

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

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Reasons for the Bill**

The *Mobile Homes Act 1989* was introduced to provide security of tenure for people owning mobile homes and renting sites in residential parks. The *Mobile Homes Act 1989* provides a legal framework to address particular issues relevant to residents and owners of mobile home parks.

One of the main policy objectives of the *Mobile Homes Act 1989* was to limit the grounds on which the agreement to site the mobile home in a park and to reside in the home as the person's principal place of residence may be terminated. The Small Claims Tribunal was given authority to hear and to determine disputes under the *Mobile Homes Act 1989* and in certain circumstances, on application by the park owner, to terminate site agreements.

Manufactured/mobile home living in residential parks is gaining popularity as a retirement housing option with about 10,000 people residing in 160 parks in Queensland. Some of these people live in purpose built exclusive manufactured home parks. Others live in mixed accommodation caravan parks which may provide for residents owning their own homes, either mobile home or caravan, or renting mobile homes or caravans, either for short or long term periods, from the park owner. Some renters may be tourists holidaying in the locality. People renting mobile homes or caravans from a park owner or renting sites for their own caravans fall under the provisions of the *Residential Tenancies Act 1994*.

The cost of purchasing a manufactured home represents a significant investment with factory built homes ranging from \$35,000 up to \$122,000 depending on the size, features and number of bedrooms. Some park owners are building homes on site and while these homes are generally able to be moved, they are securely affixed to the site in the residential park and removal may be difficult and expensive. Recent advertisements have

indicated that some of these built on site homes are selling for up to \$200,000. The name “mobile home” gives a connotation of a home that may have wheels and may be readily moved. However, this is usually not the case. The new name enshrined in the name of the Bill, “manufactured home”, should give an appreciation of a more substantial structure and better reflect the nature of the industry.

Complaints have been received from home owners that the *Mobile Homes Act 1989* does not address issues which have emerged since its commencement. In particular, home owners have complained about high rents, inadequate contracts, withdrawal of services, deterioration of park facilities and alleged bullying, harassment and intimidation by park owners and managers.

Both home owners and park owners have been critical of determinations made by the Small Claims Tribunal, which was not provided with any guidelines to assist in the decision making process. Rent issues, contractual arrangements and what constitutes a “mobile home” have been major issues of concern.

An underlying problem is the basic tension between home owners and park owners largely caused by differing social and economic perspectives. Home owners are generally on low and/or fixed incomes. They have invested substantial amounts of money in purchasing homes, often for retirement purposes, and need security of tenure for the siting of the home in a residential park at a rent level commensurate with their capacity to pay. Many of these home owners have chosen this lifestyle to maintain their independence rather than seeking access to public housing. On the other hand, park owners have invested significant resources in both time and money in acquiring the land and developing their businesses. Different parks have different income and expenditure streams and park owners are not only seeking a return on their investment but also need to ensure the economic viability of their businesses. The Bill recognises these competing concerns and endeavours to provide certainty for both parties.

Essentially, the Bill retains all of the existing rights and responsibilities of both parties and introduces new provisions to enhance home owner protection through such measures as upfront disclosure of information on the park, written contracts, new definitions, input into park rules, establishment of home owner committees, new offence provisions and access to an improved dispute resolution process. Where the parties are unable to agree on certain issues, applications may be made to the Commercial and Consumer Tribunal to make appropriate determinations.

A new concern is that recent rapid increases in land prices have placed added pressure on the industry as parks located in prime real estate locations are becoming attractive to developers. Generally, these parks are more likely to be mixed accommodation caravan parks in seaside resort locations rather than purpose built residential parks. The Bill recognises the park owner's right to use the land, subject to local government consent, for other purposes. Home owners are protected by the provisions in the Bill which are similar to those in the *Mobile Homes Act 1989* in that they provide for the Commercial and Consumer Tribunal to make orders in relation to the payment of compensation for relocation where the purpose of the land is changed to permit redevelopment.

The *Mobile Homes Act 1989* was identified in the *Queensland Legislation Review Timetable* as requiring review under National Competition Policy (NCP) principles. As the repeal of the *Mobile Homes Act 1989* was proposed, the review obligation was transferred to the *Manufactured Homes (Residential Parks) Bill 2003*. The review was conducted on the provisions of the draft Bill released for consultation and an assessment in line with NCP Guidelines of provisions seen as restricting competition has been conducted and has been the subject of a Public Benefit Test Report. The Report found that the Bill was required to respond to community concerns and the advantages to the community provided by the Bill outweighed any possible disadvantages resulting from restrictions on competition contained in the Bill.

### **Policy Objectives of the Bill**

The key policy objectives of the Bill are to regulate and promote fair trading practices in operating residential parks by:

- declaring particular rights and obligations of the park owner and home owner for a residential park;
- facilitating disclosure of information about residential parks to a prospective home owner;
- regulating:
  - the making, content, assignment and ending of site agreements;
  - the sale of an abandoned manufactured home;
  - the variation of site rent;

- facilitating participation by home owners for a residential park in the affairs of the park; and
- providing means of resolving a site agreement dispute.

**Other main objects of the Bill are:**

- encouraging the continued growth and viability of the residential park industry; and
- providing a clear regulatory framework to ensure certainty for the residential park industry in planning for future expansion.

The Bill is considered to be a reasonable and appropriate way of achieving the objectives. This is because existing laws have failed to adequately protect home owners who have invested substantial amounts of money in purchasing their own homes or to provide certainty for park owners who have made significant investments in their businesses.

**Compliance with Fundamental Legislative Principles**

The Bill includes investigative powers consistent with those in other legislation administered by the Office of Fair Trading. The usual safeguards against abuse of power recommended by the Scrutiny of Legislation Committee have been included. For example, a warrant is required to enter premises except in very limited circumstances. Additionally, investigators must identify themselves and explain the purpose of their entry and provide receipts for seized documents or things.

