Manufactured Homes (Residential Parks) Amendment Bill 2010

Explanatory Notes

General Outline

Short title

The short title of the Bill is the Manufactured Homes (Residential Parks) Amendment Bill 2010.

Policy Objective

The policy objective of the Bill is to strengthen fair trading requirements under the *Manufactured Homes (Residential Parks) Act 2003* (the Act) while maintaining a clear regulatory framework that encourages the continued growth and viability of the residential parks industry in Queensland.

Reasons for the Bill

The residential parks industry provides housing and accommodation for a significant number of people. While residential parks (and their residents) are increasingly diverse, a notable proportion of people who live in manufactured homes are vulnerable members of the community due to their health, age or income.

The Act aims to create a regulatory environment that effectively and fairly protects the interests of manufactured home owners, while also supporting the availability of affordable housing options through existing and new residential parks.

As required by *section 145(1)* of the Act, a review has been conducted to ensure the Act is meeting community expectations and that its provisions remain appropriate. The review findings and recommendations were tabled in the Legislative Assembly on 15 May 2008 in the *Review of the Manufactured Homes (Residential Parks) Act 2003 Outcome Report.*

The Bill contains amendments identified and developed in the review process that will improve the capacity of the Act to achieve its purpose.

Achievement of the Objectives

The Bill achieves the policy objective by making amendments to the Act to address issues (summarised below) identified by manufactured home owners, residential park owners and consumer and industry advocates during the review process.

Objects of the Act

The main object of the Act is to regulate, and promote fair trading practices in the operation of residential parks. The Bill improves the operation of the Act by providing increased clarity about the Act's main purpose. Specifically, the Bill amends the Act to explicitly state the primary reasons that the Act, as articulated by the main object, is necessary. Those reasons are:

(i) to protect home owners from unfair business practices; and

(ii) to enable home owners, and prospective home owners, to make informed choices by being fully aware of their rights and responsibilities in their relationship with park owners.

Consistent with the policy objective, the other important objects of the Act continue to be:

(i) encouraging the continued growth and viability of the residential parks industry; and

(ii) providing a clear regulatory framework to ensure certainty for the residential park industry in planning for future expansion.

Coverage of the Act with respect to 'converted caravans'

The Act defines a manufactured home as 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. Caravans, as defined by the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act), and tents are specifically excluded from the statutory definition of a manufactured home.

There is some uncertainty on the inclusion of converted caravans under the Act, which was highlighted in 2006 following a Court of Appeal decision (*Monte Carlo Caravan Park P/L v Curyer* [2006] QCA 363) which upheld a determination of the Commercial and Consumer Tribunal that a particular converted caravan was a manufactured home under the Act as it could no longer be defined as a caravan under the *Residential Tenancies Act 1994* (now the RTRA Act). However, in *Tamahori v Roofley Pty Ltd* [2009] QCCTMH 9 (15 May 2009), a converted caravan owner sought a site agreement for their converted caravan, however was unsuccessful as it was considered that the tribunal was unable to rule on this case for want of jurisdiction because the converted caravan was not considered to be a manufactured home for the purposes of the Act.

The review highlighted conflicting views on whether the definition of 'manufactured home' should be sufficiently broad to include caravans that have been subject to significant structural and other modifications such that the structure ceases to meet the definition of 'caravan' under the RTRA Act.

Some converted caravan owners prefer to have their occupation of a site in a residential park regulated by the Act (rather than the RTRA Act), particularly due to the Act's compensation provisions which apply if the park owner seeks to terminate the home owner's right to reside in the park on the basis that the park owner wishes to use the site for another purpose.

However, allowing converted caravan owners to secure a site agreement under the Act (without the agreement of the park owner) may have unfair outcomes for park owners. For example, a park owner may allow a person to position their caravan within the park on the basis that the tenancy will be regulated by the RTRA Act. However, over time, the caravan owner may make substantial alterations to their caravan potentially leading to a claim that their caravan should be considered to be a manufactured home under the Act, notwithstanding that this was not the original intention of the parties.

In accordance with the policy objectives, the Bill amends the Act to provide more certainty about when the Act applies (or does not apply) to caravans, which have been subject to significant structural or other modifications, positioned in residential parks. The amendments will enhance the clarity of the regulatory framework to provide more certainty for the residential park industry in planning for the future.

Specifically, the amendments clarify that the definition of manufactured home under the Act does not include a converted caravan (as defined in the Bill). However, the Bill also provides flexibility by allowing converted caravan owners and park owners to agree to enter into a site agreement under the Act, if that is their preference.

These amendments will increase certainty for converted caravan owners and park owners regarding the coverage of the Act, including by avoiding the situation where parties find themselves bound by the Act, notwithstanding that this type of relationship does not reflect the original intention or nature of the tenancy and has not been subsequently considered and agreed upon by the parties.

The Bill contains transitional provisions to ensure people currently occupying converted caravans are treated reasonably and fairly.

Existing agreements between converted caravan owners and park owners made under the Act are not affected by the amendment to the definition of a manufactured home contained in the Bill. Under the transitional provisions, these types of agreements will continue to be considered site agreements under the Act and will continue according to their terms.

Transitional provisions also address the issue of undecided applications before a court or the Queensland Civil and Administrative Tribunal (the tribunal) concerning the application of the Act to converted caravans. If undetermined prior to commencement, a court or tribunal must decide these types of disputes as if the amendments had not commenced.

The consultation process revealed that a significant number of long-term residents of converted caravans in residential parks are not aware of their existing right to apply to the tribunal to consider whether they are entitled to a site agreement under the Act on the basis that their home meets the current definition of a manufactured home. Consultation suggested a significant number of these people have lived on their site for many years and are at significant risk of dislocation and financial loss if their right to reside in the park is able to be terminated under the RTRA Act which provides for a comparatively rapid termination of a resident's right to reside in a park.

In recognition of the vulnerability of this sector of the community, the Bill provides converted caravan owners who are occupying a site in a residential park prior to commencement of the amendments, a period of 3 years to apply to the tribunal to determine whether the person is entitled to a site agreement on the basis that the person's home meets the definition of

manufactured home as it applies immediately prior to commencement of the amendments.

However, the transitional provisions also provide that the preservation of the right of converted caravan owners to seek an order within 3 years is limited to people who own a converted caravan positioned in a residential park and made the structural modification to their caravan prior to the commencement of the relevant sections. The transitional arrangement does not apply to people who purchase a converted caravan in a residential park after commencement of the amendments or to people who make modifications to an existing caravan after commencement of the amendments.

Drafting and presentation of site agreements

The Bill contains amendments to improve the presentation of site agreements, including a new requirement for site agreements to be clearly expressed in plain language. Consistent with the policy objective, the amendments will improve disclosure, transparency and accountability regarding the preparation and presentation of site agreements. The amendments will reduce disputes and disagreements in residential parks by ensuring manufactured home owners (and park owners) are better able to understand their rights and obligations prior to entering into a site agreement, and during the life of the site agreement.

The Bill contains amendments to provide the tribunal with authority to consider applications from home owners regarding whether special terms in a site agreement are clearly expressed in plain language. Under the amendments, the tribunal will have wide discretion in considering whether special terms are clearly expressed in plain language. For example, the tribunal could consider whether the special terms in question contain:

(i) excessively long sentences, clauses or paragraphs;

(ii) unnecessary use of technical terms, jargon or language other than plain English;

(iii) extensive cross-referencing;

(iv) failure to define key terms;

(v) excessive definition of terms, particularly in relation to commonly used words;

(vi) important terms ‘buried’ in fine print or schedules; or

(vii) terms that place the home owner at an unfair disadvantage because he or she is not clear about their meaning, even if the meaning could be determined by a legal practitioner.

If satisfied that a site agreement contains special terms that are not clearly expressed in plain language, the Bill enables the tribunal to make an order varying the terms in a way the tribunal considers appropriate. The tribunal may also prohibit the park owner from using the same or a similar term in another site agreement.

Special terms in site agreements

The Act allows special terms negotiated between park owners and home owners to be included in a site agreement. The Act also provides a process for making park rules for a residential park (which are taken to be included as a term of a site agreement pursuant to section 19 of the Act).

While there is a need for park owners and home owners to have the flexibility to include special terms in site agreements, and apply park rules, that suit the individual circumstances of the parties and of the residential park, some special terms and park rules developed by park owners are unduly prejudicial to home owners and unnecessary to reasonably protect the park owner's legitimate interests. These types of special terms and park rules are inconsistent with, and undermine, the objects of the Act.

Consistent with the policy objective to strengthen fair trading requirements under the Act, the Bill contains amendments to establish a statutory head of power to prohibit particular types of special terms and park rules by regulation (this approach is similar to that adopted in New South Wales under the *Residential Parks Act 1998*).

