback received during a consultation period following the release of the draft MHRP Bill in December 2009, release of the draft PBT report in January 2010 and eight consultation forums conducted in early February 2010. Over 500 stakeholders attended the forums including home owners, park owners, park managers, solicitors, industry and consumer representatives and Members of Parliament and over 100 written submissions were received in response to the draft MHRP Bill.
11. The full Terms of Reference for the PBT are included as **Attachment 1**.

Part 2 Industry snapshot

2.1 What is a residential park?

12. Residential parks are a form of community living whereby a number of residents occupy parts of a single parcel of land owned by a park owner.
13. Under the MHRP Act, a 'residential park' is defined as an area of land that includes sites available for occupation by 'manufactured homes', along with common areas and facilities for the personal comfort, convenience or enjoyment of people residing in the manufactured homes positioned on those sites.
14. A manufactured home is defined in the MHRP Act as a structure, other than a caravan or tent that:
 - has the character of a dwelling house
 - is designed to be able to be moved from one position to another and
 - is not permanently attached to land.
15. It is important to note that the MHRP Act only applies to a residential park where at least one or some of the sites are occupied by a manufactured home. The MHRP Act does not apply to caravans or other structures positioned in a residential park, whether or not the agreement is for short or long-term accommodation.
16. It should also be noted that some parks are colloquially, or by business name, known as a 'caravan park'. However, 'caravan parks' may still offer sites for the positioning of a manufactured home.
17. There are some difficulties and limitations in accessing specific demographic and other data relating to residential parks, as defined in the MHRP Act. This is due to the fact that there is currently no requirement for manufactured homes or the sites occupied by manufactured homes, in a residential park to be centrally 'registered' or recorded. However, some indicative data is available and outlined below.

2.2 Size of the sector

18. It is estimated that caravan and residential parks provide permanent accommodation for around 168,120 people across Australia¹.
19. In terms of residential parks with sites available for manufactured homes in Queensland, (that is, residential parks within the meaning of the MHRP Act) it is estimated there are approximately 200 residential parks, which provide accommodation for around 15,000 Queenslanders. Residential parks in Queensland are generally concentrated in the South-East region of the State.
20. In general, 'caravan parks' and 'residential parks' occupy large parcels of level land, which are near highways and located in rapidly developing coastal areas

¹ Australian Bureau of Statistics March 2005, *Mature age persons statistical profile, Living arrangements*, vol. 4905.0.55.001.

or growth corridors.² These locations often provide prime access and exposure to passing traffic resulting in residential park land being targeted in the property market as potential redevelopment sites for shopping centres, high-density residential developments, or bulky good retail outlets.

21. Park owners value and often base their decision to enter the industry and operate a residential park on whether or not the legislation provides the capacity for park owners to maintain the right to choose to use their land and change its use as they see fit. Over the long-term the land owner may be presented with the opportunity to gain a large return on their investment through potential redevelopment ventures.
22. In addition, the article *Caravan parks as a provider in the affordable housing market*³, noted emerging trends in the property market (such as increases in insurance, regulations and land values) have also threatened the viability and growth of caravan parks.

2.3 Sector demographics and variation of parks

23. The Australian Housing and Urban Research Institute's report in 2003 titled *On the margins? housing risk among caravan park residents*⁴ (the AHURI report) notes that over the past two to three decades, caravan parks have increasingly become home to a diverse range of people and types of households.
24. There are a number of factors that affect the diversity of residential parks including the level of growth in the industry; the viability of parks; the standard of facilities; the composition of residents and the proportion of sites available for either short-term or long-term accommodation.
25. The AHURI report also noted that the types of parks available to residential park residents is also diverse and ranges greatly from purpose-built manufactured home estates, with high quality amenities and services, to caravan parks, which may have the most basic of facilities and can provide crisis accommodation for people who are homeless and/or on a waiting list for public or community housing.
26. The Outcome Report further highlighted that there exists two clearly separate groups of manufactured homes: "traditional" mobile homes (usually located in 'mixed use' parks) and modern manufactured homes (often located in 'purpose built' manufactured home parks).
27. Manufactured home parks can offer residents a communal style of living, which may include a variety of facilities for use by the residents such as pools, tennis courts, fitness centres or other sporting and common areas. Manufactured home parks may also offer residents the opportunity to participate in a variety of organised events where park residents can socialise with other members of their park community.

² Reed, R and Greenhalgh, E 2004, '*Caravan parks as a provider in the affordable housing market*' *Property Management*, vol. 22, Number 5, pp. 396-409, Emerald Group Publishing Limited.

³ Reed, R and Greenhalgh, E 2004, '*Caravan parks as a provider in the affordable housing market*' *Property Management*, vol. 22, Number 5, pp. 396-409, Emerald Group Publishing Limited.

⁴ Wensing, E, Holloway, D, Wood, M 2003 *On the Margins? housing Risk Among Caravan Park Residents* (Final Report No. 47), Australian Housing and Urban Research Institute, Melbourne.

28. There are a wide variety of options available to manufactured home owners in relation to quality, size, design, location and purchase price as well as the range of amenities, services and programs available in residential parks for manufactured home owners. This was highlighted during the review of the MHRP Act and in the Outcome Report⁵.
29. Responses received to the survey released by Office of Fair Trading in 2007, showed that the purchase price for a manufactured home also varies substantially with the year of purchase. The purchase prices provided by respondents to the survey⁶ showed a sizable increase in the purchase price of manufactured homes from 2002 to 2006.
30. Manufactured homes purchased prior to 2002 cost on average between \$30,000 to \$150,000 and manufactured homes purchased between 2002 and 2006 cost on average between \$150,000 and \$250,000.
31. Developers of purpose built manufactured home parks are now marketing for sale, new manufactured homes which range in price from \$295,000 to well over \$500,000. However, regardless of the purchase price, the manufactured home owner does not have any right to the land that the home is positioned on or to the increase or decrease in land value.
32. The high cost of purchasing a manufactured home, particularly in purpose built parks, has reinforced the sentiment that was expressed during consultation that new manufactured homes in purpose built parks are no longer the affordable housing option mobile homes once were.
33. As purchasing a manufactured home often represents a significant investment for the home owner, consumers should be aware that there is not always a ready market for resale. In addition, the availability of vacant sites in residential parks for the re-positioning of a manufactured home is limited.
34. Furthermore, the value of a manufactured home is more likely to depreciate over time rather than keep pace with values in the general housing market because increases in values in the general housing market are usually linked with an increase in land value. Manufactured home owners are simply leasing the land and they neither own nor have any rights to the land on which their manufactured home is positioned. However, home owners often pay a premium for the site agreement in addition to the cost of the home, making the total purchase price of some manufactured homes well above the actual value of the manufactured home.
35. Manufactured home parks are only one option for alternative housing available to consumers and particularly consumers in the 'over 50's' demographic. For example, manufactured home parks compete in the same marketplace as retirement villages as a housing option for older people. In New South Wales the market for relocatable home villages and retirement villages appears to be

⁵ Queensland Government, Department of Justice and Attorney-General May 2008, Outcome Report for the Review of the *Manufactured Homes (Residential Parks) Act 2003*, pp 9-10.

⁶ Queensland Government, Department of Justice and Attorney-General May 2008, Outcome Report for the Review of the *Manufactured Homes (Residential Parks) Act 2003*, pp 29-32.

very competitive. However, a 2003 study noted that in Queensland, retirement villages command a significant share of the retirement housing market.⁷

2.4 Mixed use parks

36. Mixed use parks provide sites for both short-term tourist style accommodation and long-term, more permanent accommodation. Long term, more permanent accommodation may include for example sites for occupation by caravans, caravans with an annexure or addition, larger more permanent style caravans (for example, square-lines) or manufactured homes.
37. As mentioned previously, the MHRP Act only applies if the agreement between the park owner and the resident is in relation to the positioning of a manufactured home, which the resident owns.
38. Other forms of accommodation located in a residential park, whether short-term or long-term accommodation are likely to be regulated by the Residential Tenancies and Rooming Accommodation Act 2008 (the RTRA Act).
39. For example, a park owner may rent sites to caravan owners for either a short-term or long-term stay. A park owner may also rent caravans, cabins, manufactured homes or an alternative form of accommodation to tourists or tenants that wish to use the dwelling either short-term for a holiday or long-term as their principal place of residence. These forms of agreement would normally be subject to the regulatory framework provided for under the RTRA Act.
40. Many mixed use parks have recently been focusing more on tourist/short-term accommodation opportunities. According to the AHURI report the trend to reduce the availability of sites for permanent residents is due to the profitability of tourist accommodation. However, as tourist accommodation is often only occupied during certain 'peak' periods, some park owners still believe it is of benefit to provide sites to permanent residents who continue to provide revenue through the entire year, including through 'off peak' periods.
41. In addition, research during the review of the MHRP Act also showed that the composition of sites in 'mixed use' caravan parks in the South East Queensland region was changing with a decrease in the number of sites available for long term accommodation offered to more permanent residents of a park and an increase in the number of sites available for short-term accommodation catering to tourists.
42. This trend has continued in 'mixed use' parks in Queensland, which are focusing on short-term tourist accommodation opportunities that can draw on Queensland's tourism industry to increase profitability.
43. There is also the additional incentive for park owners to utilise their land for commercial or residential development and to leave the industry because of the relatively restrictive regulatory burden applying to park owners who provide sites for occupation by manufactured homes (including through increasing

⁷ Woodbridge, S 2003, Coping With Change: Comparing The Retirement Housing Decisions Of Older People, Centre for Social Change Research, School of Humanities and Human Services, Queensland University of Technology

regulation and varying local, state and national government and planning legislation).

2.5 Purpose built parks

44. Although there may be a general decline in the number of 'mixed use parks' which offer long-term sites for the owners of more permanent dwellings, the residential parks sector is increasingly diverse and a more recent trend has been the development and emergence of sophisticated, purpose-built manufactured home parks.
45. Modern manufactured homes are often constructed on site, are not as easily moved as traditional 'mobile homes' and can more closely resemble a conventional house. However, at the time of purchase, many purpose built manufactured homes are often certified as being 'architecturally designed' to be moved and are able to be disengaged from the slab or rails on which they are built. In order to receive building approval as a mobile home park, purpose built manufactured homes must meet the specifications of local government planning and building codes.
46. It should be noted that modern manufactured homes are less likely to be moved to another site because of the costs with moving the sometimes complex structure. In addition, the availability of an alternative, vacant site for the positioning of a manufactured home within a residential park is limited.
47. In Queensland, the development of purpose built manufactured home parks, as well as the substantial investment residents may choose to make in purchasing a manufactured home, has largely emerged as a result of the consumer protection initiatives under the MHRP Act, which provides that site agreements not have a fixed termination date, may only be terminated in accordance with the Act and may be transferred to a new owner when the manufactured home is sold.
48. Modern manufactured home developments or 'lifestyle' villages are often marketed to the over 50's, self-funded retiree demographic. The attraction to these purpose built parks is often based on the lifestyle options that are provided to residents, with facilities including heated pools, spas and saunas, tennis courts, bowling greens, libraries, gymnasiums, cinemas and medical facilities. Another attraction to entering these parks is being able to live in a secure environment surrounded by a community of like-minded residents.

2.6 Who are the park owners?

49. Park owners own the real property on which the residential park is situated and are responsible for operating the park (which may be delegated to a park manager) as well as compliance with all relevant legislation affecting residential parks. For example, park owners must abide by local, State and Commonwealth legislation, which can involve compliance costs and responsibilities.
50. Park owners operating 'mixed use' parks in Queensland must comply with the regulatory framework provided for by a number of pieces of legislation including, for example, local planning laws as well as the RTRA Act and the MHRP Act.

51. Rising expenses (partly due to the cost of complying with increasing legislation) that have not been offset by higher income (usually in the form of site rent) can impact on the financial return on investment for park owners.
52. It is in a park owner's interests to maintain the right to determine the use of their land, the ability to consider both long-term and short-term business proposals and plans, the ability to maximise the return on their investment (often through increases in site rent), and the opportunity to provide their customers with a high quality residential park.
53. Under the MHRP Act, a park owner's ability to increase site rent is limited to their site agreement with a manufactured home owner and through the methods for varying site rent provided for in the MHRP Act. As discussed previously, many park owners operating 'mixed use' parks have been transitioning out of providing sites to more permanent residents, including manufactured home owners. This is one method park owners are using to maintain a higher degree of flexibility in their ability to vary site rent and increase the profitability and viability of their investment.
54. Flexibility to change the use of the land is limited for park owners that offer sites for the positioning of a manufactured home. This limited flexibility is due to the termination and compensation provisions under the MHRP Act, which aim to provide a high degree of security for home owners in relation to their ability to occupy a site in a park.
55. Furthermore, the potential sale of park land and transfer of residential park ownership may not be an appealing investment to a successor in title of the park as the successor will obtain the benefits, and be subject to the obligations of the previous park owner in relation to current site agreements in the park and will also be responsible for compliance with varying pieces of legislation.

2.7 Who are the customers?

56. A variety of people are attracted to manufactured homes as an option for alternative, often affordable, housing. Studies, including the AHURI Report and the Outcome Report, show the manufactured homes industry provides certain demographic groups with desirable housing and lifestyle options.
57. Residential parks range greatly from purpose-built manufactured home estates, with high quality amenities and services, to caravan parks, with the most basic of facilities that may provide crisis accommodation, including for people of a lower socioeconomic status. Depending on the circumstances and financial capacity of individual consumers, the quality of a manufactured home and range of park facilities available to residential park residents can be of very high quality.
58. Studies, including the Outcome Report, show that an increasingly older demographic is choosing to purchase manufactured homes located in 'purpose built' manufactured home parks as an accommodation option for their retirement.
59. For example, a key finding during the consultation phase of the review was that the majority of residential home owners are elderly retirees on a fixed income, seeking alternative housing options that offer community living. Of those

⁸, 80 per cent were over 65 years of age and a further 33 per cent of that 80 per cent were over 75 years of age.

60. This demographic group was also represented in the AHURI report in 2003, which found that people aged 65 years and over comprised 23 per cent of caravan park residents and 58 per cent of residents living in manufactured home estates across Australia.
61. Because a number of individuals in this demographic group are retired and on limited or fixed incomes, many (but not all) manufactured home park residents constitute some of the more vulnerable members of the community.
62. However, individuals who choose to purchase a manufactured home may also be eligible for a number of benefits. For example, there are benefits offered to individuals who receive a pension, including the fact that owning a manufactured home (as their principle place of residence) does not usually reduce a person's eligibility for payments received in relation to the age pension. In addition, a manufactured home owner may also be eligible for rent assistance⁹ which will positively impact on the individual's retirement savings budget and assist the manufactured home owner in paying their weekly site rent and other fees.
63. These factors make the ownership of a manufactured home an attractive option for individuals who receive a pension and are able to live independently, without general home care or living assistance.
64. Individuals who are in the 'over 50's' demographic who chose to live in a manufactured home, particularly homes positioned in a purpose built manufactured home park, are often interested in living in a close-knit community with few maintenance obligations, a variety of amenities and with people who have similar interests and needs.
65. Manufactured home owners who choose to live in purpose built manufactured home parks, where the purchase price of a home can be upwards of \$300,000, could have a number of other options available to them in the housing market. These options include the purchase of a town house, a more traditional home or the purchase/rental of an apartment.
66. However, alternative options for low income earners in residential parks are very narrow. People who live in caravan parks as a last resort are also a significant and often vulnerable group in the community¹⁰. Although individuals in a lower socioeconomic group may also be eligible for a form of housing assistance, their options are more limited.
67. The Queensland Government, through the Department of Communities, supports a range of initiatives aimed at improving the availability of affordable housing within the private housing market.

⁸ Queensland Government, Department of Justice and Attorney-General May 2008, Outcome Report for the Review of the *Manufactured Homes (Residential Parks) Act 2003*, pp 29-32.

⁹ Australian Government, Centrelink, Updated on 4 December 2009, Viewed on 14 December 2009, www.centrelink.gov.au.

¹⁰ Hogarth, D., Geggie, J. and Eddy, G. 1994, 'When home is a caravan park', *Children Australia*, vol. 19, no. 3, pp. 4-8.

