

# MOBILE HOMES ACT

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Queensland



ANNO TRICESIMO OCTAVO

ELIZABETHAE SECUNDAE REGINAE

No. 50 of 1989

An Act to provide with respect to the siting and occupancy  
of mobile homes and for related purposes

[ASSENTED TO 5TH MAY, 1989]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

**1. Short title.** This Act may be cited as the *Mobile Homes Act 1989*.

**2. Commencement.** (1) Section 1 and this section shall commence on the day this Act is assented to for an on behalf of Her Majesty.

(2) Except as provided by subsection (1), the provisions of this Act or such of them as are specified in the Proclamation shall commence on a day or days appointed by Proclamation.

**3. Interpretation.** (1) In this Act, except where a contrary intention appears—

“by-law” means in relation to Brisbane City Council, an ordinance;

“caravan” means—

(a) a vehicle ordinarily fitted with wheels and designed for attachment to a motor vehicle;

or

(b) a vehicle designed for use as part of a motor vehicle; and designed for use for residence therein;

“Local Authority” means Brisbane City Council and a Local Authority within the meaning of the *Local Government Act 1936-1987*;

“mobile home” means a building, other than a caravan (whether with or without an annexe thereto), designed to be moved from one position to another, that is not permanently attached to land;

“occupier” means a person who under a relevant agreement is entitled to occupy a mobile home positioned on a site;

“owner” means, in relation to a site, the person who is the registered proprietor or registered mortgagee in possession of an estate in fee simple in the site;

“relevant agreement” means an agreement under which a person is entitled—

(a) to position a mobile home on a site;

and

(b) to occupy the mobile home as his only or principal place of residence;

“site” means land made available for positioning of mobile homes under relevant agreements and includes every part of such land;

“spouse” means, in relation to—

(a) an occupier who is male, a woman;

or

(b) an occupier who is female, a man,

who is residing with the occupier in a relationship of man and wife, whether within or outside the bond of marriage and, in relation to an occupier who is deceased, was so residing up to the time of death.

(2) The rights and remedies conferred on an occupier by this Act are in addition to and not in derogation of or substitution for rights and remedies that would be had in law by an occupier apart from this Act.

(3) Where before the commencement of this section a person who is not the owner within the meaning of this Act has made a relevant agreement relating to a site with another who has thereby become an occupier, a reference in this Act, except in section 8 (1) or (2), to “owner” shall be construed to include reference to that person, and, for the purposes of a provision of this Act, except section 8 (1) or (2), that contains reference to “owner of a site”, that person shall be deemed to be the owner of the site.

**4. Particulars of agreement.** (1) Within three months after the making of a relevant agreement, the owner of the site shall give to the occupier a written statement that—

(a) specifies the names and addresses of the parties to the relevant agreement and the date of commencement of the agreement;

(b) includes particulars of the land on which the occupier is entitled to position the mobile home, sufficient to identify the position of the mobile home;

(c) specifies the express terms of the relevant agreement and the terms implied by an order under section 5 (2);  
and

(d) complies with such other requirements as are prescribed by the regulations.

(2) Where a relevant agreement was made before the commencement of this section, the written statement shall be given as prescribed within six months after that commencement.

(3) Where the owner of the site is bound by and has the benefit of a relevant agreement only by reason of section 8 (2) it shall be sufficient compliance with subsection (1) or (2) or with an order made under subsection (5) if the person who made the agreement, not being the occupier thereunder, gives the written statement as prescribed.

(4) A reference in subsection (1) or (2) to the making of a relevant agreement includes reference to any variation of an agreement by reason of which the agreement becomes a relevant agreement.

(5) Where an owner of a site fails to comply with this section, the occupier may, in a court of competent jurisdiction, apply for and obtain an order that requires the owner to give to the occupier a statement that complies with subsection (1).

**5. Terms of agreements.** (1) The terms specified in Part I of Schedule 1 shall be implied in every relevant agreement, notwithstanding any express term of the agreement or any other agreement made or acknowledgment given by the occupier.

(2) A Small Claims Tribunal may, on the application of either party to a relevant agreement, which application is made at any time during the currency of the agreement, order that there shall be implied in the agreement terms concerning all or any of the matters specified in Part II of Schedule 1.

(3) A Small Claims Tribunal may, on the application of either party to a relevant agreement, which application is made within six months of the giving of the statement required by section 4 (1), by order vary or delete any express term of the agreement.