The prohibition of particular special terms and park rules will have retrospective operation by applying to both new and existing site agreements. Retrospective operation of the amendments is necessary due to the long-term, inter-generational nature of site agreements and the potential for exploitative and undesirable special terms and park rules to continue as part of existing site agreements for many years into the future, affecting not only current home owners, but also people who purchase homes and are assigned a home owner's interest under a site agreement.

The specific special terms to be prohibited by regulation will be subject to consultation with stakeholders and developed in accordance with the *Statutory Instruments Act 1992*.

Fixed-term site agreements

The Act is intended to provide manufactured home owners with a high level of certainty in their ability to reside in a residential park pursuant to a site agreement. Under the Act, a site agreement may only be terminated in accordance with the Act (which allows termination by notice of the home owner, by agreement between the home owner and park owner, or by order of the tribunal upon application by the park owner on particular grounds).

A number of park owners have entered into site agreements that purport to have a fixed termination date. Some park owners have also requested prospective home owners to enter into a mutual termination agreement at the same time as (or prior to) entering into the original site agreement. Effectively, this means that the site agreement expires at a fixed point, typically in 7 to 10 years time. The Act's compensation provisions, which are intended to protect the interests of home owners, do not apply if a site agreement is terminated by mutual agreement of the home owner and park owner.

The Bill contains amendments to explicitly prohibit the establishment of fixed-term site agreements including through the use of mutual termination agreements entered into at the same time (or prior) to the parties entering into the site agreement. The amendments are also intended to operate retrospectively by voiding these types of termination agreements (which are referred to in the Bill as 'prohibited agreements'). Retrospective operation of the amendments is necessary as the Act was not intended to facilitate fixed-term site agreements and a number of home owners may be seriously disadvantaged if the amendments do not apply to 'prohibited agreements' entered into before commencement.

Site rent variations

The Act does not prescribe or regulate a specific formula for calculating the site rent payable by manufactured home owners. The method for calculating site rent is agreed to between a residential park owner and a manufactured home owner at the time of entering into a site agreement. However, the Act does provide the following methods in which site rent may be increased or reduced.

First, the Act prescribes the method park owners must follow if they wish to increase the site rent in accordance with the express provisions of the site agreement. This includes an ability for the home owner to make an application to the tribunal if they consider the rent increase to be excessive.

Second, the Act allows park owners to apply to the tribunal if the park owner wishes to seek an increase in rent outside the express terms of the agreement and the proposed increase is not agreed to by the affected home owner. The ability for park owners to seek an increase in rent outside the terms of a site agreement reflects the long-term nature of site agreements. The Act allows the tribunal to consider a wide range of factors in deciding whether the proposed increase is fair and equitable in the circumstances. In March 2008, the tribunal decided that a site rent increase based on 'market review' was valid, including for those home owners whose site agreements provided for a CPI increase only (*Palmpoint Pty Ltd T/A Bribie Pines Island Village v The Residents Of Bribie Pines Island Village, Astbury, M. & Hose, R.T. & P.A.* [2008] QCCTMH 3).

Finally, the Act provides manufactured home owners with the ability to apply to the tribunal for an order reducing the site rent on the basis that the amenity or standard of communal areas and facilities have decreased substantially or a communal facility or service has been withdrawn since entering into the site agreement.

Consistent with the policy objective, the Bill contains amendments to promote improved fair trading practices with respect to variations in site rent.

First, the Bill contains a new, maximum penalty of 100 penalty units for park owners who fail to advise home owners of their right to apply to the tribunal if the home owner considers that a particular increase in rent, provided for under the site agreement is excessive.

Second, the Bill provides home owners with the ability to apply to the tribunal for a reduction in rent if a service or facility promised in pre-contractual advertising and other material is not provided.

Third, the Bill contains amendments to increase the confidence home owners have in relying on the terms of their site agreement by substantially limiting the grounds on which a park owner may apply to the tribunal for an increase in site rent outside the express terms of the site agreement. Specifically, park owners will only be able to seek a rent increase outside the terms of site agreements where the increase is necessary to cover:

(i) significant increased operational costs in relation to the park, including significant increases in rates, taxes or utility costs;

(ii) unforseen significant repair expenses in relation to the park; or

(iii) significant facility upgrades in relation to the park.

A ‘market review of site rent’ (as defined in the Bill) will be excluded from the circumstances that justify an increase in rent outside the terms of a site agreement.

The proposed restrictions for seeking site rent increases outside the terms of a site agreement will apply to all site agreements (agreements entered into both before and after commencement of the amendments). To balance the impact of the amendments, it is proposed to allow park owners to include a prescribed market review clause upon the assignment of a site agreement. The amendments also protect prospective buyers by requiring park owners to provide buyers with notice of their intention to include a market review clause prior to the assignment of the site agreement to the buyer.

The amendments meet the policy objectives by strengthening fair trading requirements under the Act by providing more certainty that home owners can rely on the express terms of their site agreement, balanced with sufficient flexibility for park owners to maintain the viability of the park through securing increases in rent where those increases are necessary to meet particular, specified costs.

Termination of site agreements

The Act is intended to provide manufactured home owners with a high degree of security and certainty with respect to their ability to reside in a residential park pursuant to their site agreement. The Act aims to provide certainty in a home owner’s right to reside by:

(i) requiring that the successors in title to the park obtain the benefits, and are subject to the obligations, of the park owner under existing site agreements;

(ii) ensuring that a home owner’s right to reside in a park under a site agreement continues until the site agreement is terminated;

(iii) providing that a site agreement can only be terminated in specific circumstances;

(iv) providing that if a home owner does not agree to a proposed termination, the site agreement may only be terminated by authority of the tribunal; and

(v) providing that if the tribunal authorises the termination of a site agreement on the basis that the park owner wishes to use the land for another lawful purpose, the tribunal must also make an order requiring

the park owner to pay the home owner compensation for the costs of relocating the manufactured home and the home owner's personal effects to another location.

Some manufactured home owners continue to hold significant concerns about their potential dislocation if the park owner seeks termination of their site agreement. Three of the most significant issues raised by home owners are:

(i) the potential difficulty in locating an alternative site upon which to relocate their home if the existing site agreement is terminated;

(ii) the fear that individual home owners may have their agreement terminated to make way for changes to the park (impacting on their specific site) and may not be offered another site in the same park even if it is available; and

(iii) the adequacy of compensation payable to a dislocated home owner under the Act.

Due to the limited number of alternative sites available for manufactured homes, a home owner may be substantially burdened if forced to quickly move to a location which is no longer close to their family, social, medical, employment and community networks.

Although the termination and compensation provisions of the Act make the termination of most site agreements and the closure of a residential park costly and unlikely, the impacts on manufactured home owners in the event of a park closure are substantial as the consequences could cause serious dislocation of residents.

The Bill contains amendments to expand the ability of the tribunal to make just and equitable orders when approving the termination of a site agreement because a park owner wishes to use their land for another purpose. Specifically, under the Bill the tribunal may:

(i) order the park owner to make another site within the park available to the home owner (unless the tribunal is satisfied there is no suitable site available); and

(ii) order that the termination is approved but does not take effect until a later time specified by the tribunal (up to 1 year from the time of the order). The amendment allows the tribunal to consider a range of social and economic impacts (for both home owners and park owners) of allowing this extended period prior to the termination taking effect.

The amendment will not impact on the ability of the home owner to make an application to the tribunal to have the termination day extended due to unforseen circumstances.

Home owners committees

The Act allows home owners in a residential park to establish, by election among themselves, a home owners' committee. The function of the home owners' committee is to deal with the park owner on behalf of home owners regarding the day to day running of the park and any complaints or proposals raised by the home owners. The Act also imposes a formal obligation on park owners to respond to complaints raised by the home owners' committee.

In a number of residential parks, more than one home owners' committee has been purportedly established for the park, including as a result of disputes between home owners themselves. This is not considered desirable as it results in inconsistent representations being made to park owners on behalf of home owners and causes uncertainty regarding the particular committee the park owner is obliged to deal with under the Act. To address this matter, the Bill proposes an amendment to clarify that there is to be one home owner's committee established for the purposes of the Act.

The Bill does not prevent home owners from communicating with each other (or the park owner) outside the home owner committee structure or prevent residential park residents setting up alternative social, hobby and other types of groups. However, the amendment will increase certainty to ensure that the committee, properly chosen by home owners to formally liaise with the park owner on their behalf, is able to discharge its duties and exercise its rights under the Act without confusion caused by another, unelected group purporting to be the home owners' committee.

Record of residential parks

There is currently no public register or record of residential parks providing sites for manufactured homes. The review process highlighted that more comprehensive information about the location and number of sites available for manufactured homes would contribute to improved policy development and provide better mechanisms for communicating with park owners and manufactured home owners.