68. These initiatives encourage the private sector and the not-for-profit sector to engage in the supply of affordable housing. They also assist Queenslanders to access affordable housing in the private market.

2.8 Who are the industry competitors?

69. The manufactured homes park industry provides consumer groups with an alternative housing and lifestyle option. However, the housing industry is competitive and purchasing a manufactured home is just one of many options available to consumers.
70. As mentioned previously, individuals considering the purchase of a manufactured home, particularly consumers with a budget upwards of \$300,000, may also consider living in a traditional home, in a rented house or in a rented apartment (which offers various amenities) in a block of units, in a townhouse (which can provide for regular yard maintenance and amenities) or in a caravan in a residential park.
71. The Outcome Report showed that in Queensland, consumers of manufactured homes are often part of an older demographic and the housing market offers a range of options for housing and services during retirement, including for example retirement villages.
72. Retirement villages can provide residents with the benefits of village management and personal care options and may include services such as garden maintenance, housekeeping and personal services as well as features such as emergency call assistance.
73. In addition, a number of services are available to help seniors remain in their own home, which may encourage individuals to continue their pre-retirement living arrangements. For example, services may be available to assist an individual with their personal health needs or house maintenance requirements through private or not-for-profit organisations or through a range of government initiatives. For example, general living assistance may be provided within an individual's home or within the family home. Out-of-home and respite services may also be available in some areas.

2.9 What role does government play?

74. According to the AHURI Report, a range of policies and actions are required by all spheres of government to meet the needs of people living long-term in caravan parks whose housing may be threatened by park closures or changes in the market.
75. For example, the AHURI Report argues that it is necessary to provide the residential parks sector of the housing market with improved security of tenure arrangements, written site lease agreements, better dissemination of information about the positives and negatives of living long-term in caravan parks or manufactured housing estates, information about legal rights and responsibilities for all the parties involved and improved advisory and support services. Additional policy considerations outlined by AHURI include possible compensation for forced relocations to cover re-housing and/or re-location costs.

76. A number of the policy initiatives outlined above are currently represented in the residential parks industry in Queensland through the consumer protection initiatives provided for in the MHRP Act.
77. The main purpose of the MHRP Act is to regulate and promote fair trading practices in the operation of residential parks, including, by declaring particular rights and obligations of manufactured home owners and residential park owners and by facilitating the disclosure of information about a residential park and the MHRP Act to a prospective home owner for a site. This is achieved through prescribed consumer information and warnings, regulation of the making, prescribed content, assignment and termination of site agreements, limitation of variations in site rent and the provision of informal and accessible ways of resolving site agreement disputes.
78. Providing a clear regulatory framework for the operation of residential parks in order to ensure consumers are adequately protected while allowing residential parks to remain commercially viable is crucial because, as mentioned previously, such parks service vulnerable demographic groups within the housing sector.
79. The review highlighted that manufactured home owners and residential park owners often have competing interests, which are at the core of many on-going issues in the industry. For example, residential parks are usually run by land owners on a commercial basis, while manufactured home owners are often concerned with their ongoing right to reside in a residential park and with minimising site rent increases.
80. The policy objectives of the MHRP Act aim to balance these competing interests by offering manufactured home owners a high level of consumer protection, while also encouraging the continued growth of the residential parks sector.
81. The MHRP Act also offers manufactured home owners and residential park owners options for dispute resolution, which can eventuate as a result of the parties competing interests. The MHRP Act provides for a number of methods to resolve site agreement disputes including through the parks 'home owners committee' if one has been established, or by seeking an order from the Queensland Civil and Administrative Tribunal (the Tribunal).
82. In addition, manufactured home owners may utilise the Caravan and Manufactured Home Residents Association of Queensland Inc (CAMRA). CAMRA is a mediation and advice service funded by the Queensland Government to assist manufactured home park residents in understanding their rights and responsibilities under the MHRP Act.
83. Another objective of the Act is to encourage the continued growth and viability of the residential parks industry. One factor that encourages the continued growth is the Government's exemptions on land tax for owners of moveable dwelling parks in certain circumstances. For tax purposes, moveable dwelling parks are considered to be place where caravans or manufactured homes are situated for occupation on payment of consideration. Specifically, the tax concessions provide that if land is used predominantly as a moveable dwelling park on which more than 50% of the total numbers of sites are occupied or

84. During consultation some stakeholders expressed concern that over-regulation of the residential parks industry by government would inhibit the growth of the industry (and encourage park owners to leave the industry) which would impact on the availability and affordability of manufactured homes.

¹¹ *Land Tax Act 1915*, section 13 (1)(l) and *Land Tax Act 2010*, section 54 (commencing 30 June 2010)

Part 3 Legislative framework

3.1 Manufactured Homes (Residential Parks) Act 2003

85. The MHRP Act received royal assent on 22 October 2003 with most of its provisions commencing operation on 1 March 2004. The MHRP Act repealed and replaced the *Mobile Homes Act 1989*.
86. The MHRP Act is administered by the Department of Employment, Economic Development and Innovation (through the Office of Fair Trading) and provides for the positioning and occupancy of manufactured homes in residential parks. The legislation governs the relationship between people who own their own manufactured home, but rent the site it is positioned on from a residential park owner.
87. The main object of the MHRP Act is to regulate and promote fair trading practices in the operation of residential parks, including by declaring particular rights and obligations of manufactured home owners and residential park owners. However, the objectives of the MHRP Act also include encouraging the continued growth and viability of the residential parks industry in Queensland.
88. The *Manufactured Homes (Residential Parks) Regulation 2003* (the Regulation) has been made under the MHRP Act. The Regulation is currently limited to prescribing the maximum fee a park owner may charge for acting as a home owner's agent in the course of selling a manufactured home. However, one of the options considered as part of this PBT would result in new regulations to address concerns about particular types of special terms in site agreements.

3.2 Current requirements under the MHRP Act

89. The MHRP Act imposes a number of restrictions and obligations on residential park owners in the operation of residential parks. These include statutory requirements in relation to the following matters:
 - cleaning, repair and maintenance of common areas and communal facilities in the park
 - ensuring home owner and emergency services access to sites and common areas
 - providing home owners' with quiet enjoyment of the home owner's site and common areas
 - providing reasonable availability of the park owner or park manager to be contacted by home owners
 - providing a continuity of supply of utility services to the park and sites within the park
 - regulating compliance with site agreements and park rules
 - ensuring the provision of pre-contractual consumer information to prospective home owners
 - entering into written site agreements with home owners which contain prescribed information
 - inclusion of park owners' statutory responsibilities in the terms of site agreements

- limiting the grounds upon which a park owner may seek termination of a site agreement with a home owner (including a requirement for park owners to pay a home owner compensation for termination of a site agreement in some circumstances)
 - facilitating and refraining from unreasonably interfering with a home owner's decision to assign their interest in a site agreement to another person
 - ensuring the provision of notices and information regarding proposed increases in site rent pursuant to a site agreement
 - following processes for seeking variations in site rent outside the terms of site agreements (including a requirement for the park owner to seek an order of the Tribunal)
 - ensuring the maintenance of a notice board and provision of mail facilities
 - responding to complaints or proposals presented by the home owners committee and
 - refraining from fraudulent, misleading, harassing or unconscionable conduct.
90. The MHRP Act specifically prohibits park owners from contracting out of statutory obligations imposed by the legislation. In addition, successors in title to the park obtain the benefits, and are subject to the obligations of the park owner under existing site agreements.
91. The MHRP Act provides for the resolution of particular types of disputes arising between park owners and manufactured home owners by the Tribunal. In addition, the MHRP Act authorises the appointment of inspectors to conduct compliance and enforcement functions under the legislation.

3.3 Requirements and concessions under other legislation

92. 'Mixed-use' residential parks often provide sites for occupation by manufactured homes, caravans or tents. Residing in caravans in a residential park is governed by the RTRA Act. Therefore, the operators of mixed-use residential parks must comply with both the MHRP Act (with respect to the rental of sites to manufactured home owners) and the RTRA Act (in relation to the occupation of sites by caravan owners, or the rental of a manufactured home or other structures owned by the park owner).
93. Residential parks are also regulated by Commonwealth, State and local government laws relating to general business conduct as well as planning and development.
94. As a result of amendments to the *Land Tax Act 1915* in 2005, residential park owners benefit from a specific exemption from land tax, provided more than 50% of the sites in the park are occupied, or solely available for occupation, for residential purposes for periods of more than six weeks at a time.

3.4 Regulation of residential parks in other Australian jurisdictions

95. In New South Wales under the *Residential Parks Act 1998* (NSW Act) manufactured home owners benefit from a number of consumer protection measures. For example, the NSW Act includes specific provisions in relation to the rights of park residents, park rules and maintenance, requirements for written agreements, increasing site rent, water and electricity charges, the sale of moveable dwellings, how an agreement may be terminated and specific rights for park residents faced with possible termination of their agreement due to a park owner choosing to close the park for redevelopment or other reasons and options for dispute resolution.
96. In South Australia, the *Residential Parks Act 2007* (SA Act) applies to residential park agreements where a park owner gives a resident a right to occupy a site, or site and dwelling, in a residential park as a place of residence. The SA Act provides for 'fixed term' residential tenancy agreements for permanently fixed dwellings. At the end of a fixed term, a park owner may terminate the residential park tenancy agreement without specifying a ground for termination. The SA Act provides for mutual rights and obligations of park owners and residents in relation to for example: rent and other charges including bond, a resident's entitlement to quiet enjoyment, security and access to the residential park, a resident's and park owner's obligations in relation to common areas, the assignment of an agreement, and the termination of agreements. The SA Act also provides a new residential park land owner with the ability to, by notice of termination given to the resident, terminate a residential park site agreement without specifying a ground of termination (as long as the termination date is not earlier than the end of the agreement if by a fixed term).
97. The Western Australia *Residential Parks (Long-Stay Tenants) Act 2006* (WA Act) sets out broad principles and minimum standards for the conduct of park operators and tenants in the residential park industry and applies to people including those who are renting a site on a park for three months or more. The WA Act provides for: standard information to be made available to prospective tenants about the residential park tenancy prior to entering into an agreement, a cooling-off period for site-only agreements, standard information about the WA Act and the agreements to be made available in an accessible way, and information about a particular park to be provided to a prospective tenant. However the WA Act does not define a manufactured home or offer specific protection to this consumer group.
98. In Victoria, under the *Residential Tenancies Act 1997* (VIC Act) tenants in residential parks are considered to be like any other tenant, for example, a tenant of a flat or apartment. A caravan means a movable or immovable dwelling located in a caravan park. A caravan park or park means an area of land on which movable dwellings are located for occupation on payment of rent. The VIC Act provides for pre-contractual disclosure requirements and the terms and conditions which may be included in an agreement, including the amount of rent, the length of time the resident will rent the site or hire the caravan, the amount of money required as refundable security bond, and the general duties of residents, caravan park owners and caravan owners.

99. Tasmania has a non-legislative Code of Practice for caravan and cabin park operators, which was developed by the Caravan Industry Association of Tasmania in consultation with the state Government (Consumer Affairs and Fair Trading). The Code represents the accepted standards for park operators in their dealings with park occupants in an effort to promote a high standard of 'best practice' in the operation of residential parks. The Code of Practice includes suggested practice in relation to long-term stays. However, neither the Code of Practice nor the *Residential Tenancy Act 1997* includes specific consumer protection provisions for manufactured home owners.
100. Similarly, the Australian Capital Territory's *Residential Tenancies Act 1997* (the ACT Act) applies to residential tenancy agreements or occupancy agreements in the Australian Capital Territory. However, the ACT Act does not include specific consumer protection provision for manufactured home owners.
101. Since 2002 there has been no legislative scheme regulating caravan or residential parks in the Northern Territory. However, Part 8 of the *Law of Property Act* provides for some protection and clarification of the rights and responsibilities of landlords and tenants for tenancies that are not covered by specific legislation such as the *Residential Tenancies Act*. The *Residential Tenancies Act* specifically provides that the Act does not apply to an agreement under which a person occupies or is intended to occupy a caravan, or a mobile home, that is in a caravan park.
102. Comparatively speaking, Queensland's MHRP Act provides a very strong benchmark for consumer protection initiatives offered to manufactured home owners in Australia.
103. A summary of the legislative arrangements in other Australian jurisdictions can be viewed in **Attachment 2**.

Part 4 Assessment of the problem

104. A detailed review has been undertaken to determine if the MHRP Act is adequately meeting community expectations and to ensure that its provisions remain appropriate.
105. The review and this Public Benefit Test document was informed by an extensive consultation process involving:
- a public discussion paper and survey (which attracted over 670 responses)
 - correspondence received by the Office of Fair Trading
 - determinations made by courts and tribunals and
 - targeted roundtable consultation conferences, conducted by the Office of Fair Trading, with manufactured home owners, residential park owners and key consumer and industry representatives, as recommended in the Outcome Report
 - public release and consultation on a draft of the *Manufactured Homes (Residential Parks) Amendment Bill 2010* and
 - public release of the draft Public Benefit Test report.
106. The outcome report noted that, overall, the legislation is operating effectively and as intended. However, the review process also highlighted that there are a number of key issues of concern for stakeholders. The following key issues were further articulated at the consultation conferences and through written submissions following the release of the *Manufactured Homes (Residential Parks) Amendment Bill 2010*:
- the ability of park owners to seek increases in site rent outside the terms of the site agreement by way of an application to the Tribunal
 - the inclusion of special terms in site agreements which are perceived as unfair or prejudicial to manufactured home owners
 - the use of mutual termination agreements as a means of establishing fixed-term site agreements, notwithstanding that the MHRP Act provides that site agreements may only be terminated in accordance with the MHRP Act
 - the ability of park owners to seek termination of a site agreement if the park owner wishes to use the land for another purpose
 - compensation for manufactured home owners if their right to position their home within the residential park is terminated
 - the application of the definition of 'manufactured home' with respect to modified caravans and
 - the emergence of structures in residential parks that may not meet the definition of a 'manufactured home' because they are either not designed to be moved or are permanently attached to the land.
107. The continuing regulatory challenge for the residential parks sector is maintaining an appropriate balance between the sometimes competing interests of manufactured home owners and residential park owners.
108. As mentioned previously, demographic data collected from responses to the survey conducted to inform the review of the MHRP Act suggest that many manufactured home owners are older members of the community, many of whom are likely to have limited and fixed incomes. While it is important to note these are not characteristics of all manufactured home owners, it is evident that access to affordable housing, along with security and continuity in the ability to reside in a residential park, continue to be critical issues for many

109. Key issues for residential park owners who are private land owners, appear to be the ability to make lawful decisions about the use of their land, along with the capacity to achieve a commercially viable return on their initial and ongoing financial investment in the residential park.
110. As part of its Q2 strategy, the Queensland Government has committed to supporting fair communities. In the context of residential park policy, the Government has a dual interest in ensuring that manufactured home owners are treated fairly, and in ensuring the viability and growth of the residential park industry as an important provider of an alternative, affordable housing option for Queenslanders.
111. Moreover, the MHRP Act allows for a relatively unique, specialised arrangement for the use of land with the associated need for a clear regulatory framework.
112. This PBT analyses proposed responses to a number of the issues outlined above where those responses may adversely impact on competition in the residential parks sector.

Part 5 Policy objectives

113. The purpose of the review of the MHRP Act was to ensure the legislation was adequately meeting community expectations and that its provisions remained appropriate. The recommendations for legislative amendment arising from the review are intended to enhance consumer protection under the MHRP Act, while also encouraging continued growth and viability of the residential parks sector. More specifically, the policy objectives are to:

- ensure manufactured home owners are treated fairly with respect to variations in site rent
- eliminate the unintended use of mutual termination provisions to establish fixed term site agreements
- ensure manufactured home owners are not subjected to unfair special terms in their site agreements or subject to unfair park rules
- ensure the MHRP Act provides an appropriate level of protection and assistance to enable vulnerable manufactured home owners to make a smooth transition to new living arrangements if their site agreement (and their right to position their home in the residential park) is terminated
- clarify the definition of 'manufactured home' with respect to modified caravans and
- develop a record of residential parks to provide the Government with information about the industry and to facilitate and improve communication with home owners and park owners
- make a number of minor, technical amendments to the MHRP Act.

114. An impacts matrix to measure the negative and positive impacts of the preferred options has been developed (see **attachment 3**).