The Bill requires the executive officers of a corporation to ensure the corporation complies with the Bill. If a corporation commits an offence, an executive officer commits the offence of failing to ensure the corporation complies with the Bill. This is so unless an executive officer is in a position to influence the conduct of the corporation in relation to the offence and has exercised reasonable diligence to ensure the corporation complies with the provision. It is also a defence for an executive officer to show the officer was not in a position to influence the conduct of the corporation in relation to the offence.

It could be argued that this provision fails to pay sufficient regard to the rights and liberties of a person in that it effectively reverses the onus of proof. This clause is included because provisions which a corporation may contravene have the potential to cause substantial detriment to home

owners. In these circumstances, it is appropriate that an executive officer who is in a position to influence the conduct of the corporation, and who is responsible for a contravention, should be accountable for such a contravention. This is especially relevant to the manufactured home industry, because many of the people residing in manufactured home parks are elderly single women, who are highly vulnerable to unfair business practices and are unlikely to complain about such practices. To the wider community such practices may seem trivial. However, to the victims they can result in great distress. To deter this behaviour, it is essential that an executive officer who is in a position to influence the conduct of the corporation, and who is responsible for a contravention, should be accountable for such a contravention.

### **Estimated Cost for Government Implementation**

On 18 July 2002, the Cabinet Budget Review Committee (CBRC) noted the financial implications of implementing the policy/legislative proposal to reform the *Mobile Homes Act 1989* and endorsed that the Minister for Tourism and Racing and Minister for Fair Trading proceed to Cabinet to seek approval to develop the proposal.

As part of the mid-year review in December 2002, the CBRC determined that a report should be made to the CBRC in the 2004-05 Budget process on the effect of the reform of the *Mobile Homes Act 1989* on the new Commercial and Consumer Tribunal during 2003-04 and on an appropriate lodgement fee for tribunal determinations under the proposed manufactured homes legislation.

### **Consultation**

There has been wide consultation both during the policy development phase and on the Bill itself with park owners, the park owners' association, home owners, home owners' associations, manufactured home builders, community groups and relevant government agencies.

Following the public release of a Discussion Paper on options for reform of the *Mobile Homes Act 1989* in March 2000, a stakeholder working party was established to consider the responses and to make recommendations on preferred options for changes to the existing legislation. The working party comprised three home owners, three park owners, representatives from each of the three residents' associations, a representative from the park owners' association, a representative from the mobile home manufacturing

industry, representatives from two community organisations, a representative from the Local Government Association, and representatives from the Office of Ageing, Queensland Housing, and the Departments of Justice and Local Government and Planning. The working party met on 10 occasions and made the following key recommendations:

- separate legislation should be maintained;
- security of tenure should continue;
- the name of the Act should change;
- the definition of a home under the Act should be clarified;
- written, universal contracts should be introduced;
- a disclosure/information package for all new purchasers should be developed; and
- an improved dispute resolution process should be put in place.

The Consultation Draft Bill was largely based on these recommendations. It also sought to introduce consistency with relevant provisions of the *Residential Tenancies Act 1994* to reduce confusion for owners of mixed accommodation caravan parks.

The Consultation Draft Bill was released on 28 April 2003 with the closing date for submissions on 23 May 2003. A letter advising of the availability of the Consultation Draft Bill on the Office of Fair Trading website and by way of hard copies upon request was sent to 535 home owners and their associations, park owners and their association, community groups and selected local governments. Advertisements were also placed in targeted publications. A total of 449 hard copies of the Consultation Draft Bill were distributed to members of the working party, telephone inquirers and those who had provided feedback in 2000 on the Discussion Paper. Departmental officers attended three public meetings with stakeholders. A total of 50 submissions were received from residents, residents' groups, park owners, park owners' association, community groups and local government. The responses received were carefully considered and, where appropriate, have been addressed in the Bill.

## NOTES ON PROVISIONS

### PART 1—PRELIMINARY

*Clause 1* sets out the short title of the Bill.

*Clause 2* provides that the Bill commences on a date fixed by proclamation.

*Clause 3* clarifies that the Bill binds the State of Queensland. The clause clarifies this does not mean the State of Queensland is liable to be prosecuted for an offence.

*Clause 4* states the main objects of the Bill are to promote fair trading practices in the operation of residential parks. The Bill does this by:

- declaring particular rights and obligations of the park owner and home owner;
- facilitating information disclosure about the residential park and this Bill to prospective home owners;
- regulating:
  - the making, content, assignment and ending of site agreements;
  - the sale of an abandoned home;
  - the variation of site rent.
- facilitating participation by home owners in the affairs of the residential park;
- providing means for resolving disputes;
- encouraging continued growth of the industry, and
- providing a clear regulatory framework to ensure certainty for the industry in planning for future expansion.

*Clause 5* makes it clear the Bill does not limit other rights or remedies a person would have apart from this Bill.

## **PART 2—INTERPRETATION**

*Clause 6* states that the dictionary in Schedule 2 to the Bill defines certain words used in the Bill.

*Clause 7* clarifies that a note in the text of the Bill is part of the Bill.

*Clause 8* defines a “home owner” as a person who owns a manufactured home positioned or to be positioned on a site under a site agreement and who occupies or intends to occupy the home as the person’s principal place of residence. The definition also refers to a person who obtains an interest in a site agreement as the personal representative of, or beneficiary in, a deceased person’s estate or other successor in title. A person remains a “home owner” even though the home is occupied by someone who is permitted under the site agreement to rent the home on a temporary basis.

*Clause 9* defines what is meant by a “home owners information document”. The purpose of this document is to provide information on the residential park to assist the prospective home owner to make an informed decision before entering into a site agreement.

*Clause 10* defines “manufactured home”. The definition includes a structure that has the character of a dwelling house, is designed to be able to be moved from one position to another, and is not permanently attached to land. It does not include a caravan or a tent. This is consistent with the definition contained in the *Residential Tenancies Act 1994*.

*Clause 11* defines “park owner” as a person who owns a residential park and includes the personal representative, or beneficiary in the estate of a deceased park owner, a mortgagee in possession, or another successor in title.

*Clause 12* defines a “residential park” as an area of land including sites, common areas and facilities for the personal comfort, convenience or enjoyment of persons residing in manufactured homes positioned on sites.