The Bill empowers the chief executive to establish a record of residential parks. Residential park owners will be required to provide specified information to the chief executive, including the name of the park, the location and mailing address of the park, the number of sites available for manufactured homes and any other information prescribed by regulation.

The Bill also contains an amendment which will compel park owners to display prescribed information on the park's notice board (which is currently required to be maintained under the Act) for a prescribed period of time. This amendment complements the amendment allowing the chief executive to maintain a record of residential parks by enabling important information to be effectively distributed to manufactured home owners across the State.

Consistent with the policy objective to strengthen fair trading practices in the operation of residential parks, providing ongoing information to home owners and park owners about the Act will increase both parties understanding about their rights and obligations and may lead to a reduction in the number of disputes between the park owners and home owners.

Miscellaneous and technical amendments

Consistent with the policy objective, the Bill contains a number of miscellaneous and technical amendments to improve and clarify the operation of the Act. Specifically, the Bill:

(i) omits a provision of the Act dealing with notes in the text of the Act as this matter is addressed by the *Acts Interpretation Act 1954*;

(ii) ensures park owners state a business hours contact telephone number when providing home owners with contact details as required by the Act;

(iii) clarifies that the statutory definition of 'site agreement dispute' includes a dispute about whether or not a home owner (or a park owner) is entitled to a site agreement;

(iv) clarifies the grounds for termination of a site agreement to ensure that a site agreement cannot be terminated on the basis that the home owner is not using the home as their principal place of residence, including in circumstances where the home owner is absent from the home due to illness (for example, the home owner has been

hospitalised for an extended period) or where the home owner is deceased and an executor is dealing with the home owner's estate.

(v) requires park owners to provide written reasons for refusing to consent to a proposed assignment of a home owner's interest in a site agreement accompanied by information about the home owner's right to seek a review of the decision by the tribunal;

(vi) ensures that provisions of the Act prohibiting park owners from engaging in fraudulent, misleading, harassing or unconscionable conduct in the operation of the park apply when a park owner acts as a selling agent for a home owner;

(vii) provides examples of fraudulent and misleading conduct;

(viii) clarifies that park owners must not charge home owners more than the actual cost of providing a utility service (for example, water or electricity) to the home owner where the home owner's use of the utility service is separately measured and metered; and

(ix) implements a 28 day time limit for home owners to apply to the tribunal for an order reducing site rent if the home owner disputes the adequacy of a rent reduction after the home owner's payment for a utility service ceases being a component of site rent and becomes a separate charge calculated on the separate measurement or metering of the home owner's use of the utility service;

Alternatives to the Bill

A number of possible alternative approaches to achieving the policy objective have been identified and analysed through a Public Benefit Test process conducted in accordance with National Competition Policy principles.

The Public Benefit Test report can be viewed on the Department of Employment, Economic Development and Innovation website at www.deedi.qld.gov.au.

While information, education and advocacy are (and continue to be) important policy instruments in achieving the policy objective, on their own, they are not the most effective way of addressing a number of the issues raised by manufactured home owners, residential park owners, and consumer and industry advocates during the review process.

The proposed legislative responses, accompanied by relevant communication and education strategies, are the most effective way of strengthening fair trading requirements under the Act while maintaining a clear regulatory framework that encourages the continued growth and viability of the residential parks industry in Queensland.

Estimated Cost for Government Implementation

The administrative costs to Government in implementing the Bill are not expected to be significant.

The Department of Employment, Economic Development and Innovation will incur costs in delivering information and education services to assist manufactured home owners and the residential parks industry understand their rights and obligations following the changes to the Act. In addition, the Department will incur staff training costs, as well as costs in updating publications, website resources and complaint management systems.

The Bill contains amendments that will expand the types of disputes the tribunal can resolve as part of its jurisdiction under the Act. In addition, transitional arrangements regarding converted caravans may also lead to a temporary increase in applications to the tribunal. However, it is expected that any increase in applications to the tribunal will be offset or mitigated by a reduction in other types of applications, particularly applications regarding site rent increases outside the terms of site agreements, which will be substantially limited by the amendments.

Consistency with Fundamental Legislative Principles

<u>Does the legislation have sufficient regard to the rights and liberties of individuals?</u>

Section 4(2)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the rights and liberties of individuals.

Converted caravans – Clauses 6, 8 and 33 (new sections 169)

The term ‘manufactured home’ is defined in section 10 of the Act as a structure, other than a caravan or tent, that has the character of a dwelling house, is designed to be able to be moved from one position to another and is not permanently attached to land. The occupation of caravans in residential parks is regulated by the RTRA Act.

Clause 6 of the Bill amends the definition of 'manufactured home' under the Act to specifically exclude a 'converted caravan'. The term 'converted caravan' is defined in *clause 7* to mean a structure that, as originally designed, was a caravan and is no longer a caravan because of a structural addition or alteration.

Under the Act, the tribunal has jurisdiction to resolve 'site agreement disputes'. *Clause 8* of the Bill amends the definition of a 'site agreement dispute' to exclude disputes between people who own a converted caravan and park owners about whether the parties are obliged to enter into a site agreement under the Act in relation to the converted caravan.

The purpose of the amendments is to provide certainty about the application of the Act to caravans that have been subject to structural alterations and to increase transparency and clarity regarding the agreements entered into by converted caravan owners and park owners regarding the positioning of caravans in residential parks.

The amendment may have an adverse impact on the existing rights and liberties of people who own converted caravans that are positioned in a residential park. Specifically, the amendment may result in a converted caravan owner being prevented from securing a site agreement under the Act, notwithstanding that their converted caravan meets the definition of a manufactured home as interpreted by the Court of Appeal in *Monte Carlo Caravan Park P/L v Curyer [2006] QCA 363* as it applied prior to the amendments being made.

The amendments are justified on the basis that they will increase certainty about the application of the Act. In particular, the amendment will address situations where park owners may be ordered to enter into a site agreement under the Act with a converted caravan owner, notwithstanding that the park owner originally intended and agreed to allow the person to position a caravan in the park and did not authorise or consent to the alterations to the caravan which have potentially brought the structure within the statutory definition of a 'manufactured home'. Further, the amendments will respond to a reluctance of some caravan park owners to allow people to reside in caravans in the park on an extended or long-term basis due to concerns that the park owner may become compelled to enter into a site agreement under the Act with the caravan owner.

If a converted caravan is declared to be a manufactured home, the home owner is provided with greater security of tenure than would be provided to

a tenant under the RTRA Act. This includes compensation for the costs of moving the home in certain circumstances.

The possible breach of the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals (in this case, converted caravan owners) is mitigated in three ways:

(i) under the amendments, a converted caravan will be taken to be a 'manufactured home' if the converted caravan owner and residential park owner choose to enter into a site agreement under the Act in relation to the converted caravan (*clause 6(3*) and (*4*));

(ii) any undecided applications to the tribunal regarding a converted caravan owner's entitlement to a site agreement under the Act will be decided as if the amendment to the definition of 'manufactured home' had not been made (*clause 33*, new section 169); and

(iii) people who own a converted caravan positioned in a residential park before commencement of the amendments will have 3 years after commencement to apply to the tribunal for an order that the person is entitled to a site agreement under the Act on the basis that the person's converted caravan met the definition of 'manufactured home' as it applied immediately prior to commencement of the amendments (*clause 33*, new section 169).

In addition, a communication strategy will be developed to inform converted caravan owners of their changing rights. Amendments requiring residential park owners to provide the chief executive with information, including the contact information for the park, will be used assist in communicating with home owners.

Restrictions on site rent variations outside the terms of a site agreement - Clauses 20 and 33 (insofar as it inserts new section 166)

Section 71(7) of the Act enables park owners to apply to the tribunal for an order increasing the site rent payable by a home owner outside of the express terms of the relevant site agreement. The tribunal may consider a wide range of factors in deciding whether to order an increase in the rent payable by a home owner (sections 71(8) and 70(3) of the Act), including an increase based on 'market review' of rents (that is, a comparison of rent paid by the home owner with rents paid in other residential parks or for other types of residential accommodation in the locality).

The Act permits park owners to seek increases in rent outside the terms of the site agreement in recognition of the potentially long-term nature of site agreements and the fact that site agreements are assignable from one home owner to another.

Some home owners have complained that they have entered into site agreements that include, under the heading ‘way site rent can be increased’, the words ‘CPI only’ or ‘CPI’ and the park owner has then, successfully, made an application to the tribunal for an order requiring the home owner to pay a market review based increase in site rent. Such residents have strongly objected to increases based on market review outside the terms of the site agreement as home owners were unaware that they needed to take market based increases into account when deciding to enter into a residential park.

Clause 20 of the Bill amends section 71 of the Act to substantially restrict the basis that the tribunal may order an increase in site rent payable by a home owner upon application by a park owner. The clause may adversely impact on the current right of park owners to secure increases in rent outside the express terms of site agreements they have with individual home owners.

