

Queensland



# **MANUFACTURED HOMES (RESIDENTIAL PARKS) ACT 2003**

**Reprinted as in force on 1 March 2004  
(Act not amended up to this date)**

**Reprint No. 1**

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Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A)
- make all necessary consequential amendments (s 7(1)(k)).

This page is specific to this reprint. A table of reprints is included in the endnotes.

**Also see endnotes for information about when provisions commenced.**

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# MANUFACTURED HOMES (RESIDENTIAL PARKS) ACT 2003

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# **MANUFACTURED HOMES (RESIDENTIAL PARKS) ACT 2003**

[reprinted as in force on 1 March 2004]

**An Act to provide for the positioning and occupancy of manufactured homes in residential parks, and for other purposes**

## **PART 1—PRELIMINARY**

### *Division 1—Introduction*

#### **1 Short title**

This Act may be cited as the *Manufactured Homes (Residential Parks) Act 2003*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

#### **3 Act binds all persons**

(1) This Act binds all persons, including the State.

(2) However, nothing in this Act makes the State liable to be prosecuted for an offence.

### *Division 2—Objects*

#### **4 Objects of Act**

(1) The main object of this Act is to regulate, and promote fair trading practices in, the operation of residential parks by—

- (a) declaring particular rights and obligations of the park owner, and home owners, for a residential park; and
  - (b) facilitating the disclosure of information about a residential park, and this Act, to a prospective home owner for a site; and
  - (c) regulating—
    - (i) the making, content, assignment and ending of a site agreement; and
    - (ii) the sale of an abandoned manufactured home positioned on a site in a residential park; and
    - (iii) the variation of site rent; and
  - (d) facilitating participation by home owners for a residential park in the affairs of the park; and
  - (e) providing ways of resolving a site agreement dispute.
- (2) The following are also important objects of this Act—
- (a) encouraging the continued growth and viability of the residential park industry in the State;
  - (b) providing a clear regulatory framework to ensure certainty for the residential park industry in planning for future expansion.

### *Division 3—Rights or remedies not restricted*

## **5 Rights and remedies of persons**

(1) A right or remedy given to a person under this Act is in addition to, and not in substitution for, a right or remedy the person would have apart from this Act.

(2) Without limiting subsection (1), this Act does not operate to reduce the effect of a right or remedy a person would have apart from this Act.

(3) In subsections (1) and (2), a reference to a right or remedy a person would have apart from this Act is a reference to a right or remedy that is consistent with this Act.

## PART 2—INTERPRETATION

### 6 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

### 7 Notes in text

A note in the text of this Act is part of the Act.

### 8 Who is a “home owner”

(1) Each of the following is a “**home owner**”—

- (a) a person who owns a manufactured home that is positioned on a site in a residential park under a site agreement;
- (b) a person who intends to position a manufactured home on a site in a residential park under a site agreement for use by the person as the person’s principal place of residence;
- (c) a person who obtains an interest in a site agreement as the personal representative, or a beneficiary of the estate, of a deceased individual who immediately before the individual’s death was a person mentioned in paragraph (a) or (b);
- (d) another successor in title of a person mentioned in paragraph (a) or (b).

(2) A person mentioned in subsection (1)(a) is a “**home owner**” whether—

- (a) the person occupies the home as the person’s principal place of residence; or
- (b) a tenant of the person occupies the home.

### 9 What is a “home owners information document”

A “**home owners information document**” is a document, in the form provided for in section 18, giving a prospective home owner for a site in a residential park information to help the person make an informed decision about entering into a site agreement for the site.

*Note—*

Section 18 requires particular information to be included in a home owners information document.

## **10 What is a “manufactured home”**

A **“manufactured home”** is a structure, other than a caravan or tent, that—

- (a) has the character of a dwelling house; and
- (b) is designed to be able to be moved from one position to another; and
- (c) is not permanently attached to land.

## **11 Who is a “park owner”**

(1) A person who owns a residential park is a **“park owner”**.

(2) Each of the following is also a **“park owner”**—

- (a) the personal representative, or a beneficiary of the estate, of a deceased individual who immediately before the individual’s death was a person mentioned in subsection (1);
- (b) a mortgagee in possession of a residential park for which site agreements are in force;
- (c) another successor in title of a person mentioned in subsection (1).

## **12 What is a “residential park”**

A **“residential park”** is an area of land that includes—

- (a) sites; and
- (b) common areas; and
- (c) facilities for the personal comfort, convenience or enjoyment of persons residing in manufactured homes positioned on sites.

## **13 What is a “site”**

A **“site”** is land that is available for rent under a site agreement.

## **14 What is a “site agreement”**

A “**site agreement**” is an agreement between a park owner and a home owner that—

- (a) provides for—
  - (i) the rental by the home owner of particular land in a residential park; and
  - (ii) the positioning on the land of a manufactured home; and
  - (iii) the home owner’s non-exclusive use of the park’s common areas and communal facilities; and
- (b) includes provision about anything else required or permitted by this Act to be in the agreement.

*Example for paragraph (b)—*

provision about how site rent may be increased

## **PART 3—BASIC RESPONSIBILITIES OF PARK OWNERS AND HOME OWNERS**

### **15 What this part is about**

(1) This part states some of the basic responsibilities of park owners and home owners.

(2) Other parts of the Act deal with more specific rights and responsibilities.

(3) This part does not limit a park owner’s, or home owner’s, rights or responsibilities under this Act.

### **16 Home owner’s responsibilities**

A home owner under a site agreement has the following responsibilities—

- (a) to use the site only as a place of residence;
- (b) to use the residential park’s common areas only for a purpose associated with the home owner’s residential use of the site;

- (c) not to use, or allow the home owner's tenant or guests to use, the site or residential park's common areas for an illegal purpose;
- (d) not to interfere with, and to ensure as far as practicable the home owner's tenant or guests do not interfere with, the reasonable peace, comfort or privacy of the residential park's residents;
- (e) to pay the site rent and other charges payable by the home owner under the agreement;
- (f) not to intentionally or recklessly damage or destroy, or allow the home owner's tenant or guests to intentionally or recklessly damage or destroy, the residential park's communal facilities;
- (g) to maintain the manufactured home positioned on the site in a reasonable state of cleanliness and repair, and fit to live in;
- (h) otherwise, to comply with the agreement and the park rules for the residential park.

*Note—*

The responsibilities mentioned in this section are taken to be included as terms of the site agreement under section 19.

## **17 Park owner's responsibilities**

The park owner for a residential park has the following responsibilities in relation to a home owner—

- (a) to take reasonable steps to ensure the home owner—
  - (i) always has access to the home owner's site in the park; and
  - (ii) has reasonable access to the common areas;
- (b) to maintain the common areas and communal facilities in a reasonable state of cleanliness and repair, and fit for use by the home owner;
- (c) to ensure the times the park owner or park manager is available to be contacted by the home owner are reasonable, having regard to all the circumstances, including the utilities supplied by the park owner to the site;
- (d) to the extent it is within the park owner's control, to ensure the continuity of supply of a utility to the park and the site;
- (e) otherwise, to comply with the site agreement for the site and the park rules.

*Note—*

The responsibilities mentioned in this section are taken to be included as terms of a site agreement under section 19.

## **PART 4—HOME OWNERS INFORMATION DOCUMENT**

### **18 Form and content of home owners information document**

(1) A home owners information document, for a residential park, must be in the approved form.

(2) The approved form must provide for the inclusion of the following—

- (a) the address and real property description of the park;
- (b) the park owner's name and business address;
- (c) the park manager's name and business address;
- (d) details of the communal facilities;
- (e) details of any authority issued under a law of the State necessary for the operation of the park;
- (f) the basic responsibilities of park owners and home owners mentioned in part 3;
- (g) the rights of a park owner or home owner to terminate a site agreement under part 6;
- (h) how a home owner's interest in a site agreement may be assigned under part 7;
- (i) how site rent may be varied under part 11;
- (j) how a site agreement dispute may be resolved under section 140;
- (k) a recommendation that a person seek independent legal advice before—
  - (i) entering into a site agreement; or
  - (ii) agreeing to an assignment of a home owner's interest in a site agreement to the person.

(3) In this section—  
“**authority**” includes approval, consent, licence and permit.

## **PART 5—SITE AGREEMENTS**

### *Division 1—General*

#### **19 Terms of site agreement include responsibilities under Act etc.**

The following are taken to be included as terms of a site agreement—

- (a) the home owner’s responsibilities under section 16;
- (b) the park owner’s responsibilities under section 17;
- (c) the park rules for the residential park;
- (d) the terms of any tribunal order in force about the agreement;
- (e) other duties imposed on, or entitlements given to, the park owner or home owner under this Act.

#### **20 Standard terms**

(1) A regulation may prescribe terms for inclusion in a site agreement.

(2) The terms prescribed for this section are the “**standard terms**” of a site agreement.

#### **21 Special terms**

The “**special terms**” of a site agreement are the terms of the agreement that are not—

- (a) standard terms; or
- (b) terms taken to be included in the agreement under section 19.

## 22 Variation of special term

(1) A special term of a site agreement may be varied at any time while the agreement is in force.

(2) A variation of a special term of a site agreement is void unless it is written and signed by the parties to the agreement.

(3) Subsection (4) applies if a party to a site agreement does not agree to a variation of a special term of the agreement proposed by the other party to the agreement.

(4) On application by the other party, the tribunal may make the order the tribunal considers appropriate about the proposed variation.

## 23 Contracting out prohibited

(1) An agreement is void to the extent to which it purports to exclude, change or restrict the application or operation of a provision of this Act about the terms of a site agreement.

(2) A person must not enter into an agreement with the intention, directly or indirectly, of defeating the operation of this Act.

Maximum penalty—200 penalty units.

(3) In this section—

“**agreement**” includes arrangement.

“**defeating**” includes evading and preventing.

## 24 Inconsistency

(1) If a provision of this Act is inconsistent with a special term of a site agreement, the provision prevails and the term is void to the extent of the inconsistency.

(2) If a standard term of a site agreement is inconsistent with a special term of the agreement, the standard term prevails and the special term is void to the extent of the inconsistency.

## 25 Written agreement

(1) The park owner for a residential park must ensure a site agreement is written to the extent, and in the way, required by this section.

Maximum penalty—200 penalty units.

(2) The agreement must include the standard terms, and any special terms, of the agreement.

(3) If, for a standard term of a site agreement to be effective, the term requires stated information to be included in it, the agreement is taken to include the standard term only if the information is properly included.