*Clause 13* defines a “site” as a part of residential park available for rent under a site agreement.

*Clause 14* defines a “site agreement” as an agreement between the park owner and the home owner for the home owner to rent a particular site in a residential park for the positioning of a manufactured home and to use the park’s common areas and communal facilities.

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

*Clause 15* states that this part is about some of the basic responsibilities of park owners and home owners and notes that other parts of the Bill deal with more specific rights and responsibilities. This part does not limit the rights or responsibilities of the parties under this Bill.

*Clause 16* outlines the basic responsibilities of home owners which include:

- using the site as place of residence;
- using the park's common areas only for a purpose associated with residential use;
- not to use or allow guests or tenants to use the site or common areas for an illegal purpose;
- not to interfere or allow guests or tenants to interfere with the peace, comfort or privacy of other residents;
- to pay the site rent and other charges payable to the park owner;
- not to intentionally or recklessly damage or destroy or allow guests or tenants to intentionally or recklessly damage or destroy the park's communal facilities;
- to maintain the manufactured home in a state of cleanliness and repair and fit for habitation; and
- to comply with the site agreement and the park rules.

*Clause 17* outlines the basic responsibilities of park owners which include:

- to ensure reasonable access for the home owner to the home owner's home and common areas;
- to maintain the common areas and communal facilities in a state of cleanliness and repair and fit for use;
- to ensure that the times the park owner or manager are available to be contacted are reasonable having regard to all circumstances;
- to ensure, to the extent of the park owner's control, the continuity of the supply of a utility; and

- to comply with the site agreement and the park rules.

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

*Clause 18* provides details on the content of the home owners information document which must be in the approved form. The document must contain information on the matters listed, including the park owner's name and business address, the address and real property description of the park, the communal facilities provided, the basic responsibilities of park owners and home owners, information on provisions relating to termination of the agreement, varying site rent, assigning the interest in the site agreement and the dispute resolution process.

## **PART 5—SITE AGREEMENTS**

### *Division 1—General*

*Clause 19* states that the terms of the site agreement include certain responsibilities provided under the Bill, park rules, any tribunal orders and other duties imposed by the Bill.

*Clause 20* provides that standard terms for inclusion in the site agreement may be made by regulation.

*Clause 21* states that special terms are not standard terms or terms taken to be included in the agreement.

*Clause 22* provides that special terms may be varied at any time during the duration of the agreement and that if the home owner and park owner cannot agree, then an application may be made to the tribunal for an order about the proposed variation.

*Clause 23* states that contracting out of the Bill is prohibited. A penalty applies to contravention of this clause.

*Clause 24* provides that the provisions of the Bill prevail over any terms of the site agreement and such terms are void to the extent of any inconsistency with the Bill. It also provides that standard terms of the agreement prevail over any special terms which are also void to the extent of the inconsistency.

*Clause 25* places an obligation on the park owner to provide the home owner with a written site agreement. The agreement must be in writing and signed by both parties and must include certain specified information. A copy of the agreement must be kept until 1 year after the termination of the agreement. Penalties apply to specified contraventions of this clause.

*Clause 26* states that a home owner's right to position a manufactured home on a site continues until the agreement is terminated.

*Clause 27* states that a successor in title to the park owner obtains the benefits and is subject to the obligations of the park owner.

*Clause 28* provides that where there is a successor in title to the park owner a notice including the information specified in the clause must be given to the home owner within 14 days. A penalty applies to contravention of this clause.

### ***Division 2—Entering into site agreements***

*Clause 29* states that the park owner must give the prospective home owner disclosure documents which include a copy of the home owners information document and the park rules, and 2 copies of the proposed site agreement. A park owner may not enter into a site agreement with a prospective home owner unless these disclosure documents are provided. A penalty applies to contravention of this clause.

*Clause 30* provides that a park owner must not restrict a person's right to obtain independent legal advice before or after entering into an agreement. A penalty applies to contravention of this clause.

*Clause 31* requires that the park owner must give the home owner one of the two signed copies of the agreement within 10 days of signing. A penalty applies to contravention of this clause.

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

### ***Division 1—Introduction***

*Clause 32* states that a site agreement may not be terminated other than under this part or part 8.

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

*Clause 33* provides for a 7 day cooling-off period. It applies if the park owner has given the home owner the disclosure documents and within the cooling-off period the park owner and home owner enter into a site agreement. It also applies if the park owner has not given the prospective home owner the disclosure documents and the parties enter into a site agreement. This clause provides that the home owner has the right to terminate the agreement within 28 days of entering into the agreement. If the agreement is terminated under this clause, the park owner, must within 14 days, refund to the home owner any rent paid under the agreement. A penalty applies to contravention of this clause.

*Clause 34* provides for automatic termination of a sale agreement between the park owner and home owner for the purchase of a manufactured home positioned on a site in the park. If the site agreement has been terminated under clause 33, the sale agreement is taken to be terminated. Termination of the agreement under this clause may take place even if the home owner has affirmed and fully executed the agreement. If the agreement is terminated under this clause, the park owner must, within 14 days, pay the refundable amount firstly to any person under a security interest registered for the home under the *Bills of Sale and Other Instrument Act 1955* and secondly any balance to the home owner. The refundable amount includes all amounts paid at the park owner's direction or under the agreement and reimbursement to the home owner of any expenses reasonably incurred by the home owner arising out of the sale agreement. A penalty applies to contravention of this clause.

*Clause 35* applies where a site agreement has been terminated due to the park owner not complying with the cooling-off period or not providing the disclosure documents and the home owner has already moved a home onto

the site. The home owner may make application to the tribunal for a compensation order to cover removal of the home from the site and relocating it to another place. In determining the amount of the order the tribunal may have regard to the costs of transporting the home and personal effects to another location and the costs of repositioning the home. Expenses payable are limited to a distance of 300 kilometres. The tribunal must consider whether the home owner has taken all reasonable steps to mitigate the costs of removal and relocation. The compensation order is limited to an amount no more than the market value of the home.