A restriction on the ability of park owners to seek increases outside the express terms of a site agreement is justified on the basis that home owners (and prospective home owners) should be able to rely on the express terms of their site agreement in planning and making decisions about the occupation of their homes in a residential park. This is especially critical because many home owners are retired and on a fixed income. In that respect, *clause 20* will increase transparency and certainty for parties to a site agreement.

The potential adverse impact on park owners arising from *clause 20* is mitigated in two ways.

(i) First, while *clause 20* restricts the grounds on which a park owner may seek an increase in rent outside an agreement, to protect the viability of parks, the amendments allow park owners to seek increases under section 71 of the Act where the increase is necessary to cover significant increases in operational costs (for example, rates, taxes and utility charges), significant unforseen repair costs and significant facility upgrades (*clause 20(2)*).

(ii) Second, in recognition of the long-term, potentially inter-generational nature of site agreements, the Bill provides an ability for park owners

to include a specified 'market review clause upon the sale of a manufactured home and assignment of the home owners' interest in the site agreement to a new home owner (*clause 33*, new section 166). This is considered necessary to avoid creating an unfair, long-term divide amongst home owners within a park who are subject to market reviews of rent and those that are not. The amendments ensure that prospective purchasers are made aware of the park owners' decision to include a market review clause prior to completing the purchase of the manufactured home and seller's interest under the site agreement.

Does the legislation adversely affect rights or liberties, or impose obligations retrospectively?

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that whether legislation has adequate regard to the rights and liberties of individuals depends on, for example, whether the legislation adversely affects rights or liberties or imposes obligations, retrospectively.

Prohibited terms of site agreements and prohibited park rules – Clauses 10 (Insofar that it inserts new section 25B) and clause 33 (insofar as it inserts new section 159)

The Act allows park owners and home owners to negotiate and include 'special terms' in site agreements. The Act also allows park owners to establish park rules about the use, enjoyment, control and management of the park. Park rules are taken to be included as terms of a site agreement between a park owner and home owner (Act, section 19(c)).

Clause 10 establishes a power for stated types of special terms in a site agreement and stated types of park rules to be prohibited by regulation. The amendments address concerns that some park owners are including special terms in site agreements and making park rules (which are taken to be terms of site agreements) which are unnecessarily onerous and prejudicial to home owners and which are not necessary to protect the park owner's reasonable and legitimate interests.

Examples of these types of special terms include terms purporting to allow various costs, which should be borne by the park owner, to be recovered from the home owner (including the park owner's own legal expenses), terms seeking to discharge the park owner from any and all liability for negligence and other legal liabilities and terms forcing home owners to only engage tradespeople approved by the park owner to carry out work on the home owner's manufactured home.

Under the amendments, any prohibited terms that are included in site agreements (or park rules) are void. Pursuant to *clause 33* (new section 159), provisions dealing with prohibited special terms and park rules also apply to site agreements that were entered into before the commencement of the amendment Act.

The capacity for an existing special term of a site agreement (or park rule) to become void following the making of a regulation may breach the fundamental legislative principle against retrospective operation of legislation.

However, the potential breach is justified due to the long-term, potentially inter-generational nature of site agreements. Specifically, if a particular type of special term is considered exploitative and oppressive for home owners, if the prohibition does not apply retrospectively, then the term may continue in site agreements for many years (and potentially decades) into the future affecting not only current home owners, but also people who purchase homes and are assigned the home owner's interest under the site agreement.

It is also important to note that under section 23 of the Act, it is an offence to enter in to an agreement with the intention of, directly or indirectly, defeating the purpose of the Act, which is to regulate and promote fair trading practices in the operation of residential parks.

While it may be contended that the affected home owner agreed to the special term and that this agreement should not be interfered with retrospectively, this argument overlooks the often weaker bargaining position of prospective manufactured home owners who are considering entering into a site agreement and who may not understand the terms of a site agreement, who may believe, or be led to believe, that the special term will not be enforced, or who may feel they have little option but to agree to any special terms proposed by a park owner.

Prohibited agreements to terminate a site agreement – Clauses 11 and 33 (insofar as it inserts new section 160)

The Act is intended to provide manufactured home owners with security and certainty in relation to their ongoing ability to position their home in a residential park. This is necessary because manufactured home owners often invest significant amounts of money in their home and the costs of removing the home and re-positioning it on another site can be substantial.

It is also a relevant policy consideration that many (although not all) people who occupy manufactured homes have limited choices for alternative accommodation, due to a number of factors which fall outside the scope of the Act (for example, the cost of alternative accommodation, the ability to secure an adequate mortgage, and the person's eligibility to receive housing assistance), if their right to reside in a particular park comes to an end.

The Act provides three main ways for site agreements to be terminated. Specifically, site agreements may be terminated by mutual agreement of the home owner and the park owner, by notice of the home owner to the park owner and by order of the tribunal upon application by the park owner. In respect of the latter, the Act requires the tribunal to order a park owner to pay compensation to a home owner if a site agreement is terminated on the basis that the park owner wishes to use the land for another purpose.

Site agreements are not intended to contain an end date as the site agreement continues until it is terminated as outlined above, under the provisions of the Act. Providing security of tenure was a crucial element of both the *Mobile Homes Act 1989* and the *Manufactured Homes (Residential Parks) Act 2003*. The explanatory notes that accompanied the Act in 2003 note that security of tenure is important because home owners have often invested substantial amounts of money in purchasing their manufactured home, often for retirement purposes.

However, it is evident that some park owners are applying provisions of the Act in an unintended way to establish fixed-term agreements, and consequently, to avoid liability for paying compensation to home owners upon termination of a site agreement. Specifically, some park owners are including a fixed termination date as a special term in site agreements or requiring potential home owners to sign a *Mutual Consent to Terminate* (Form 4) at the same time as entering into the site agreement.

It should be recognised that payment of compensation includes the estimated costs in removing the manufactured home from the site, the estimated costs of transporting the home and the home owner's personal effects to the other location, the estimated costs of positioning the manufactured home at the new site and anything else the tribunal considers relevant. The payment of compensation is not considered a 'windfall' for the home owner as it reflects the costs of moving the home to the new site.

In addition to avoiding compensation provisions of the Act, establishing fixed-term agreements may be used as a means of park owners ensuring that new agreements can be periodically adopted which provide more

onerous arrangements regarding rent and other matters. This is contrary to the principles of the Act which are intended to provide home owners with certainty regarding the right to reside in the park, as well as their right to sell their home on–site, pursuant to their existing site agreement.

It is unknown how many home owners have entered into purported fixed-term site agreements. However, it is evident that these types of fixed-term site agreements (for periods between 7-10 years) are becoming increasingly commonplace in a number of 'mixed use' residential parks.

Clause 11 prohibits the use of special terms of a site agreement and the use of separate termination agreements (entered into prior to or on the same day as the site agreement) as a means of establishing a fixed-term site agreement. In accordance with *clause 11* and *clause 33* (new section 160), these types of special terms and termination agreements are void, whether they were entered into before or after commencement of the amendments.

The retrospective operation of *clause 33* (new section 160) raises a potential breach of fundamental legislative principles, particularly because it voids agreements entered into by park owners and home owners prior to commencement of the amendments.

It is considered that retrospectivity is justified in this instance as park owners entering into fixed-term agreements are fundamentally undermining the intention of the Act through an unintended use of the mutual termination provisions and special terms. In this respect, it is arguable that the amendments primarily confirm the existing intention and provisions of the Act. Further, the amendments will protect home owners who are in the more vulnerable bargaining position when entering into site agreements and address a seemingly common (but inaccurate) belief among home owners who enter into fixed-term site agreement that park owners will invariably renew the agreement at the end of the fixed-term.

<u>Does the legislation have sufficient regard to the rights and liberties of individuals subject to new penalties?</u>

Section 4(2)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the rights and liberties of individuals.

New Penalties - Clause 10 Insertion of new sections 25A and 25B (insofar as it inserts new sections 25B(2), (3) and (4)), Clause 11 Amendment of section 36 (Termination of site agreement by agreement between home owner and park owner), Clause 17 Amendment of section 49 (Consent to assignment of seller's interest), Clause 18 Amendment of section 69 (Notice of increase in site rent), Clause 24 Insertion of new pt 11, div 5 (insofar as it inserts section 74A), Clause 25 Amendment of section 89 (Notice Board), Clause 26 Insertion of new section 91A, Clause 29 Insertion of new section 99A, Clause 31 Insertion of new pt 19A (insofar that it inserts new section 139C) and Clause 33 Insertion of new pt 21, div 3 (insofar that it inserts new section 159).