*Example of information—*

the names of the parties and a description of the site

(4) The agreement must—

- (a) be written in a clear and precise way; and
- (b) precisely identify the site; and
- (c) state each party's name, address and any telephone number; and
- (d) state the following—
  - (i) the site rent and other charges payable under the agreement;
  - (ii) when the site rent and other charges are payable and how they must be paid;
  - (iii) how and when the site rent may be varied; and
- (e) state the maximum number of persons who may reside on the site the subject of the agreement; and
- (f) be signed by the parties; and
- (g) comply with any other requirement prescribed under a regulation.

(5) The park owner must pay the costs of preparing the agreement.

(6) Also, the park owner must keep a copy of the agreement until 1 year after the agreement is terminated.

Maximum penalty—20 penalty units.

(7) Nothing in this section affects the enforceability of a site agreement that is not written.

*Note—*

Section 151 deals with relevant agreements, under the repealed Act, in force immediately before the commencement of section 148 that are not in writing.

**26 Duration of site agreement**

A home owner's right under a site agreement to position a manufactured home on a site continues until the agreement is terminated.

**27 Successor in title of park owner**

A successor in title of the park owner under a site agreement obtains the benefits, and is subject to the obligations, of the park owner in relation to the agreement.

**28 Notice to be given by successor in title of park owner to home owner**

A person must, within 14 days after becoming a successor in title of the park owner under a site agreement, give the home owner under the agreement a notice—

- (a) stating the person's name and business address; and
- (b) directing the home owner to make all future payments of site rent payable under the agreement to the person.

Maximum penalty—10 penalty units.

***Division 2—Entering into site agreements*****29 Park owner to give disclosure documents to prospective home owner**

(1) The park owner for a residential park must simultaneously give a prospective home owner for a site—

- (a) the following documents relating to the park (the “**disclosure documents**”)—
  - (i) the home owners information document for the park;
  - (ii) the park rules;
  - (iii) any proposal for a change in the park rules not finally dealt with under part 13, division 2;<sup>1</sup> and

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<sup>1</sup> Part 13 (Park rules), division 2 (Park rule changes)

(b) 2 copies of a proposed site agreement for the site.

(2) The park owner for a residential park who has not given a prospective home owner for a site the disclosure documents for the park must not enter into a site agreement, for the site, with the prospective home owner.

Maximum penalty for subsection (2)—200 penalty units.

### **30 Obtaining independent legal advice about site agreement**

The park owner for a residential park must not, at any time, restrict a person's right to obtain independent legal advice about a site agreement.

Maximum penalty—100 penalty units.

### **31 Home owner's copy of site agreement**

(1) This section applies if the park owner for a residential park—

- (a) has received 2 copies of a proposed site agreement for a site, signed by a prospective home owner for the site; and
- (b) has signed both copies.

(2) The park owner must, within 10 days after signing both copies, return a copy to the other party to the agreement.

Maximum penalty—100 penalty units.

## **PART 6—TERMINATION OF SITE AGREEMENTS**

### *Division 1—Introduction*

### **32 No other way of terminating site agreement**

A site agreement may be terminated only under this part or part 8.<sup>2</sup>

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<sup>2</sup> Part 8 (Abandonment of manufactured homes)

***Division 2—Termination within 28 days after entering into site agreement***

**33 Cooling-off period**

(1) This section applies if—

- (a) within 7 days after the park owner for a residential park gives a prospective home owner for a site the disclosure documents for the park, the park owner and prospective home owner enter into a site agreement for the site; or
- (b) the park owner for a residential park does not give a prospective home owner for a site the disclosure documents for the park before the park owner and prospective home owner enter into a site agreement for the site.

(2) Within 28 days after the day the agreement is entered into, the home owner may give the park owner a signed notice stating the agreement is terminated.

(3) The notice must state the day, within 28 days after the notice is given, the termination is effective (the “**termination day**”).

(4) The home owner may terminate the agreement under subsection (2) even though—

- (a) the home owner has affirmed the agreement; and
- (b) the agreement has been fully executed.

(5) If the agreement is terminated under subsection (2), the home owner is not liable to pay any amount otherwise payable under the agreement by the home owner to the park owner.

(6) If the agreement is terminated under subsection (2), the park owner must, within 14 days after the termination day, refund any amount received under the agreement from the home owner.

Maximum penalty—100 penalty units.

(7) An amount payable to the home owner under subsection (6) is recoverable as a debt.

### 34 Automatic ending of sale agreement

(1) This section applies in relation to a site agreement if—

- (a) in conjunction with the agreement, the parties to the agreement enter into an agreement (the “**sale agreement**”) for the sale of a manufactured home positioned on the site; and
- (b) the home owner terminates the site agreement under section 33.

(2) The sale agreement is taken to be at an end on the day the termination of the site agreement is effective.

(3) Also, on the ending of the sale agreement under subsection (2), ownership of the home reverts to the park owner.

(4) Subsections (2) and (3) apply even though—

- (a) the home owner has affirmed the sale agreement; and
- (b) the sale agreement has been fully executed.

(5) The park owner must, within 14 days after the ending of the sale agreement under subsection (2), pay the refundable amount as follows—

- (b) first, if there is an amount owing to a person under a security interest registered for the home under the *Bills of Sale and Other Instruments Act 1955*—in payment of the amount owing under the security interest;
- (b) second, in payment of any balance to the home owner.

Maximum penalty—100 penalty units.

(6) A term in the sale agreement is void to the extent it purports to exclude, change or restrict the operation of subsection (5).

(7) In this section—

“**refundable amount**” means the total of the following—

- (a) the amount paid to the park owner, or at the park owner’s direction, under the sale agreement;
- (b) the amount of any expenses reasonably incurred by the home owner arising out of or incidental to the sale agreement.

**35 Compensation may be payable to home owner**

(1) This section applies if—

- (a) the home owner under a site agreement terminates the agreement under section 33; and
- (b) the home owner removes the manufactured home positioned by the home owner on the site from the site and relocates it to another place.

(2) On application by the home owner, the tribunal may make an order (the “**compensation order**”) that the park owner pay the home owner an amount of compensation to cover the reasonable costs of removing the home from the site and relocating it to another place.

(3) The application must be made within 6 months after the termination of the agreement is effective.

(4) In making the compensation order, the tribunal may have regard to the following—

- (a) the costs of removing the home from the site;
- (b) the costs of transporting the home and the home owner’s personal effects to the other location;
- (c) the costs of positioning the home at the other location;
- (d) the costs of repairing any damage to the home arising from its removal and relocation;
- (e) whether the home owner has taken all reasonable steps to mitigate the costs of removal and relocation.

(5) In making the compensation order, the tribunal may only make an allowance for the costs mentioned in subsection (4)(b)—

- (a) if the distance of transport was less than 300 km—relating to the actual distance of transport; or
- (b) if the distance of transport was 300 km or more—relating to a distance of transport of 300 km.

(6) The compensation order must not be for an amount that is more than the market value of the home.

(7) In conjunction with the compensation order, the tribunal may make any other order the tribunal considers appropriate.

***Division 3—Termination of site agreement in other circumstances*****36 Termination of site agreement by agreement between home owner and park owner**

(1) The parties to a site agreement may agree, in the approved form, to terminate the site agreement.

(2) If a site agreement is terminated under subsection (1), the home owner must give the park owner vacant possession of the site on or before the day it is agreed by the parties the termination is effective.

(3) The park owner under a site agreement must not coerce, or attempt to coerce, the home owner to agree to terminate the agreement under subsection (1).

Maximum penalty for subsection (3)—200 penalty units.

**37 Termination of site agreement by home owner**

(1) The home owner under a site agreement may terminate the agreement by notice, in the approved form, given to the park owner.

(2) The notice must state the day, not later than 28 days after the notice is given, the agreement is terminated.

(3) The home owner must give the park owner vacant possession of the site on or before the stated day.

**38 Termination of site agreement by tribunal**

(1) On application by the park owner under a site agreement, the tribunal may make an order (a “**termination order**”) terminating the agreement on any of the following grounds—

(a) the home owner—

(i) has contravened a term of the agreement; and

(ii) has failed to remedy the contravention after being given by the park owner a notice, in the approved form, requiring the home owner to remedy the contravention within 28 days after the notice is given;

(b) the home owner has assaulted a person who was lawfully in the residential park;

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- (c) the home owner has wilfully destroyed property, other than the home owner's property, on the residential park or site;
- (d) the home owner is not occupying the manufactured home positioned on the site as the home owner's principal place of residence;
- (e) the home owner, or the home owner's tenant or guest—
  - (i) repeatedly interferes, or has repeatedly interfered, with the quiet enjoyment of the residential park by the park's residents; and
  - (ii) continues, or has continued, the behaviour mentioned in subparagraph (i) after the park owner gives the home owner a notice, in the approved form, requiring the home owner to stop the behaviour;
- (f) the park owner wishes to use the residential park land, or a part of the park in which the site is located, for another purpose stated in the application (the **“stated purpose”**).

(2) However, the ground mentioned in subsection (1)(d) does not apply if the home is occupied by a tenant of the home owner.

(3) An application for a termination order on the ground mentioned in subsection (1)(f) must be accompanied by a document certified by the local government for the local government area in which the residential park is situated stating it is lawful for the park land, or a part of the park in which the site is located, to be used for the stated purpose.

(4) In this section—

**“assault”** includes threaten to assault, procure someone else to assault and attempt to assault.

### **39 Vacant possession of site to be given after making of termination order**

(1) If a termination order is made relating to a site agreement, the order must—

- (a) state the day (the **“termination day”**) the termination is effective; and
- (b) require the home owner under the agreement to give the park owner vacant possession of the site on or before the termination day.

(2) If unforeseen circumstances prevent the home owner under the agreement giving the park owner vacant possession of the site on or before the termination day, the home owner may apply to the tribunal before the termination day for an order extending the time for giving the park owner vacant possession of the site.

(3) Subject to subsection (4)—

- (a) the termination order is suspended until the application is decided; and
- (b) the termination day is changed to the day decided by the tribunal on the hearing of the application.

(4) In deciding the application, the tribunal may—

- (a) extend the time for the period (the “**extension period**”) the tribunal considers reasonable; and
- (b) make any other order the tribunal considers appropriate.

(5) If the tribunal extends the time under subsection (4)(a), the termination day is taken to be the last day of the extension period.

#### **40 Compensation may be payable in particular circumstances**

(1) This section applies if the tribunal intends making a termination order, in relation to a site agreement, on the ground mentioned in section 38(1)(f).

(2) The tribunal must, in conjunction with the order, make an order (the “**compensation order**”) that the park owner pay the home owner compensation for the termination of the agreement.

(3) If the home owner intends relocating the manufactured home to another location if the termination order is made, the tribunal may have regard to the following when making the compensation order—

- (a) the estimated costs of removing the home from the site;
- (b) the estimated costs of transporting the home and the home owner’s personal effects to the other location;
- (c) the estimated costs of positioning the home at the other location;
- (d) anything else the tribunal considers relevant.