(4) On an application under this section the Small Claims Tribunal may make such provision as it considers reasonable and just in the circumstances.

(5) Upon the making of an order on an application under this section the relevant agreement shall be construed and given effect in accordance with the order.

**6. Successors in title.** (1) A relevant agreement is binding on and enures for the benefit of any successor in title of the owner of the site and any person claiming through or under the owner or any such successor.

(2) Where a relevant agreement is lawfully assigned to any person, the agreement shall be binding on and shall enure for the benefit of that person.

(3) Where a person who is bound by and has the benefit of a relevant agreement dies at a time when he is occupying the mobile home under the agreement as his only or principal place of residence, the agreement shall be binding on and shall enure for the benefit of—

(a) any person residing with that person (called herein “the deceased”) at that time, being—

(i) the spouse of the deceased;

or

(ii) in default of a spouse so residing, a member of the deceased’s household;

or

(b) in default of any such person so residing, the person entitled to the mobile home by virtue of the deceased’s will or the

law relating to intestacy, as the case may be, but subject to subsection (4).

(4) A relevant agreement shall not be binding on or enure for the benefit of a person by reason of subsection (3) (b) in so far as—

- (a) it would, but for this subsection, require or enable that person to occupy the mobile home;
- (b) a term contained or implied therein would entitle the owner to terminate, with or without an order of a Small Claims Tribunal, the agreement on the ground specified in clause 4 (c) of Part I of Schedule 1;
- or
- (c) it includes a term implied therein by virtue of clause 7 of Part I of Schedule 1.

(5) To the extent that a relevant agreement is binding on and enures for the benefit of a person by reason of subsection (3) (b) that person shall be deemed, for the purposes of this Act, to be the occupier.

**7. Local Authority's approval.** (1) Where pursuant to the provisions of a town planning scheme or the by-laws of a Local Authority the approval or permission of a Local Authority, or of any person on its behalf, is required before land may be lawfully used as a site and such approval or permission has been given, the Local Authority shall cause to be given to the owner of the land to be so used a certificate in the prescribed form affirming that the appropriate approval or permission has been given, and is in force, for the use of the land as a site.

(2) The owner of a site—

- (a) shall keep exhibited in a conspicuous place on the site so that it may readily be read by any person on the site—
  - (i) a copy of the certificate given in relation to the site by or on behalf of the Local Authority as required by subsection (1);
  - or
  - (ii) a copy of the approval or permission given by or on behalf of the Local Authority to the use of the land as a site;
- and
- (b) shall give to a person who is about to enter into a relevant agreement under which that person would become an occupier a copy of the certificate referred to in paragraph (a) (i) or of the approval or permission referred to in paragraph (a) (ii).

**8. Strictures on conduct of site.** (1) A person—

- (a) shall not make available land as a site, unless he is the owner of the land;
- (b) shall not make a relevant agreement with another who thereby becomes an occupier, unless he is the owner of the site to which the agreement relates.

(2) Where a person, not being the owner of the site, makes a relevant agreement with another who thereby becomes an occupier—

- (a) the person shall be deemed to have made the agreement as the authorized agent of the owner;
- (b) the agreement is valid, notwithstanding the provisions of subsection (1);
- and
- (c) the agreement is binding on and enures for the benefit of the owner.

(3) An owner of a site—

- (a) shall not limit the occupancy of the site to a mobile home sold or provided by any specific person, unless the site to be occupied has not previously been occupied by a mobile home;
- (b) shall not restrict or interfere with an occupier's efforts to sell his mobile home positioned on the site;
- (c) shall not charge a fee in connexion with a sale or attempted sale of a mobile home positioned on the site unless—
  - (i) he has rendered some service with respect to the sale or attempted sale;
  - and
  - (ii) at the time the service is rendered there is an agreement between him and the occupier for the payment of a fee for the service.

(4) Where an owner of a site is entitled to charge a fee for a service rendered with respect to the sale or attempted sale of a mobile home by an occupier, the amount of the fee demanded or accepted by him shall not exceed the amount to which a real estate agent would be entitled at the material time for a similar service pursuant to the *Auctioneers and Agents Act 1971-1988*.

**9. Termination of agreement.** (1) The owner of a site shall not terminate a relevant agreement unless he has, on application made to a Small Claims Tribunal, obtained an order that permits him so to do.

(2) A putative termination of a relevant agreement in contravention of subsection (1) is void and without effect.