Section 4(2)(a) of the Legislative Standards Act 1992 requires legislation to have sufficient regard to the rights and liberties of individuals. The Bill includes new penalties regarding particular provisions of the Act. The introduction of new penalties is justified for the following two key reasons:

(i) to discourage residential park owners from attempting to misuse, avoid or contract out of the policy principles underpinning the Act and

(ii) to ensure manufactured home owners are adequately protected.

The levels of the proposed new penalties are consistent with comparable, existing offences and are justified for the reasons outlined below.

Clause 10 provides for a maximum penalty of up to 100 penalty units to be applied if a park owner includes a prohibited term in a site agreement, if a park owner makes a park rule that has been prohibited by regulation or if a park owner attempts to enforce a special term or a park rule that has been prohibited by regulation. The maximum penalty of 100 penalty units complements, and is consistent with, section 30 of the Act which prohibits park owners from preventing home owners from seeking legal advice about a site agreement, and which also attracts a maximum penalty of 100 penalty units.

Clause 11 provides for a maximum penalty of 200 penalty units if a park owner enters into a prohibited agreement following commencement of the relevant section. This is consistent with section 23(2) of the Act which provides for a maximum penalty of 200 penalty units if a person enters into an agreement with the intention of directly or indirectly defeating the purpose of the Act.

Clause 17 provides a maximum penalty of 20 penalty units if the park owner does not fulfil their obligations in the event that they refuse to consent to a proposed assignment of the site agreement. This is consistent with section 49(4) of the Act which imposes a maximum penalty of 20 penalty units should a park owner fail to meet their obligations if they consent to the proposed assignment of a site agreement.

Clause 18 provides a maximum penalty of 100 penalty units for a park owner who does not advise home owners of their right to apply to the tribunal if they consider a proposed increase in site rent to be excessive. Due to the potential financial gain to park owners if home owners are not aware of their ability to apply to the tribunal if a rent increase is excessive, the penalty needs to be sufficiently high to offset any potential financial gain that could be achieved by park owners breaching the disclosure requirement. This offence is comparable to penalties under the *Property Agents and Motor Dealers Act 2000* for auctioneers and motor dealers needing to provide details on statutory warranties in the conduct of the auction or sale.

Clause 24 provides a maximum penalty of 200 penalty units if a park owner engages in threatening, intimidating or coercing behaviour, or attempts to threaten, intimidate or coerce a home owner to agree to an increase in site rent or refrain from seeking a review of the site rent. This provision operates in a similar way to section 36(3) which prohibits park owners from coercing home owners to agree to terminate a site agreement and which also attracts a maximum penalty of 200 penalty units. The new provision also complements section 95 of the Act (which prohibits fraudulent and misleading conduct) and section 96 (which prohibits harassing and unconscionable conduct) which both attract maximum penalties of 200 penalty units.

Clause 25 provides a maximum penalty of 5 penalty units if a park owner does not make all reasonable attempts to display the information as required under new section 89(3). The maximum penalty of 5 penalty units is consistent with section 89(2) of the Act which provides a maximum 5 penalty unit offence if the park owner interferes with the home owners right to read the notice board and place relevant material on the notice board.

Clause 26 provides a maximum penalty of 10 penalty units if a park owner does not advise the home owner within 7 days if there was a change in the park owner's or park manager's telephone number. The maximum penalty of 10 penalty units is consistent with section 28 of the Act which

establishes a 10 penalty unit offence if the new park owner does not advise the home owner that they are the new successor in title of the park.

Clause 29 provides a maximum penalty of 20 penalty units if the park owner charges the home owner an amount for the use of a utility that is more than the amount charged by the relevant supply authority when a home owner is required to pay separately for the supply of the utility. The maximum penalty of 20 penalty units in this instance is considered appropriate to provide a disincentive penalty amount higher than the potential profit to be made from charging higher fees for the on-supply of utilities.

Clause 31 provides a maximum penalty of 5 penalty units if the park owner does not provide the required information to the chief executive within 28 days of the park opening or if the park owner does not provide the required information to the chief executive within 28 days of a change of the information contained within the record of residential parks. A 5 penalty unit offence for this section is consistent with section 51 of the Act which relates to the park owner being required to provide information to the home owner. It is considered that a small penalty best reflects the nature of an offence against this section.

Clause 33 (new section 159) relates to site agreements entered into before the commencement of the amendments and provides a maximum penalty of 100 penalty units if the park owner attempts to enforce a special term in a site agreement that has been prohibited by regulation.

Does the legislation have sufficient regard to the institution of parliament?

Section 4(2)(b),(4)(a) and (b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament.

Prohibited terms of site agreements and prohibited park rules – Clause 10 (new subsection 25B)

Clause 10 (inserting new *subsection 25B*) establishes a power for stated types of special terms in a site agreement and stated types of park rules to be prohibited by regulation. It could be argued that including the types of prohibited special terms in a regulation (rather than the primary legislation) is a breach of the fundamental legislative principle that legislation have sufficient regard to the institution of Parliament, including by allowing the delegation of legislative power only in appropriate cases and to appropriate persons and by sufficiently subjecting the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

Establishing a clear head of power in the primary legislation to prescribe particular special terms and park rules to be prohibited in a regulation is justified due to the detailed and technical nature of describing the relevant special terms and park rules. In addition, capacity to prohibit specific special terms and park rules by regulation is necessary because of how rapidly and unpredictably park owners may develop special terms and park rules for inclusion in site agreements which may exploit and unfairly prejudice vulnerable home owners.

Prohibiting particular special terms from site agreements under regulation is consistent with the approach adopted in the New South Wales *Residential Parks Act 1998*.

The potential breach of the fundamental legislative principle is mitigated in two ways:

(i) the process of identifying special terms and park rules to be prohibited by regulation will be conducted in accordance with the rigorous analysis, as well as community and industry consultation requirements of the *Statutory Instruments Act 1992*; and

(ii) any regulation prescribing prohibited special terms and park rules will be subject to potential disallowance by the Legislative Assembly under *section 50* of the *Statutory Instruments Act 1992*.

Consultation

The consultation process for the review commenced in May 2007 with the release of a public discussion paper and survey which attracted approximately 670 written responses. In addition, roundtable consultation conferences were conducted with peak representatives of manufactured home owners and residential park owners to discuss a range of existing and emerging issues impacting on home owners and the residential parks sector more broadly.

In December 2009, a draft version of the Bill, a short plain language summary of the Bill and the draft Public Benefit Test report were released for public consultation. This process was complemented by eight public consultation forums. Approximately 100 written submissions were made in response to the draft Bill, with over 500 people attending the consultation forums. A number of changes were made to the Bill in response to comments and feedback from the community.

Government departments have been consulted, including the Department of Communities (Housing and Homelessness Services), Department of the Premier and Cabinet, Department of Justice and Attorney-General, Queensland Treasury and the Department of Infrastructure and Planning.

Uniform or complimentary legislation of the Commonwealth or another State

Regulation of residential parks providing sites for occupation by manufactured homes is not subject to a scheme of uniform or complementary legislation between the Commonwealth, States and Territories.

Notes on Provisions

Clause 1 - Short Title

Clause 1 establishes the short title of the Act as the *Manufactured Homes (Residential Parks) Amendment Act 2010*.

Clause 2 - Commencement

Clause 2 provides for the commencement of the Act.

Clause 3 - Act Amended

Clause 3 provides that the Act being amended is the *Manufactured Homes (Residential Parks) Act 2003* (the Act).

Clause 4 – Amendment of s 4 (Objects of Act)

Clause 4 amends section 4 of the Act to explicitly state that the main object of the Act (which is to regulate and promote fair trading practices in the operational of residential parks), includes protecting manufactured home owners from unfair business practices and enabling home owners, and prospective home owners, to make informed choices by being fully aware of their rights and responsibilities in their relationship with park owners.

Encouraging the growth and viability of the residential parks industry, and providing a clear regulatory framework to ensure certainty for the residential park industry in planning for future expansion, continue to be recognised as important objects of the Act.

Clause 5 – Omission of s 7 (Notes in text)

Clause 5 omits section 7 of the Act as this section is not required due to section 14(4) of the *Acts Interpretation Act 1954* which provides that a note in an Act is part of the Act.

Clause 6 - Amendment of s 10 (What is a *manufactured home*)

In accordance with section 10 of the Act, a caravan (as defined by the *Residential Tenancies and Rooming Accommodation Act 2008*) does not fall within the meaning of a 'manufactured home' for the purposes of the Act.

Clause 6 amends section 10 of the Act to clarify that a 'converted caravan' (as defined in *clause 7*) is not a manufactured home for the purposes of the Act, regardless of whether the structure otherwise meets the definition of manufactured home under the Act.

However, *clause 6* also provides flexibility by allowing a converted caravan to be taken to be a manufactured home, provided the converted caravan owner and park owner have entered into an agreement that would be a site agreement under the Act, if the agreement related to a manufactured home. New section 10(3) gives effect to a conscious decision by a park owner and converted caravan owner to have their relationship regulated by the Act, rather than the *Residential Tenancies and Rooming Accommodation Act 2008*.