(4) Subsection (5) applies if—

- (a) the home owner intends disposing of the manufactured home if the termination order is made; or
- (b) the manufactured home can not be removed from the site and positioned at another location.

(5) The tribunal may have regard to the following when making the compensation order—

- (a) the estimated costs of removing the home from the site, including, for example, the costs of dismantling the home;
- (b) the estimated costs of transporting the home owner's personal effects to the home owner's proposed place of residence;
- (c) anything else the tribunal considers relevant.

(6) In making the compensation order, the tribunal may only make an allowance for the costs mentioned in subsection (3)(b) or (5)(b)—

- (a) if the estimated distance of transport is less than 300 km—relating to the actual distance of transport; or
- (b) if the estimated distance of transport is 300 km or more—relating to a distance of transport of 300 km.

(7) The amount payable under the compensation order is recoverable as a debt.

#### **41 Apportioning payments on termination of site agreement**

(1) If a site agreement is terminated under this division, the home owner is not liable to pay to the park owner a part of a payment payable under the agreement that relates to a period after the day the termination is effective.

(2) If a site agreement is terminated under this division, the park owner must, within 14 days after the termination is effective, refund to the home owner a part of any payment received under the agreement from the home owner that relates to a period after the day the termination is effective.

Maximum penalty—100 penalty units.

(3) An amount payable to the home owner under subsection (2) is recoverable as a debt.

## **PART 7—ASSIGNMENT OF HOME OWNER’S INTEREST IN SITE AGREEMENT**

### *Division 1—Introduction*

#### **42 Application of pt 7**

This part applies if the home owner for a site in a residential park (the “seller”) on which a manufactured home is positioned proposes—

- (a) to sell the home to a person (the “buyer”); and
- (b) to assign the seller’s interest in the site agreement for the site (the “seller’s interest”) to the buyer.

#### **43 Hinder proposed assignment**

(1) The park owner under the agreement must not hinder the proposed assignment of the seller’s interest.

Maximum penalty—100 penalty units.

(2) The park owner does not contravene subsection (1) if, under this part, the park owner reasonably refuses to consent to a proposed assignment of the seller’s interest.

### *Division 2—Requirements for assignment of seller’s interest*

#### **44 Assignment to be written**

The seller may only assign the seller’s interest by written agreement.

#### **45 Notice of proposed sale and assignment**

(1) The seller must give the park owner notice, in the approved form, of the proposed assignment of the seller’s interest.

(2) Within 7 days after receiving the notice, the park owner must give the buyer the following documents—

- (a) a copy of the site agreement;

(b) the disclosure documents for the residential park.

Maximum penalty for subsection (2)—20 penalty units.

#### **46 Obtaining independent legal advice about assignment of seller's interest**

The park owner or seller must not restrict the buyer's right to obtain independent legal advice about the assignment of the seller's interest.

Maximum penalty—100 penalty units.

#### **47 Form of assignment**

(1) The assignment of the seller's interest must be in the approved form (the "**form of assignment**").

(2) The seller and buyer must each sign 2 copies of the form of assignment.

#### **48 Park owner's consent required**

(1) The assignment of the seller's interest is not effective unless the park owner has consented to the assignment.

(2) The park owner may give the consent only by signing both copies of the form of assignment.

#### **49 Consent to assignment of seller's interest**

(1) After the buyer and seller sign the form of assignment, the seller must give the park owner a written request for the park owner's consent to the assignment.

(2) The request must be accompanied by 2 signed copies of the form of assignment.

(3) The park owner must not unreasonably refuse to consent to the assignment.

(4) If the park owner consents to the assignment, the park owner must—

(a) return 1 copy of the form of assignment to the seller; and

(b) keep the other copy of the form of assignment until 1 year after the site agreement is terminated.

Maximum penalty—20 penalty units.

(5) If the park owner decides not to consent to the assignment, the park owner must—

- (a) return both copies of the form of assignment to the seller; and
- (b) give the seller notice of the decision and the reasons for the decision.

(6) If the park owner fails to make a decision about the request within 14 days after its receipt, the park owner is taken to have decided not to consent to the assignment.

## **50 Review of refusal to consent**

(1) If the park owner decides, or is taken to have decided, not to consent to the assignment of the seller's interest, the seller may apply to the tribunal for a review of the decision.

(2) In deciding the application, the tribunal may—

- (a) confirm the park owner's decision; or
- (b) override the park owner's decision and require the park owner to consent to the assignment of the seller's interest.

(3) If the tribunal makes the order mentioned in subsection (2)(b), the park owner must, within 7 days after the making of the order, sign both copies of the form of assignment and return them to the seller.

Maximum penalty—20 penalty units.

## **51 Seller to give particular documents to buyer**

(1) This section applies if the park owner consents to the assignment of the seller's interest.

(2) The seller must, as soon as practicable after receiving a copy of the form of assignment under section 49(4)(a), give the following documents to the buyer—

- (a) the copy of the form of assignment;
- (b) the seller's copy of the site agreement.

Maximum penalty—5 penalty units.

## **PART 8—ABANDONMENT OF MANUFACTURED HOMES**

### **52 Abandonment order**

(1) Subsection (3) applies if the park owner under a site agreement reasonably believes the home owner has abandoned the manufactured home positioned on the site.

(2) Subsection (3) also applies if the park owner under a terminated site agreement reasonably believes the home owner under the agreement has abandoned the manufactured home positioned on the site.

(3) On application by the park owner, the tribunal may make an order (the “**abandonment order**”) declaring that the home owner has abandoned the home and the day the home was abandoned.

(4) The following provisions have effect on the day stated in the abandonment order as the day the home was abandoned—

- (a) the home owner is taken to have abandoned the home;
- (b) unless the agreement is a terminated site agreement, the agreement is taken to have been terminated.

(5) In deciding whether to make the abandonment order, the tribunal may have regard to the following—

- (a) whether site rent payable under the agreement is unpaid;
- (b) whether the home is unoccupied and neglected;
- (c) whether the agreement has already been terminated under part 6;
- (d) whether the home owner’s mail is being collected;
- (e) reports from neighbours of the home owner, or from other persons, about the whereabouts or absence of the home owner;
- (f) whether utilities supplied to, or used at, the home have been disconnected;
- (g) whether the home owner’s personal effects have been removed from the home;
- (h) anything else the tribunal considers relevant.

(6) In conjunction with the abandonment order, the tribunal may do any of the following—

- (a) by order (a “**sale order**”), authorise the park owner, in the way and on any conditions stated in the order, to sell the home or the home owner’s personal effects in the home or on the site;
- (b) order the home owner to pay to the park owner any amount payable under the agreement up to the day the agreement is taken to have been terminated under subsection (4)(b) (the “**termination payment**”);
- (c) make any other order the tribunal considers appropriate.

(7) An amount payable to the park owner under subsection (6)(b) is recoverable as a debt.

(8) The park owner must not sell the home to which the abandonment order relates, or the home owner’s personal effects in the home or on the site, unless the tribunal authorises the park owner to sell the home or personal effects under subsection (6)(a).

Maximum penalty—100 penalty units.

(9) In this section—

“**terminated site agreement**” means a site agreement terminated under part 6, division 3.<sup>3</sup>

### **53 Sale of home or personal effects**

(1) This section applies if, under a sale order, a park owner is authorised to sell a manufactured home positioned on a site or a home owner’s personal effects.

(2) The park owner does not incur any liability for selling the home or personal effects, or removing the personal effects from the home or site, if the park owner acts honestly and without negligence.

(3) A person who buys the home or personal effects acquires a good title to the home or personal effects, and the interest of anyone else in the home or personal effect ends, unless the person buying the home or personal effects did not act honestly in the purchase.

(4) The park owner must not sell the home or personal effects to a prohibited person unless the tribunal authorises the sale under subsection (5).

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3 Part 6 (Termination of site agreements), division 3 (Termination of site agreement in other circumstances)

Maximum penalty—100 penalty units.

(5) On application by the park owner, the tribunal may make an order authorising the park owner to sell the home or personal effects to a prohibited person on the conditions, if any, stated in the order.

(6) In this section—

“**associate**”, of the park owner, means an employee or relative of the park owner.

“**prohibited person**” means the park owner or an associate of the park owner.

“**relative**”, of the park owner, includes someone connected to the park owner by a spousal relationship or step-relationship.

#### **54 Proceeds of sale**

(1) This section applies if, under a sale order, the park owner sells a manufactured home or a home owner’s personal effects.

(2) The proceeds of the sale must be applied as follows—

- (a) first, in payment of the reasonable costs of selling the home, or removing, storing and selling the personal effects;
- (b) second, if there is an amount owing to a person under a security interest registered for the home or personal effects under the *Bills of Sale and Other Instruments Act 1955*—in payment of the amount owing under the security interest;
- (c) third, in payment to the park owner of the amount of any termination payment;
- (d) fourth, in payment of any balance to the home owner or, if the home owner can not be located, to the public trustee within 10 days after the sale.

(3) The public trustee must pay an amount received under subsection (2)(d) into the unclaimed moneys fund (the “**fund**”) kept under the *Public Trustee Act 1978*.

**55 Payment of after-termination rent**

(1) This section applies if—

- (a) a site agreement is taken to have been terminated under section 52(4)(b); and
- (b) under a sale order, the park owner sells the manufactured home positioned on the site or the home owner's personal effects; and
- (c) under section 54(3), the public trustee pays proceeds from the sale into the fund.

(2) On application to the tribunal by the park owner, the tribunal may make an order conferring on the park owner an entitlement to receive an amount paid into the fund under section 54(3), decided by the tribunal, on account of after-termination rent.

(3) On making the application, the park owner must demonstrate to the tribunal that the park owner—

- (a) acted as soon as is reasonably practicable to sell the home or personal effects; and
- (b) otherwise took all reasonable steps to mitigate the park owner's loss of site rent that would have been payable under the agreement if it were still in force.

(4) In deciding whether to make the order, or if it decides to make the order, in deciding the amount the park owner is entitled to receive, the tribunal must take into account the extent to which the park owner has complied with subsection (3).

(5) In this section—

**“after-termination rent”** means the total of site rent that would have been payable under the agreement, if it were still in force, from the day the agreement is taken to have been terminated under section 52(4)(b) until the day the home or personal effects are sold.

## **PART 9—SALE OF MANUFACTURED HOME POSITIONED ON SITE**

### *Division 1—Home owner’s right to sell manufactured home*

#### **56 Right to sell**

The home owner under a site agreement has the right to sell the manufactured home positioned on the site.

