



Queensland

Manufactured Homes (Residential Parks) Amendment Bill 2010

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Consultation Draft

2010

A Bill

for

An Act to amend the *Manufactured Homes (Residential Parks) Act 2003*

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Manufactured Homes (Residential Parks) Amendment Act 2010*.

2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- (a) section 6;
- (b) section 7 to the extent it inserts section 25A;
- (c) sections 11, 13, 15 and 16;
- (d) section 18 to the extent it inserts sections 158(2) and (3), 160, 163, 165, 166 and 167;
- (e) section 19(2) to the extent it inserts the definition *market review of site rent*.

3 Act amended

This Act amends the *Manufactured Homes (Residential Parks) Act 2003*.

4 Amendment of s 10 (What is a *manufactured home*)

Section 10—

insert—

- ‘(2) A *manufactured home* does not include a modified caravan.
- ‘(3) However, if a park owner and the owner of modified caravan enter into an agreement in the nature of a site agreement for a site on which the modified caravan is positioned or intended to be positioned—

-
- (a) the modified caravan is taken to be a manufactured home; and
 - (b) the agreement is taken to be a site agreement.’.

5 Insertion of new s 14A

After section 14—

insert—

‘14A What is a *site agreement dispute*

- ‘(1) A *site agreement dispute* is—
 - (a) a dispute between the parties to a site agreement about the parties’ rights and obligations under the agreement or this Act; or
 - (b) a dispute about whether a person is entitled to have a park owner enter into a site agreement with the person; or
 - (c) a dispute about whether a park owner is entitled to have a person enter into a site agreement with the park owner.
- ‘(2) However, neither of the following is a site agreement dispute—
 - (a) a dispute about whether a person is entitled to have a park owner enter into a site agreement with the person in relation to a modified caravan;
 - (b) a dispute about whether a park owner is entitled to have a person enter into a site agreement with the park owner in relation to a modified caravan.’.

6 Amendment of s 25 (Written agreement)

- (1) Section 25(4)(d) to (g)—
renumber as section 25(4)(i) to (l).
- (2) Section 25(4)(a) to (c)—
omit, insert—
 - ‘(a) be easily legible; and

[s 7]

- (b) be in at least 10 point font; and
 - (c) be written in a precise way; and
 - (d) be clearly expressed in plain language; and
 - (e) precisely identify the site; and
 - (f) state each party's name and address; and
 - (g) state a phone number, if any, of the home owner; and
 - (h) state a business hours contact phone number, for the park owner or, if a park manager has been appointed, the park manager; and'.
- (3) Section 25(4)(i)(iii), as renumbered, after 'varied'—
insert—
' , including that, in particular circumstances, the tribunal may—
- (a) make an order increasing the site rent on application by the park owner; or
 - (b) make an order reducing the site rent on application by the home owner.'
- (4) Section 25—
insert—
- '(8) If a business hours contact telephone number for the park owner, or the park manager, stated in the site agreement under subsection (4)(h) changes, the park owner must give the home owner written notice of the change within 7 days after the change.
Maximum penalty for subsection (8)—10 penalty units.'

7 Insertion of new ss 25A and 25B

After section 25—

insert—

‘25A Application to tribunal to consider whether special term of site agreement is not clearly expressed in plain language

- ‘(1) A home owner under a site agreement may apply to the tribunal to consider whether a special term of the site agreement is not clearly expressed in plain language.
- ‘(2) If the tribunal considers the term is not clearly expressed in plain language, it may do 1 or more of the following—
 - (a) declare the term void;
 - (b) make an order varying the special terms of the site agreement in the way the tribunal considers appropriate;
 - (c) make an order prohibiting the park owner from using the same or a similar term in another site agreement.

‘25B Prohibited unfair special terms of site agreement

- ‘(1) A regulation may prohibit the inclusion of a stated type of unfair special term in a site agreement.
- ‘(2) A term of a site agreement that is prohibited from being included in a site agreement under subsection (1) is void.
- ‘(3) A home owner may apply to the tribunal for a declaration that a term of the site agreement is void under subsection (2).’.

8 Amendment of s 36 (Termination of site agreement by agreement between home owner and park owner)

- (1) Section 36(3), penalty, ‘for subsection (3)’—
omit.
- (2) Section 36—
insert—
- ‘(4) A park owner must not—
 - (a) enter into a prohibited agreement; or
 - (b) vary a site agreement to include a term under which the parties to the site agreement agree to terminate the site agreement.