To remove any doubt, *clause 6* provides that an agreement entered into under another Act or a former Act, other than the repealed *Mobile Homes Act 1989*, is not taken to be a site agreement under the Act.

Clause 7 – Insertion of new s 10A

Clause 7 inserts new section 10A to define 'converted caravan'. A converted caravan is a structure that as originally designed was a caravan (as defined by the *Residential Tenancies and Rooming Accommodation Act 2008*), but can no longer be described as a caravan because of a structural addition or structural alteration.

Clause 8 - Insertion of new s 14A

Clause 8 inserts new section 14A to clarify the definition of a 'site agreement dispute'. The tribunal has jurisdiction to resolve site agreement disputes under section 140 of the Act.

Clause 8 clarifies the existing definition of a site agreement dispute (that being, a dispute between the parties to a site agreement about the parties' rights and obligations under the agreement or this Act) by specifically including disputes about whether a person is entitled to have a park owner enter into a site agreement with the home owner. Similarly, *clause 8* provides that a site agreement dispute includes a dispute about whether a park owner is entitled to have a person enter into a site agreement with the park owner.

However, *clause 8* also provides that a site agreement dispute does not include a dispute about whether a converted caravan owner is entitled to have a park owner enter into a site agreement with the converted caravan owner. Similarly, *clause 8* provides that a site agreement dispute does not include a dispute about whether a park owner is entitled to have a converted caravan owner enter into a site agreement with the park owner.

Excluding disputes between converted caravan owners and park owners from the tribunal's jurisdiction under the Act reinforces the amendments to section 10, which provide that converted caravans do not meet the definition of a manufactured home, but which also allow converted caravan owners and park owners to enter into a site agreement under the Act on a voluntary basis.

Clause 9 - Amendment of s 25 (Written agreement)

Clause 9 amends section 25 of the Act to prescribe new requirements to improve the presentation, transparency and clarity of site agreements, including a requirement that site agreements be clearly expressed in plain language.

Clause 9 also provides an additional disclosure requirement under section 25(4)(i)(iii) of the Act (as renumbered) regarding the capacity for the tribunal to vary site rent in accordance with Part 11 of the Act. This provision will assist prospective home owners in making informed decisions by highlighting that, in particular circumstances, the tribunal may order variations in rent outside the express terms of a site agreement.

Clause 10 - Insertion of new ss 25A and 25B

25A Application to tribunal - plain language

Clause 10 inserts new section 25A into the Act which provides that a home owner under a site agreement may apply to the tribunal to consider whether a special term of the site agreement is not clearly expressed in plain language. If the tribunal considers the term is not clearly expressed in plain language, the tribunal may make an order varying the terms of the site agreement in the way the tribunal considers appropriate and may also make an order prohibiting the park owner from using the same or a similar term in another site agreement.

In assessing whether a site agreement is clearly expressed in plain language, the tribunal could have regard to a range of factors, including whether the site agreement contains:

(i) excessively long sentences, clauses or paragraphs;

(ii) unnecessary use of technical terms, jargon or language other than plain English;

(iii) extensive cross-referencing;

(iv) failure to define key terms;

(v) excessive definition of terms, particularly in relation to commonly used words;

(vi) important terms 'buried' in fine print or schedules; or

(vii) terms that place the home owner at an unfair disadvantage because he or she is not clear about their meaning, even if their meaning could be determined by a legal practitioner.

The new section 25A complements the new requirement for site agreements to be clearly expressed in plain language as provided in *clause 9*.

25B Prohibited terms of site agreements and prohibited park rules

Clause 10 also inserts new section 25B into the Act which provides the power for specified special terms or park rules to be prohibited by regulation. Park owners and home owners will continue to have the flexibility to agree on special terms in site agreements, and to adopt park rules, that suit the parties', and the park's, individual circumstances, except where a term or park rule has been prohibited by regulation (or otherwise contravenes the Act). Prohibited terms in a site agreement and prohibited

park rules (prescribed by regulation) will include special terms and park rules that are unnecessarily onerous on, or prejudicial to, either party of the site agreement.

Section 25B(5) provides that a term of a site agreement is void to the extent it is, or contains a term, that is prohibited. If there is a dispute between a home owner and a park owner about whether a term of a site agreement is prohibited, the home owner may apply to the tribunal to resolve the dispute (section 25B(6)). The tribunal may declare the term void, declare the term not void, declare the term void to a stated extent, or make an order varying a stated term of the site agreement (section 25B(7)).

Section 25B(2) and (3) prevent a park owner from including a prohibited term in a site agreement or making a park rule that is prohibited. A park owner who contravenes sections 25B(2) or (3) may be liable for a maximum penalty of 100 penalty units.

Section 25B(4) prevents a park owner from attempting to enforce a prohibited special term in a site agreement, or a prohibited park rule, and provides for a maximum penalty of 100 penalty units.

Clause 11 - Amendment of s 36 (Termination of site agreement by agreement between home owner and park owner)

Clause 11 amends section 36 of the Act to prevent the establishment of fixed-term site agreements.

Clause 11 inserts new subsections 36(4), (5) and (6) which stipulate that a park owner must not enter into a ‘prohibited agreement’ (*clause 34* defines ‘prohibited agreement’) or vary a site agreement to include a term under which the parties to the site agreement agree to terminate the site agreement. In both of these instances the site agreement is void to the extent that the agreement is prohibited under the Act.

Clause 11 also inserts a maximum penalty of 200 penalty units which may apply to a park owner who enters into a ‘prohibited agreement’ (as defined in the amended dictionary) or varies a site agreement to include a term in which the parties to the site agreement agree to terminate the agreement.

Clause 12 - Amendment of s 38 (Termination of site agreement by tribunal)

Clause 12 omits section 38(1)(d) of the Act which provides that, upon application by a park owner, the tribunal may make an order terminating a

site agreement on the grounds that the home owner is not occupying the manufactured home positioned on the site as the home owner's principal place of residence.

In its place, *clause 12* inserts a new section 38(1)(d) to provide that a basis for terminating a site agreement under section 38 is that the home owner is using the site other than as a place of residence. In most cases, home owners will reside in their manufactured homes personally. However, as stated in the example, a home owner using the home as rental accommodation is also a case of the home owner using the home as a place of residence.

Clause 12 ensures that a site agreement cannot be terminated on the basis that the home owner is not using the home as their principal place of residence, including in circumstances, for example, where the home owner is absent from the home due to illness (for instance, the home owner has been hospitalised for an extended period), or where the home owner is deceased and an executor is dealing with the home owner's estate.

Clause 13 - Amendment of s 39 (Vacant possession of site to be given after making of termination order)

Clause 13 expands the types of orders the tribunal may make to assist manufactured home owners where the tribunal has decided, upon application by a park owner, to make an order terminating a home owner's site agreement under section 38(1)(f) of the Act on the grounds that the park owner wishes to use the site for another purpose.

Specifically, *clause 13* amends section 39 of the Act to provide that in deciding on a date that the termination will take effect (the 'termination day'), the tribunal may have regard to a range of social and economic factors (for example, the home owner's personal and financial circumstances and the availability of alterative accommodation). If it is just and equitable to do so, the amendment to section 39 allows the tribunal to postpone the day the termination order would otherwise have taken effect for up to one year after the day of the termination order. In appropriate circumstances, a postponed termination day will ease the pressure on home owners faced with termination of their right to reside in a park by facilitating a longer period of time for the home owner to make alternative housing arrangements.

However, in deciding whether it is just and equitable to postpone a termination day, the tribunal will also have regard to the financial impact on the park owner, if any, of a postponed termination day.

The amendments do not restrict the existing ability provided in section 39 for a home owner to seek an extension of time if unforseen circumstances prevent the home owner from giving the park owner vacant possession of the site by the termination day, even if the termination day has been set under the amended provisions allowing the tribunal to postpone termination for 1 year on the basis that it would be just and equitable to do so.

Clause 14 - Amendment of s 40 (Compensation may be payable in particular circumstances)

Clause 14 amends the title of section 40 from 'Compensation may be payable in particular circumstances' to 'Compensation order'. The change to the heading reflects that section 40 is limited to compensation orders and the new, complementary section 40A provides for other orders the tribunal may make if it decides to make an order, upon application by a park owner, to terminate a site agreement under section 38(1)(f) on the basis that the park owner wishes to use the site for another purpose.

Clause 15 - Insertion of new s 40A

Clause 15 expands the types of orders the tribunal may make to assist manufactured home owners where the tribunal has decided, upon application by a park owner, to make an order terminating a home owner's site agreement under section 38(1)(f) of the Act on the grounds that the park owner wishes to use the site for another purpose.