Part 6 Restrictions on competition

115. The following proposals for legislative amendment have been identified as potential business conduct restrictions on competition:

- (i) **Site rent variations:** It is proposed to restrict the existing ability of park owners to seek variations in site rent outside the terms of a site agreement.
- (ii) **Special terms in site agreements:** It is proposed to establish a head of power to enable specified, special terms in site agreement and park rules to be prohibited by regulation and to require site agreements to be presented in 'plain language'.
- (iii) **'Fixed term' site agreements:** It is proposed the MHRP Act be amended to prevent the use of mutual termination agreements to establish site agreements for a fixed duration.
- (iv) **Termination of site agreements:** It is proposed to expand the types of supplementary orders the Tribunal may make to assist manufactured home owners whose site agreements are terminated.
- (v) **Record of residential parks:** It is proposed that the Chief Executive establish a record of residential parks.

116. The costs, benefits and impacts of the possible restrictions on competition, and alternatives to achieving the policy objectives, are analysed in detail in Part 7

117. The following amendments, including minor and technical amendments, have also been proposed:

- clarifying that modified caravans are not manufactured homes
- providing that there is only one home owners' committee in a residential park
- stipulating the park owners or park managers obligation to provide home owners with a business hours contact telephone number
- requiring park owners to give written reasons for a refusal to consent to the assignment of a site agreement
- stipulating that park owners may not charge home owners more than the actual cost of providing a utility service if the utility service is separately measured or metered and
- clarifying that the jurisdiction of the Tribunal includes disputes on whether or not a site agreement should be entered into.

118. The minor and technical amendments are not expected to impose an increased burden on the business conduct requirements that would impact on competition in the residential parks sector.

Part 7 Assessment of proposed restrictions

7.1 Site rent variations outside the terms of site agreements

Context and issue

119. In exchange for the ability to position their home on a site in a residential park, manufactured home owners are liable to pay site rent to the park owner.
120. The MHRP Act does not prescribe or regulate a specific formula for calculating the site rent payable by manufactured home owners. The method for calculating site rent is agreed to between a residential park owner and a manufactured home owner at the time of entering into a site agreement.
121. However, the MHRP Act includes a number of consumer protection and business conduct restrictions aimed at ensuring home owners are treated fairly with respect to site rent and variations in rent.
122. First, the MHRP Act includes pre-contractual disclosure requirements on park owners. Prior to entering into the site agreement, the park owner must provide the prospective home owner with the proposed site agreement and a 'home owner's information document'. The site agreement between the home owner and park owner must state the site rent and other charges payable under the agreement, as well as how and when they are payable and how and when the site rent may be varied. The 'home owners information document' contains general information on how site rent may be varied under the MHRP Act, including that variations may be sought by the park owner outside the terms of the agreement. The front page of the Home Owners Information Document also warns prospective home owners to seek independent professional advice from a solicitor, community legal service or financial adviser, before signing the site agreement.
123. Second, the MHRP Act provides manufactured home owners with the ability to apply to the Tribunal for an order reducing the site rent on the basis that the amenity or standard of communal areas and facilities have decreased substantially or a communal facility or service has been withdrawn since entering into the site agreement.
124. Third, the MHRP Act prescribes the method park owners must follow if they wish to increase the site rent in accordance with the express provisions of the site agreement. Specifically, the park owner must give the home owner a notice setting out:
 - the amount of the proposed increase in rent
 - how the increase in rent has been calculated
 - the day the increased rent is first payable (which cannot be earlier than 28 days after the notice is given) and
 - advice about the home owner's right to apply to the Tribunal for an order reducing or setting aside the proposed increase if the home owner considers the increase is excessive.
125. Finally, the MHRP Act allows park owners to apply to the Tribunal if the park owner wishes to seek an increase in rent outside the express terms of the agreement and the proposed increase is not agreed to by the affected home

126. The review of the MHRP Act highlighted significant concern among some manufactured home owners about the capacity of park owners to seek increases in site rent outside the terms of the site agreement. Home owners who object to increases in site rent outside the express terms of their site agreement are particularly critical of increases based on a comparison with rents paid in other residential parks or a comparison of the range of market rents usually charged for residential accommodation in the locality (also known as 'market reviews' of site rent). These manufactured home owners argue that the current arrangements are unfair and contrary to normal contractual principles. The home owners contend that the legislation should only allow increases in rent in accordance with the express terms of the site agreement.
127. It has recently become standard practice for site agreements to include that a market review can be sought on a specified and regular basis. However, in one matter of note¹², a market review increase was sought (outside of the terms of the site agreements) even though the site agreement allowed for an increase based on market review. In this particular case the site agreement included a limitation on the frequency of a market review increase and the park owner was seeking a market review in a time period shorter than what was provided for in the site agreement. This highlights the uncertainty for home owners brought about by section 71 of the MHRP Act.
128. A contrary argument is that the indefinite nature of site agreements means that it may be difficult for park owners to anticipate the appropriate rent increase mechanisms that should be included in site agreements, when those agreements may potentially continue for decades into the future. It is arguable that some capacity to seek increases outside the express terms of the agreement is necessary to ensure the long-term viability of parks.
129. There has been some debate around site rent increases based on 'market review' for home owners whose site agreement provides for a CPI increase only. In 2005 the Commercial and Consumer Tribunal (the CCT) made a determination¹³ that a park owner was not entitled to seek a rent increase based on 'market review' as it was inconsistent with the wording of the particular site agreements. However, the park owner appealed the decision in the District Court of Queensland¹⁴. The District Court annulled the CCT's decision and ordered that the case be resubmitted to the CCT. In March 2008 the CCT decided¹⁵ that a site rent increase based on 'market review' was valid and just for some applicants, however, it was noted in the conclusion that the increase was reduced (however, still granted) for those home owners whose site agreements provide for CPI increases only.

¹² *C Billiet and others listed in the application lodged on 7 July 2008 v Gray* [2009] CCT MH013-08

¹³ *Palmpoint Pty Ltd t/a Bribie Pines Island Village v The Residents of Bribie Pines Island Village, Astbury, M., Terrence, R. & Hose, P. A.* [2006] QCCTMH 10

¹⁴ *Palmpoint Pty Ltd v The Residents of Bribie Pines Island Village & Ors* [2007] QDC 130

¹⁵ *Palmpoint Pty Ltd T/A Bribie Pines Island Village v The Residents Of Bribie Pines Island Village, Astbury, M. & Hose, R.T. & P.A.* [2008] QCCTMH 3

130. Since this decision, a number of park owners have successfully sought, through the CCT, an increase in site rent based on 'market review' when the site agreement does not include 'market review' as a method for calculating an increase.
131. The number of applications made to the CCT for a site rent increase based on 'market review' under section 71 of the MHRP Act demonstrates that this has become common in a number of parks. However, the use of section 71 of the MHRP Act as a method for increasing site rent on a regular basis undermines the primacy of the site agreement as the document that indicates how and when the site rent may be varied.

Policy objective

132. The policy objective regarding site rent is to ensure that manufactured home owners are treated fairly regarding increases in site rent. It is desirable that there is transparency in relation to potential increases in site rent, while also ensuring the regulatory arrangements allow for the growth and viability of residential parks.

Options for achieving policy objective

Option 1: Status quo

133. The review of the MHRP Act concluded that overall, provisions relating to variations of site rent are operating effectively and as intended. However, the Outcome Report recommended further consultation on the main issues around site rent. (Outcome Report Recommendation 5.4)
134. Initial and supplementary consultation, including consideration of relevant Tribunal cases, has highlighted significant dissatisfaction among some manufactured home owners regarding the capacity of residential park owners to seek increases in rent outside the terms of a site agreement - particularly on the basis of 'market reviews'. There is a strong argument that manufactured home owners should be able to rely on the express terms of their site agreements and that allowing regular site rent increases outside the express terms of the agreement undermines the site agreement.
135. A nil-response option will not address the dissatisfaction some manufactured home owners have regarding provisions of the MHRP Act allowing for site rent increases outside the express terms of the site agreement. Moreover, adopting the status quo will not contribute to the MHRP Act meeting community expectations about manufactured home owners being treated fairly with respect to site rent variations. As this option will not meet the policy objectives, the costs and benefits have not been assessed.

Option 2: Preferred option - Information, education and advocacy/further disclosure requirements

136. The review did not suggest that inconsistent information or a lack of information was the underlying cause of community dissatisfaction with the MHRP Act provisions which allow for rent increases outside the terms of site agreements. Rather there are opposing views on whether or not the MHRP Act should allow site rent increases outside the terms of a site agreement at all.

137. For similar reasons to the explanations outlined in paragraphs 134 and 135 regarding the status quo option, new information and education strategies will not adequately meet the policy objective. Consequentially, the costs and benefits of information, education and advocacy instruments have not been assessed.
138. However, the review has highlighted that enhancing the existing pre-contractual disclosure requirements (discussed in paragraph 122) by requiring park owners to disclose in the site agreement the intended ways of increasing site rent would benefit stakeholders. This would require disclosure that, in addition to the explicitly outlined variations in site rent, site rent can also be varied in accordance with section 71 of the MHRP Act, which allows the park owner to apply to the Tribunal for an increase in site rent outside the terms of the agreement.
139. Amendments to enhance disclosure requirements would complement the information already provided in the 'Home owners' information document'. This would also ensure that potential site rent variation information is more prominently located adjacent to the statement of rent payable. Amendments would also need to be made to the approved form for site agreements (Manufactured Homes Form 2) to reflect enhanced disclosure requirements.
140. In addition to the increased disclosure requirements, amending the MHRP Act to provide that the residential park owner is required to disclose to the prospective home owner, the site rent payable by the existing home owner at the time of assignment, will ensure that the new home owner is fully informed of the costs payable when they enter the residential park.

Impacts for manufactured home owners

141. Requiring further consumer information and disclosure to be included in site agreements will assist in alerting prospective home owners to the possibility that rent may be increased outside the express terms of their site agreement. However, it should be noted that this initiative would not address the underlying objection of manufactured home owners regarding the capacity for park owners to seek increases in site rent outside the express terms of the site agreement.

Impacts for residential park owners

142. Prescribing further disclosure provisions for site agreements would require park owners to adjust current templates and precedents they may be using when preparing site agreements. Failure to adequately disclose the required information to prospective home owners may result in the park owner incurring a penalty.

Impacts for Government

143. Strengthening the capacity of the MHRP Act to facilitate more informed consumers is a positive outcome for Government. However, the initiative will not resolve the underlying objection of many manufactured home owners about existing provisions in the MHRP Act allowing park owners to seek increases in site rent outside the terms of the site agreement.

Net impact

144. While it is apparent this proposal will not achieve the policy objective on its own, improving the operation of the marketplace through more informed consumers is a positive result. This result is not outweighed by the short-term costs in making a minor change to site agreement templates and the relevant approved form that the industry and Government may incur.

Option 3: Remove ability of park owners to seek rent increases outside the express terms of the site agreement (remove section 71)

145. Removing the capacity for park owners to seek increases in site rent outside the express terms of the site agreement is an option which may meet the policy objective. This would be achieved by amendments to legislation removing the authority of the Tribunal to make orders under section 71 of the Act. This option would address home owners' concerns regarding their ability to rely on the express terms of their site agreements, and would be likely to contribute to achieving community expectations that home owners should be treated fairly regarding increases in site rent. However, the option carries a significant risk of undermining the viability of parks when faced with unexpected costs that cannot be recovered through the site rent payable by home owners.

Impacts for manufactured home owners

146. Manufactured home owners would benefit as there would be a significant increase in certainty around how site rent may be varied. This option would also assist home owners (many of whom may be on limited or fixed incomes) with budgeting and future financial planning. This option is also likely to address the criticism and dissatisfaction expressed by a significant number of home owners who consider it unfair and prejudicial to their interests, for park owners to be able to seek increases in site rent outside the express terms of their site agreement.
147. However, manufactured home owners would be severely disadvantaged if the legislative amendments adversely impacted on the viability of existing parks. Home owners would also be disadvantaged if the amendments proved to be a disincentive for park owners to establish new parks because, as many home owners are aware, the stock of available sites for manufactured homes is limited and has the potential to fail to meet future demands in the industry.
148. This option may also negatively impact on home owners with agreements that provide for wide rights of rent review in a residential park as they are likely to experience higher or more frequent increases in rent while those with restricted rent review terms will benefit from an ongoing, lower rate of rent. A perception of unfairness between different manufactured home owners within parks, with some owners believing that they are 'subsidising' other manufactured home owners could eventuate.
149. Significant variations in the method for calculating site rent and variations in the amount and frequency of each potential increase of site rent for different home owners within a residential park could also potentially distort the resale market, as site agreements which have limited rights for rent review may fetch a higher price due to the ability to 'assign' a site agreement to a new home owner.

Impacts for residential park owners

150. This option would impact on those park owners who seek increases in rent outside the terms of the site agreement. It is also likely that new agreements will be drafted to include wider rights of rent review for park owners.
151. Some park owners with older agreements may find that the prescribed structure for varying site rent does not offer an adequate rate of return on their investment. As a result, these park owners may seek to leave the industry and change the use of their land.
152. The viability of some parks may also be threatened if substantial, unforeseen circumstances result in significant expenses that cannot be recovered through increases in site rent.

Impacts for Government

153. This option would address one of the most contentious, ongoing areas of concern in the residential parks sector, that being, the perception that home owners cannot rely on the express terms of their site agreement with regard to site rent. It would also potentially decrease the number of disputes referred to the Tribunal for resolution.
154. There are risks that the option will have unintended consequences, such as:
 - motivation for park owners to pressure home owners to enter new site agreements to include wider rent increase clauses (albeit, that the MHRP Act provides that park owners must not engage in harassing or unconscionable conduct)
 - residential parks may become unviable as an affordable accommodation option, which may result in an increased demand for social housing and Government assistance
 - wider drafting of new site agreements to allow for more substantial and frequent increases in rent
 - inequity between different manufactured home owners regarding site rent and
 - the ability for the home owner to receive a 'premium' price upon assignment of a site agreement that contains restrictive rent provisions upon resale, compared to a site agreement that has more extensive rent increase provisions.

Net impact

155. While removing the capacity of park owners to seek an increase in site rent outside of the express terms of the site agreement will address concerns raised by home owners, it poses a significant risk of threatening the viability of those parks that have restricted rent variation provisions and which may face unforeseen increases in operating costs. This option may also result in anomalies and undesirable discrepancies of site rent payable by home owners residing in a particular park. In conclusion, the potential benefits of this option do not outweigh the risks of potential adverse outcomes.

Option 4: Limit 'market reviews' of site rent not expressly provided for in the site agreement (if agreement states 'CPI only')

156. One option to meet the policy objective is to prohibit 'market reviews' of site rent (refer to paragraph 126) that are not provided for in the site agreement while continuing to allow park owners to apply to the Tribunal for an increase in site rent for other reasons, including for example, if faced with an actual, unforeseen expense that threatens the viability of the residential park.
157. For future site agreements, this option would require the site agreement to explicitly outline any potential 'market review' increases in site rent. Therefore, if the park owner wishes to increase the site rent based on a market review, the site agreement would need to provide for this method of calculating a site rent increase.
158. However, for existing site agreements, this option would continue to provide park owners with the ability to apply to the Tribunal for an increase in site rent based, or partially based, on a market review, unless the site agreement states that the site rent would only be increased by the Consumer Price Index.
159. To mitigate the negative impacts on the park owner, this option allows a park owner to revisit a 'CPI only' clause contained in a site agreement and include 'market review' as a basis for potential increases in rent, on assignment of a site agreement.

Impacts for manufactured home owners

160. This option would address the concerns of manufactured home owners who object to increases in site rent on the basis of 'market review', outside of the terms of their site agreement, if their site agreement states that the site rent will increase by 'CPI only'.
161. However, this option does not prevent or restrict rent increases, apart from market review, outside the terms of the site agreement and therefore does not provide home owners with certainty regarding potential variations in their site rent.
162. It also does not address the concerns of home owners whose site agreements may not refer to increases in site rent by 'CPI only', but also do not explicitly state the park owner's intention to conduct and seek an increase in site rent based on a market review.
163. This option may mitigate the risk of a park becoming unviable because an unforeseen, substantial expense may still be funded through an increase in site rent. Home owners would not benefit if a residential park became unviable and closed.
164. Some risk (albeit slightly reduced) of indirect, adverse consequences for home owners may arise including through inequities of site rent payable by different home owners within a particular park. Park owners may also seek to adopt new agreements with current home owners.
165. It is likely that park owners would begin to draft new agreements to more broadly encompass potential increases in site rent including increases based on market review.