### ***Division 3—Termination of site agreement in other circumstances***

*Clause 36* provides that the park owner and home owner may agree in the approved form to terminate the site agreement. If the site agreement is terminated under this clause, the home owner must then give the park owner vacant possession of the site. The clause also provides that the park owner must not coerce or attempt to coerce the home owner to terminate the agreement under this clause. A penalty applies to contravention of this clause.

*Clause 37* allows the home owner to terminate the site agreement by giving a notice. The notice must state a day, not more than 28 days after the notice is given, on which the agreement is to be terminated. If the site agreement is terminated under this clause, the home owner must give the park owner vacant possession of the site.

*Clause 38* provides that the park owner may apply to the tribunal for an order to terminate a site agreement. Grounds for terminating the agreement are specified and these are:

- the home owner has contravened a term of the agreement and, after service by the park owner on the home owner of a notice, in the approved form, to remedy the contravention, has not complied with the notice within 28 days;
- the home owner has assaulted a person who was lawfully in the residential park;
- the home owner has wilfully destroyed property, other than the home owner's property, on the residential park or site;

- the home owner is not occupying the manufactured home positioned on the site as the home owner's principal place of residence;
- the home owner, the home owners' tenant, or guest –
  - (i) repeatedly interferes, or has repeatedly interfered, with the quiet enjoyment of the residential park by other home owners, or other residents, of the park: and
  - (ii) continues, or has continued, the behaviour after service by the park owner on the home owner of a notice, in the approved form, to stop the behaviour;
- the park owner wishes to use the residential park land, or part of the park in which the site is located, for another purpose stated in the application. Where a park owner makes an application under this provision, the application must be accompanied with a certificate from the local government that the land may be used for the stated purpose.

*Clause 39* provides that the tribunal must state the day the termination is effective and the home owner must give the park owner vacant possession from that day. However, the Bill also provides that the home owner may seek an extension of the termination day if unforeseen circumstances prevent the home owner from giving the site owner vacant possession on that day.

*Clause 40* states that if the park owner seeks termination on the grounds of using the land for another purpose, the tribunal must in conjunction with the termination order, make an order for compensation. The provision states that the tribunal may take into consideration certain matters in making the compensation order. These matters include estimated costs of removing the home, transporting the home to another location and positioning the home at that location.

*Clause 41* states that if a site agreement is terminated under this part, the home owner is not liable to make payments relating to a period after the termination is effective. The clause provides that the park owner must refund payments made by the home owner relating to a period after the termination day is effective.

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

### ***Division 1—Introduction***

*Clause 42* applies if the home owner proposes to sell the manufactured home to a buyer and assigns the home owner’s interest in the site agreement to the buyer.

*Clause 43* makes it an offence for the park owner to hinder or interfere with the proposed assignment of the agreement.

### ***Division 2—Requirements for assignment of interest***

*Clause 44* states that an interest may only be assigned if the agreement is in writing.

*Clause 45* requires that a home owner must give the park owner notice of the proposed assignment of the interest and that the park owner must provide the proposed buyer with copies of the home owners information document, the park rules and the site agreement. A penalty applies to contravention of this clause.

*Clause 46* provides that the park owner or seller must not restrict the buyer’s right to obtain independent legal advice. A penalty applies to contravention of this clause.

*Clause 47* states that the assignment of the interest must be in the approved form and the seller and buyer must each sign 2 copies of the form of the assignment.

*Clause 48* states that the assignment of the agreement is not effective unless the park owner consents to the assignment by signing both copies of the form of assignment.

*Clause 49* provides that the park owner must not unreasonably refuse to consent to the assignment and if the park owner consents, the form of assignment must be signed by the park owner and returned to the seller. The park owner retains one copy of the assignment form for the park’s records. A penalty applies to the contravention of this clause. If the park

owner refuses to consent, written notice of the decision and the reasons must be given to the seller.

*Clause 50* states the seller may apply to the tribunal for a review of the decision not to consent to the assignment. The tribunal can either confirm the park owner's decision or require the park owner to consent to the assignment. A penalty applies if the park owner does not comply with the tribunal order.

*Clause 51* provides that the seller must give the signed copy of the form of assignment and the seller's copy of the site agreement to the buyer. A penalty applies to contravention of this clause.

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

*Clause 52* provides for the park owner to make an application to the tribunal for an order declaring that a home has been abandoned and to permit the sale of the home and any personal effects. The clause sets out what the Tribunal may consider in making the order. The park owner cannot sell the home or the personal effects unless the Tribunal has authorised this and a penalty applies to contravention of this clause.

*Clause 53* sets out the rights of the park owner to sell the home or personal effects if authorised by the tribunal and the rights of the buyer to the home. The park owner or associate of the park owner is prohibited from buying the home unless authorised by the tribunal. An associate of the park owner is defined to include a relative or spouse of the owner, or an employee of the owner.

*Clause 54* sets out how the proceeds of the sale are to be applied including providing for the park owner to receive any expenses relating to the sale of the home and any outstanding rent entitlement, the payment to any person of an amount owing on the home or personal effects, and payment of the balance to the home owner if the person's whereabouts are known or to the public trustee.

*Clause 55* provides that a park owner may make a further application to the tribunal for after-termination rent to cover rent for the period after the termination order has been made until the home is sold.

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

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

*Clause 56* provides that the home owner has the right to sell the manufactured home positioned on a site in a residential park.

*Clause 57* provides for the placement of a “for sale” sign on the home owner’s manufactured home. The home owner must give the park owner notice of the sale before placing the sign and the park owner must not restrict any placement of the sign if it is permitted in the site agreement, and notice of the sale has been given.

*Clause 58* creates an offence if the park owner interferes with the sale by a home owner of the manufactured home positioned on a site. The park owner is taken to interfere with the sale if the park owner stops potential buyers from inspecting the home.

### ***Division 2—Appointing park owner to sell manufactured home***

*Clause 59* provides a definition for the “fee” that the park owner can charge in acting as the home owner’s agent to sell the home. The fee can include a commission or other reward.