Clause 15 inserts new section 40A into the Act to provide the tribunal power to, with the consent of the home owner, order the park owner to make a comparable site within the park available to the home owner for the positioning of the manufactured home. The comparable site must be an available site which is not currently occupied by another resident.

By allowing the tribunal to require a park owner to offer an available site to a home owner, the amendment ensures that social dislocation and upheaval for home owners who have their right to reside in a park terminated without their agreement is mitigated and avoided wherever practically possible.

The insertion of new section 40A(4) provides that if the tribunal makes an order that the park owner make a comparable site within the park available for the positioning of the manufactured home, the tribunal must also make an order varying the site agreement to identify the new site, and may make an order varying the site agreement in any other way the tribunal considers appropriate. For example, if the new site is smaller than the previous site, the tribunal may consider varying the site agreement to reduce the site rent payable. The tribunal may also consider it appropriate and necessary to vary the site agreement to reflect any differences in maintenance obligations between the two sites.

It is more than likely that there will be costs associated with relocating a home (and the home owner's personal effects) to another site within the park. Section 40A(5) confirms that making an order made under section 40A(2) will not prevent the tribunal from making a compensation order under section 40(2) in favour of the home owner.

Clause 16 - Amendment of s 45 (Notice of proposed sale and assignment)

Section 45(2) of the Act ensures that people considering buying a manufactured home (and an interest under a site agreement) from an existing home owner receive critical information from the park owner to assist the buyer to make an informed purchase decision.

Clause 16 amends section 45(2) to insert a new subsection 45(2)(c) to require park owners, within 7 days of receipt of a notice of proposed sale and assignment, to give the buyer written advice of the amount of site rent payable by the seller at that time, in addition to a copy of the site agreement and disclosure documents (as required by section 45(2)(a) and (b)).

This amendment strengthens the disclosure requirements by ensuring that the buyer has current information about the site rent being paid by the seller of the manufactured home.

Clause 17 - Amendment of s 49 (Consent to assignment of seller's interest)

Clause 17 amends section 49 to improve the disclosure of important information to home owners if a park owner refuses to consent to a proposed assignment of the home owner's interest under a site agreement.

In accordance with *clause 17*, if a park owner refuses to consent to the assignment of the site agreement, the park owner must give the affected home owner written notice advising of the refusal, the reasons for the refusal and must also disclose that the home owner has a right to apply to the tribunal if the home owner is dissatisfied with the park owner's refusal to consent to the assignment.

Clause 17 provides a maximum penalty of 20 penalty units if the park owner does not comply with their obligations in the event that they refuse to consent to the assignment. This penalty is consistent with the penalty applied if a park owner does not comply with their obligations should they consent to the assignment under section 49(4).

Clause 18 - Amendment of s 69 (Notice of increase in site rent)

Clause 18 amends section 69 to insert a maximum penalty of 100 penalty units if a park owner fails to advise a home owner of their right to apply to the tribunal for an order reducing the amount of, or setting aside, an increase in rent provided for in a site agreement, if the home owner considers the increase in rent is excessive.

Clause 19 - Amendment of s 70 (Home owner may apply to tribunal for order about site rent increase)

Section 70(3) of the Act provides a range of factors the tribunal may have regard to in deciding particular disputes about rent variations.

Clause 19 amends section 70(3)(a) to provide the tribunal with more specific guidance on the weight that should be given to rents paid for different types of rental accommodation when deciding whether a disputed increase in rent under a site agreement is reasonable. Specifically, *clause 19* prioritises the types of rental accommodation the tribunal may have regard to for comparison purposes in the following order:

(i) the range of site rents usually charged for comparable residential parks in the locality of the park;

(ii) the range of site rents usually charged for comparable sites in comparable residential parks in a different, but comparable locality to the park and;

(iii) general trends in rent for residential accommodation in the locality of the park.

The amendment to section 70 of the Act enhances the existing provision by ensuring that similar rental arrangements are compared by the tribunal in the first instance. However, the amendment will continue to enable the tribunal to have regard to other types of rental information (including general rental trends) where it is just and equitable to do so.

Clause 20 - Amendment of s 71 (Notice of proposed increase in site rent)

Clause 20 amends section 71 to substantially limit the grounds on which a park owner may apply to the tribunal for an order increasing site rent outside the terms of the site agreement. The amendment will provide home owners with more certainty about future rent increases and allow home owners to place more reliance on the express terms of their site agreement. The amendment will also provide sufficient flexibility for park owners to seek rent increases in particular circumstances, including with respect to matters that may impact on the future viability of the park.

Clause 20 stipulates that section 71 of the Act can not be utilised for an increase in site rent based on a market review of site rent. The intention of this amendment is to cease the practice that the Courts found was permitted in the case of *Palmpoint Pty Ltd v The Residents of Bribie Pines Island Village & Ors* [2007] QDC 130. However, the tribunal can consider an application under section 71 if the proposed increase is considered necessary to cover significant increased operational costs (including increases in rates, taxes or utility costs), unforseen significant repair costs or significant facility upgrades in relation to the park.

Clause 21 - Amendment of s 72 (Site rent reduction on application to tribunal by home owner)

Clause 21 amends section 72 of the Act to expand the grounds upon which a home owner may apply to the tribunal for a reduction in site rent. Specifically, on application by a home owner, the tribunal may make an order that the site rent payable under the site agreement be reduced if the tribunal is satisfied that a communal facility or service that the home owner was led to believe would be provided at the park (through advertising or another document) has not been provided.

New section 72(2) provides that the tribunal can take into consideration the site agreement, the home owner's information document, any advertising material made available to the home owner and any other document the

tribunal considers relevant when determining an application by a home owner for an order reducing site rent.

Clause 22 - Amendment of s 73 (Utility cost in site rent)

Clause 22 amends section 73 of the Act to improve the disclosure of information to home owners who experience a change in the way they pay for utility services provided to their site, that is, the home owner has been paying for a utility as a component of site rent, however the park owner has decided to separately measure and charge the home owner for the utility service.

In accordance with the amendments in *clause 22*, a 'utility cost notice' provided to the home owner by the park owner must contain the utility cost previously factored into the site rent and how that utility cost was calculated, the date that the new arrangements for measuring and charging for the utility service commence, and the new, reduced site rent payable by the home owner. The notice must also state that the home owner has 28 days following receipt of the utility cost notice to make an application to the tribunal for an order reducing the site rent if the home owner disputes the new site rent payable by the home owner as proposed by the park owner.

The amendment to section 73(2) ensures that the home owner understands how the utility cost notice will impact on their site rent and discloses their ability to make an application to the tribunal within 28 days if they dispute the utility cost and that a penalty is applicable if the park owner fails to provide this notice or fails to inform the home owner of their right to apply to the tribunal.

Clause 23 - Amendment of s 74 (Tribunal review of utility cost and reduction in site rent)

Clause 23 inserts section 74(2) to stipulate that if the park owner under a site agreement contravenes section 73(2), the home owner under the site agreement may apply to the tribunal seeking an order to reduce the site rent payable under the agreement from the change of event date, or another order. In this instance the Act does not require the application to be made within 28 days as the park owner did not comply with section 73(2) and the home owner may not have received a utility cost notice.

Clause 23 also inserts section 74(3) to provide that if 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, the home owner may apply to the tribunal within 28 days seeking an order to reduce the site rent payable under the agreement from the change of event date, or another order.

Clause 24 - Insertion of new pt 11, div 5

Division 5 Prohibition on particular conduct

Clause 24 inserts a new division 5 (Prohibition on particular conduct) in Part 11 (Varying site rent). The new division is comprised of new section 74A.

74A Park owner not to threaten, intimidate or coerce home owner

Clause 24 inserts new section 74A into the Act to prohibit park owners from threatening, intimidating or coercing, or attempting to threaten, intimidate or coerce a home owner to agree to an increase in site rent or refrain from seeking a review of site rent.

A maximum penalty of 200 penalty units may be applied if a park owner were to engage in conduct that was threatening, intimidating or coercive in relation to having a home owner agree to an increase in site rent or to prevent a home owner from seeking a review to reduce site rent.

Under *clause 24*, behaviour that is considered threatening, intimidating or coercive may include a park owner engaging in conduct that would make an ordinary person feel unwillingly compelled to comply with a park owner's request or demand.

The prohibition on threatening, intimidating, and coercive conduct does not prevent a park owner from engaging in reasonable communication and negotiation with home owners regarding rent issues.

Clause 25 – Amendment of s 89 (Notice Board)

Clause 25 inserts new section 89(3) to provide that a regulation may prescribe types of information that the park owner must display on the notice board. The amendment will facilitate the distribution of important information to home owners to assist them understand their rights and obligations.

Clause 25 also provides a maximum penalty of 5 penalty units if a park owner does not make all reasonable attempts to display the information as required under new section 89(3).