#### **57 Placement of ‘for sale’ sign on site**

(1) This section applies if—

- (a) the home owner under a site agreement intends to offer the manufactured home positioned on the site for sale; and
- (b) the agreement provides for the placement of a ‘for sale’ sign, in relation to the home, on the site.

(2) The home owner must give the park owner notice of the intention to offer the home for sale before placing the sign on the site.

(3) If the home owner gives a notice to the park owner under subsection (2), the park owner must not restrict the placement of the sign on the site, as allowed under the agreement.

Maximum penalty for subsection (3)—20 penalty units.

#### **58 Park owner not to interfere with sale**

(1) The park owner for a residential park must not hinder the sale by a home owner of the home owner’s manufactured home positioned on a site.

Maximum penalty—200 penalty units.

(2) Without limiting subsection (1), the park owner is taken to hinder the sale if the park owner stops potential buyers from inspecting the home.

(3) The park owner does not contravene subsection (1) if, under part 7,<sup>4</sup> the park owner reasonably refuses to consent to a proposed assignment of the home owner’s interest in the site agreement for the site.

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4 Part 7 (Assignment of home owner’s interest in site agreement)

***Division 2—Appointing park owner to sell manufactured home*****59 Definition for div 2**

In this division—

“fee” includes commission or other reward.

**60 Appointing park owner under selling authority**

The home owner under a site agreement may by signed notice (a “**selling authority**”), in the approved form, appoint the park owner as the home owner’s agent to sell, or to negotiate the sale of, the manufactured home positioned on the site.

**61 Maximum fee under selling authority**

The park owner for a residential park must not, under a selling authority, charge a home owner a fee for the agency that is more than the amount, if any, prescribed under a regulation.

Maximum penalty—100 penalty units.

**62 Unauthorised selling fee prohibited**

The park owner for a residential park must not charge a home owner a fee in relation to the sale of the manufactured home positioned on the home owner’s site in the park unless—

- (a) the charge is made under a selling authority; and
- (b) the park owner is the effective cause of the sale.

Maximum penalty—100 penalty units.

## **PART 10—SITE RENT**

### **63 How site rent to be paid**

(1) The home owner under a site agreement must pay the site rent payable under the agreement in an approved way.

(2) If the agreement states an approved way for payment of the site rent, the home owner must pay the site rent in the way stated.

(3) However, if after signing the agreement—

- (a) the park owner or home owner gives to the other party a notice stating an approved way, or a different approved way, as the way the site rent is required, or is proposed, to be paid; and
- (b) the other party agrees in writing (the “**site rent agreement**”) to payments of site rent being made in the way stated;

the home owner must pay the site rent in the way stated while the site rent agreement remains in force.

(4) Site rent is paid in an “**approved**” way if it is paid in any of the following ways—

- (a) cash;
- (b) cheque;
- (c) deposit to a financial institution account nominated by the park owner under the agreement;
- (d) credit card;
- (e) an EFTPOS system;
- (f) deduction from pay, or a pension or other benefit, payable to the home owner;
- (g) another way agreed on by the park owner and home owner.

### **64 Where site rent to be paid**

(1) If a site agreement states the place for payment of the site rent payable under the agreement, the home owner must pay the site rent at the place stated.

(2) However, if, after signing the agreement, the park owner gives the home owner a notice stating a place, or a different place, for the payment of

the site rent and the place is reasonable, the home owner must pay the site rent at the place stated in the notice while the notice is in force.

(3) If the place for payment of the site rent is not stated in the agreement, the home owner must pay the site rent at an appropriate place.

*Example of an appropriate place—*

the park owner's office in the residential park

## **65 Receipts and other records**

(1) If site rent is paid in cash, the person receiving the payment must give the person making the payment a receipt for the payment as required under this section.

Maximum penalty—10 penalty units.

(2) If site rent is paid by cheque and the person making the payment asks for a receipt when making the payment, the person receiving the payment must give the person making the payment a receipt for the payment as required under this section.

Maximum penalty—10 penalty units.

(3) The receipt must be signed by the person receiving the payment.

(4) The receipt must be given to the person making the payment—

- (a) for a payment made personally and in cash—when the payment is made; or
- (b) for a payment made in cash but not personally—before the next business day after the day the payment is received; or
- (c) for a payment made by cheque—within 3 business days after the day the payment is received.

(5) The park owner for a residential park must, for a payment of site rent by a home owner—

- (a) make an electronic or written record of the payment (the “**site rent payment record**”); and
- (b) if asked by the home owner, give a copy of the site rent payment record to the home owner within 7 days after the request is made.

Maximum penalty—10 penalty units.

(6) However, the site rent payment record is not required to be made if—

- (a) the site rent payment is made in cash; or
- (b) the site rent payment is made by cheque and a receipt is given for the payment.

(7) A receipt given for, or a site rent payment record made of, a payment of site rent must state the following—

- (a) the name of the home owner for the site for which the payment is made;
- (b) sufficient particulars to identify the site;
- (c) the date the payment is received;
- (d) the period for which the payment is made;
- (e) the amount of the payment;
- (f) that the payment is a payment of site rent.

## **66 Keeping records**

(1) The park owner for a residential park must, for each payment of site rent under a site agreement for which a receipt has been given—

- (a) make a copy of the receipt or make another appropriate written record of the payment; and
- (b) keep the copy or other record until the earlier of the following—
  - (i) the day that is 7 years after the receipt is given;
  - (ii) the first anniversary of the end of the agreement.

Maximum penalty—20 penalty units.

(2) The park owner for a residential park must, for each payment of site rent under a site agreement for which a site rent payment record has been made, keep the record until the earlier of the following—

- (a) the day that is 7 years after the record is made;
- (b) the first anniversary of the end of the agreement.

Maximum penalty—20 penalty units.

**67 False, misleading or incomplete site rent record**

(1) A person must not—

- (a) make an entry in a site rent record the person knows is false or misleading in a material particular; or
- (b) fail to enter a material particular in a site rent record unless the person does not know, and can not reasonably obtain, the necessary information.

Maximum penalty—20 penalty units.

(2) In this section—

**“site rent record”** means a receipt given for, or a site rent payment record or another record made of, a payment of site rent under a site agreement.

## **PART 11—VARYING SITE RENT**

### *Division 1—Introduction*

**68 Ways of varying site rent**

The site rent payable under a site agreement may only be varied in the ways stated in this part.

### *Division 2—Increase in site rent provided for in site agreement*

**69 Notice of increase in site rent**

(1) This section applies if a site agreement—

- (a) provides for an increase in the site rent payable under the agreement; and
- (b) states how the amount of the increase is to be calculated.

(2) If the park owner wishes to increase the site rent under this section, the park owner must give the home owner a notice stating the following—

- (a) the amount of the increased site rent;
- (b) how the increased site rent has been calculated;
- (c) the day the increased site rent is first payable (the “**increase day**”);
- (d) 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.

(3) The increase day must not be earlier than 28 days after the notice is given.

(4) The increased site rent is payable from the increase day.

## **70 Home owner may apply to tribunal for order about site rent increase**

(1) This section applies if—

- (a) the park owner for a residential park gives a home owner notice, under section 69, of an increase in the site rent payable under the site agreement between the parties; and
- (b) the home owner considers the increase is excessive.

(2) On application by the home owner made within 28 days after receiving the notice, the tribunal may make any of the following orders—

- (a) an order reducing the amount of the increase by a stated amount;
- (b) an order setting aside the increase;
- (c) an order confirming the increase on the conditions, if any, the tribunal considers appropriate;
- (d) another order the tribunal considers appropriate.

(3) In deciding the application, the tribunal may have regard to the following—

- (a) the range of site rents usually charged for comparable sites in comparable residential parks in the locality of the park, or if there are no comparable residential parks or sites, the range of market rents usually charged for residential accommodation in the locality;
- (b) the increased site rent compared to the previous site rent;

- (c) the frequency, and amount, of past increases in the site rent payable under the agreement;
- (d) any increase in the CPI number during the previous site rent period;
- (e) the amenity or standard of the common areas and communal facilities;
- (f) any withdrawal of a communal facility or service previously provided at the park;
- (g) any addition of a communal facility or service not previously provided at the park;
- (h) any increase in the park owner's operating costs for the park during the previous site rent period;
- (i) whether the increase is fair and equitable in all the circumstances of the case;
- (j) anything else the tribunal considers relevant.

(4) If, in deciding the application, the tribunal makes an order mentioned in subsection (2)(a) or (b), the park owner must refund to the home owner any overpayment of the site rent since when the increased site rent has been paid.

Maximum penalty—10 penalty units.

(5) An amount payable to the home owner under subsection (4) is recoverable as a debt.

(6) In this section—

“**CPI**” means the all groups consumer price index for Brisbane published by the Australian statistician.

“**previous site rent**” means the site rent payable under the agreement before the increase.

“**previous site rent period**” means the period commencing on the first day the previous site rent was payable and ending on the day the tribunal decides the application.

***Division 3—Other way of increasing site rent*****71 Notice of proposed increase in site rent**

(1) This section applies if—

- (a) the park owner for a residential park wishes to increase the site rent payable under a site agreement; and
- (b) section 69 does not apply to the proposed increase.

(2) The park owner must give the home owner for the site a notice stating the following—

- (a) the amount of the proposed increased site rent;
- (b) the basis for the proposed increase;
- (c) the day the proposed increased site rent is first payable (the “**increase day**”);
- (d) the home owner must, within 28 days after receiving the notice, give the park owner a written response indicating whether or not the home owner agrees to the proposed increase.

(3) The increase day must not be earlier than 2 months after the notice is given.

(4) The home owner must within 28 days after receiving the notice give the park owner a written response indicating whether or not the home owner agrees to the proposed increase.

(5) If the response indicates the home owner agrees to the proposed increase, the proposed increased site rent is first payable on the increase day.

(6) If the home owner does not give a written response under subsection (4) within the 28 days, the home owner is taken to have not agreed to the proposed increase.

(7) If the park owner and home owner do not agree on the proposed increase within the 28 days, the park owner may apply to the tribunal for an order about the proposed increase.

(8) In deciding the application, the tribunal may have regard to the matters mentioned in section 70(3).

(9) Also, in deciding the application, the tribunal may make any of the following orders—

- (a) an order reducing the amount of the proposed increase by a stated amount;
- (b) an order setting aside the proposed increase;
- (c) an order confirming the proposed increase on the conditions, if any, the tribunal considers appropriate;
- (d) another order the tribunal considers appropriate.

(10) If the tribunal makes an order mentioned in subsection (9)(a) or (c), the order must also state the day from which the increased rent is first payable.