[s 9]

Maximum penalty—200 penalty units.

- ‘(5) A prohibited agreement mentioned in subsection (4)(a) is void.
- ‘(6) A site agreement is void to the extent it is varied as mentioned in subsection (4)(b).’.

9 Amendment of s 39 (Vacant possession of site to be given after making of termination order)

- (1) Section 39(2) to (5)—

renumber as section 39(4) to (7).

- (2) Section 39—

insert—

- ‘(2) Subsection (3) applies if a termination order is made on a ground mentioned in section 38(1)(f).
- ‘(3) If the tribunal is satisfied it is just and equitable to do so having regard to the particular circumstances of the case, the tribunal may postpone the day the termination order would otherwise have effect to a stated day not later than 1 year after the day of the termination order.

Examples of particular circumstances—

- the home owner’s personal and financial circumstances, including the home owner’s health, age and mobility
- the availability and location of alternative accommodation at a similar cost
- the financial impact on the park owner, if any, of postponing the day the termination order would otherwise have effect
- any other financial or social considerations the tribunal considers appropriate’.

- (3) Section 39(5), as renumbered, ‘subsection (4)’—

omit, insert—

‘subsection (6)’.

-
- (4) Section 39(7), as renumbered, ‘subsection (4)(a)’—
omit, insert—
‘subsection (6)(a)’.

10 Amendment of s 40 (Compensation may be payable in particular circumstances)

- (1) Section 40, heading—
omit, insert—

‘40 Compensation orders or other orders tribunal may make in particular circumstances’.

- (2) Section 40—
insert—
- ‘(8) With the consent of the home owner, the tribunal may order the park owner to make a comparable site within the park available to the home owner for the positioning of the manufactured home.
- ‘(9) However, the tribunal may not make an order under subsection (8) if the tribunal is satisfied there is no comparable site available.
- ‘(10) If the tribunal makes an order under subsection (8), the tribunal—
- (a) must make an order varying the site agreement to identify the comparable site; and
 - (b) may make any other order, including an order varying the site agreement in another way, the tribunal considers appropriate in relation to the comparable site.
- ‘(11) Subsection (8) does not prevent a compensation order under section 40(2) being made in favour of the home owner.’.

11 Amendment of s 49 (Consent to assignment of seller’s interest)

- Section 49(5)(b)—
omit, insert—

[s 12]

- ‘(b) give the seller written notice—
 - (i) of the decision and the reasons for the decision; and
 - (ii) that the seller has the right to apply to the tribunal if the seller is dissatisfied with the park owner’s refusal to consent to the assignment.

Maximum penalty—20 penalty units.’.

12 Amendment of s 69 (Notice of increase in site rent)

- (1) Section 69(2)(d)—
omit.
- (2) Section 69(3) and (4)—
renumber as section 69(4) and (5).
- (3) Section 69—
insert—
- ‘(3) The park owner must also state in the notice that if the home owner considers the increase is excessive, the home owner may apply to the tribunal, within 28 days after receiving the notice, for an order reducing the amount of, or setting aside, the increase.

Maximum penalty—100 penalty units.’.

13 Amendment of s 71 (Notice of proposed increase in site rent)

Section 71(1)—

insert—

- ‘(c) the basis for the proposed increase is not, or does not include, a market review of site rent.

Note—

Paragraph (c) applies only if the site agreement was entered into on or after the commencement of section 165.’.

14 Insertion of new pt 11, div 5

After section 74—

insert—

‘Division 5 Prohibition on park owner coercing home owner to agree to increase in, or refrain from seeking review of, site rent

‘74A Park owner not to coerce home owner

‘The park owner under a site agreement must not coerce, or attempt to coerce, the home owner to—

- (a) agree to an increase in the site rent; or
- (b) refrain from seeking a review, under this part, of the site rent.

Maximum penalty—200 penalty units.’.

15 Amendment of s 95 (Fraudulent or misleading conduct)

Section 95—

insert—

‘Example—

A park owner must not in advertising or in pre-contractual negotiations—

- (a) indicate that the site rent will only ever increase in accordance with increases in the consumer price index; or
- (b) indicate that the site agreement can only be terminated by the home owner.’.

16 Amendment of s 100 (Establishment of committee)

- (1) Section 100(2) to (4)—

renumber as section 100(3) to (5).

[s 17]

(2) Section 100—

insert—

‘(2) Only 1 home owners committee may be established for a residential park.’.