*Clause 60* states that a home owner may appoint, in the prescribed form, a park owner as the home owner’s agent to sell or to negotiate the sale of the home owner’s manufactured home.

*Clause 61* provides that, in acting as the home owner’s agent, the park owner must not charge the home owner a fee greater than the amount prescribed by regulation. A penalty applies to contravention of this clause.

*Clause 62* prohibits the park owner charging a fee in relation to the sale of the home unless the park owner has been appointed under a selling authority to sell the home and it was the park owner’s effort that was the effective cause of the sale. A penalty applies to contravention of this clause.

## **PART 10—SITE RENT**

*Clause 63* provides how site rent must be paid and prescribes a number of approved ways the rent can be paid, including the way agreed to between the park owner and the home owner.

*Clause 64* provides where site rent must be paid and how this may be varied.

*Clause 65* requires a rent receipt to be given where rent is paid by cash or cheque and requires that the park owner must provide the home owner upon request with a copy of the site rent payment records where payments are made by other approved methods. The clause also sets out what must be in the receipt or the site rent payment record. Penalties apply to contraventions of parts of this clause.

*Clause 66* requires park owners to retain site rent records of receipts or site rent records for a specified period. A penalty applies to contravention of this clause.

*Clause 67* makes it an offence to make an entry in the site rent record or receipt that is false or misleading in a material particular.

## **PART 11—VARYING SITE RENT**

### *Division 1—Introduction*

*Clause 68* states that rent may only be varied in ways stated in this part.

### *Division 2—Increase in the site rental provided for in site agreement*

*Clause 69* applies to site rent increases in accordance with the a agreement and provides that the park owner must give the home owner 28 days notice in advance of the amount of the increase, how the increase has been calculated, the date the increase is payable, and that the home owner

has the right to make an application to the tribunal if the increase is considered excessive.

*Clause 70* provides that a home owner may make an application to the tribunal if the home owner considers the site rent increase to be excessive. The tribunal may make an order reducing the amount, setting aside the increase, confirming the increase, or making any other order considered appropriate. In deciding the application, the tribunal may have regard to rents payable in comparable parks or, where there are no comparable parks, the range of market rents in the locality, the increase compared to the current rent, any increase in the Consumer Price Index, the amenity or standard of the park, the withdrawal or introduction of any new facilities or services, any increases in park operating costs, and whether the increase is fair and equitable and anything else the tribunal considers relevant. In certain circumstances, the tribunal may require the park owner to refund to the home owner any overpayment of site rent.

### ***Division 3—Other ways of increasing site rent***

*Clause 71* provides that where a park owner wishes to increase the site rent outside of the site agreement, the park owner must give the home owner a notice stating the amount and basis for the proposed increase, the date the proposed increase is payable, and that the home owner must advise within 28 days whether the home owner agrees to the proposal. If the proposal is rejected, the park owner has the right to make an application to the tribunal for an order about the proposed increase. The tribunal may make an order reducing the amount, setting aside the proposed increase, confirming the increase or any other order considered appropriate. In deciding the application, the tribunal may have regard to the issues mentioned in clause 70.

### ***Division 4—Reducing the rent***

*Clause 72* allows the home owner to make an application to the tribunal for an order that the site rent be reduced by an appropriate amount if the amenity or standard of the park has decreased substantially or where communal facilities or services have been withdrawn.

*Clause 73* applies where utility costs have not previously been separately metered but formed a component of the site rent. The clause applies where separate meters have been introduced or where the utility stops being available due to no fault of the home owner (a “change event”). The park owner must give the home owner a notice of how the utility cost has been worked out. The site rent must be reduced by the utility cost amount previously charged in the site rent. Overpayments of site rent relating to utility the cost must be refunded to the home owner from the change event day. Penalties apply for specified contraventions of this clause.

*Clause 74* applies where the site rent is not reduced by the amount previously allowed for utility charges or if the home owner disputes the amount of the reduction. An application may be made to the tribunal for an order reducing the site rent. The tribunal may have regard to relevant information on utility costs in the area where the park is located, the terms of the site agreement, the number of persons occupying the manufactured home, or anything else the tribunal considers appropriate.

## **PART 12—PARK MANAGERS**

*Clause 75* states that the park owner may appoint a park manager with responsibility for the day to day operations of the park. Home owners should be notified of the appointment. The appointment of the park manager may be revoked at any time by the park owner and home owners should be notified of the revocation.

*Clause 76* provides that the home owner may give the park manager any documents required under the Bill.

## **PART 13—PARK RULES**

### ***Division 1—Making of park rules***

*Clause 77* provides that the park owner may make rules about the use, enjoyment, control, and management of the park. These rules include the use of communal facilities, the making and abatement of noise, the carrying on of sporting and other recreational activities, speed limits and parking of motor vehicles within the park, disposing of refuse and the keeping of pets. These rules are the same as the rules that can be made by the owner of a park under the *Residential Tenancies Act 1994*. In making park rules the park owner must not contravene any State or local laws such as those, for example, relating to speed limits, parking, disposal of refuse or the keeping of pets.

### ***Division 2—Park rule changes***

*Clause 78* provides that if the park owner proposes to change a park rule, the park owner must fix a day upon which any objections to the proposed change should be made. The park owner must also give notice of the proposal to home owners including new home owners.

*Clause 79* provides that a home owner who believes that the proposed change is unreasonable may lodge an objection by the closing day stating why the proposal is considered to be unreasonable.

*Clause 80* provides for the establishment of a park liaison committee if objections to the proposed change are made.

*Clause 81* provides that the park liaison committee must consider all objections about the proposed change and declare the proposal reasonable or unreasonable. If the park liaison committee decides the proposal is unreasonable, it must change the proposal to make it reasonable.

*Clause 82* states that where objections to the proposed change cannot be resolved or where an objector is dissatisfied with the decision of the park liaison committee, an application may be made to the tribunal for an order to declare the proposal reasonable or unreasonable. A single application may be made by all objectors if it is made by a specified number of home owners.