Impacts for residential park owners

166. This option would only impact on those park owners who seek site rent increases, based on market review, outside the terms of the site agreement. It is likely that new agreements will include wider rights of review of rent, including on the basis of a periodic market review.
167. Preventing park owners from seeking increases in rent outside the terms of the site agreement based on 'market review' will limit the future returns for park owners who have provisions to increase site rent by CPI only.
168. However, this option would continue to provide park owners with the ability to increase site rent outside of the terms of the site agreements with oversight of the Tribunal (which may have regard to a wide range of factors) including when they have incurred unforeseen and substantial expenses that cannot be absorbed by current rent structures.

Impacts for Government

169. This option is a compromise between interests of home owners and park owners. It would address one of the most contentious, ongoing areas of concern in the residential parks sector and also result in a decrease in disputes referred to the Tribunal for resolution.
170. However, there are risks that the option will have unintended consequences, such as:
 - incentives for park owners to pressure home owners into new agreements (albeit the MHRP Act currently provides that park owners must not engage in harassing or unconscionable conduct)
 - wider drafting of site agreements to allow for more substantial increases in rent, including on the basis of market review and
 - inequity between different manufactured home owners regarding site rent.

Net impact

171. This option would go towards achieving the policy objective of enhancing the capacity of the MHRP Act to meet community expectations that manufactured home owners are treated fairly regarding variations in site rent. However, the option only addresses the concerns of home owners who have a 'CPI only' clause in their site agreement.
172. Therefore, it is considered that this option does not fulfil the intention that a site agreement is transparent in relation to site rent increases whilst also encouraging the growth and viability of the residential parks sector.

Option 5: Preferred Option - Remove ability of park owners to seek rent increases outside the express terms of the site agreement except in exceptional circumstances

173. Consultation highlighted that there is a need for transparency about the way in which rent can be increased.

174. Removing the capacity for park owners to seek increases in site rent outside the express terms of the site agreement apart from in 'exceptional circumstances' is an option will meet the policy objective.
175. A large number of home owners are elderly people on fixed incomes and despite the disclosure documents required to be provided to prospective home owners (under the MHRP Act) which outline the process if the park owner wants to increase the rent outside of the agreed terms of the site agreement, home owners are seeking more certainty in their agreements and argue that they should be able to rely on the terms of their site agreement as it will assist them to be able to plan for their financial future.
176. This option would address some home owners' concerns regarding their ability to rely on the express terms of their site agreements, and would be likely to contribute to achieving community expectations that home owners are treated fairly regarding increases in site rent.
177. This option also mitigates the potential risk of undermining the viability of parks by continuing to provide the park owner the ability to seek an increase in site rent outside the terms of the site agreement when faced with unexpected costs due to exceptional circumstances that cannot be recovered through the existing site rent payable by home owners.
178. Exceptional circumstances would include significant escalating operational costs, unforeseen significant repair costs, and significant facility upgrades. In addition, a market review would not be considered an exceptional circumstance.

Impacts for manufactured home owners

179. Manufactured home owners would benefit, as there would be a significant increase in certainty around how site rent may be varied. This option would also assist home owners (many of whom may be on limited or fixed incomes) with budgeting and future financial planning.
180. This option would address the criticism and dissatisfaction expressed by a significant number of home owners who consider it unfair and prejudicial to their interests, for park owners to be able to seek increases in site rent outside the express terms of their site agreement.
181. However, this option has the potential to negatively impact on home owners with agreements that provide for wide rights of rent review in a residential park as they are likely to experience higher or more frequent increases in rent while those with restricted rent review terms will benefit from an ongoing, lower rate of rent. There could be a perception that some manufactured home owners within parks are 'subsidising' other manufactured home owners, this has the potential to cause frustration and resentment between residents in the park. This risk can be mitigated by allowing park owners to insert a clause providing for market increases in site rent on assignment of the site agreement.

Impacts for residential park owners

182. This option would only impact on those park owners who seek increases in rent outside the terms of the site agreement. It is also likely that new agreements will be drafted to include wider rights of rent review for park owners.

183. Some park owners with older agreements may find that the prescribed structure for varying site rent does not offer an adequate rate of return on their investment. As a result, these park owners may seek to leave the industry and change the use of their land.
184. However, this option would encourage park owners to be as clear and as fulsome as possible in their site agreements about how rent can be increased with potential home owners. This could potentially result in wider drafting of new agreements to allow for more substantial and frequent increases in rent.
185. This option mitigates any potential risks to the viability of residential parks by providing park owners with the ongoing flexibility to increase rent to cover unforeseen increasing costs arising through exceptional circumstances.

Impacts for Government

186. This option would address one of the most contentious, ongoing areas of concern in the residential parks sector, that being, the perception that home owners cannot rely on the express terms of their site agreement with regard to site rent. It would also potentially decrease the number of disputes referred to the Tribunal for resolution.

Net impact

187. This option would achieve the policy objective of enhancing the capacity of the MHRP Act to meet community expectations that manufactured home owners are treated fairly regarding variations in site rent. While the option carries some risks of unintended consequences, overall, the benefits of the option outweigh the costs and better balances the competing interests of home owners and park owners regarding this issue. The impact on park owners (and home owners concerned about differentiations in rent within the park) could be mitigated by allowing park owners to include a market review clause in and upon assignment of a site agreement (provided an incoming purchaser was fully informed of the new term prior to completion of the sale).
188. This option also provides industry with a clear regulatory framework regarding site rent.

Option 6: Preferred option - Enhanced penalties and offences

189. The review has also highlighted an opportunity to enhance transparency and accountability regarding site rent increases by:
- providing a specific penalty for failure of a park owner to comply with their existing obligations under section 69(2) of the MHRP Act (which requires park owners to advise home owners of their right to apply to the Tribunal if they consider a proposed rent increase is excessive) and
 - amending the MHRP Act to make it clear that park owners' obligations not to engage in fraudulent or misleading conduct includes statements made to home owners in relation to site rent.

Impacts for manufactured home owners

190. The proposal to clarify and strengthen existing offences may benefit home owners by improving the capacity for the MHRP Act to improve the standards

Impacts for residential park owners

191. The above proposals will have no adverse impacts on park owners who engage in proper standards of conduct in their dealings with home owners. Reputable park owners may benefit from a general increase in standards in the industry as they will not have to compete with park owners who make misleading representations to home owners regarding site rent structures and attempt to 'undercut' reputable parks by proposing lower rent to potential consumers.

Impacts for Government

192. A clear regulatory framework regarding standards of conduct in the sector would be a positive result for Government. While some allegations of fraudulent and misleading conduct would continue to be difficult to substantiate, clearer offences and penalties may assist the Government in conducting compliance activities and responding to complaints in the sector.

Net impact

193. The benefits of increasing penalties and offences outweigh any potential cost to stakeholders.

Consultation on draft Bill (Option 4 and 6)

194. The option to remove the ability of the park owner to receive an increase in rent, based on a 'market review', outside the terms of the site agreement if the site agreement stated that site rent would only ever increase by the consumer price index (option 4), and the provisions which imposed penalties on park owners for misleading conduct in relation to site rent (option 6) received support from a majority of stakeholders.

195. However, there was some concern that the implementation of the option could create a two tiered system within the park, those on new site agreements (which will generally include the ability to increase site rent based on a market review) and those on older site agreements (which may not include a market review clause). Some home owners see this as a cause of potential disharmony with some home owners perceiving that they are subsidising the rent of other home owners.

196. It was also argued in consultation that the Tribunal's ability to consider rental prices in other forms of residential accommodation should not be used in determining the market value for a manufactured home due to the unique situation of the resident owning the home and being responsible for the maintenance of the home.

197. Stakeholders at the public meetings noted that during the assignment process the buyer of the manufactured home should remain on the same level of site rent that was payable by the seller of the manufactured home, however, some park owners are requiring the new owner to pay a higher rent on assignment. This is inconsistent with the MHRP Act as rent should only be increased as per the site agreement or in accordance with the MHRP Act.

198. Some stakeholders were concerned that the preferred option was contrary to one of the objectives of the MHRP Act which is to encourage continued growth and viability within the residential parks sector. Some stakeholders expressed that a residential park was a business and is not responsible for social housing, and that reasonable commercial expectations include allowing a park owner to receive a commercial return on their investment in a park (like any other investor). The running of a profitable residential park also enables the park owner to be able to maintain and upgrade the park to ensure that home owners have a safe and enjoyable life within the residential park.

7.2 Special terms in site agreements

Context and Issue

199. While the MHRP Act establishes a number of statutory rights and responsibilities for both park owners and home owners, the site agreement is also critical to determining the responsibilities of, and relationship between, the parties. In accordance with the MHRP Act, park owners must ensure a written site agreement is prepared and provided to home owners. Under the MHRP Act, site agreements include responsibilities under the Act (outlined in section 19), any standard terms prescribed by regulation, as well as any special terms agreed to by the park owner and home owner.
200. As site agreements do not include a termination date and may continue for decades, some site agreements contain an extensive list of special terms to predict any potential issues that may arise in the future.
201. While special terms can potentially address a wide range of matters (for example, responsibility for maintenance of the site, fencing, security or pets), parties cannot enter into a site agreement with the intention (directly or indirectly) of defeating the operation and intention of the MHRP Act. Moreover, the MHRP Act allows the Tribunal to make an order varying a special term as it considers appropriate.
202. Although there is a need for park owners and residents to have the flexibility to agree on special terms which suit the particular residential park and the individual circumstances of the home owner and park owner, the review of the MHRP Act highlighted that manufactured home owners can be at a significant disadvantage when it comes to negotiating special terms. Prospective home owners may not be able to robustly negotiate special terms with the park owner because of limited alternative housing options. In addition, some site agreements are drafted in a complex, overly-legalistic way making it difficult for prospective home owners to properly understand the special terms of the agreement.
203. The review of the MHRP Act highlighted that some park owners are including special terms in site agreements which may be contrary to the policy of the MHRP Act and are considered unfair. These unfair special terms may be prejudicial to home owners and unnecessary to reasonably protect the park owner's interests. Unfair special terms may also tend to undermine the key consumer protection policy objectives of the MHRP Act.
204. Some examples of 'unfair' special terms include: those purporting to allow various costs, which should be borne by the park owner, to be recovered from the manufactured home owner (including the park owner's own legal expenses); terms seeking to discharge the park owner from any and all liability for negligence; terms nominating the park owner as the sole selling agent for the home; or terms requiring that the resident of the residential premises engage only tradespersons or services specified by the park owner.
205. Currently the MHRP Act requires that a site agreement must be written in a clear and precise way. However, some site agreements include terms that contain excessively long sentences, unnecessary use of technical terms and

206. Site agreements that are drafted in a way that may be difficult for home owners to comprehend, can be seen as lacking transparency and have the potential to cause conflict in the future.

Policy objective

207. The policy objective is to ensure the MHRP Act meets community expectations about manufactured home owners being treated fairly regarding special terms in site agreements, including that site agreements are easily understood by prospective home owners and are not contrary to any policy intention of the MHRP Act.

Options for achieving policy objective

Option 1: Status quo

208. The review of the MHRP Act confirmed that the policy intention of the legislation is currently being undermined by some park owners who adopt special terms which are unfair and inconsistent with the policy of the MHRP Act.
209. The MHRP Act currently offers a high degree of flexibility in relation to special terms that may be included in site agreements. While home owners have an existing right to apply to the Tribunal for an order varying a special term, which may be 'unfair' or contrary to the policy intention of the Act, the Tribunal is only able to offer a remedy for that particular home owner. Currently an order made by the Tribunal does not offer a systemic remedy to deal with widespread use of the same special term.
210. Maintaining the status quo will not provide an adequate response to the use of unfair special terms in the residential parks sector. As this option will not achieve the existing policy (and legislative) objective, the impacts on stakeholders have not been assessed.

Option 2: Information, education and advocacy

211. It is likely that some prospective home owners do not have sufficient understanding of the provisions and objectives of the MHRP Act to allow them to negotiate, identify and object to 'unfair' special terms in a proposed site agreement. In this respect, information and education initiatives continue to be important in empowering home owners to assert their rights under the MHRP Act.
212. However, it is also very likely that some prospective home owners do not feel they are in a position to be able to object to special terms for a range of reasons, including their limited, alternative housing options. Information and education strategies are unlikely to assist prospective home owners in this position.
213. Similarly, information and education initiatives are unlikely to affect the behaviour of park owners who deliberately seek to 'push the boundaries' of

214. This option will not meet the policy objective and the impacts on stakeholders have not been assessed.

Option 3: Preferred option - Legislative amendments to prohibit unfair special terms by regulation

215. The review of the MHRP Act resulted in a recommendation for legislative amendments to establish a statutory head of power to prohibit special terms by regulation. This approach is similar to that adopted in New South Wales under the *Residential Parks Act 1998*. In New South Wales, the following types of special terms are prohibited under the [Residential Parks Regulation 2006](#):

- terms providing for indemnification of the park owner against any liability (including vicarious liability) of the park owner for damage, loss or injury arising from an act or omission of the park owner (or the park owner's employees or agents) in relation to the occupation or use of the manufactured home
- terms nominating the park owner as the sole selling agent in the event that the manufactured home is sold while on the residential site and
- terms requiring that the resident of the manufactured home engage only tradespersons or services specified by the park owner.

Impacts for manufactured home owners

216. This option would benefit home owners (and prospective home owners) by increasing certainty about the types of special terms that are prohibited from being included in site agreements. Home owners (and prospective home owners) would be placed in a stronger bargaining position as home owners would be able to objectively identify and consider particular terms that are prohibited without having to apply to the Tribunal.

Impacts for residential park owners

217. Prohibition of special terms by regulation would reduce the high level of flexibility for park owners currently offered under the MHRP Act when drafting site agreements. However, park owners would benefit from increased certainty regarding acceptable and unacceptable terms that may be considered for inclusion in site agreements.

218. A clearer regulatory framework for the inclusion of special terms would assist park owners in drafting site agreements which are consistent with the policy intentions of the MHRP Act and decrease the risk of a park owner incurring a penalty which may be related to entering into site agreements with the intention of defeating the policy intention of the MHRP Act.

219. There may be a marginal cost associated with preparing future site agreements to ensure they do not contain special terms which have been prohibited by regulation. However, costs associated with existing agreements would be negligible as the proposed amendments include a provision declaring an unfair special term in a current agreement as void to the extent that it is a prohibited term.

Impacts for Government

220. A regulatory framework which more clearly outlines 'unfair' special terms would increase the standard of conduct in the residential parks sector, which is a positive outcome for Government.
221. This option aims to reduce the number of disputes between park owners and home owners, as special terms in a site agreement which are considered 'unfair' will be clearly identifiable. This option may result in an initial increase in applications to the Tribunal, however, overall it is anticipated that there would be a decrease in the number of applications made to the Tribunal as site agreements are developed that no longer contain 'unfair' special terms.

Net Impact

222. Amendments to the MHRP Act which prohibit unfair special terms by regulation would result in a positive impact for stakeholders and meet the policy objective.

Option 4: Preferred option - Legislative amendments to ensure special terms are written in plain language

223. The review of the MHRP Act highlighted that some site agreements (including special terms) are being drafted in an overly legalistic way, making them difficult for home owners to comprehend. To improve the operation of the MHRP Act regarding site agreements and special terms, the review recommended a new statutory requirement for site agreements to be written in 'plain language'.

Impacts for manufactured home owners

224. This option would empower and benefit home owners (and prospective home owners) by enhancing transparency and readability of site agreements. The option would ensure that the important terms of site agreements are not 'buried' in schedules or clauses which include excessive and unnecessary use of technical language, jargon and cross referencing. This would give home owners the opportunity to have a clearer understanding of their rights and responsibilities associated with entering into a proposed site agreement.