**10. Grant of jurisdiction.** (1) Jurisdiction is hereby conferred on every Small Claims Tribunal to hear and determine all applications made to it pursuant to or for the purposes of this Act.

Exercise of such jurisdiction shall be subject to and in accordance with this Act.

(2) A Small Claims Tribunal shall not make an order that permits an owner of a site to terminate a relevant agreement unless—

- (a) the tribunal is satisfied that the ground on which application for the order is based has been made out;

and

- (b) the tribunal is satisfied that the making of the order is reasonable and just in the circumstances.

(3) Where application is made to a Small Claims Tribunal for an order that permits termination of a relevant agreement on the ground specified in clause 4 (e) of Part I of Schedule 1, if in the circumstances, the tribunal considers the owner of the site should bear the whole or part of the occupier's expenses of relocating the mobile home to which the agreement relates, the tribunal shall not make the order unless it is satisfied that the owner has paid a sum sufficient for that purpose (assessed by the tribunal, should the case require it) to or on account of the occupier.

**11. Recovery by occupier of certain moneys. Where—**

- (a) as a consequence of an owner of a site not having the approval or permission of a Local Authority, or of a person on behalf of a Local Authority, for the use of land as a site, an occupier is compelled to relocate a mobile home from the site;

or

- (b) in accordance with section 10 (2) (b) a Small Claims Tribunal has assessed a sum to be paid by an owner of a site before the tribunal will make an order, such as is referred to in section 10 (2), and that sum has not been paid,

the occupier may recover from the owner by way of action for a debt, due and owing and unpaid, in a court of competent jurisdiction or by way of claim for payment of money before a Small Claims Tribunal (if the amount sought is within the jurisdiction of the tribunal) his expenses reasonably incurred in relocating the mobile home or, as the case may be, the sum so assessed.

**12. Penalty provision.** (1) A person who contravenes or fails to comply with a provision of this Act other than section 7 (1) or 10 (2), commits an offence against this Act.

(2) A person who commits an offence against this Act is liable to a penalty of 90 penalty units or six months imprisonment or both.

**13. Proceedings for offences.** (1) Proceedings for an offence against this Act shall be taken in a summary way under the *Justices Act 1886-1988* upon the complaint of any person authorized in that behalf by the Minister for Justice and Attorney-General.

(2) If in a complaint relating to an offence against this Act the complainant is described as authorized as prescribed to lay the complaint, it shall not be necessary to prove that authority, in the absence of evidence to the contrary.

**14. Evidentiary provision.** In any proceedings for the purposes of this Act or relating to a relevant agreement or to which any matter provided for by this Act is material—

- (a) a copy of the statement that purports to be given by or on behalf of the owner of a site to an occupier as to all or any of the matters referred to in section 4 (1) is admissible as evidence and, in the absence of other evidence, conclusive evidence of the matters contained therein;
- (b) a certificate purporting to be that of the registrar of a Small Claims Tribunal as to the making of an order under section 5 and as to the particulars of the order is admissible as evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein;
- (c) a certificate purporting to be that of the registrar of a Small Claims Tribunal as to a sum assessed by the tribunal under section 10 (2) (b) is admissible as evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

**15. Regulations.** The Governor in Council may make regulations not inconsistent with this Act providing for—

- (a) forms to be used for the purposes of this Act;
- (b) enforcement of orders of Small Claims Tribunals made on applications under this Act and the powers of persons engaged in such enforcement;
- (c) all matters required or permitted by this Act to be prescribed;
- (d) all matters necessary or convenient to be prescribed for the proper administration of this Act or to achieve the objects and purposes of this Act.

**16. Application to existing agreements.** The provisions of this Act apply, not only in respect of relevant agreements made after the commencement of this section and the parties thereto, but, with the exception of sections 7 and 8 (1), (2) and (3) (a), also in respect of relevant agreements made before that commencement and the parties thereto.