*Clause 83* provides that the tribunal may declare the proposed change reasonable or unreasonable or may change the proposal in a way the tribunal considers appropriate to make it reasonable. The tribunal may have regard to the park's location, layout, amenities, facilities, the number of home owner's involved and their needs and the level of site rent paid.

*Clause 84* sets out the way of determining when a park rule change takes effect.

*Clause 85* states when a park rule has no effect.

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

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

*Clause 86* provide that park owners must take reasonable steps to ensure quiet enjoyment of home owners of their site and of the common areas and 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. A penalty applies to contravention of this clause.

*Clause 87* provides that the park owner must have a system in place to ensure ready access to the park in an emergency by emergency vehicles. A penalty applies to contravention of this clause.

*Clause 88* states the park owner must not interfere in the right of the home owner to participate in an organisation established to represent the interests of home owners. A penalty applies to contravention of this clause.

*Clause 89* provides for the maintenance of a notice board and the rights of home owners to read and place notices on the notice board. A penalty applies to contravention of this clause.

*Clause 90* requires park owners to maintain trees on park common areas so they do not pose a danger to any person or property and for applications to the tribunal by the home owner if the park owner does not comply.

*Clause 91* provides that park owners must establish and maintain mail facilities at the park and home owners must have reasonable access to those facilities.

*Clause 92* states that if the utility under the site agreement is not separately measured or metered and the park owner wishes to separately measure or meter the use of the utility, the park owner must pay the cost of installing any utility measuring device. A penalty applies to contravention of this clause.

*Clause 93* provides that the park owner must pay all relocation expenses if the park owner requires and the site agreement permits repositioning of a manufactured home in the park.

*Clause 94* provides for access to the site by the park owner where: the home owner consents; in an emergency; to read any utility meter; to carry out an inspection or maintenance; to show the home to a prospective buyer; if the home has been abandoned; or under an order of the tribunal permitting entry. A penalty applies to contravention of this clause. Entry to the site is limited in some cases to certain specified hours.

*Clause 95* creates the offence of fraudulent or misleading conduct in the operation of the park by the park owner. A penalty applies to contravention of this clause.

*Clause 96* creates the offence of harassment or unconscionable conduct in the operation of the park by park owners. Examples are provided of harassment and unconscionable conduct to assist in the interpretation of the clause. A penalty applies to contravention of this clause.

### ***Division 2—Home owners' obligation***

*Clause 97* provides that where a site agreement permits a home owner may rent the site to a person on a temporary basis. If a letting takes place, the home owner must give the park owner notice of the letting and provide certain information about the tenant and the letting. The intention of the Bill is to provide security of tenure for home owners. The provision allows the home owner, if it is permitted in the site agreement, to rent the home on a temporary basis where the home owner is absent for a period of time due to illness or undertaking extended travel. It is not intended that this will be a permanent arrangement and despite the temporary absence, the home will remain the permanent place of residence for the home owner.

*Clause 98* provides that a home owner must not make any alterations to the home visible from the outside unless the park owner gives written consent. The park owner must not unreasonably refuse to give consent. The tribunal may make an order if the tribunal considers that the refusal of the consent is unreasonable. However, the tribunal must not make an order if the proposed alteration or addition contravenes a law of the State.

*Clause 99* states that the home owner may be required to pay the park owner for the use of utilities at the site only if it is separately measured or metered.

## **PART 15—HOME OWNERS COMMITTEE**

*Clause 100* provides for the establishment of a committee by election amongst home owners. The clause also provides for some procedural matters for home owner committees.

*Clause 101* provides that the majority of home owners may adopt and amend a constitution governing the operations of the committee. The constitution adopted must not be inconsistent with this Bill and must provide for any matters prescribed under a regulation.

*Clause 102* provides that the committee's function is to deal with the park owner on behalf of home owners about the day to day running of the park and any complaints or proposals raised by home owners.

*Clause 103* provides that if the committee gives the park owner a notice detailing a complaint or proposal, the park owner must make a written response within 21 days of receiving the notice. There is a penalty for the contravention of this clause.

## **PART 16—INSPECTORS**

*Clause 104* states that the chief executive may appoint an officer of the department as an inspector for the purposes of this Bill.

*Clause 105* provides that an inspector's powers under the Bill may be limited by the instrument of appointment, a notice signed by the chief executive or by a regulation.

*Clause 106* requires the chief executive to give each inspector an identity card. The identity card must contain a recent photo of the inspector, a copy of the inspector's signature, identify the person as the inspector, and the expiry date of the card.

*Clause 107* requires an inspector to produce the inspector's identity card or have the identity card clearly displayed when exercising a power in relation to this Bill. The only exception is if it is not practicable to produce the card before exercising the power. In those circumstances, the card must be produced at the first reasonable opportunity.

*Clause 108* states that an inspector ceases to hold office if the term of office ends, the inspector ceases to hold office or the inspector resigns.

*Clause 109* states that the inspector may resign by signed notice.

*Clause 110* states that if a person ceases to be an inspector the person's identity card must be returned within 21 days. A penalty applies for non compliance.

## **PART 17—ENFORCEMENT**

### *Division 1—Entry of places*

*Clause 111* provides that an inspector may enter a place if:

- the occupier consents;
- it is a public place and entry is made when it is open to the public;
- the inspector has a warrant;
- it is an office or a place for administering or managing a residential park and it is open for carrying on the business or otherwise open for entry.

The clause provides that the inspector does not need consent or a warrant to enter land around the premises to contact the occupier, or to enter part of the place where the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier. The park owner is taken to be the occupier of the park other than for the home owner's manufactured home.

### ***Division 2—Procedure for entry***

*Clause 112* applies when an inspector intends to request consent to enter under clause 111(1)(a). In such a case, the inspector must tell the occupier, prior to asking for the consent, the purpose of the entry and that the occupier is not required to consent. The inspector may ask the occupier to sign an acknowledgment of the consent if given, and the acknowledgment must include certain prescribed information. The inspector must give a copy of the acknowledgment to the occupier. The clause further provides that in certain circumstances, the onus of proof will be on the person relying on the lawfulness of the entry to prove that the occupier consented.