Impacts for residential park owners

225. This option may result in a marginal increase in costs for some park owners if the park owner needs to redraft their template site agreements to ensure the 'plain language' requirement is satisfied.
226. However, park owners may also benefit as more easily readable agreements could reduce misunderstandings and disputes with home owners about the meaning of particular clauses within the agreement.
227. There is potential for a small increase in the number of applications made to the Tribunal to determine if a clause is expressed in plain language, however, as there is already a requirement that site agreements be written in a way that is clear and precise, it is not expected that the number of applications will increase substantially.

Impacts for Government

228. Government would benefit from increased transparency and clarity in site agreements in that disputes are likely to be easier to resolve.

Net Impact

229. This option represents an overall benefit to stakeholders as the terms of a site agreement will be more transparent. The possible cost to park owners in drafting site agreements which comply with new guidelines would be negligible.

Option 5: Standard contracts developed by Government

230. Providing park owners with standard contracts to use which have been developed by the Government is an alternative option to ensure that site agreements, and specifically special terms, are not being used by park owners to contract out of the MHRP Act and that agreements are presented in 'plain language'.
231. It would be very difficult (if not impossible) for a standard contract to consider and effectively cater for all of the possible alternatives and scenarios unique to maintaining and moderating the needs and interests specific to each residential park. In addition, the use of unfair special terms by some park owners does not justify removing the freedom of the majority of home owners and park owners to enter into their own agreements, particularly if the MHRP Act includes adequate provisions to deal with unfair special terms as they arise.
232. Although standard contacts would offer consistency, in regard to the terms included in site agreements throughout Queensland, many stakeholders may be happy with their existing site agreements and standard contracts would significantly limit the flexibility in site agreements. The limitation will not promote growth in the sector.
233. As this option is impractical and would not adequately address the individual preferences and concerns of stakeholders, the impacts have not been assessed. The purpose of the 'special terms' provisions are to provide for situations which are not covered by the Act as situations vary significantly from park to park. A mandated 'special terms' contract would not provide park owners and residents with the necessary level of flexibility.

Option 6: Preferred option - Enhanced penalties and offences (in conjunction with preferred option 4)

234. Consultation has highlighted that some home owners are unaware of the protections afforded to them under the MHRP Act. This creates an environment where a park owner could potentially attempt to benefit from the home owner's lack of knowledge of the MHRP Act by continuing to include and attempt to enforce prohibited special terms to their benefit (preferred option 4).
235. Including a penalty for the continued use of a prohibited term would act as a deterrent to a park owner who may rely on a home owner's limited understanding of the MHRP Act.

Impacts for manufactured home owners

236. This option would provide prospective and existing home owners with security that their site agreement will not contain any prohibited special terms and a park owner may receive a penalty if they continue to attempt to include and enforce the prohibited term.

Impacts for residential park owners

237. The above proposals will have no adverse impacts on park owners who do not include prohibited special terms in their site agreements.

Impacts for Government

238. A clear regulatory framework regarding prohibited special terms would be a positive result for Government. It is considered that the introduction of a penalty of this nature would assist the Government in conducting compliance activities and responding to complaints in the sector.

Net impact

239. The benefits of increasing penalties and offences outweigh any potential cost to stakeholders.

Consultation results on preferred option

240. The majority of stakeholders supported the preferred option that special terms, which are considered to be unfair, be prohibited by regulation. There was also support from home owners for site agreements to be presented in 'plain language'.
241. However, there were also concerns raised regarding the retrospectivity of prohibiting terms by regulation as park owner's considered this to be an intrusion upon negotiated and agreed terms of the site agreement.
242. There was also concern about the prohibited terms being prescribed in a regulation. Park owners were concerned that if a particular term was prohibited by regulation, inclusion of the term would not receive thorough parliamentary debate.
243. Therefore, some stakeholders believed that the prohibited terms should be a component of the MHRP Act, and should undergo debate in Parliament before their inclusion.
244. Currently some site agreements contain an extensive and comprehensive list of special terms to consider any potential issues that may arise in the future. This is considered essential by park owners as a site agreement is for an indefinite period.
245. Stakeholders also recommended that the Government consider the development of a standard contract, and this has been considered in detail as an option.
246. Consultation also highlighted that the use of the term 'plain language' was not sufficiently clear and should be accompanied by some guiding principles so

247. Following consultation it was noted that stakeholders were concerned that as park rules are included as a term of the site agreement (under section 19 of the MHRP Act), they may be used to insert 'unfair' requirements on home owners and circumvent the policy intention of any prohibition of unfair special terms.

7.3 'Fixed term' site agreements

Context and Issue

248. One of the fundamental purposes of the MHRP Act is to provide manufactured home owners with security and certainty in relation to their ongoing ability to position their home in a residential park. The rationale for this approach is twofold. First, manufactured home owners often invest significant amounts of money in their home and the costs and difficulties of removing the home and re-positioning it in another site can be substantial. Second, manufactured home owners may not have a wide range of choices for alternative accommodation, due to a number of factors which fall outside the scope of the Act (for example, the cost of alternative accommodation, the ability to secure finance, the availability of housing assistance, and the limited number of vacant manufactured home sites available), if their right to reside in a particular park comes to an end.
249. The MHRP Act is designed to achieve security and certainty for residents by:
- providing that successors in title to the park obtain the benefits, and are subject to the obligations of the park owner under existing site agreements
 - ensuring that a home owner's right to reside in a park under a site agreement continues until the site agreement is terminated
 - providing that a site agreement can only be terminated in specific circumstances
 - requiring non-agreed termination of site agreements to be authorised by the Tribunal and
 - providing for compensation to be payable by a park owner to a home owner if a site agreement is terminated because the park owner wishes to use the land for another purpose.
250. The MHRP Act includes provision for site agreements to be terminated in three ways, through mutual agreement of the home owner and the park owner, through decision of the home owner and by order of the Tribunal on application by the park owner.
251. A site agreement is not intended to contain an end date as the site agreement continues until it is terminated as outlined above, under the provisions of the MHRP Act.
252. In the second reading speech for the *Mobile Homes Act 1989*, the then Minister for Justice and the Attorney General said 'the Mobile Homes Bill will ensure that persons residing in mobile home parks, or parks which have sections set aside for mobile homes, are given indefinite security of tenure'.
253. Under the explanatory notes for the *Manufactured Homes (Residential Parks) Bill 2003* it was stated that 'the Bill retains all the existing rights and responsibilities of both parties and introduces new provisions to enhance home owner protection'.
254. It is clear from the above information that a site agreement is intended to continue until the site agreement is terminated in accordance with the MHRP Act.

255. The review of the MHRP Act, as well as complaints and correspondence received by the Office of Fair Trading, has highlighted that some park owners include a fixed termination date as a special term in site agreements or ask potential home owners to sign a Mutual Consent to Terminate (Form 4) at the same time as entering into the site agreement. While definitive data is not available, it is estimated that at least 100-120 manufactured home owners have entered into this type of arrangement with park owners. There is also a risk that this practice will become increasingly common.
256. The inclusion of a special term to terminate a site agreement on a specified date may not comply with section 32 of the MHRP Act which provides that a site agreement can only be terminated under part 6 or part 8 of the MHRP Act.
257. The use of mutual termination agreements is also contrary to the policy intention of the MHRP Act and an unintended use of provisions allowing parties to agree to terminate a site agreement. Mutual termination provisions are intended to improve on the requirements of the *Mobile Homes Act 1989* and provide a streamlined method of ending an agreement, without the need for the Tribunal to oversee the matter where both parties freely and voluntarily wish to end the agreement. Mutual termination provisions are not intended to provide a means for park owners to establish fixed term agreements.
258. It is considered that the creation of a fixed term site agreement does not comply with section 23 of the MHRP Act which prohibits a person from entering into an agreement with the intention of defeating the operation of the Act.
259. The review of the MHRP Act highlighted that some home owners were advised that signing a mutual termination agreement at the same time as the site agreement was normal practice and that their site agreement would be renewed following the end of the current agreement. However, if a change in park ownership or change in plans for the park occurs during the term, some home owners may not have their site agreements renewed. In these circumstances, it is likely that the home owner would be required to remove their home from the residential park, locate a new site for their home and pay the costs of moving their home as there would be no requirement for the park owner to pay the home owner compensation.
260. Any home owner who agrees to terminate their site agreement, including through the use of the mutual consent to terminate approved form is not eligible to receive any compensation for the termination of the site agreement.
261. The compensation provisions under the MHRP Act are intended to apply to home owners when their site agreement has been terminated by the park owner because the park owner wishes to use the park land for another lawful purpose. The MHRP Act does not require the park owner to pay compensation when a home owner has agreed to terminate the site agreement.
262. There is a conflict between the home owner's need to have continued security in their right to reside in a residential park and the ability of the park owner to change the use of their land to meet the highest and best use of the land.

Policy Objective

263. The policy objective is to ensure that site agreements under the MHRP Act do not have fixed end dates and can only be terminated in accordance with the provisions of the MHRP Act.

Options for achieving policy objective

Option 1: Status Quo

264. The review of the MHRP Act confirmed that the policy intention of the legislation is currently being subverted, in some cases, through the use of mutual termination agreements being entered into prior to, or at the same time, as the home owner and the park owner enter into a site agreement.

265. For some park owners, entering into a mutual termination agreement when entering a site agreement with a home owner gives the park owner flexibility to consider changing the use of the land in the future without being required to pay compensation to the home owner. If a home owner agrees to terminate the site agreement, the home owner will be responsible for the removal of their manufactured home and any costs associated with it. However, if the home owner had not entered into a mutual consent to terminate agreement they may have been eligible for compensation from the park owner.

266. Therefore, maintaining the status quo will not achieve the existing policy (and legislative) objective of ensuring site agreements are for an indefinite duration and can only be terminated in accordance with the provisions of the MHRP Act and that compensation provisions are available to home owners whose site agreements are terminated on the basis that the park owner wishes to use the land for another purpose.

267. As this option will not meet the policy objective, the impacts on stakeholders have not been assessed.

Option 2: Information and education

268. It is possible that some park owners who have (or are currently) simultaneously entering into site agreements for a fixed term with home owners are not aware that the policy intention (and provisions of the legislation) of the MHRP Act is that site agreements are for an indefinite duration. The conduct of these park owners may be positively altered by information and education strategies aimed at increasing awareness of these aspects of the MHRP Act.

269. However, information and education initiatives are unlikely to affect the behaviour of park owners who use mutual termination agreements as a means of creating a fixed term agreement and avoiding potential compensation costs. Therefore, this option will not meet the policy objective, and the impacts of stakeholders have not been assessed.

Option 3: Preferred option - Legislative amendments

270. An option for achieving the policy objective is to amend the MHRP Act to prohibit (and invalidate) mutual termination agreements that are entered into prior to or at the same time as the parties enter into the original site agreement.

271. This option would continue to provide the park owner and the home owner with the ability to enter into a mutual termination agreement at a later date and would also continue to provide the park owner with the ability to apply to the Tribunal for a termination order.
272. This option will remove the ability of park owners to enter into a termination agreement with a home owner at the same time as entering into the site agreement. It also removes the potential pressure home owners may feel to sign a termination agreement when they enter into a site agreement as the termination agreement will be void.

Impacts for manufactured home owners

273. This option would strengthen the security and certainty of a home owner's continuing right to reside in a residential park pursuant to their site agreement.
274. In addition, the amendment would assist in ensuring home owners were compensated by park owners who sought to terminate site agreements because the park owner decides to use the site for another purpose.
275. The amendment is expected to better balance the bargaining position of both parties during negotiations when entering into a site agreement.
276. The preferred option would also provide clarity to potential home owners on the indefinite nature of site agreements and encourage potential home owners to invest into the manufactured homes industry.
277. However, there is a risk that removing the ability for the park owner and the home owner to enter into fixed term site agreements will create an environment where the amount paid to own a manufactured home will continue to increase to include a premium for the site agreement held in perpetuity. This has the potential to cause further difficulties when the site agreement is legitimately terminated under the MHRP Act and the home owner is left with the depreciating chattel, which may be worth significantly less than what the home owner originally paid to purchase the manufactured home.
278. There is also the potential that in certain circumstances park owners will be reluctant to offer sites for manufactured homes due to the provisions of the MHRP Act restricting the use of fixed term agreements and requiring the payment of compensation in some circumstances.

Impacts for residential park owners

279. Amending the legislation to prohibit the use of termination agreements to establish fixed term site agreements will have no impact on most park owners. It appears that most park owners comply with the policy intention of the MHRP Act and do not seek to establish fixed term site agreements.
280. For park owners who currently enter into mutual termination agreements when entering into site agreements with home owners, the preferred option would eliminate the means of establishing fixed term site agreements and provide that the park owner may be required to pay the home owner compensation in certain circumstances.

Impacts for Government

281. This option would strengthen the capacity of the legislation to meet its intended policy objective which is a positive result for Government.
282. As most park owners do not currently enter into fixed term agreements, it is expected that this option will not impact on park owners who are currently operating with site agreements that do not include an end date. However, there is a risk that park owners who enter into fixed term site agreements may no longer offer sites to manufactured home owners, which may place an increased burden on the State's provision of public housing as fewer sites become available for manufactured home owners.
283. It should also be noted that in certain mining and industrial towns in Queensland which are currently undergoing unprecedented temporary population growth, there is a reluctance to develop residential parks to house the temporary population due to the indefinite nature of site agreements. This potentially removes an accommodation option to support the temporary growth in these areas.
284. This is highlighted in Gladstone where over 6150 jobs¹⁶ have been created following approval of current and confirmed major projects involved in the production and supply of Alumina, coal, laterite nickel ore and gas.
285. Gladstone Regional Council are currently looking for solutions to the increased population growth as it is expected that up to '6700 new dwellings will be required to be built by 2016 and a further 15,000 by 2031'¹⁷.
286. There may be a concern that eliminating the potential use of manufactured homes as an accommodation option to meet the short term needs of major industrial and mining communities could increase the housing pressures in these communities.

Net Impact

287. The legislative amendments described would represent an overall benefit for stakeholders and complement the current policy intention of the MHRP Act.

Option 4: Allowing site agreements for a fixed duration.

288. The current policy objective of the MHRP Act is to provide that site agreements are for an indefinite duration and may only be terminated in accordance with the provisions of the MHRP Act. The policy aims to provide certainty in the ongoing ability of manufactured home owners to reside in the park.
289. If the MHRP Act was amended to allow the park owner and home owner to enter into a fixed term site agreement there could potentially be a reluctance by

¹⁶ Gladstone Economic and Industry Development Board, 'Gladstone Region Project Development Review, March 2010', viewed on 26 March 2010,

http://www.gladstoneindustry.org.au/documents/1267504569_dev_rev_matrix_march_2010.pdf

¹⁷ Gladstone Regional Council, 'Our Place, Our Plan, Housing and Residential Development, Issue Sheet #2',

<http://www.gladstonerc.qld.gov.au/building5Development/docs/ISSUEPAPER2HousingandResidentialDevelopment.pdf>

home owners in the future to purchase manufactured homes and a preference to utilise other housing options. This is because at the end of a fixed term site agreement, if the site agreement is not renewed, the home owner could be faced with the costs of moving their manufactured home to another site, along with the uncertainty of finding a site for their manufactured home in the location of their family, friends and community networks.

290. If a site agreement was for a fixed term, home owners would not have a strong bargaining positioning at the end of their fixed term. There is the potential for home owners to feel pressured into signing a new fixed term site agreement (which could include excessive increases in site rent and additional special terms) in order to remain in the park as the costs and uncertainty of moving to another site would likely exceed the costs associated with staying in the park.
291. However, if the park owner was to continue to offer the site as a manufactured home site at the end of the fixed term agreement it would be likely that the park owner would seek that the home owner enter into a new site agreement that reflects what the current market would consider appropriate.
292. If fixed term agreements were provided for under the Act and the home owner sought assistance from the Tribunal, the park owner would be in the better position and have the power to refuse to enter a new site agreement or insist in additional provisions being included in a new site agreement. Ultimately, the home owner would then be faced with the costs associated with moving their manufactured home.