17 Amendment of pt 21, div 2, hdg (Transitional provisions)

Part 21, division 2, heading, after ‘provisions’—

insert—

‘for Act No. 74 of 2003’.

18 Insertion of new pt 21, div 3

Part 21, after section 155—

insert—

**‘Division 3 Transitional provisions for
Manufactured Homes (Residential
Parks) Amendment Act 2010**

‘Subdivision 1 Definition

‘156 Definition for div 3

‘In this division—

amended Act means this Act as amended by the
*Manufactured Homes (Residential Parks) Amendment Act
2010*.

**‘Subdivision 2 Transitional provisions relating to
courts or tribunal**

**‘157 Undecided application to court or tribunal involving
modified caravan**

‘(1) This section applies if—

-
- (a) before the commencement of this section, an application was made to a court or tribunal in relation to—
 - (i) an agreement between a park owner and a home owner providing for the positioning of a modified caravan on a site; or
 - (ii) a dispute about whether a person is entitled to have a park owner enter into a site agreement with the person in relation to a modified caravan; or
 - (iii) a dispute about whether a park owner is entitled to have a person enter into a site agreement with the park owner in relation to a modified caravan; and
 - (b) the application has not been decided.
- ‘(2) The court or tribunal must decide the application as if the *Manufactured Homes (Residential Parks) Amendment Act 2010* had not commenced.

‘158 Tribunal’s power to make orders

- ‘(1) Sections 39(2) and (3) and 40(8) to (11) apply only in relation to an application to the tribunal for a termination order made on or after the commencement of this subsection.
- ‘(2) Subsection (3) applies if—
 - (a) after the commencement of this subsection, a park owner makes an application to the tribunal under section 71(7) for an order about a proposed increase of site rent based on, or partly on, a market review of site rent payable under a site agreement; and
 - (b) the site agreement was entered into before the commencement of this subsection; and
 - (c) a term of the site agreement states or implies that the rent is to be increased, or only to be increased, in accordance with increases in the consumer price index.

Example of a term stating that site rent is to be increased, or only to be increased, in accordance with increases in the consumer price index—

- site rent is to increase by CPI

[s 18]

- site rent will increase by CPI only
 - site rent is to be adjusted in accordance with increases in the consumer price index (all groups) Brisbane as published by the Australian Statistician
 - site rent is to be adjusted in accordance with increases in the consumer price index (all groups) Brisbane as published by the Australian Statistician or, if another index is nominated by the Australian Statistician, the other index
- ‘(3) The tribunal may not make an order under section 71(9) giving effect to a site rent increase, to the extent the increase is based on a market review of site rent.

‘Subdivision 3 Other transitional provisions

‘159 Existing agreements involving modified caravans

- ‘(1) This section applies to an agreement in the nature of a site agreement between a park owner and a home owner providing for the positioning of a modified caravan on a site and—
- (a) entered into under, or purportedly under, this Act; and
 - (b) in force immediately before the commencement of this section.
- ‘(2) Despite the amended Act, other than this section, and subject to section 157, the agreement—
- (a) is taken to be a site agreement; and
 - (b) continues, under this Act, according to its terms.

‘160 Form and content of site agreements

- ‘(1) Despite section 25, the provisions mentioned in subsection (2) apply only in relation to—
- (a) a site agreement entered into on or after the commencement, whether or not the site agreement has been varied; or

-
- (b) a variation of a site agreement entered into before the commencement if the variation was made on or after the commencement.
- ‘(2) For subsection (1), the provisions are as follows—
- (a) section 25(4)(a), (b), (d) and (h);
 - (b) section 25(4)(i)(iii) to the extent it requires a site agreement to include a statement that, in particular circumstances, the tribunal may—
 - (i) make an order increasing the site rent on application by the park owner; or
 - (ii) make an order reducing the site rent on application by the home owner.
- ‘(3) Section 25A(1) applies only if the special term of the site agreement mentioned in that section is—
- (a) part of a site agreement entered into on or after the commencement, whether or not the site agreement has been varied; or
 - (b) a variation of a site agreement entered into before the commencement if the variation was made on or after the commencement.
- ‘(4) In this section—
- commencement* means commencement of this section.

‘161 Prohibition on inclusion of unfair special terms

‘Section 25B applies whether the site agreement was entered into before or after the commencement of this section.