#### *Division 4—Reducing site rent*

### **72 Site rent reduction on application to tribunal by home owner**

On application by the home owner under a site agreement, the tribunal may make an order that the site rent payable under the agreement be reduced by an amount the tribunal considers appropriate if it is satisfied—

- (a) the amenity or standard of the residential park's common areas and communal facilities has decreased substantially since the agreement was entered into; or
- (b) a communal facility or service provided at the park when the agreement was entered into has been withdrawn.

### **73 Utility cost in site rent**

(1) This section applies if—

- (a) the use by the home owner under a site agreement of a utility at the site is not separately measured or metered; and
- (b) either of the following events (a “**change event**”) happens—
  - (i) the home owner's use of the utility becomes separately measured or metered and the cost of the use becomes payable by the home owner;
  - (ii) the utility stops being available for use by the home owner for any reason other than the default or neglect of the home owner.

(2) The park owner must within 14 days after the change event happens give the home owner notice (a “**utility cost notice**”) of the utility cost factored into the site rent payable under the agreement and how the utility cost has been worked out.

Maximum penalty—10 penalty units.

(3) The site rent payable from the day the change event happens (the “**change event day**”) is the site rent payable immediately before the change event day, reduced by the utility cost stated in the utility cost notice.

(4) Any overpayment of site rent, relating to the utility cost, from the change event day must be refunded by the park owner to the home owner within 14 days after the home owner received the utility cost notice.

Maximum penalty—10 penalty units.

(5) An amount payable to the home owner under subsection (4) is recoverable as a debt.

#### **74 Tribunal review of utility cost and reduction in site rent**

(1) This section applies if—

- (a) the park owner under a site agreement contravenes section 73(2);  
or
- (b) the home owner under a site agreement who receives a utility cost notice under section 73(2) disputes the utility cost stated in the notice.

(2) On application by the home owner, the tribunal may make any of the following orders—

- (a) an order reducing the site rent payable under the agreement, from the change event day, by the amount the tribunal considers appropriate;
- (b) another order the tribunal considers appropriate.

*Example for subsection (2)(b)—*

An order that the park owner refund to the home owner any overpaid site rent from the change event day.

(3) In making an order under subsection (2), the tribunal may have regard to the following—

- (a) relevant available information about the costs of supplying utilities in the local government area in which the residential park is situated;
- (b) any terms of the agreement about utility costs;
- (c) the number of persons occupying the manufactured home positioned on the site;
- (d) anything else the tribunal considers relevant.

## **PART 12—PARK MANAGERS**

### **75 Park owner may appoint park manager**

(1) The park owner for a residential park may appoint a person as the park manager, with responsibility for the day-to-day management of the park.

(2) The park owner must as soon as practicable after an appointment under subsection (1) give to each home owner notice of the park manager's appointment and the name and business address of the appointee.

(3) An appointment of a person as the park manager may be revoked at any time by the park owner.

(4) If the park owner revokes an appointment under subsection (3), the park owner must as soon as practicable after revoking the appointment give notice of the revocation to each home owner.

### **76 Service of documents**

(1) If this Act requires a document to be given to a park owner for a residential park, the document may be given instead to the park manager.

(2) A document given to the park manager under subsection (1) is taken to have been given to the park owner.

## **PART 13—PARK RULES**

### *Division 1—Making of park rules*

#### **77 Park owner may make park rules**

(1) The park owner for a residential park for which site agreements are in force may make rules about the use, enjoyment, control and management of the park.

(2) However, rules may be made only about—

- (a) the use and operation of the communal facilities; and
- (b) the making and abatement of noise; and
- (c) the carrying on of sporting and other recreational activities; and
- (d) the speed limits for motor vehicles; and
- (e) the parking of motor vehicles; and
- (f) the disposal of refuse; and
- (g) the keeping of pets; and
- (h) other things prescribed under a regulation.

### *Division 2—Park rule changes*

#### **78 Notice of proposed change of park rule**

(1) If the park owner for a residential park for which site agreements are in force proposes to change a park rule, the park owner must—

- (a) fix a day (the “**objection closing day**”) by which a home owner may object to the proposed change (the “**proposal**”); and
- (b) give notice of the proposal to—
  - (i) each home owner at least 28 days before the objection closing day; and
  - (ii) each person who becomes a home owner before the objection closing day, as soon as practicable after the person becomes a home owner.

(2) The notice must also inform the home owner—

- (a) that the home owner may object to the proposal before the objection closing day; and
- (b) how the objection may be made.

## **79 Objection to proposal**

(1) A home owner for the residential park who considers the proposal, or any part of it, is unreasonable may object to the proposal by notice given to the park owner before the objection closing day.

(2) The objection must give particulars of why the proposal is considered to be unreasonable.

## **80 Park liaison committee**

(1) This section applies only if objections to the proposal are made before the objection closing day by—

- (a) at least 5 home owners; or
- (b) if the residential park has less than 10 sites—a majority of the home owners.

(2) As soon as practicable after the objection closing day, the home owners who have objected (the “**objectors**”) and the park owner must set up a committee (the “**park liaison committee**”) to consider the objections.

(3) The park liaison committee is to consist of the following members—

- (a) a person chosen by the objectors;
- (b) the park owner or the park owner’s nominee;
- (c) someone else agreed on by the members mentioned in paragraphs (a) and (b).

(4) The member mentioned in subsection (3)(a) may be an objector.

(5) A quorum for the park liaison committee is formed by the 3 members mentioned in subsection (3).

(6) If the members mentioned in subsection (3)(a) and (b) fail within 7 days after the objection closing day to agree on who is to be the member mentioned in subsection (3)(c), the park owner must give notice of the failure to each objector (a “**non-resolution notice**”).

**81 Consideration of objections by park liaison committee**

(1) The park liaison committee must consider all objections made under section 79 about the proposal and decide whether the proposal is reasonable or unreasonable.

(2) If the park liaison committee decides the proposal is unreasonable, it must also change the proposal in a way the park liaison committee considers appropriate to make it reasonable.

(3) The park liaison committee must give notice of its decisions under this section to—

- (a) each home owner for the residential park; and
- (b) if the park owner is not a member of the park liaison committee—the park owner.

**82 Application to tribunal about proposal**

(1) This section applies if—

- (a) a non-resolution notice is given to each objector; or
- (b) the park owner, or a home owner for the residential park, is dissatisfied with a decision of the park liaison committee under section 81.

(2) The park owner or home owner may apply to the tribunal for an order declaring the proposal to be reasonable or unreasonable.

(3) The application must—

- (a) be made within 7 days after receiving the non-resolution notice or notice of the decision; and
- (b) give particulars of why the proposal is considered to be reasonable or unreasonable.

(4) A single application may be made by more than 1 home owner if it is made by—

- (a) at least 5 home owners; or
- (b) if the park has less than 10 sites—a majority of the home owners.

(5) In subsection (2), a reference to the proposal includes the proposal as decided to be changed by the park liaison committee under section 81(2).

**83 Decision of tribunal about proposal**

(1) In deciding an application made to the tribunal under section 82, the tribunal may—

- (a) declare the proposal to be reasonable; or
- (b) declare the proposal to be unreasonable; or
- (c) change the proposal in a way the tribunal considers appropriate to make it reasonable; or
- (d) make any other order the tribunal considers appropriate.

(2) For deciding the application, the tribunal may have regard to the following—

- (a) the residential park's location;
- (b) the park's internal layout;
- (c) the amenities, improvements, facilities and other physical features of the park;
- (d) the number of home owners for the park and their needs;
- (e) the levels of site rent and other charges payable, under site agreements, by the home owners.

(3) Subsection (2) does not limit the matters to which the tribunal may have regard.

**84 When proposal takes effect**

(1) This section sets out the way of working out when a proposal takes effect.

(2) If no objections are made to the proposal or the number of objections made to the proposal is not enough to require the setting up of a park liaison committee, the proposal takes effect—

- (a) at the end of the objection closing day for the proposal; or
- (b) if a later day is stated in the proposal—on the later day.

(3) If non-resolution notices about the proposal are given to the objectors and no application under section 82 is made to the tribunal about the proposal, the proposal takes effect—

- (a) at the end of the last day for making an application under section 82 to the tribunal about the proposal; or

(b) if a later day is stated in the proposal—on the later day.

**(4)** If—

(a) a decision is made by a park liaison committee—

(i) declaring the proposal to be reasonable; or

(ii) changing the proposal in a way the park liaison committee considers appropriate to make it reasonable; and

(b) no application under section 82 is made to the tribunal about the proposal;

the proposal, or the proposal as changed, takes effect on the day decided by the park liaison committee.

**(5)** If the tribunal decides the proposal is reasonable or changes the proposal in a way the tribunal considers appropriate to make it reasonable, the proposal takes effect on the day decided by the tribunal.

## **85 When change of park rule has no effect**

**(1)** A change of a park rule for a residential park has no effect if—

(a) it is made otherwise than under this division; or

(b) a park liaison committee or the tribunal, in considering a proposal about the change, declares it to be unreasonable.

**(2)** However, subsection (1)(b) does not apply to a decision of the park liaison committee if the tribunal later—

(a) declares the proposal to be reasonable; or

(b) changes the proposal in a way the tribunal considers appropriate to make it reasonable.

## **PART 14—RESIDENTIAL PARK OPERATIONS**

### *Division 1—Park owners' obligations*

#### **86 Quiet enjoyment**

(1) The park owner for a residential park must take reasonable steps to ensure a home owner has quiet enjoyment of the home owner's site in the park and the common areas.

(2) The park owner, or park manager, for a residential park must not interfere with the reasonable peace, comfort or privacy of a home owner in using the home owner's site in the park or the common areas.

Maximum penalty for subsection (2)—20 penalty units.

#### **87 Emergency access to residential park**

(1) The park owner for a residential park for which site agreements are in force must ensure that an emergency vehicle has ready access to the park in an emergency, unless the park owner has a reasonable excuse.

Maximum penalty—20 penalty units.

(2) In this section—

“**emergency vehicle**” means a motor vehicle driven by a person who is—

- (a) an emergency worker; and
- (b) driving the vehicle while performing duties as an emergency worker.

“**emergency worker**” means—

- (a) an ambulance officer of the Queensland Ambulance Service or a corresponding service of another State; or
- (b) a fire officer of the Queensland Fire and Rescue Service or a corresponding service of another State; or
- (c) a Queensland police officer or a member of a police force or service of the Commonwealth or another State.

**88 Right of home owner to participate in home owners' organisation**

The park owner for a residential park must not unreasonably interfere with the exercise of the right of a home owner to participate in an organisation established to represent the interests of the home owner or home owners generally.

Maximum penalty—20 penalty units.

**89 Notice board**

(1) The park owner for a residential park for which site agreements are in force must maintain a notice board in a prominent position within the common areas.