Impacts for manufactured home owners

293. Amending the legislation to allow for fixed term site agreements would reduce the security that manufactured home owners have regarding their security to reside in a residential park.
294. The establishment of fixed term site agreements would limit the ability of the Tribunal to order the park owner to pay compensation to a home owner if the park owner does not wish to continue providing a site for the occupation of a manufactured home at the end of the fixed term. This would result in a cost for home owners who may be required to move their manufactured home at the end of the fixed term agreement at their own cost.
295. Park owners could entice potential home owners with fixed term site agreements by including reasonable rent provisions; however, at the end of the fixed term the home owner could feel pressured into signing a further fixed term site agreement, (which may include additional special terms and excessive rent increases) because of the substantial costs associated with moving their manufactured home.
296. However, if fixed term site agreements were able to be negotiated and entered into, it could be of benefit to the home owner and prospective home owners as there could be increased transparency in the agreement where a home owner would know the length of time they were able to reside in the park (and to date it appears the termination of a fixed term arrangement has not been questioned in the Tribunal).
297. Providing for fixed term arrangements has the potential of mitigating the risks associated with the rising entry price of buying a home to better reflect the cost

298. However, there has been no indication that residents who currently have a fixed term site agreement have paid a reduced amount for their home in comparison to residents who currently have site agreements that do not include an end date.

Impacts for residential park owners

299. Allowing for fixed term site agreements under the MHRP Act would provide park owners with the flexibility to make future decisions regarding the use of their land without awaiting a decision by the Tribunal to terminate a site agreement or the potential requirement to pay compensation to the home owner.
300. However, the introduction of fixed term agreements may lead to a reduction in the number of home owners investing in manufactured homes as an accommodation option due to the reduction in their security of tenure and the costs and uncertainty of moving their manufactured home at the end of the fixed term.
301. Currently some site agreements contain an extensive list of special terms to predict any potential issues that may arise in the future. However, if a site agreement was entered into for a fixed term the site agreement may reflect this by being less extensive, making the site agreement more transparent, timely and easily understandable.
302. This option would also allow for a park owner and a home owner to enter into a new site agreement following the end of the fixed term. This provides the park owner with the flexibility of amending the site agreement to reflect any changes in the park or trends in the industry.
303. Park owners would also be able to adjust their business plans to meet demands in the market. If there is an increase in a requirement for temporary accommodation, the residential parks and manufactured homes industry could assist in fulfilling the temporary requirement without requiring a park owner to commit to long-term accommodation or risk being subject to compensation payments, which may be seen as an attractive prospect for the park owner and also meets the needs of individuals requiring temporary accommodation.

Impacts for Government

304. An amendment allowing for fixed term site agreements would reduce the number of applications brought before the Tribunal relating to the termination of site agreements.
305. However, added pressure could be placed on State housing if people become reluctant to purchase a manufactured home as a form of alternative housing.
306. The policy intention of the MHRP Act and purpose of the regulatory framework around the termination provisions could be undermined which is not a beneficial result for any stakeholder.

307. This option unlikely to meet community expectations regarding the level of consumer protection that should be provided to manufactured home owners.

Net Impact

308. The benefits of this option do not outweigh the costs and risks associated with allowing for fixed term site agreements. While this option provides greater flexibility for park owners and may create certainty about the duration of site agreements in the industry, it substantially decreases the level of consumer protection about termination offered to manufactured home owners under the MHRP Act.

Consultation results on preferred option

309. The majority of stakeholders supported the preferred option that site agreements should provide an ongoing right to reside in a residential park as this option affords home owners with some certainty regarding their future accommodation.

310. However, some park owners oppose the retrospective nature of the proposed amendment on the basis that, the park owner and the home owner both freely entered into a fixed term agreement and that the park owner would not have entered into a site agreement if the park owner was aware that the site agreement would not be terminated on a specific date.

311. Some home owners have disputed whether all parties did freely enter into a fixed term agreement as there are residents who believe they were misled at the time of signing the document. Consultation highlighted that residents may have been led to believe that the site agreement was to be renewed at the end of the fixed term and signed the document on that understanding.

312. It was also noted in consultation that this was not always the case, as there are situations where both home owners and park owners have entered into fixed term agreements to meet their individual needs, and these agreements are not disputed by either party.

313. Some residents expressed concern at the removal of fixed term lease (e.g. 99 year leases) because they believe a fixed term agreement is very important for the security of long term occupancy, however, the termination provisions in the MHRP Act may still apply to fixed term site agreements as the park owner maintains the right to terminate the site agreement before the termination date, and many fixed term agreements were for a significantly shorter period of time than 99 years (e.g. 5-10years).

7.4 Termination of site agreements

Context and issues

314. The MHRP Act is intended to provide manufactured home owners with a high degree of security and certainty with respect to their ability to reside in a residential park, in accordance with their site agreement. The legislation seeks to provide certainty in a home owner's right to reside by:
- requiring that the successors in title to the park obtain the benefits, and are subject to the obligations, of the park owner under existing site agreements
 - ensuring that a home owner's right to reside in a park under a site agreement continues until the site agreement is terminated
 - providing that a site agreement can only be terminated in specific circumstances
 - providing that if a home owner does not agree to a proposed termination, the site agreement may only be terminated by authority of the Tribunal and
 - ensuring that if the Tribunal authorises the termination of a site agreement on the basis that the park owner wishes to use the land for another lawful purpose, the Tribunal must also make an order requiring the park owner to pay the home owner compensation for the costs of relocating the manufactured home and the home owner's personal effects.
315. The Outcome Report of the review of the MHRP Act concluded that overall, the legislative provisions regulating the termination of site agreements are operating effectively and as intended. However, it is also clear that some manufactured home owners continue to hold significant concerns about their potential dislocation if the park owner seeks termination of their site agreement. Three of the most significant issues raised by home owners are:
- the potential difficulty in locating an alternative site upon which to relocate their home if the existing site agreement is terminated
 - the fear that individual home owners may have their agreement terminated to make way for changes to the park (impacting on their specific site) and may not be offered another site in the same park even if it is available and
 - the adequacy of compensation payable to a dislocated home owner under the MHRP Act.
316. Due to the limited number of alternative sites available for manufactured homes, a home owner may be substantially burdened if forced to quickly move to a location which is no longer close to their family, social, medical, employment and community networks.
317. Although the termination and compensation provisions of the MHRP Act make the termination of most site agreements and the closure of a residential park costly and unlikely, the impact on manufactured home owners in the event of a park closure would be substantial as the consequences could cause serious dislocation for residents.
318. Therefore the issue of park closures requires a coordinated policy response which has adequate regard to the:
- Financial and social impact on home owners whose site agreements are terminated
 - rights and liberties of park owners and
 - integrity of ownership of real property.

- current, significant restrictions regarding termination which impacts on a park owners flexibility to change the use of their land
- appropriateness of imposing a social housing responsibility on private land owners
- impact on incentives for existing park owners to offer sites for occupation by manufactured homes (including for the re-positioning of a manufactured home for residents in other parks)
- current policy seeking growth and viability of the industry as a whole
- impacts on home owners following dislocation from their community and
- rights of residents to have continued security in their ability to reside in the residential park.

Policy objective

319. The policy objective is to ensure that the MHRP Act meets the community expectation that manufactured home owners are treated fairly with respect to potential termination of their site agreements, including through the recognition of the substantial costs and disruption that manufactured home owners face if their right to reside in a residential park ends. The policy objective must be balanced with the rights of park owners to make reasonable, lawful decisions about the future use and management of their land.

Options for achieving policy objective

Option 1: Status Quo

320. As described in paragraph 314, the MHRP Act currently contains a range of measures to ensure manufactured home owners benefit from a high degree of certainty regarding their ongoing ability to reside in a residential park pursuant to a site agreement.

321. The status quo option is supported by the finding of the review that overall, the provisions of the MHRP Act regulating termination of site agreements and compensation for home owners are operating effectively and as intended.

322. However, the review also highlighted that the provisions regulating the termination of site agreements could be further enhanced. Therefore, the impacts on stakeholders for maintaining the status quo have not been assessed.

Option 2 - Information, education and advocacy

323. As part of the pre-contractual disclosure requirements of the MHRP Act, park owners must provide prospective home owners with a copy of the approved *Home owner's information document* (Manufactured Homes Form 1). This publication contains a range of information about a park owner's and a home owner's rights and responsibilities under the Act including specific information in relation to the termination of site agreements and how a termination may occur.

324. Given that many home owners are made aware of the termination provisions of the Act prior to choosing to enter into a site agreement with a park owner, and because park owners may decide to seek termination of a particular site agreement and this decision is out of the home owner's control, the information,

education and advocacy option is unlikely to adequately address home owner concerns.

325. As this option will not meet the policy objective the impacts on stakeholders have not been addressed.

Option 3 – Prohibit termination of site agreements

326. An option to increase security and certainty for manufactured home owners in their right to reside in a residential park is to amend the MHRP Act to remove the capacity for site agreements to be terminated on any basis, except with the agreement of the home owner.
327. However, there are a range of instances where termination without the agreement of the home owner could be appropriate and justified. For example, in circumstances where the home owner has assaulted persons who were lawfully in the park, wilfully destroyed property within the park or abandoned the manufactured home, termination of a site agreement would appear to be justified.
328. Removal of all grounds for termination without the home owners consent would be impractical and would form an unreasonable and unjustified restriction on the ability of park owners to operate their park and to make decisions about the use of their land. The Tribunal protects home owners by providing an independent and broad assessment of the purported grounds for termination.
329. As this option appears impractical and unjustified, the costs and benefits have not been specifically assessed.

Option 4: Prohibit termination of site agreements based on change of use

330. A further option is to amend the MHRP Act to remove the capacity of the Tribunal to authorise the termination of a site agreement on the basis that the park owner has decided to use the land the home is positioned on for another purpose, while leaving the other grounds for termination currently appearing in the legislation unchanged.

Impacts for manufactured home owners

331. This option would provide home owners with a substantial increase in security and certainty regarding their ongoing ability to reside in the residential park and reduce the likelihood of home owners needing to secure an alternative site for their manufactured home in the future.
332. This option would also mitigate the impact on some home owners who may have paid a premium price for their manufactured home and the ability to reside in a particular residential park.
333. However, this option is considered to be a disincentive for land owners to enter the residential park industry, and in turn, would result in a reduction in the number of sites available for existing and prospective manufactured home owners. This may increase demand for sites and the ability of existing park owners to charge a high weekly site rent, which would not be considered to be a benefit for home owners.

334. In addition, unintended consequences may result and would not benefit home owners such as a potential reduction in the level of maintenance of a residential park or reluctance of park owners to improve the facilities in a residential park because of their dissatisfaction with the removal of their right to use their land and investment as they see fit.
335. An overall reduction in the number of sites available for the positioning or re-positioning of a manufactured home would negatively impact on manufactured home owners particularly over the long-term and would not be a positive result.

Impacts for residential park owners

336. Removing the capacity for park owners to apply to the Tribunal for an order terminating a site agreement on the basis that the park owner wishes to use the land for another purpose would be a serious restriction on the ability of the park owner to make decisions about the future use of the land.
337. It is likely that this option would also have substantial negative impacts on the amount investors would be prepared to pay to purchase the land should the park owner decide to sell the park. Also financiers are likely to be reluctant to lend money on the security of park land, given the encumbrance of home owners.
338. This option will also provide a significant disincentive for potential park owners to enter the industry in the future, limiting growth in the sector, and may in fact prompt park owners to leave the sector, resulting in a reduced number of manufactured home sites available in the future.

Impacts for Government

339. Eliminating the ability to terminate site agreements on the basis of a change of a use to the land in the park would ensure home owners have security in their ongoing right to reside in a residential park. However, the associated risks including the disincentive for land owners to enter the industry, a potential reduction in the quality of residential parks and a potential increase in site rent for existing residential parks, may result in fewer, new residential parks being opened.

Net impact

340. Overall, the disadvantages of this option (including the significant intrusion into the ability of park owners to make decisions about the use of their property) outweigh the potential advantages of providing further security and certainty in home owners' ongoing rights to reside in a residential park, particularly given the MHRP Act already includes a compensation regime to assist home owners whose site agreement is terminated in certain circumstances.

Option 5: Preferred option - Expand Tribunal powers: Park Owner to offer another site

341. Some home owners are concerned that park owners may seek to terminate a particular site agreement on the basis of a 'change of use' which does not affect the whole park. As an example, this may involve the park owner claiming that particular sites within the park, will in the future, be used for non-residential purposes, while a range of other sites will continue to be available for occupation by manufactured homes.
342. Given that the Tribunal may order the park owner to pay the potentially substantial costs of relocating the manufactured home (which may be in the tens of thousands of dollars), it is unlikely this scenario would arise very often.
343. However, in recognition of the benefits residents would receive from being able to continue to reside in the same park if possible, a proposed option is to empower the Tribunal (when appropriate) to authorise the termination, but make a supplementary order requiring the park owner to offer the home owner an alternative, comparable site in the park. This type of order could only be made if the Tribunal was satisfied that an appropriate alternative site was available and the resident wished to remain in the park.

Impacts for manufactured home owners

344. The option would benefit home owners by providing home owners with some additional certainty in their right to reside in the residential park where possible. The option would also contribute to meeting the policy objective of providing security and certainty for home owners.

Impacts for residential park owners

345. The option would not impact on park owners who seek to maintain the number of home owners within their park.
346. However, consultation highlighted that it is important that any available site should be unoccupied and not currently being planned for another purpose.

Impacts for Government

347. The Government would benefit as the Tribunal would be provided with an additional ability to ensure that home owners are able to remain in their park when termination of their agreement is sought, notwithstanding the availability of other vacant, comparable sites within the particular residential park. This is likely to reduce a home owner being dislocated from their community and the potential of having additional pressure placed on public housing.

Net impact

348. Overall, the benefits of the option outweigh the potential costs and any disadvantages.

Option 6: Preferred option - Clarify Tribunal power to delay termination taking effect

349. The MHRP Act provides the Tribunal with the power to make a termination order which includes the date by which a home owner must provide the park owner with vacant possession of a site.
350. A proposed amendment and preferred option to meet the policy objective is to also specifically provide that the Tribunal may set the date for vacant possession up to 12 months from the date of the termination order. This option would only be available to home owners following a successful application by the park owner for a termination order because the park owner wished to use the site for another lawful purpose.
351. During consultation on the draft amendment Bill, this option was questioned by both home owners and park owners. Some home owners believe that an additional 12 months still would not provide enough time for home owners to be able to locate an alternative site for their manufactured home. Park owners are concerned that an additional 12 month postponement of a termination order will make it impossible to meet required timelines as part of a development application.
352. Some stakeholders also raised concern that under the Act, the home owner may still apply to the tribunal before the termination date for an order further extending the time for providing the park owner with vacant possession of the site following the 12 month postponement of a termination order.

Impacts for manufactured home owners

353. This option would benefit manufactured home owners as more time to locate and secure alternative accommodation arrangements (which may involve the re-positioning or sale of their manufactured home) would be provided to assist them in transitioning out of the park.
354. This option provides home owners with increased confidence in their ability to be able to make alternative housing arrangements.

Impacts for residential park owners

355. This option may result in a significant new restriction on the ability of park owners to quickly change business models and to use their land as they see fit. It may mean that a decision to change the type of business and use of their land would take well over 12 months to implement.
356. This option may also have an adverse consequence on the value of the land in circumstances where the park owner wishes to sell, because the postponement of the termination date may be considered by potential purchasers and investors as a significant restriction on the ability to change the use of the land.
357. However, there are already substantial commercial disincentives under the MHRP Act to change the use of park land as the park owner may be required to pay compensation to home owners upon termination, and in certain circumstances this may make some proposals commercially unviable.

358. There is also a risk to park owners that the extension of the date of termination may impact on their ability to meet the timelines provided for under the development approval. Particularly where unforeseen circumstances prevent the home owner from giving the park owner vacant possession of the site and the home owner applies to the Tribunal for an order further extending the date for giving the park owner vacant possession of the site.
359. However, to mitigate any negative impacts on park owners it is proposed that the Tribunal is required to have regard to particular circumstances when making an order for the postponement of a termination date, including any financial impact on the park owner.

Impacts for Government

360. Providing wider powers for the Tribunal to make orders to assist home owners faced with termination of their site agreements would benefit Government by meeting the policy objective and community expectations regarding the operation of the Act and provide home owners with more time to transition out of the residential park and find alternative accommodation.