‘162 Existing particular agreements to terminate site agreement

- ‘(1) This section applies if—
- (a) before the commencement of this section, a park owner and a home owner—

[s 18]

- (i) entered into a prohibited agreement in relation to a site agreement; or
 - (ii) varied a site agreement to include a term under which the parties to the site agreement agree to terminate the site agreement; and
 - (b) the site agreement mentioned in paragraph (a)(i) or (ii) is in force.
- ‘(2) A site agreement or other agreement is void to the extent it is or contains a prohibited agreement under subsection (1)(a)(i).
- ‘(3) A site agreement is void to the extent it is varied as mentioned in subsection (1)(a)(ii).

‘163 Park owner’s notice on refusal of consent to assignment

- ‘(1) Section 49(5)(b) applies only in relation to a written request, made on or after the commencement, by a seller for the park owner’s consent to an assignment of the seller’s interest in the site agreement.
- ‘(2) Section 49(5)(b) as in force immediately before the commencement continues to apply in relation to a written request, made before the commencement, by a seller for the park owner’s consent to an assignment of the seller’s interest in the site agreement.
- ‘(3) In this section—
- commencement* means commencement of this section.

‘164 Notice of increase in site rent

‘Section 69(3) applies to a park owner only if the notice of increase in site rent required to be given under section 69(2) is given by the park owner to the home owner on or after the commencement of this section.

‘165 Notice of proposed increase in site rent

‘Section 71(1)(c) applies only if the site agreement mentioned in section 71(1)(a) was entered into on or after the commencement of this section.

‘166 Variation of site agreement on assignment to allow site rent to be increased in accordance with market review

‘(1) This section applies if—

- (a) a site agreement was entered into before the commencement of this section; and
- (b) a term of the site agreement states or implies that the site rent is to be increased, or only to be increased, in accordance with increases in the consumer price index.

Note—

See the example in section 158(2)(c) of a term stating that site rent is to be increased, or only to be increased, by the consumer price index.

‘(2) The park owner under the site agreement may, by complying with subsection (4), vary the site agreement by adding the following term to the site agreement—

‘The site rent may be increased in accordance with a market review of site rent conducted by an appropriately qualified independent person, including an independent person who has qualifications or experience appropriate to conducting the review, at the cost of the park owner no more often than once every 3 years after the site agreement was entered into, that has regard to—

- (a) the range of rents usually charged for comparable sites in comparable residential parks in the locality of the park; or
- (b) if there is no comparable residential parks or sites—the range of market rents usually charged for residential accommodation in the locality.’.

‘(3) The term—

[s 19]

- (a) may be added to the site agreement only in conjunction with an assignment of the site agreement; and
 - (b) may be added to the site agreement without the agreement of the seller, buyer or any other future home owner; and
 - (c) takes effect when the assignment takes effect; and
 - (d) is taken to be a term of the site agreement for all purposes under the Act.
- ‘(4) If the park owner wishes to add the term to the site agreement, the park owner must—
- (a) at the same time the park owner gives a copy of the site agreement to the buyer under section 45(2)(a), also give to the buyer a notice, in the approved form, of the addition of the term to the site agreement; and
 - (b) as soon as possible after giving a notice under paragraph (a), but within 3 days after doing so, give the seller a copy of the notice.

‘167 More than 1 home owners committee

- ‘(1) This section applies if, immediately before the commencement, there was more than 1 home owners committee for a residential park.
- ‘(2) The home owners for the park must, by election conducted among themselves within 3 months after the commencement, establish a single home owners committee.
- ‘(3) Sections 100(3) to (5) apply in relation to a home owners committee elected under subsection (2).’.

19 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definition *site agreement dispute*—
omit.

(2) Schedule 2—

insert—

'amended Act, for part 21, division 3, see section 156.

market review of site rent means a review of site rent based on the range of rents usually charged for comparable sites in comparable residential parks in the locality of the park or, if there is no comparable residential parks or sites, the range of market rents usually charged for residential accommodation in the locality.

modified caravan means a structure that—

- (a) as originally designed, was a caravan; and
- (b) is no longer a caravan because of a structural addition or structural alteration.

prohibited agreement, in relation to a site agreement, means any of the following agreements, or terms of an agreement, between a park owner and a home owner if the agreement is entered into before or on the same day as the park owner and the home owner enter into the site agreement—

- (a) a term of the site agreement to terminate the site agreement;
- (b) another agreement, or a term of another agreement, to terminate the site agreement;
- (c) a term of the site agreement requiring the home owner to enter into an agreement with the park owner at some later time to terminate the site agreement.

site agreement dispute see section 14A.'.