Maximum penalty—10 penalty units.

(2) The park owner for a residential park must not unreasonably interfere with the rights of a home owner—

- (a) to read the park's notice board; and
- (b) to place a notice, or other material, relevant to the park on the park's notice board.

Maximum penalty—5 penalty units.

(3) In this section—

**“notice board”** means a notice board for the display of notices and other material of interest to the home owners.

**90 Maintenance of trees**

(1) The park owner for a residential park for which site agreements are in force must ensure trees in the common areas are maintained so as not to pose a danger to any person or property.

(2) However, the park owner is not required to take any action under subsection (1) that is unlawful.

(3) The tribunal may, on the application of a home owner, make an order requiring the park owner to comply with subsection (1) in a stated way.

**91 Mail facilities**

The park owner for a residential park must establish and maintain at the park reasonable, accessible mail facilities for the home owners.

**92 Separate measurement or metering of supply of utility**

(1) This section applies if—

- (a) the use by the home owner under a site agreement of a utility at the site is not separately measured or metered; and
- (b) the park owner wishes to separately measure or meter the use of the utility at the site.

(2) The park owner must pay the cost of installing a measuring device or meter to measure the use of the utility at the site.

Maximum penalty—100 penalty units.

**93 Repositioning of manufactured home**

(1) This section applies if—

- (a) there is a site agreement in force for a site (the “**original site**”); and
- (b) a manufactured home is positioned on the original site; and
- (c) under the agreement, the park owner may require the home owner to reposition the home to another site in the residential park.

(2) The park owner may require the home owner to reposition the home to another site in the park only if—

- (a) the other site is broadly comparable to the original site; and
- (b) the park owner gives the home owner a written undertaking to pay all the expenses involved in repositioning the home.

(3) The undertaking may be enforced by the home owner in a court of competent jurisdiction as if it were a deed.

**94 Access by park owner to site**

(1) This section applies if—

- (a) there is a site agreement in force for a site; and
- (b) a manufactured home is positioned on the site.

(2) Subject to subsection (3), the park owner or the park manager for the residential park must not enter the site other than in the following circumstances—

- (a) if the home owner consents to the entry;
- (b) in an emergency;
- (c) if the park owner arranges for the supply of electricity, gas or water to the site—to read a meter situated on the site recording the quantity of electricity, gas or water supplied during a period;
- (d) to carry out an inspection, or maintenance, of the site, after giving the home owner at least 2 days notice of the proposed entry;
- (e) to show the site to a prospective home owner for the site, after giving the home owner at least 1 day's notice of the inspection;
- (f) if the park owner or park manager reasonably believes the home has been abandoned;
- (g) under an order of the tribunal permitting entry to the site for a stated purpose.

Maximum penalty—10 penalty units.

(3) Entry to the site in the circumstances mentioned in subsection (2)(c), (d) or (e) must not happen on a Sunday or public holiday, or outside the hours from 8 a.m. to 8 p.m., without the written consent of the home owner.

(4) The tribunal may, on application made by the park owner or park manager, make an order permitting the park owner or park manager to enter the site for a stated purpose.

**95 Fraudulent or misleading conduct**

The park owner for a residential park for which site agreements are in force must not engage in conduct that is fraudulent or misleading in the operation of the park.

Maximum penalty—200 penalty units.

**96 Harassment or unconscionable conduct**

The park owner for a residential park for which site agreements are in force must not engage in harassment or unconscionable conduct in the operation of the park.

*Examples of harassment—*

- using, or getting a third party to use, threatening or intimidating language or behaviour towards a home owner or prospective home owner for a site
- engaging in conduct that would make a person feel unwillingly compelled to comply with the park owner's request or demand

*Examples of unconscionable conduct—*

- taking unfair advantage of the park owner's superior bargaining position relative to a home owner or prospective home owner for a site
- requiring a home owner or prospective home owner for a site to comply with conditions that are not reasonably necessary for the protection of the park owner's legitimate interests
- if it is reasonably apparent that a home owner or prospective home owner for a site can not understand relevant documents, taking unfair advantage of the home owner's, or prospective home owner's, lack of understanding in relation to the documents
- exerting undue influence or pressure on, or using unfair tactics against, a home owner, prospective home owner for a site, or a person acting for a home owner or prospective home owner for a site

Maximum penalty—200 penalty units.

***Division 2—Home owners' obligations*****97 Letting of site by home owner**

(1) This section applies if a manufactured home is positioned on a site the subject of a site agreement.

(2) The home owner must not rent the site to a person on a temporary basis unless this is allowed under the agreement.

(3) If the home owner rents the site to a person on a temporary basis under subsection (2), the home owner must as soon as practicable after the letting give the park owner notice of the letting.

(4) The notice must state—

- (a) the name of the tenant; and
- (b) the period of the tenancy.

## **98 Alteration or addition to manufactured home**

(1) This section applies if a manufactured home is positioned on a site the subject of a site agreement.

(2) The home owner must not make any alteration to the home that is visible from the outside of the home, or make any addition to the home, unless the park owner gives written consent to the proposed alteration or addition.

(3) The park owner must not unreasonably refuse to give the consent.

(4) The tribunal may, on application made by the home owner, require the park owner to consent to the proposed alteration or addition if the tribunal considers the consent has been unreasonably refused.

(5) However, the tribunal may not make an order under subsection (4) if effecting the proposed alteration or addition would contravene a law of the State.

## **99 Separate payment by home owner for use of utility at site**

(1) This section applies if, under a site agreement, the home owner is required to pay the park owner for the use by the home owner of a utility at the site.

(2) The home owner may be required to pay for the use only if the use is separately measured or metered.

# **PART 15—HOME OWNERS COMMITTEE**

## **100 Establishment of committee**

(1) The home owners for a residential park may establish, by election conducted among themselves, a home owners committee.

(2) A member of the committee—

- (a) holds office for not more than 1 year, but may be re-elected; and
- (b) may be removed, at any time, by special resolution at a meeting of the home owners.

(3) The committee may, subject to any constitution adopted under section 101 for the committee—

- (a) decide its own procedures; and
- (b) form subcommittees and decide each subcommittee's procedures.

(4) The park owner may, if invited by the committee, attend a meeting of the committee.

### **101 Home owners constitution**

(1) If a home owners committee is established under section 100 for a residential park, a majority of the home owners may adopt a constitution governing the performance by the committee of its function under section 102.

(2) The constitution—

- (a) must not be inconsistent with this Act; and
- (b) must provide for any matter prescribed under a regulation.

(3) The committee must comply with the constitution.

(4) The constitution may be amended by special resolution at a meeting of the home owners.

### **102 Committee's function**

The function of a home owners committee for a residential park is to deal with the park owner on behalf of the home owners about—

- (a) the day-to-day running of the park; and
- (b) any complaint or proposal about the operation of the park raised by the home owners.

**103 Park owner to respond to complaint or proposal**

If a home owners committee for a residential park gives the park owner a notice detailing a complaint or proposal mentioned in section 102(b), the park owner must within 21 days after receiving the notice give the committee a written response addressing the complaint or proposal.

Maximum penalty—20 penalty units.

**PART 16—INSPECTORS****104 Appointment and qualifications**

(1) The chief executive may appoint an officer of the department as an inspector.

(2) However, the chief executive may appoint a person as an inspector only if—

- (a) the chief executive believes the person has the necessary expertise or experience to be an inspector; or
- (b) the person has satisfactorily completed an appropriate course of training approved by the chief executive.

**105 Appointment conditions and limit on powers**

(1) An inspector holds office on any conditions stated in—

- (a) the inspector's instrument of appointment; or
- (b) a signed notice given to the inspector; or
- (c) a regulation.

(2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector's powers under this Act.

(3) In this section—

**“signed notice”** means a notice signed by the chief executive.

**106 Issue of identity card**

(1) The chief executive must issue an identity card to each inspector.

(2) The identity card must—

- (a) contain a recent photo of the inspector; and
- (b) contain a copy of the inspector's signature; and
- (c) identify the person as an inspector under this Act; and
- (d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and for other purposes.

**107 Production or display of identity card**

(1) In exercising a power under this Act in relation to a person, an inspector must—

- (a) produce the inspector's identity card for the person's inspection before exercising the power; or
- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 111(1)(b) or (3).

**108 When inspector ceases to hold office**

(1) An inspector ceases to hold office if any of the following happens—

- (a) the term of office stated in a condition of office ends;
- (b) under another condition of office, the inspector ceases to hold office;
- (c) the inspector's resignation takes effect.

(2) Subsection (1) does not limit the ways an inspector may cease to hold office.

(3) In this section—

“**condition of office**” means a condition on which the inspector holds office.

### **109 Resignation**

An inspector may resign by signed notice given to the chief executive.

### **110 Return of identity card**

A person who ceases to be an inspector must return the person’s identity card to the chief executive within 21 days after ceasing to be an inspector, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

## **PART 17—ENFORCEMENT**

### *Division 1—Entry of places*

### **111 Power to enter place**

(1) An inspector may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant; or
- (d) it is an office or other place for administering or managing a residential park for which site agreements are in force, and is—
  - (i) open for carrying on the business of the park; or
  - (ii) otherwise open for entry.

(2) For subsection (1)(a), the park owner for a residential park is taken to be the occupier of the park, other than for a home owner’s premises in the park.

(3) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter a site at the place to an extent that is reasonable to contact the home owner for the site; or
- (c) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(4) For subsection (1)(d), a place does not include a part of the place where a person resides.

(5) In this section—

“**premises**”, of a home owner, means the home owner's manufactured home and the site on which it is positioned.

### *Division 2—Procedure for entry*

#### **112 Entry with consent**

(1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 111(1)(a).

(2) Before asking for the consent, the inspector must tell the occupier—

- (a) the purpose of the entry; and
- (b) that the occupier is not required to consent.

(3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

(4) The acknowledgment must state—

- (a) the occupier has been told—
  - (i) the purpose of the entry; and
  - (ii) that the occupier is not required to consent; and
- (b) the purpose of the entry; and
- (c) the occupier gives the inspector consent to enter the place and exercise powers under this part; and

(d) the time and date the consent was given.

(5) If the occupier signs the acknowledgment, the inspector must immediately give a copy to the occupier.

(6) If—

(a) an issue arises in a proceeding about whether the occupier consented to the entry; and

(b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

### **113 Application for warrant**

(1) An inspector may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

### **114 Issue of warrant**

(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and

(b) the evidence is at the place, or may be at the place within the next 7 days.

(2) The warrant must state—

(a) that a stated inspector may, with necessary and reasonable help and force—

(i) enter the place and any other place necessary for entry; and

- (ii) exercise the inspector's powers under this part; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant's issue, the warrant ends.