Net impact

361. It is considered that the overall benefits of this option outweigh the costs. Home owners will benefit from improved protection to assist them in transitioning out of the park. However, park owners may have an additional time limitation on their ability to adopt a new business plan for the park land. This is balanced by the ability of the Tribunal to take into account the financial circumstances and impacts on both the home owner and the park owner.
362. Given that the Tribunal is currently empowered to set a date they consider appropriate for termination to take effect and that the proposal is for up to 12 months, the potential cost to park owners is not considered substantial enough to outweigh the potential benefit for the community as a whole.

Option 7: Broaden the basis for compensation payable to home owners

363. During (and following) the review of the MHRP Act, some home owners have questioned the adequacy of the compensation provisions of the legislation. Currently, if the Tribunal decides to order the termination of a site agreement, on the basis that the park owner wishes to use the land for another purpose, the Tribunal must also order the park owner to pay compensation to the home owner. In deciding the amount of the compensation, the Tribunal must have regard to:
- the estimated costs of removing the home from the site
 - the estimated costs of transporting the home and the home owners personal effects to another location
 - the estimated costs of positioning the home at the other location and
 - anything else the Tribunal considers relevant.
364. The Act, information contained in the pre-disclosure documents, and the basis of the relationship between a residential park owner and manufactured home owner clearly indicate that the land the manufactured home is positioned on is owned by the park owner. However, some home owners feel that the compensation arrangements are inadequate in three ways:

- (i) the compensation provisions do not include consideration of issues such as the potential increase in value of the land or the desirability of the location and
 - (ii) the compensation provisions do not include consideration of the initial investment made by a home owner when purchasing their manufactured home.
 - (iii) consumers often choose to pay a premium price above the value of the manufactured home to secure the right to reside in a particular park and location pursuant to the site agreement under the MHRP Act.
365. With respect to the issues raised in paragraph 364(i) it is noted that the MHRP Act applies when a person owns their own manufactured home but rents the site it is located on from a residential park owner. As the home owner does not own the land, the home owner is not entitled to realise any capital appreciation or contribute to the park owner's loss because of capital depreciation in the land over time.
366. With respect to the issues raised in paragraph 362(iii) when a prospective home owner wishes to enter a residential park, they will generally enter into two transactions. Firstly, they will purchase the manufactured home (an asset). Secondly, they will enter into a site agreement with the park owner (or be assigned the previous home owners interest under an existing site agreement with the home owner). Consultation and the review showed that the purchase price paid by the prospective home owner to enter the park can be substantially more than the value of the manufactured home itself, as the purchase price often reflects the value in the rights under the site agreement to reside in the park. If the park owner decides to terminate the agreement, this investment and potential for return on this portion of the investment may be lost.
367. While there is some risk for prospective consumers and current manufactured home owners who have chosen to purchase a manufactured home for a substantially higher price than the actual value of the structure as outlined in the scenario above, there are practical difficulties in providing home owners with any further protections or remedies than what the MHRP and proposed amendment Bill currently offers.
368. A key issue is that home owners often purchase their home and interest under a site agreement from a previous home owner (not a park owner). Therefore, the previous home owner would be the beneficiary of any appreciation they may have been able to negotiate at the time of sale and during assignment of the site agreement through the purchase price agreed to with the new home owner.
369. Moreover, while the MHRP Act seeks to provide home owners with as much security as possible in their right to reside in the park, park owners have the right to terminate agreements in certain circumstances (subject to an order made by the Tribunal). Therefore, possible termination of a site agreement is a real and serious risk for home owners that should be factored in by the prospective home owners when they choose to purchase a manufactured home. Information on ways in which a site agreement can be terminated are disclosed and outlined through the pre-contractual disclosure requirements of the MHRP Act and highlighted in the Home owner's information document.

370. As changes sought by some manufactured home owners to the compensation provisions of the MHRP Act appear unjustified and impractical, the costs and benefits to stakeholders have not been assessed.

Option 8: Do not permit the termination of a site agreement if the termination would cause social dislocation or financial detriment to home owners

371. During the recent consultation process some consumer advocates proposed an amendment to the MHRP Act which would require any proposal for termination of a site agreement to be considered by a public official and only approved if the official is satisfied that the closure would not cause:

- (i) unacceptable levels of social dislocation and personal housing issues and
- (ii) reasonable and available housing alternatives for affected manufactured home owners was secured and provision made, at the park owner's expense, for the home owners to move there without financial detriment.

372. Although the termination and compensation provisions of the MHRP Act make the termination of most site agreements and the closure of a residential park costly and unlikely, the impact on manufactured home owners in the event of a park closure would be substantial as the consequences could cause dislocation for a vulnerable demographic.

373. This option would seek to address the limited availability of alternative housing options for pensioners and other vulnerable home owners by restricting the commercial decisions of park owners if the termination of the site agreement is expected to have a potential negative financial or social impact on a manufactured home owner.

Impacts for manufactured home owners

374. This option would provide security to the home owner as their site agreement would only ever be terminated if another suitable location or alternative accommodation could be secured.

375. With the increased certainty afforded in a manufactured home owners right to reside on the site, home owners may also be able to ask a higher purchase price because of the assurance for home owners about their continued ability to reside in a particular park or be offered an alternative housing option.

376. In addition this option would ensure manufactured home owners are not subject to any financial detriment during their relocation.

377. However, there is a strong potential for the industry to become unviable and unattractive to future investors into residential parks. This may remove manufactured home living as an option for affordable or alternative housing for existing and potential home owners.

Impacts for residential park owners

378. This option would effectively require a private land owner to take responsibility for social housing issues.

379. If there was a shortage of alternative sites available for the re-positioning of a manufactured home or a lack of suitable alternative accommodation for the

380. Placing major limitations on a private land owner's rights to use their land would hinder the growth of the residential park industry by making the development of residential parks unattractive.

Impacts for government

381. In the short term this option may benefit the Government as the responsibility of social housing would be placed partially on private land owners and there would be protection for home owners, who in turn would be able to continue living in their manufactured own home.
382. However, a reduction in the number of alternative accommodation options over the long term would not benefit the general housing sector.

Net Impact

383. It is considered that the disadvantages of this option (including the significant intrusion into the ability of park owners to make decisions about the use of their property) outweigh the potential advantages of providing further security and certainty in home owners' ongoing rights to reside in a residential park.

Draft Bill consultation results

384. In general, consultation feedback reflected the uncertainty and stress caused to home owners due to the potential termination of site agreements based on the park owner's ability to change the use of their land.
385. Although, there was general support for the preferred options from the majority of stakeholders, there were also a number of home owners who did not believe the preferred options went far enough to protect residents if their site agreement was terminated and the home owner was forced to move their home.
386. Some manufactured home owners raised concerns about the lack of alternative sites available in the event that their site agreement is terminated. In some instances, even when sites are available in nearby parks, some new parks won't accept older style manufactured homes.
387. Consultation also highlighted concern amongst some stakeholders about the lack of alternative sites available and the 'permanent' nature of some manufactured homes, which are considered by some home owners to actually be immovable. These home owners have expressed their view that a home owner should be eligible for compensation which reflects the 'market value' or initial investment made in their structure if their site agreement is terminated which would allow the home owner to abandon the home and consider other alternative housing options to meet their needs (this is discussed further in option 7).
388. However, because many manufactured home owners purchase their homes from previous home owners who also assign their rights under an existing site

389. During consultation, many home owners and consumer advocates raised and are supportive of the idea of removing a park owner's right to seek termination of a site agreement through the Tribunal and therefore further restricting a park owner's ability to change the use of their land.

7.5 Modified Caravans

390. The relationship between the MHRP Act and the RTRA Act is critical for residential parks, particularly those comprising of a mix of manufactured homes sites and sites for caravans. Whether or not a structure falls within the definition of a 'manufactured home' or a 'caravan' will determine whether the relationship between the park owner and home owner is regulated by the MHRP Act or the RTRA Act. These two Acts encompass substantially different rights and responsibilities for park owners and home owners.
391. The MHRP Act defines a 'manufactured home' as a structure other than a caravan or tent that has the character of a dwelling house, is designed to be able to be moved from one position to another and is not permanently attached to land.
392. Under the RTRA Act a 'caravan' is a trailer principally used for residential purposes, designed to be attached to and towed by a self propelled vehicle and as originally designed was capable of being registered under a law of the State about the use of vehicles on public roads. A caravan is also something not fitted with wheels but designed for attachment to a motor vehicle and for use for residential purposes.
393. Some caravan owners make substantial modifications and additions to their caravans after entering a residential park. This can include attaching carports and annexes, or making structural modifications to create a 'modified caravan'. Some modified caravan owners argue that these changes allow the caravan to fit within the definition of a manufactured home. Further, a number of modified caravan owners have applied to the Tribunal seeking an order for a site agreement under the MHRP Act in relation to their modified caravan.
394. In 2006, the Court of Appeal¹⁸ upheld a determination of the CCT that the modified caravan in question was now a manufactured home under the MHRP Act as it could no longer be defined as a caravan under the *Residential Tenancies Act 1994* (now the RTRA Act).
395. Following this decision some park owners have become apprehensive and no longer allowing caravans to be positioned on a site if they were not registrable for use on the road and are no longer allowing hard annexes to be built onto caravans on site. Of more concern is that some park owners are refusing to accommodate long term residents in their residential park or allowing for the positioning of any more permanent structures on site due to the uncertainty following the Court of Appeal decision¹⁹.
396. It is important to note that each case continues to be determined on the individual merits. For example, in *Tamahori v Roofley Pty Ltd [2009] QCCTMH 9 (15 May 2009)*, a modified caravan owner was seeking a site agreement for their modified caravan; however, it was considered that the Tribunal was unable to rule on this case for want of jurisdiction because the modified caravan was not considered to be a manufactured home for the purposes of the MHRP Act.

¹⁸ *Monte Carlo Caravan Park P/L v Curyer* [2006] QCA 363

¹⁹ Queensland Government, Department of Justice and Attorney-General May 2008, Outcome Report for the Review of the *Manufactured Homes (Residential Parks) Act 2003*, pp 13-14.

397. The reluctance of some park owners to allow caravans to be positioned within their residential park is of concern because of the important role caravans play in the provision of emergency and social housing.
398. The Outcome Report recommended that the definition of 'manufactured home' be refined following targeted consultation. During the targeted consultation, it was determined that the definition of a 'manufactured home' should clarify that modified caravans are not considered manufactured homes under the MHRP Act, including because the MHRP Act is not intended to apply to caravans occupying a site in a residential park and manufactured homes and caravans are quite different structures with different purposes.
399. Feedback received during consultation indicated that the group of residential park residents who would be affected by providing that a modified caravan is not a manufactured home for the purposes of the MHRP Act, may be a vulnerable group of home owners, largely consisting of low income families, disability pensioners, aged pensioners and self-funded retirees.
400. Consultation also highlighted that there is a concern that the current rights of modified caravan owners to apply to the Tribunal for consideration of whether or not their structure meets the definition of a manufactured home would be negatively impacted by removing their ability to apply to the Tribunal for an order for a site agreement on the basis that their structure meets the definition of a manufactured home under the MHRP Act.
401. Following the review of the MHRP Act and information received during recent consultation it is proposed to amend the MHRP Act to:
- clarify that caravans, which have been subject to structural and other modifications are not 'manufactured homes' for the purposes of the MHRP Act
 - provide flexibility in allowing a park owner and a modified caravan owner to freely enter into a site agreement for the modified caravan
 - preserve the existing right of modified caravan owners to apply to the Tribunal for an order for a site agreement, on the basis of the MHRP Act before commencement, for a period of up to 3 years after the commencement of the amendments and
 - provide that the right to apply to the Tribunal (and have the application considered on the existing law) within 3 years would only apply to people who are occupying their homes immediately prior to commencement and where the relevant structural modifications to the caravan were made to the home prior to commencement of the amendments.
402. As the clarification of the definition of a manufactured home will not impose an increased burden on the business conduct requirements that would impact on competition in the residential parks sector, the options and an impacts analysis has not been undertaken on the issue.

7.6 Record of residential parks

Context and Issues

403. During recent consultation many stakeholders expressed strong support in requiring residential parks to be licensed or registered. It is seen that the licensing of residential parks may provide a framework for the management of residential parks, a set of behavioural guidelines for park owners and park managers and an additional method of ensuring park owners comply with the requirements of the MHRP Act.
404. There is also a lack of industry specific information available about the number and location of residential parks offering sites to manufactured home owners in Queensland, and no formal method for the Government to communicate and disseminate important information to the majority of park owners and manufactured home owners in the broader community.

Policy objective

405. The policy objective is to ensure the MHRP Act meets community expectations that there is an adequate method to improve communication between industry, Government and manufactured home owners.

Options for achieving the policy objective

Option 1: Status Quo

406. Currently under the MHRP Act there is no requirement for a residential park to be licensed, nor is there a register of residential parks in Queensland. The information available about the number of residential parks or manufactured homes in Queensland is very limited and informal.
407. Consultation highlighted that many stakeholders would be supportive of the Government maintaining a record of residential parks, which included the location of the residential park and number of sites available for the positioning of manufactured homes.
408. In addition, stakeholders were supportive of options which would improve the level of communication between the Government, residential park owners and manufactured home owners. A greater level of communication would be one method of ensuring stakeholders are made aware of any consultation activities, changes or amendments to the Act and, any information/education campaigns held by the Government.
409. Maintaining the status quo will not achieve the policy objective of ensuring a communication network is established between the Government, industry and, manufactured home owners. As this option will not meet the policy objectives, the costs and benefits have not been assessed.

Option 2: Licensing of residential parks

410. One option that was raised during consultation to meet the policy objective is the registration of residential parks, or licensing of residential park owners and

411. First, many home owners are of the view that the licensing of residential park owners may ensure the guidelines and provisions of the MHRP Act, which relate to the conduct of park owners and park managers, are adhered to. However, because the park owner owns the land on which the manufactured homes are positioned, limiting the park owner or park manager from operating the residential park through sanctions or removal of their license would likely result in the closure of the park. Park closures would not benefit the residents of the residential park.
412. Second, some stakeholders feel that a key factor central to many disputes between manufactured home owners and residential park owners is a low level of communication between both parties. However, requiring residential park owners or park managers to maintain a license or registration would not necessarily ensure a higher level of communication is maintained.
413. Stakeholders expressed the expectation that licensing would include the requirement for an internal dispute resolution service to be developed with the residential park owner and manufactured home owners. However, methods for dispute resolution are already provided for in the MHRP Act and available from various Government funded areas. In addition, there is nothing limiting a residential park owner and manufactured home owners from developing their own dispute resolution scheme to deal with issues arising in the park that are mainly related to community living.
414. Third, some manufactured home owners expressed the view that licensing would be an effective method for disciplining park owners who did not comply with the specific licence requirements because many manufactured home owners thought it possible for the licence or park registration to be revoked if the MHRP Act is not complied with.
415. Finally, some manufactured home owners felt that having probity requirements imposed on residential park owners as a component of their licensed or registration would ensure that a person with a history of certain criminal behaviours would not be eligible to own or operate a residential park.
416. However, as mentioned above, the key issue is that the residential park owner owns the land on which the residential park is operating and for this industry revoking a park owner's license or registration would likely result in the closure of the residential park as the land owner would then need to use their land for another purpose.

Impacts for manufactured home owners

417. This option would further promote fair trading practices in the operation of residential parks by improving the treatment of home owners and prospective home owners.
418. However, this option is impractical as revoking a residential park owners license or registration would result in the park closure and this would not benefit the residents of the residential park.

419. In addition, there are limited alternative sites available, particularly in desirable locations, for the re-positioning of manufactured homes and moving and relocating a manufactured home can be costly.

Impacts for residential park owners

420. A licensing or registration regime would be a further burden on residential park owners and introduce an additional barrier to entering the industry resulting in limited if any growth of the industry.
421. The increased regulation and cost is seen as a disincentive to remain, or enter the residential parks industry. In addition, this option would not improve the conduct of park owners who are interested in exiting the industry and using their land for another purpose.
422. However, a licensing or registration regime may improve the overall level of conduct in the industry, improve the standards of all parks and improve the viability of existing parks though an increase in demand from consumers.