**17. Amendment Small Claims Tribunal Act.** (1) A provision of the *Small Claims Tribunal Act 1973-1987* specified in the first column of the following Table is amended as specified in the second column of the Table opposite to that provision:—

TABLE

Provision Amendment	Amendment
s. 4 (Interpretation)	<p><i>in the definition "claimant", insert after paragraph (d) the following paragraph:—</i></p> <p><i>"(e) in relation to a claim in an application made pursuant to or for the purposes of the Mobile Homes Act 1989, the owner, or the occupier, within the meaning of that Act;"</i>;</p>
s. 16 (Extent of jurisdiction)	<p><i>in subsection (1), insert after the word "amount" at the end of paragraph (b) the following words:—</i></p> <p><i>“; and</i></p> <p><i>(c) any claim in an application made to it pursuant to or for the purposes of the Mobile Homes Act 1989;</i></p> <p><i>in subsection (2), omit the words "or (d)" and substitute the words “, (d) or (e)”.</i></p>

## SCHEDULE 1

## PART I

## TERMS IMPLIED IN RELEVANT AGREEMENTS

[s. 5 (1)]

## Duration of agreement

1. Subject to clause 2, the right to position a mobile home on the site shall subsist until the agreement is duly terminated in accordance with the *Mobile Homes Act 1989*.

2. (1) If the owner's entitlement to use the land as a site is of limited duration, by reason of any town planning scheme or an approval or permission of the relevant Local Authority, the period for which the right subsists shall not extend beyond the duration of the owner's entitlement.

(2) If before the expiry of the period for which the right would subsist pursuant to subclause (1) there is a change in circumstances that allows for a longer duration of the right, account shall be taken of that change.

Termination by occupier

3. The occupier is entitled to terminate the agreement by written notice given to the owner not less than four weeks before the date on which termination is to take effect.

Termination by owner

4. The owner is entitled to apply to a Small Claims Tribunal for an order that permits termination of the agreement and, subject to the order being made, is entitled to terminate the agreement on any of the following grounds—

- (a) the occupier has committed a breach of a term of the agreement and, after service on the occupier of a notice to remedy the breach, has not complied with the notice within a reasonable time;
- (b) the occupier has unlawfully assaulted or threatened to unlawfully assault, or has procured another to unlawfully assault or threaten to unlawfully assault the owner or, or other person lawfully on, the site, or has wilfully destroyed or damaged or threatened to destroy or damage, or has procured another to destroy or damage or threaten to destroy or damage property, other than property of the occupier, on the site;
- (c) the occupier is not occupying the mobile home positioned on the site as his only or principal place of residence;
- (d) the recurrent behaviour on the site of the occupier, or of any person residing with or associated with the occupier, interferes with the quiet enjoyment of the site by any other occupier;
- (e) the mobile home positioned on the site, having regard to its age and condition is having a detrimental effect on the amenity of the site;
- (f) the relevant Local Authority has granted its approval of the use of the site for a purpose other than as a site.

Recovery of overpayments by occupier

5. Where the agreement is terminated pursuant to clause 3 or 4, the occupier is entitled to recover from the owner so much of any payment made by the occupier pursuant to the agreement as is attributable to a period after the termination.

Sale of mobile home

6. (1) The occupier is entitled—

- (a) to sell the mobile home;
- and

- (b) to assign his rights and obligations under the agreement to a person approved by the owner.

(2) The grant or refusal of the owner's approval is in the absolute discretion of the owner.

(3) In his efforts to sell the mobile home, the occupier shall not engage in, or permit others on his behalf to engage in, acts that affect the environment of the site or the quiet enjoyment of the site by other occupiers.

#### Gift of mobile home

7. (1) The occupier is entitled to give the mobile home and to assign his rights and obligations under the agreement to a member of the occupier's family approved by the owner, who shall not unreasonably withhold approval.

(2) For the purposes of this clause the reference to a member of the occupier's family includes—

the spouse of the occupier;

and

a child, grandchild or step-child of the occupier.

#### Repositioning of mobile home

8. If the owner is entitled to require the occupier to reposition the mobile home on another part of the site—

(a) that other part of the site shall be broadly comparable to the part of the site on which the occupier was originally entitled to position the mobile home;

and

(b) all expenses incurred in consequence of the requirement shall be paid by the owner.

## PART II

### Matters Concerning Which Terms May Be Implied

[s. 5 (2)]

1. The right of the occupier to quiet enjoyment.
2. The sums payable by the occupier pursuant to the agreement and the times at which they are to be paid.
3. The review at yearly intervals of sums payable by the occupier pursuant to the agreement.
4. The provision or improvement of services available to occupiers on the site, and the use by the occupier of such services.
5. The preservation of the amenity of the site.
6. The maintenance and repair of the site by the owner, and the maintenance and repair of the mobile home by the occupier.
7. Access by the owner to the land on which the occupier is entitled to position the mobile home.