### **115 Warrant—application made other than in person**

(1) An inspector may apply for a warrant by phone, fax, radio or another form of communication if the inspector considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the inspector's remote location.

(2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

(3) The inspector may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy (a “**facsimile warrant**”) to the inspector if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy to the inspector—

- (a) the magistrate must tell the inspector—
  - (i) what the terms of the warrant are; and
  - (ii) the date and time the warrant is issued; and
- (b) the inspector must complete a form of warrant (a “**warrant form**”) and write on it—
  - (i) the magistrate's name; and
  - (ii) the date and time the magistrate issued the warrant; and
  - (iii) the terms of the warrant.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the warrant issued.

(7) The inspector must, at the first reasonable opportunity, send to the magistrate—

- (a) the sworn application; and
- (b) if the inspector completed a warrant form—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) If—

- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
- (b) the warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant, issued under this section, authorised the exercise of the power.

### **116 Warrant—procedure before entry**

(1) This section applies if an inspector named in a warrant issued under this part for a place intends to enter the place under the warrant.

(2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—

- (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the inspector's identity card or other document evidencing the inspector's appointment;
- (b) give the person a copy of the warrant or if the entry is authorised by a facsimile warrant or warrant form mentioned in section 115(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the inspector is permitted by the warrant to enter the place;
- (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.

(3) However, the inspector need not comply with subsection (2) if the inspector reasonably believes immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

***Division 3—General powers of inspectors*****117 General powers after entering place**

(1) This section applies to an inspector who enters a place.

(2) However, if an inspector enters a place to get the occupier's consent to enter a place, this section applies to the inspector only if the consent is given or the entry is otherwise authorised.

(3) For monitoring and enforcing compliance with this Act, the inspector may—

- (a) search any part of the place; or
- (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
- (c) copy a document at the place; or
- (d) take into or onto the place any persons, equipment and materials the inspector reasonably requires for exercising a power under this part; or
- (e) require a person at the place to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (d); or
- (f) require a person at the place to answer questions by the inspector to help the inspector ascertain whether this Act is being or has been complied with.

(4) When making a requirement mentioned in subsection (3)(e) or (f), the inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

(5) A person given a requirement under subsection (3)(e) or (f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(6) It is a reasonable excuse for the person to fail to comply with the requirement that complying with the requirement might tend to incriminate the person.

(7) A reasonable excuse does not include a matter of mere convenience.

**118 Power to seize evidence**

(1) An inspector who enters a place under this part, other than with a warrant, may seize a thing at the place if—

- (a) the inspector reasonably believes the thing is evidence of an offence against this Act; and
- (b) for an entry made with the occupier's consent—seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.

(2) An inspector who enters a place with a warrant may seize the evidence for which the warrant was issued.

(3) The inspector may seize anything else at the place if the inspector reasonably believes—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

(4) Also, the inspector may seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against this Act.

**119 Receipt for seized thing**

(1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

(2) However, if it is not practicable to comply with subsection (1), the inspector must leave the receipt in a conspicuous position and in a reasonably secure way at the place of seizure.

(3) The receipt must describe generally the thing seized and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt required by the section, given the thing's nature, condition and value.

**120 Return of seized thing**

(1) This section applies if a thing is seized under this Act.

(2) The inspector must return the seized thing to its owner—

- (a) at the end of 6 months; or
- (b) if a proceeding for an offence involving it is started within 6 months, at the end of the proceeding and any appeal from the proceeding.

(3) Despite subsection (2), the inspector must immediately return the seized thing to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

### **121 Access to seized thing**

(1) Until a seized thing is returned or otherwise finally dealt with under this Act, an inspector must allow its owner to inspect it and, if it is a document, to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## *Division 4—Other investigative powers*

### **122 Power to require production of particular documents**

(1) An inspector may require a person to make available for inspection by an inspector, or produce to the inspector for inspection, at a reasonable time and place nominated by the inspector—

- (a) a document required to be kept by the person under this Act; or
- (b) a document, other than a document mentioned in paragraph (a), if—
  - (i) the person has access to the document; and
  - (ii) the document relates, or is related, to an obligation the person has under this Act.

(2) A person must comply with a requirement under subsection (1), unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(3) It is a reasonable excuse for the person not to comply with the requirement if complying with the requirement might tend to incriminate the person.

(4) The inspector may keep the document to copy it.

(5) The inspector must return the document to the person as soon as practicable after copying it.

(6) If the inspector copies a document mentioned in subsection (1)(a), or an entry in the document, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.

(7) The person must comply with a requirement under subsection (6), unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

### *Division 5—Other enforcement matters*

#### **123 Inspector to give notice of damage**

(1) This section applies if—

- (a) an inspector damages something when exercising or purporting to exercise a power; or
- (b) a person (the “**other person**”) acting under the direction of an inspector damages something.

(2) The inspector must promptly give notice of particulars of the damage to the person who appears to be the owner of the thing.

(3) If the inspector believes the damage was caused by a latent defect in the thing or circumstances beyond the inspector’s or other person’s control, the inspector may state it in the notice.

(4) If it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.

(5) This section does not apply to damage the inspector reasonably believes is trivial.

(6) In this section—

“**owner**”, of a thing, includes the person in possession or control of it.

**124 Compensation**

(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this part.

(2) Compensation may be claimed and ordered in a proceeding—

- (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
- (b) for an offence against this Act brought against the person claiming compensation.

(3) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

**125 False or misleading statements**

A person must not state anything to an inspector the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

**126 False or misleading documents**

(1) A person must not give an inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) tells the inspector, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

**127 Obstructing an inspector**

(1) A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(2) If a person has obstructed an inspector and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—

- (a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and
- (b) the inspector considers the person's conduct an obstruction.

(3) In this section—

“**obstruct**” includes hinder and attempt to obstruct.

### **128 Impersonation of an inspector**

A person must not pretend to be an inspector.

Maximum penalty—20 penalty units.

## **PART 18—UNDERTAKINGS**

### **129 Chief executive may seek undertaking after contravention**

(1) If the chief executive reasonably believes a person has contravened or been involved in a contravention of this Act, the chief executive may, by notice given to the person—

- (a) state the act or omission the chief executive believes is the contravention; and
- (b) ask the person to give the chief executive a written undertaking that the person will not continue or repeat the act or omission.

(2) If—

- (a) the person gives the undertaking and, if the contravention is conduct consisting of a series of acts or omissions, the person stops the conduct; and
- (b) the chief executive accepts the undertaking;

the chief executive can not start an offence proceeding against the person for the contravention, unless the chief executive withdraws the undertaking under section 130.

**130 Variation and withdrawal of undertakings**

(1) If the chief executive accepts the undertaking, it may be varied or withdrawn at any time by—

- (a) the person who gave it, but only if the chief executive agrees to the variation or withdrawal; or
- (b) the chief executive, if the chief executive reasonably believes—
  - (i) that, before it was accepted, the person who gave it contravened this Act in a way unknown to the chief executive; and
  - (ii) had the chief executive known about the contravention, the chief executive would not have accepted the undertaking or would not have accepted it unless its terms were changed.

(2) The chief executive may also withdraw the undertaking if the chief executive reasonably believes it is no longer necessary.

(3) If the chief executive varies or withdraws, or agrees to the variation or withdrawal of, the undertaking, the chief executive must give the person who gave the undertaking notice of its variation or withdrawal.

(4) The variation or withdrawal takes effect when the notice is received by the person.

**131 Enforcement of undertakings**

(1) If the chief executive reasonably believes a person has contravened a term of an undertaking, the chief executive may apply to the District Court for an order under this section.

(2) If the court is satisfied the person has contravened the term, the court may make 1 or more of the following orders—

- (a) an order directing the person to comply with the term;
- (b) an order directing the person to pay to the State an amount that is not more than the direct or indirect financial benefit obtained by the person from, and reasonably attributable to, the contravention;
- (c) an order directing the person to pay compensation to someone else who has suffered loss or damage because of the contravention;

- (d) an order directing the person to give a security bond to the State for a stated period;
- (e) another order the court considers appropriate.

(3) The District Court may order the forfeiture to the State of all or part of a security bond given by a person under subsection (2)(d) if—

- (a) the chief executive applies to the court for the order; and
- (b) the court is satisfied the person contravened the undertaking during the period for which the bond was given.

### **132 Register of undertakings**

(1) The chief executive must keep a register of each undertaking given to the chief executive by a person under this part.

(2) The register must contain a copy of the undertaking.

(3) A person may, on payment of any fee that may be prescribed under a regulation, inspect, or get a copy of details in, the register—

- (a) at the department's head office when it is open to the public; or
- (b) by using a computer.

(4) A person may pay the fee, in advance or in arrears, under an arrangement approved by the chief executive.

(5) The register may be kept in any way the chief executive considers appropriate.

## **PART 19—LEGAL PROCEEDINGS**

### *Division 1—Evidence*

#### **133 Application of div 1**

This division applies to a proceeding under this Act.

**134 Appointments and authority**

(1) It is not necessary to prove—

- (a) the chief executive's appointment; or
- (b) an inspector's appointment; or
- (c) the authority of the chief executive, the director or an inspector to do anything under this Act.

(2) Subsection (1) does not apply if reasonable notice is given to the party relying on the appointment or authority that the appointment or authority is to be challenged.

**135 Evidentiary aids**

(1) A certificate purporting to be signed by the chief executive or director and stating any of the following matters is evidence of the matter—

- (a) on a stated day, a stated person was given a stated notice under this Act;
- (b) a stated fee or other amount is payable by a stated person to someone else and has not been paid;
- (c) a matter within the control or knowledge of the chief executive or director and relevant to the proceeding.

(2) A certificate signed by the chief executive or director and stating that a stated document is a copy of a financial or other record, contract or document is evidence of the matter.

***Division 2—Proceedings*****136 Summary proceedings for offences**

(1) A proceeding for an offence against this Act is to be taken in a summary way under the *Justices Act 1886*.

(2) The proceeding must start—

- (a) within 1 year after the offence is committed; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

**137 Allegations of false or misleading information or documents**

In any proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was, without specifying which, ‘false or misleading’.

**138 Responsibility for acts or omissions of representatives**

(1) Subsections (2) and (3) apply in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

**“representative”** means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

**“state of mind”**, of a person, includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

**139 Executive officers must ensure corporation complies with Act**

(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

## **PART 20—GENERAL**

### **140 Site agreement dispute**

If there is a site agreement dispute, either party to the dispute may apply to the tribunal for an order, and the tribunal may make any order it considers appropriate, to resolve the dispute.