*Clause 113* permits an inspector to apply to a Magistrate for a warrant for a place and sets out the application procedure. The Magistrate may require that additional information be provided.

*Clause 114* limits the situations where a Magistrate may issue a warrant. There must be reasonable grounds for suspecting there is a particular thing or activity that may provide evidence of an offence against the Bill or of a relevant contravention and the evidence will remain in place for the next seven days. The clause also provides that a warrant must state certain information including the:

- inspector's rights to enter the place and the inspector's powers on entry;
- offence for which the warrant is sought;
- evidence that may be seized;
- hours when the place may be entered; and
- date the warrant ends, which must be within 14 days after the warrant's issue.

*Clause 115* provides that an inspector may apply for a warrant by phone, fax, radio or other form of communication because of urgency or other

special circumstances and outlines the procedure involved in obtaining and using a special warrant.

*Clause 116* sets out the procedure for an inspector named in a warrant to comply with prior to entry. Before entry, the inspector must or must reasonably attempt to:

- identify himself or herself with an identity card or other document;
- give the person a copy of the warrant or warrant form;
- tell the person the warrant authorises the inspector to enter; and
- give the person an opportunity to allow the inspector to enter immediately without force.

However, the inspector need not comply with this procedure if the inspector has reasonable grounds to believe compliance would frustrate the effective execution of the warrant.

### ***Division 3—General Powers of inspectors***

*Clause 117* provides on entering a place the inspector may do certain specified things for monitoring or enforcing compliance with the Bill. However, if an inspector enters a place simply to obtain the occupier's consent to enter, this clause only applies if that consent is given or entry is otherwise authorised. For monitoring and enforcement the inspector may:

- search any part of the place;
- inspect, measure, test, photograph or film any part of the place or anything at the place;
- copy a document at the place;
- take into or onto the place any persons, equipment and materials the inspector considers necessary to exercise a power under the Bill;
- require a person at the place to give the inspector reasonable help to exercise the inspector's powers;
- require a person to answer questions by the inspector to help the inspector to ascertain if the Bill is being or has been complied with;

- when making a requirement under the Bill to warn the person that it is an offence to fail to comply with the requirement;
- the person must comply with the requirement unless the person has a reasonable excuse.

When making the requirement of a person to provide reasonable help or to answer questions, the inspector must warn the person that it is an offence to fail to comply with the requirement unless the person has a reasonable excuse. A penalty applies for non compliance.

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

*Clause 118* provides that evidence may be seized by an inspector when entering a place under the Bill where the inspector reasonably believes the thing is evidence of an offence and seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent. The inspector may seize evidence for which the warrant was issued. The inspector may seize anything else at the place the inspector reasonably believes the thing is evidence of an offence against the Bill.

*Clause 119* requires an inspector to provide a receipt for anything seized. The clause also sets out the procedure for giving a receipt, the information to be included, and circumstances where the procedure does not apply.

*Clause 120* requires an inspector to return a seized thing within 6 months or at the end of any proceedings started within 6 months or any appeal from that proceeding. The inspector must return the thing sooner if its retention as evidence is no longer necessary and its return is not likely to result in the repetition of an offence against the Bill.

*Clause 121* provides that until a seized thing is returned, the person who would normally be entitled to it may inspect it or make copies of it, unless this would be impracticable or unreasonable.

#### ***Division 4—Other investigative powers***

*Clause 122* gives inspectors power to require a person to make available for inspection a document. It is an offence to refuse to comply with such a requirement by an inspector unless doing so might tend to incriminate the

person. The inspector must return the document as soon as practicable after copying it.

### ***Division 5—Other enforcement matters***

*Clause 123* provides that if an inspector or a person acting under the direction of an inspector damages something when exercising or purporting to exercise a power under the Bill, the inspector must give notice of particulars of any damage caused to property promptly to the owner of the thing. Any damage believed to have been caused by a latent defect in the property or circumstances beyond the inspector's or other person's control, may be stated in the notice. If necessary, the notice may be left in a conspicuous position and in a reasonably secure way where the damage happened. Damage of a trivial nature is exempt from this provision.

*Clause 124* enables a person to 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. Such a claim may be made in a court with jurisdiction for recovery of the amount of compensation or during a proceeding for an offence under this Bill. A court may only order compensation if it is just to make the order in the circumstances of the particular case.

*Clause 125* makes it an offence to make false or misleading statements to an inspector. A penalty applies to contravention of this clause.

*Clause 126* makes it an offence to knowingly give documents to an inspector which contain false or misleading information, unless the person tells the inspector of this fact and if possible, gives the correct information. A penalty applies to contravention of this clause.

*Clause 127* makes it an offence to obstruct an inspector without reasonable excuse. There is a requirement for an inspector to warn a person that obstructing an inspector is an offence and that the inspector considers the person's conduct to be an obstruction.

*Clause 128* makes it an offence for a person to pretend to be an inspector.

## **PART 18—UNDERTAKINGS**

*Clause 129* provides that the chief executive may seek an undertaking if the chief executive believes a person has contravened or been involved in the contravention of the Bill. The chief executive may, by written notice, state the act or omission the chief executive believes is the contravention and ask the person to provide an undertaking not to continue or repeat the act or omission.

The chief executive can not commence an offence proceeding if such an undertaking has been entered into and the conduct has stopped. This is subject to the chief executive not having withdrawn acceptance of the undertaking.

*Clause 130* allows the chief executive to vary or withdraw undertakings in certain circumstances.

*Clause 131* provides for enforcement of undertakings. If the chief executive believes an undertaking has been contravened, the chief executive may apply to the District Court for an order under this clause. If satisfied a term of the undertaking has been contravened, the District Court may make an order:

- directing compliance with the term;
- directing payment to the State an amount not more than the financial benefit obtained due to the contravention;
- directing the payment of compensation to someone who has suffered loss or damage because of the contravention;
- directing the giving of a security bond to the State for a period;
- considered appropriate by the District Court.

The District Court may order forfeiture to the State of all or part of the security bond if the chief executive applies for such an order and the court is satisfied there was a contravention of the undertaking during the currency of the bond.