Impacts for Government

423. The licensing of park owners or the registration of residential parks would assist in ensuring the provisions of the MHRP Act are adhered to by residential park owners who are interested in remaining in the industry and providing sites for the occupation of manufactured homes. However, this option would not improve the conduct of park owners who are interested in exiting the industry and using their land for another purpose.
424. In addition, the result of a park owner failing to meet any licensing probity requirements, or becoming unlicensed, would be a negative impact on the Government as a number of residents, many of which are on fixed incomes, may seek housing assistance from the Government in the short term until a long term housing solution was found following the park closure.

Net Impact

425. The licensing of residential park owners or the registration of residential parks is not considered appropriate due to the unique relationship between the commercial business owner and the tenant; that being that residential park owners own the land on which manufactured homes are positioned. Therefore, revoking a 'license' would be problematic and may result in the closure of a residential park.

Option 3: Preferred Option - Record of residential parks

426. This option would place a new requirement on residential park owners to provide specific information within a 28 day timeframe (and ensuring the information is up to date) to the chief executive officer about the residential park including for example the name of the park, the location and mailing address of the park and the number of sites available for manufactured homes.
427. Provisions of the MHRP Act currently require a park owner to maintain a notice board within a prominent position within the common areas of the residential park. In addition, provisions of the MHRP Act specify that a park owner must

428. However, the MHRP Act does not currently prescribe requirements as to what information is to be displayed on the notice board (other than the home owner's ability to display material relevant to the park).
429. This option would compel a park owner to display prescribed information on the notice board for a prescribed period of time and work in conjunction with the requirement that the chief executive maintain a record of residential parks to assist the Government in communicating with the broader residential park industry including existing residents about manufactured homes related issues.

Impacts for manufactured home owners

430. This option would require the park owner to display prescribed information on the notice board for a certain period. Overall the option would improve the level of communication with a majority of manufactured home owners by requiring prescribed information, including for example information in relation to education campaigns, a residential park owners and manufactured home owner's rights and responsibilities under the MHRP Act and upcoming consultation activities, to be shared with residential park residents by being posted on the notice board in the residential park.
431. The sharing of information with home owners is beneficial to ensure home owners are aware of their rights and obligations under the MHRP Act, any changes that are being proposed, methods for resolving disputes and any other information which may be considered relevant.

Impacts for residential park owners

432. This option is expected to increase the burden on the business conduct requirements as a park owner by a marginal amount as park owners will be required to provide details regarding their park to the chief executive and to ensure that prescribed information is made available on the park notice board.
433. However, there are potential benefits to park owners, including improved communication and understanding of the park owner and home owner relationship through the distribution of important information and updates regarding the MHRP Act and any proposed regulatory changes.
434. There is also the benefit that a publicly available list of residential parks will be a resource for potential home owners who are researching accommodation options including for the re-positioning of the manufactured homes. This may be considered beneficial for residential park owners seeking to include more permanent residents in their residential park as a form of regular rental income.

Impacts for Government

435. Requiring the chief executive to keep a record of information on residential parks would provide a useful tool for Government to identify issues, growth and trends within the residential parks industry as well as improve the level of communication about the MHRP Act with residential park owners and residents.

436. Providing on-going information to home owners and park owners about the MHRP Act will increase both parties understanding about their rights and obligations under their site agreement and the MHRP Act and may lead to a reduction in the number of disputes between the parties to a site agreement.
437. It is also considered that information about the locations and numbers of manufactured home sites will better enable the Government to use trends within Queensland to inform future policy development.

Net Impact

438. The benefits of this option are considered to outweigh any negligible costs which may be incurred by residential park owners and Government. This option would provide a mechanism to improve the communication network between industry, Government and manufactured home owners.

7.7 Minor and Technical Amendments

Context and Issues

439. Minor and technical amendments are proposed to ensure the MHRP Act is operating as intended. The proposed amendments include:
- clarification that the jurisdiction of the Tribunal to determine site agreement disputes includes disputes where there is no agreement and the matter in dispute is whether or not a site agreement should be issued
 - clarification that park owners must not charge home owners more than the actual cost of providing a utility service (for example, water and electricity) to the home owner where the home owner's use of the utility service is separately measured and metered
 - clarification that, should a park owner refuse to consent to an assignment of the site agreement, the park owner must provide the decision and the reasons for the decision in writing.
 - that park owners must state a business hours contact telephone number when providing home owners with contact details as required by the Act
 - amending the grounds which the Tribunal can consider when making a termination order, to ensure that following a number of circumstances, including the death or relocation for personal reasons of a home owner, the home owner, or executor of the home owner's estate is able to deal with the home (and the home owner's interest under the site agreement) without the risk that the site agreement is terminated on the basis that the home owner is not using the home as their principal place of residence and
 - clarification that there is to be only one home owners' committee in a residential park
440. As the minor and technical amendments will not impose an increased burden on the business conduct requirements that would impact on competition in the residential parks sector an impacts analysis has not been undertaken.

Part 8 Conclusion

441. Consultation undertaken to inform the review of the MHRP Act suggested that there was overall satisfaction with the legislation and that the MHRP Act was operating as intended. However, as detailed in the Outcome Report (and throughout Part 7 of this PBT), manufactured home owners and park owners did raise concerns about particular issues in the residential parks sector and identified opportunities to improve the capacity of the legislation to meet its consumer protection objectives, while promoting the ongoing growth and viability of the residential parks industry.
442. This PBT includes the results of an analysis on a number of alternative means of achieving the policy objectives, including maintaining the status quo and utilising information, education and advocacy tools.
443. As discussed in Part 2 of the report, the MHRP Act is among the most comprehensive consumer protection regimes for manufactured home owners in Australia. Moreover, given the existing compliance, dispute resolution and review mechanisms established under the MHRP Act, it is unlikely that maintaining the status quo would result in systemic or widespread detriment, injustice or prejudice to manufactured home owners.
444. It is also arguable that refraining from adopting restrictive legislation may have a positive influence on the ongoing viability and growth of residential parks and the attractiveness of residential parks as an investment option.
445. However, providing the community with no response to the issues raised, analysed and considered through the review process will mean that residential park stakeholders will continue to be dissatisfied with a number of fundamental aspects of the legislation. In addition, there will continue to be disharmony in some parks regarding key issues, in particular, variations of site rent and special terms in site agreements.
446. While information, education and advocacy are (and continue to be) important policy instruments in achieving the policy objectives, on their own, they will not address fundamental legislative issues causing dissatisfaction among manufactured home owners, particularly regarding site rent variations and unfair special terms.
447. On balance it is considered that a number of targeted legislative responses as outlined in the PBT are justified as a means of improving the capacity of the MHRP Act to meet community expectations and enhancing Queensland's solid policy and legislative arrangements for the protection of manufactured home owners.

TERMS OF REFERENCE

Proposals arising from a Review of the Manufactured Homes (Residential Parks) Act 2003

1. A review of the *Manufactured Homes (Residential Parks) Act 2003* (MHRP Act) resulted in recommendations designed to improve consumer protection for manufactured home owners, while also aiming to promote continued growth and viability of the residential parks sector.
2. An amendment Bill is being prepared to implement legislative recommendations resulting from the review and initiatives developed following further, targeted stakeholder consultation (as recommended by the review) on particular issues.
3. A number of proposed provisions of the Bill have been identified as potential business conduct restrictions on competition. Therefore, a Public Benefit Test (PBT) is required to be conducted under National Competition Policy.
4. The review will be undertaken in accordance with Queensland Treasury's *Public Benefit Test Guidelines* and will examine the potential restrictions on competition arising from provisions of the Bill dealing with:
 - Variations of site rent
 - 'Unfair' special terms in site agreements
 - 'Fixed-term' site agreements
 - Termination of site agreements
 - Minor and technical amendments
5. The PBT is being conducted under the guiding principle that legislation should not restrict competition unless it can be demonstrated that:
 - (a) the benefits of the restriction to the community as a whole outweigh the costs; and
 - (b) the objectives of the legislation can only be achieved by restricting competition.
6. Without limiting the PBT Terms of Reference, the review will:
 - (a) clarify the objectives of the legislation;
 - (b) identify the nature of the restriction on competition;
 - (c) analyse the likely effect of the restriction on competition and on the economy generally;
 - (d) assess and balance the costs and benefits of the restriction; and
 - (e) consider alternative means for achieving the same result including non-legislative approaches.
7. The review will be conducted as a 'reduced' PBT on the basis that extensive stakeholder consultation has already been undertaken throughout the legislative review process. Material and information provided by manufactured home owners, residential park owners, consumer and community stakeholders and government agencies during the review consultation process has informed the PBT.
8. Without limiting the scope of the PBT, the following matters shall, where relevant, be taken into account:
 - government legislation and policies relating to ecologically sustainable development;
 - social welfare and equity considerations, including community service obligations;

- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
 - economic and regional development, including employment and investment growth;
 - the interests of consumers generally or of a class of consumers;
 - the competitiveness of Australian businesses; and
 - the efficient allocation of resources.
9. The review will examine whether similar regulatory interventions exist in other jurisdictions and report on any similarities and differences.
10. The review of the MHRP Act was informed by extensive consultation with manufactured home owners, residential park owners and other stakeholders in 2007 and 2008. As well as an analysis of consumer complaints and correspondence made to the Office of Fair Trading, and a review of the issues considered by the Courts and Tribunal. The consultation processes and analysis will be taken into account in conducting the PBT.
11. A review report will be presented to the Minister for Tourism and Fair Trading for consideration in December 2010.

JURISDICTIONAL COMPARISON

The legislative arrangements for manufactured homes regulation in Australian jurisdictions as at January 2010.

State/Territory	Legislative Arrangements
Australian Capital Territory	<i>Residential Tenancies Act 1997</i> (the ACT Act): The ACT Act does not cover tenancy arrangements specific to manufactured homes. However, the ACT Act does define a mobile home and one main purpose of the ACT Act is to define the rights and duties of caravan park owners, caravan owners and residents of caravan parks.
New South Wales	<i>Residential Parks Act 1998</i> (the NSW Act) <i>Residential Parks Regulation 2006</i> The NSW Act applies to both caravan parks and manufactured home parks where people choose to live as permanent residents in the residential park. The NSW Act sets out a number of provisions and guidelines relating to manufactured home park residents including, for example, in relation to the standard form of a residential tenancy agreement, site rent, park rules and termination.
Northern Territory	<i>Issues Paper released in June 2008</i> . There has been no legislative scheme regulating caravan or residential parks in the territory since 2002. Part 8 of the <i>Law of Property Act</i> provides for some protection and clarification of the rights and responsibilities of landlords and tenants for tenancies that are not covered by specific legislation; however, the provisions are of a bare bones nature providing little protection to the types of tenancy issues likely to arise in caravan parks.
Queensland	<i>Manufactured Homes (Residential Parks) Act 2003</i> (the MHRP Act), <i>Manufactured Homes (Residential Parks) Regulation 2003</i> : The MHRP Act provides for the positioning and occupancy of manufactured homes in residential parks including by declaring particular rights and responsibilities of both manufactured home owners and residential park owners. The Act contains a number of consumer protection provisions addressing a range of issues including pre-contractual disclosure requirements, the content and presentation of site agreements, site rent variations, the termination of site agreements and options for dispute resolution.
South Australia	<i>Residential Parks Act 2007</i> (the SA Act), <i>Residential Parks Regulations 2007</i> : The SA Act applies to all residential park agreements where the park is the person's principal place of residence. The SA Act defines a permanently fixed dwelling but does not define a 'manufactured home' or provide specific consumer protection provisions for mobile or manufactured home owners.
Tasmania	<i>Residential Tenancy Act 1997</i> and the Code of Practice for Caravan Parks in Tasmania : this Act covers the renting of manufactured homes, but not the renting of sites in a caravan or residential park by manufactured home owners. Comprehensive consumer protection for manufactured home owners specifically is not available in Tasmania.
Victoria	<i>Residential Tenancies Act 1997</i> (the Victorian Act): In Victoria, protection is provided to persons living permanently in residential parks, both in caravans and moveable dwellings. The Victorian Act applies both to persons renting a caravan or moveable dwelling and owners of caravans or moveable dwellings who rent the land on which their caravan or moveable dwelling is situated. The Victorian Act defines a 'moveable dwelling' as a dwelling designed to be moveable, but excludes dwellings that cannot be situated on, and removed from, a site within 24 hours.
Western Australia	<i>Residential Parks (Long Stay Tenants Act) 2006</i> (the WA Act): This is an Act to regulate the relationship between the operators of residential parks and tenants who live in such parks for extended periods. An extended period is considered to be a fixed term or periodic tenancy of 3 months or longer. The WA Act regulates tenancy issues relating to both renters of manufactured homes and manufactured home owners who rent sites in a residential park.

IMPACT MATRIX

NO.	PROPOSALS	POSITIVE IMPACTS	NEGATIVE IMPACTS
1	Limit 'market reviews' on site rent not expressly provided for in the site agreement	<p>Home owners: Provide more certainty about the likely increases in site rent.</p> <p>Park owners: Continued ability of park owners to apply to the Tribunal for increases in site rent for unforeseen and substantial expenses.</p>	Park owners: Site agreements that specify that site rent will only increase by the consumer price index will be unable to have an increase in rent based on a 'market review'.
2	Enhance the penalties and offences in relation to the site rent provisions of the MHRP Act	<p>Home owners: Increase the likelihood that the consumer protection provisions of the MHRP Act in relation to site rent are adhered to.</p> <p>Park owners: Enhanced transparency and clearer regulatory framework.</p>	Park owners: Negligible increase in regulatory burden and the requirement for some business practices and forms to be updated.
3	Site agreements must be presented in 'plain language'	<p>Home owners: Enhanced transparency and readability of site agreements. Home owners would have a clearer understanding of their rights and responsibilities under their site agreement and the MHRP Act.</p> <p>Park owners: Clearer agreements which may provide a reduction in misunderstandings and disputes with manufactured home owners.</p>	Park owners: May result in marginal cost if site agreement needs to be redrafted to comply with the new requirements.
4	Prohibition of special terms by regulation	Home owners: Increasing certainty about the types of terms that are prohibited. Provides home owners with a stronger negotiating position.	Park owners: A reduction in the level of flexibility currently provided for in the MHRP Act by removing the ability for park owners to use special terms which have been prohibited by regulation.

		Park owners: Increased certainty regarding acceptable and unacceptable terms for the inclusion in site agreements and in the operation of residential parks.	Park owners: Special terms would be prohibited from being included in future site agreements. Special terms that were previously agreed to by both parties, including terms which were agreed to as part of the pre-contractual negotiations would be made void.
5	Restriction on mutual termination to prevent fixed term agreements	Home owners: Strengthen the security of home owners' right to reside in the park by ensuring site agreements are only terminated in accordance with the termination provisions of the MHRP Act. Park owners: No impact on park owners who currently comply with the policy intention of the MHRP Act.	Park owners: Existing site agreements which include a termination date would be made void to the extent that it inserts a fixed termination date.
6	Termination - Tribunal order to offer an alternative site	Home owners: Provides an opportunity for residents to remain in the same park if a particular site agreement is to be terminated and another site within the park is available. Park owners: No impact on park owners who are seeking to maintain the number of manufactured homes positioned in their park.	
7	Termination - Tribunal order for 12 months notice	Home owners: Provide additional time for a home owner to locate and secure alternative accommodation arrangements. Park owners: Tribunal will take into consideration the financial impact on the park owner of postponing the termination.	Park owners: May have an adverse consequence on the value of land as any decision to change the type of business being operated would take over 12 months to implement.
8	Clarification that modified caravans are not	Park owners: Will have some certainty that modified caravan owners are not intended to be	Home owners: A modified caravan owner will be unable to apply to the Tribunal to enter into a site

manufactured homes

included under the MHRP Act.

agreement for their modified caravan.

9 Record of residential parks

Home owners: Improve the level of communication regarding: a residential park owners and manufactured home owners rights and obligations under the MHRP Act; upcoming consultation campaigns and; legislative amendments including the making of regulations under the MHRP Act.

Park owners: There may be negligible operating costs associated with maintaining the notice board with the prescribed information and in ensuring the chief executive is informed of the required up to date information regarding the residential park.

Park owners: Improved understanding of the MHRP Act may assist in reducing disputes with manufactured home owners.