### **141 Application to tribunal by group of home owners**

If a provision of this Act enables a home owner for a residential park to make an application to the tribunal, a group of home owners for the park may make a joint application under the provision arising out of the same or similar facts or circumstances.

### **142 Delegation**

(1) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified person.

(2) In this section—

**“appropriately qualified”** includes having the qualifications, experience or standing appropriate to the exercise of the power.

*Example of standing—*

a person's classification level in the department

### **143 Protection from liability**

(1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents civil liability attaching to an official, the liability attaches instead to the State.

(3) In this section—

**“official”** means any of the following—

- (a) the chief executive;
- (b) the director;
- (c) an inspector.

### **144 Approval of forms**

The chief executive may approve forms for use under this Act.

### **145 Review of Act**

(1) The Minister must, within 3 years after the commencement of this section, start a review of this Act to ensure it is adequately meeting community expectations and its provisions remain appropriate.

(2) The Minister must, as soon as practicable after the review is finished, table a report of the outcome of the review in the Legislative Assembly.

### **146 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about the following—

- (a) fees for this Act;
- (b) imposing a penalty of not more than 20 penalty units for a contravention of a regulation.

## **PART 21—REPEAL AND TRANSITIONAL PROVISIONS**

### *Division 1—Repeal*

#### **147 Repeal of Mobile Homes Act 1989**

The Mobile Homes Act 1989 No. 50 is repealed.

### *Division 2—Transitional provisions*

#### **148 Definitions for div 2**

In this division—

“**commencement**” means commencement of this section.

“**relevant agreement**” means a relevant agreement, under the repealed Act, in force immediately before the commencement.

“**repealed Act**” means the *Mobile Homes Act 1989*.

“**small claims tribunal**” means a small claims tribunal under the *Small Claims Tribunals Act 1973*.

#### **149 Relevant agreement taken to be site agreement**

A relevant agreement is taken to be a site agreement.

#### **150 Park owner to keep records**

(1) Each owner under the repealed Act must keep copies of any relevant records in the owner’s possession or control immediately before the

commencement until 1 year after a relevant agreement forming part of the relevant records is terminated.

Maximum penalty—20 penalty units.

(2) In this section—

“**relevant records**” means the following—

- (a) a relevant agreement;
- (b) a document relating to a variation in site rent payable under the agreement;
- (c) a document relating to an assignment of an occupier’s interest under the agreement;
- (d) copies of orders made by a small claims tribunal relating to the agreement.

### **151 Relevant agreement that is not written**

(1) This section applies to a relevant agreement that is not written.

(2) Subject to subsection (3), the parties to the agreement must as soon as practicable after the commencement—

- (a) put the agreement into writing, as required under section 25; and
- (b) sign the agreement.

(3) If the parties fail to agree on the terms of the relevant agreement, either party may apply to the tribunal for an order about the matter within 3 months after the commencement.

(4) In deciding the application, the tribunal may make any of the following orders—

- (a) an order that the parties enter into a site agreement on the terms decided by the tribunal;
- (b) another order the tribunal considers appropriate.

(5) If the parties do not comply with subsection (2), section 25 does not apply to the relevant agreement until the later of the following—

- (a) the day that is 3 months after the commencement;
- (b) if an application is made to the tribunal, under subsection (3), about the agreement—the day that is 14 days after the tribunal decides the application.

**152 References to repealed Act**

In an Act or document, a reference to the repealed Act may, if the context permits, be taken as a reference to this Act.

**153 Applications to small claims tribunal**

(1) If—

- (a) a person has made an application to a small claims tribunal under the repealed Act before the commencement; and
- (b) the application has not been decided before the commencement;

the small claims tribunal may decide the application under the repealed Act as if this Act had not commenced.

(2) If—

- (a) immediately before the commencement a person could have made an application to a small claims tribunal under the repealed Act; and
- (b) the person has not made the application before the commencement;

the person may make the application to a small claims tribunal, and the small claims tribunal may decide the application, under the repealed Act as if this Act had not commenced.

(3) For giving effect to a decision under subsection (1) or (2), the small claims tribunal may make the orders the small claims tribunal considers necessary having regard to the provisions of this Act.

**154 Claim for compensation**

(1) If a claim for compensation made under section 12J of the repealed Act before the commencement has not been decided on the commencement, the court considering the claim may decide the claim, under section 12J of the repealed Act, as if this Act had not commenced.

(2) A person who could have made a claim for compensation under section 12J of the repealed Act as in force immediately before the commencement may make the claim after the commencement and a court to which the claim is made may decide the claim, under section 12J of the repealed Act, as if this Act had not commenced.

**SCHEDULE 2****DICTIONARY**

section 6

**“approved form”** means a form approved by the chief executive under section 144.

**“buyer”** see section 42(a).

**“caravan”** see the *Residential Tenancies Act 1994*, section 3A.

**“change”**, a park rule for a residential park, means—

- (a) make a new park rule for the park; or
- (b) amend, revoke or replace an existing park rule for the park.

**“change event day”** see section 73(3).

**“commencement”**, for part 21, division 2, see section 148.

**“common areas”** means—

- (a) generally—the parts of a residential park, other than a home owner’s site in the park, that the home owner may use under a site agreement; and
- (b) in a provision about a residential park—the park’s common areas.

**“communal facilities”**, in a provision about a residential park, means the park’s communal facilities.

**“destroy”** includes threaten to destroy, procure someone else to destroy and attempt to destroy.

**“director”** means the director under the *Commercial and Consumer Tribunal Act 2003*.

**“disclosure documents”** see section 29(1)(a).

**“executive officer”**, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director of the corporation or the person’s position is given the name of executive officer.

## SCHEDULE 2 (continued)

“**facilities**” includes furniture and equipment.

“**facsimile warrant**” see section 115(4).

“**fee**”, for part 9, division 2, see section 59.

“**form of assignment**” see section 47(1).

“**fund**” see section 54(3).

“**guest**”, of a home owner, means a person who enters the home owner’s site in a residential park, or the park’s common areas, with the home owner’s consent.

“**hinder**” includes interfere with.

“**home owner**”—

- (a) generally—see section 8; and
- (b) in a provision about a residential park—means a home owner for the park; and
- (c) in a provision about a site agreement—means the home owner under the agreement.

“**home owners committee**” means a home owners committee established under section 100.

“**home owners information document**” see section 9.

“**inspector**” means a person who is appointed as an inspector under section 104.

“**manufactured home**” see section 10.

“**mortgagee in possession**” see the *Property Law Act 1974*, schedule 6.

“**non-resolution notice**”, for a change in a park rule for a residential park, see section 80(6).

“**notice**” means written notice.

“**objection closing day**”, for a change in a park rule for a residential park, see section 78(1)(a).

“**objectors**”, for a change in a park rule for a residential park, see section 80(2).

“**park liaison committee**”, for a change in a park rule for a residential park, see section 80(2).

## SCHEDULE 2 (continued)

**“park manager”** means—

- (a) generally—a person appointed as the park manager for a residential park under section 75(1); and
- (b) in a provision about a residential park—the park manager for the park.

**“park owner”**—

- (a) generally—see section 11; and
- (b) in a provision about a residential park—means the park owner for the park; and
- (c) in a provision about a site agreement—means the park owner under the agreement.

**“park rules”** means—

- (a) generally—the rules in force for a residential park under part 13; and
- (b) in a provision about a residential park—the park rules for the park.

**“personal effects”** includes furniture and goods, but does not include a home owner’s manufactured home.

**“proposal”**, for a change in a park rule for a residential park, see section 78(1)(a).

**“prospective home owner”**, for a site in a residential park, means a person who indicates to the park owner a willingness to enter into a site agreement for the site.

**“reasonably believes”** means believes on grounds that are reasonable in the circumstances.

**“relevant agreement”**, for part 21, division 2, see section 148.

**“repealed Act”**, for part 21, division 2, see section 148.

**“residential park”**—

- (a) generally—see section 12; and
- (b) in a provision about a site agreement—means the residential park of which the site the subject of the agreement is a part.

## SCHEDULE 2 (continued)

**“restrict”** includes hinder, prevent, obstruct and attempt to restrict.

**“sale order”** see section 52(6)(a).

**“sell”**, a manufactured home, includes—

- (a) attempt to sell the home; and
- (b) dispose of the home other than by sale.

*Example for paragraph (b)—*

a gift of the home

**“seller”** see section 42.

**“seller’s interest”** see section 42(b).

**“selling authority”** see section 60.

**“site”**—

- (a) generally—see section 13; and
- (b) in a provision about a residential park—means a site in the park; and
- (c) in a provision about a site agreement—means the site the subject of the agreement.

**“site agreement”**—

- (a) generally—see section 14; and
- (b) in a provision about a residential park—means a site agreement for a site in the park.

**“site agreement dispute”** means a dispute between the parties to a site agreement about the parties’ rights and obligations under the agreement or this Act.

**“site rent”** means the rent payable under a site agreement.

**“site rent payment record”** see section 65(5)(a).

**“small claims tribunal”**, for part 21, division 2, see section 148.

**“special resolution”**, at a meeting of the home owners for a residential park, means a resolution passed—

## SCHEDULE 2 (continued)

- (a) at the meeting of which the home owners are given by a home owner at least 21 days notice stating the intention to propose the resolution as a special resolution; and
- (b) by a majority of at least three-quarters of the home owners voting personally at the meeting or by postal ballot.

**“special terms”** see section 21.

**“standard terms”** see section 20.

**“tenant”**, of a home owner, means a person renting the home owner’s site in a residential park from the home owner under section 97.

**“termination order”** see section 38(1).

**“termination payment”** see section 52(6)(b).

**“tribunal”** means the Commercial and Consumer Tribunal established under the *Commercial and Consumer Tribunal Act 2003*.

**“utility”** means any of the following services—

- (a) electricity;
- (b) gas;
- (c) sewerage;
- (d) water;
- (e) another service prescribed under a regulation.

**“utility cost”** means a cost, for a utility supplied to or used at a site in a residential park, that the park owner incorporates into the site rent payable under a site agreement for the site, whether or not the cost is separately identified in the agreement.

**“utility cost notice”** see section 73(2).

**“warrant form”** see section 115(5)(b).

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Manufactured Homes (Residential Parks) Act 2003 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

## **4 Table of reprints**

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

### TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Notes
1	none	1 March 2004	

## **5 List of legislation**

### **Manufactured Homes (Residential Parks) Act 2003 No. 74**

date of assent 22 October 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2004 (2003 SL No. 336)

## **6 List of annotations**

### **PART 22—AMENDMENT OF ACTS**

**pt 22 (s 155)** om R1 (see RA ss 7(1)(k) and 40)

### **SCHEDULE 1—ACTS AMENDED**

om R1 (see RA s 40)