*Clause 132* requires the chief executive to keep a register of each undertaking accepted. This register is to be kept in the form and in the way decided by the chief executive and must contain a copy of the undertaking. A person may inspect the register and obtain a copy of an entry in the register on payment of any prescribed fee at the department's head office or at another place decided by the chief executive.

## **PART 19—LEGAL PROCEEDINGS**

### ***Division 1—Evidence***

*Clause 133* states that this division applies to proceedings under this Bill.

*Clause 134* states that it is not necessary to prove the appointment of the chief executive, the director, or an inspector or their authority to do anything under the Bill unless reasonable notice is given that the appointment or authority is to be challenged.

*Clause 135* provides a certificate purporting to be signed by the chief executive or director stating certain matters is evidence of those matters.

### ***Division 2—Proceedings***

*Clause 136* provides that a proceeding for an offence against the Bill must be taken in a summary way under the *Justices Act 1886*. A proceeding may be started within 1 year after the offence is committed or 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

*Clause 137* provides that in any proceedings for an offence under this Bill involving false or misleading information or documents, it is sufficient enough for a charge not to specify either false or misleading.

*Clause 138* states that if it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show that 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. If the act was done or omitted to be done by the representative within the representative's actual or apparent authority, it is taken to be 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.

*Clause 139* requires executive officers of a corporation to ensure the corporation complies with the Bill. If a corporation commits an offence against the Bill, each executive officer of the corporation commits the offence of failing to ensure the corporation complies with the provision. Evidence the corporation has been convicted of an offence is evidence that

each of the executive officers of the corporation committed the offence of failing to ensure the corporation complies with the provision. The liability of executive officers is subject to specified defences.

## **PART 20—GENERAL**

*Clause 140* provides that if there is a site agreement dispute, either party may apply to the tribunal for an order and the tribunal may make any order it considers appropriate to resolve the dispute.

*Clause 141* provides that if the Bill enables a home owner to make an application to the tribunal, a group of home owners may make a joint application under the provisions arising out of the same or similar facts or circumstances.

*Clause 142* provides that the chief executive may delegate the chief executive's powers under the Bill to an appropriately qualified person.

*Clause 143* protects the chief executive, the director or an inspector from liability for an act done or an omission made honestly and without negligence under this Bill. If this clause prevents civil liability attaching to the abovementioned officials, it instead attaches to the State.

*Clause 144* gives the chief executive power to approve forms for use under the Bill.

*Clause 145* provides that a review of the Bill must be undertaken before the third anniversary of the commencement of the Bill and after the review is finished, the report must be tabled in the Legislative Assembly.

*Clause 146* provides that regulations may be made under the Bill. Any contravention of a regulation may only provide a maximum penalty of not more than 20 penalty units.

**PART 21—REPEAL AND TRANSITIONAL PROVISIONS*****Division 1—Repeal***

*Clause 147* repeals the *Mobile Homes Act 1989*.

***Division 2—Transitional provisions***

*Clause 148* defines terms for this division. A “relevant agreement” means an agreement under the repealed *Mobile Homes Act 1989* immediately in force before the commencement of this clause.

*Clause 149* states that a relevant agreement is taken to be a site agreement.

*Clause 150* requires the park owner to retain certain records until 1 year after a site agreement has been terminated. A penalty applies to contravention of this clause.

*Clause 151* states that agreements that are not in writing must be placed in writing and signed by both parties. Where the terms of an agreement are in dispute, the tribunal may make an order that the parties enter into an agreement on grounds determined by the tribunal.

*Clause 152* states that in an Act or document, a reference to the repealed *Mobile Homes Act 1989* may, if the context permits, be taken as a reference to this Bill.

*Clause 153* provides that applications made to the Small Claims Tribunal before the commencement of the Bill may be decided as if this Bill has not commenced.

*Clause 154* provides that any claims for compensation made before the commencement of the Bill against the State for loss or expense because of the exercise or purported exercise of power by an inspector made under the *Mobile Homes Act 1989* may continue as if the Bill had not commenced.

**PART 22—AMENDMENT OF ACTS**

*Clause 155* provides that schedule 1 amends the Acts mentioned in the schedule.

**SCHEDULE 1****ACTS AMENDED**

*Anti-Discrimination Act 1991*

*Commercial and Consumer Tribunal Act 2003*

*Duties Act 2001*

*Integrated Planning Act 1997*

*Local Government Act 1993*

*Property Agents and Motor Dealers Act 2000*

*Residential Tenancies Act 1994*

*Retirement Villages Act 1999*

*Small Claims Tribunal Act 1973*

*Succession Act 1981*

*Workplace Health and Safety Act 1995*

All amendments except for *Commercial and Consumer Tribunal Act 2003*, *Property Agents and Motor Dealers Act 2000* and the *Small Claims Tribunal Act 1973* reflect the change of use of the term, “mobile”, to the term “manufactured” when referring to the home sited in a residential park and replacing the repealed *Mobile Homes Act 1989* with the name of the Bill.

Schedule 2 of the *Commercial and Consumer Tribunal Act 2003* is amended to make the Bill an “empowering Act”. A new section 32 is also inserted to replace the existing provision to more clearly ensure that actions

by a group of individuals may be made to the tribunal arising out of the same or similar facts or circumstances.

The *Property Agents and Motor Dealers Act 2000* is amended to clarify that a park owner does not need a real estate agent's licence to sell manufactured homes on behalf of residents.

The *Small Claims Tribunal Act 1973* is amended to delete reference to persons under the repealed Act being "claimants".

## **SCHEDULE 2**

### **DICTIONARY**

*Schedule 2* defines the terms used in the Bill. Key definitions include:

"caravan" – see the *Residential Tenancies Act 1994*, section 3A.

"common areas" – of a residential park, means the parts of the park, other than a home owner's site in the park, that the home owner may use under a site agreement.

"director" – means the director under the *Commercial and Consumer Tribunal Act 2003*.

"tribunal" – means the Commercial and Consumer Tribunal established under the *Commercial and Consumer Tribunal Act 2003*.