Clause 26 – Insertion of new s 91A

Clause 26 inserts new section 91A to require a park owner to provide home owners with a written notice if a business hours contact telephone number for the park owner, or the park manager, stated in the site agreement changes to ensure that a home owner is able to contact the park owner or park manager if the need arises. This notice must be given within 7 days after the change or the park owner may receive a penalty of up to 10 penalty units.

Clause 27 – Amendment of s 95 (Fraudulent or misleading conduct)

Clause 27 amends section 95 of the Act to ensure that the current prohibition on park owners engaging in fraudulent or misleading conduct in the operation of the park also applies when a park owner is acting as a selling agent for a home owner.

Clause 27 also provides that an example of fraudulent or misleading conduct includes a park owner, who in advertising or pre-contractual negotiations, indicates that the site rent will only ever increase in accordance with increases in the consumer price index or indicates that the site agreement can only be terminated by the home owner. This amendment ensures that any information provided to the home owner is accurate and reflects the ability under the Act for a park owner to apply to the tribunal in particular circumstances to increase site rent and to terminate a site agreement.

Clause 28 – Amendment of s 96 (Harassment or unconscionable conduct)

Clause 28 amends section 96 of the Act to ensure that the current prohibition on park owners engaging in harassing or unconscionable conduct in the operation of the park also applies when a park owner is acting as a selling agent for a home owner.

Clause 29 – Insertion of new s 99A

Clause 29 inserts new section 99A which complements section 99 (Separate payment by home owner for use of utility at site). New section 99A provides that where a home owner's use of a utility is separately measured and charged for (and not paid for as a component of site rent) the park owner must not charge the home owner more than the amount charged by the relevant supply authority.

This amendment reflects the *Residential Tenancies and Rooming Accommodation Act 2008* which provides that the tenant of a movable dwelling premises must not be required to pay an amount for the outgoings, for a service charge, that is more than the amount charged by the relevant supply authority for the quantity of the thing, or the service or facility, supplied to, or used at, the premises.

Clause 30 – Amendment of s 100 (Establishment of committee)

Clause 30 amends section 100 of the Act to specify that there is to be only one home owners committee for a residential park. The amendment does not prevent home owners from setting up alternative social, hobby and other types of resident groups. It merely ensures that there is clarity about the home owners committee established and elected by home owners for the purposes of the Act, including provisions requiring park owners to formally respond to proposals and complaints from the home owners committee (section 103 of the Act).

Clause 31 – Insertion of new pt 19A

Clause 31 inserts a new part 19A, titled, 'Record of residential parks'.

139A Record of residential parks

Clause 31 inserts new section 139A to provide that the chief executive may establish a record of residential parks. The record, if kept by the chief executive, is required to contain specified information provided by park owners to the chief executive. The chief executive may keep the record in a way the chief executive considers appropriate.

The insertion of section 139A provides the Government and other stakeholders with a resource that can be used to improve the level of communication with home owners and park owners through the collection of information on the location and number of residential parks.

139B Inspecting record of residential parks

Clause 31 inserts new section 139B to specify that a person may inspect or get a copy of the details contained in the record at a place determined by the chief executive or by using a computer. There is also provision that the chief executive may publish information contained in the record in a way, decided by the chief executive.

The insertion of section 139B allows the record of residential parks to be kept in a way that is considered most appropriate (reflecting methods available at the time) to provide interested people with access to information contained in the record. This could include the publication of the record on the Office of Fair Trading website.

139C Park owner to give chief executive information for record of residential parks

Clause 31 inserts new section 139C to stipulate that a residential park owner must provide the chief executive with specified information within 28 days of the park opening or within 28 days following a change of the information contained within the record of residential parks.

The information that must be provided to the chief executive includes the name of the park, the address (including the postal address) of the park, the number of manufactured home sites provided in the park and any other information prescribed under a regulation.

Section 139C provides a maximum penalty of 5 penalty units if the park owner does not provide the required information to the chief executive within 28 days of the park opening or within 28 days of a change of the information contained within the record of residential parks. For existing parks, the transitional provision in clause 33 (new section 168) specifies when exiting parks must provide this information.

Clause 32 – Amendment of pt 21, div 2, hdg (Transitional provisions)

Clause 32 amends the title of part 21, division 2 (Transitional provisions), to reflect that the transitional provision in that division relate to the commencement of Act No.74 of 2003.

Clause 33 – Insertion of new pt 21, div 3

Clause 33 inserts new part 21, division 3, to provide transitional provisions for commencement of the Manufactured Homes (Residential Parks) Amendment Act 2010.

Subdivision 1 Preliminary

156 Definitions for div 3

New section 156 defines particular terms used within part 21, division 3:

- 'amending Act' is defined as *the Manufactured Homes (Residential Parks) Amendment Act 2010*;
- 'assent' is defined as the start of the date of assent of the amending Act; and
- 'commencement' is defined as the commencement of the provision of part 21, division 3 in which the word appears.

Subdivision 2 General Provisions

157 Existing agreements involving converted caravans

Clause 33 inserts section 157 to provide that any existing agreement between a park owner and a home owner involving a converted caravan, that would be a site agreement if it were in relation to a manufactured home, is taken to be a site agreement if the agreement was entered into under the Act before section 157 commenced. However this section, which ensures any existing site agreements for converted caravan owners continue under the Act according to the terms of the agreement, is also subject to the provisions outlined in section 169 of the amended Act.

158 Form and content of site agreements

Clause 33 inserts section 158(1) and (2) to provide that if a site agreement is entered into after the commencement of this section or if the site agreement was varied after the commencement of this section the following provisions apply to the site agreement or the variation:

(i) Section 25(4)(a), the site agreement must be easily legible

(ii) Section 25(4)(b), the site agreement must be in at least 12 point font if produced by mechanical or electronic means

(iii) Section 25(4)(d), the site agreement must be clearly expressed in plain language

(iv) Section 25(4)(h), the site agreement must state a business hours contact phone number, for the park owner or, if a park manager has been appointed, the park manager

(v) Section 25(4)(i)(iii), the site agreement must state that, under the Act, the tribunal may make an order increasing site rent on application by the owner or make an order reducing site rent on application of the home owner.

Section 158(3) provides that the home owner may apply to the tribunal to decide whether a special term is clearly expressed in plain language for a site agreement entered into (or a variation made) after the commencement of section 158.

159 Prohibited terms of site agreements and prohibited park rules

Clause 33 inserts section 159 and operates retrospectively by providing that a term included in a site agreement before assent is void to the extent that it contains a term that would be prohibited under section 25B(1) if it was entered into after assent. A maximum penalty of 100 penalty units may apply to a park owner who attempts to enforce a special term or a park rule that has been prohibited by regulation.

160 Particular existing agreements to terminate site agreement

Clause 33 inserts section 160 to ensure that any agreement (or term of an agreement) to terminate a site agreement entered into between a park owner and a home owner before or on the same day as the site agreement was entered into, is prohibited and void whether the agreement was entered into before or after the commencement of section 160.

161 Park owner's notice on receiving notice of proposed assignment of seller's interest

Clause 33 inserts section 161 to specify that the requirements of section 45(2) only apply when a park owner is given notice of a proposed assignment by the seller of a home after the commencement of section 161.

162 Park owner's notice on refusal of consent to assignment

Clause 33 inserts section 162 to provide that if a form of assignment has been provided by the seller to the park owner after the commencement of the section and the park owner refuses to consent to the assignment, the park owner must give the seller a written notice of the decision, the reasons for the decision and the seller's right to apply to the tribunal if the seller is dissatisfied with the park owner's refusal to consent to the assignment.

163 Notice of increase in site rent

Clause 33 inserts section 163 to provide that the requirements of section 69(3) only apply if a park owner gives a notice advising the home owner of a proposed site rent increase under section 69(2) of the Act, after the commencement of section 163.

164 Notice of proposed increase in site rent

Clause 33 inserts section 164 to specify that the amendments to section 71(1)(c) and 71(2), which provide the circumstances where a park owner can apply to the tribunal for an increase in site rent outside the terms of the site agreement, apply to all site agreements.

165 Utility cost notice

Clause 33 inserts section 165 to provide that the additional requirements for the content of a utility cost notice, as stipulated in *clause 22*, only apply to utility cost notices given after the commencement of the section.

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

Clause 33 inserts section 166 to provide that if a site agreement was entered into prior to the commencement of the section and the site agreement does not contain a clause permitting the site rent to be increased on the basis of a market review, the park owner is able to include an additional term into the site agreement during the assignment of the site agreement to a new home owner.

The additional term that can be added to the agreement is that ‘the site rent may be increased in accordance with a market review of site rent no more often than once every 3 years after the site agreement was entered into, that has regard to—

(a) the range of rents usually charged for comparable sites in comparable residential parks in the locality of the park; or

(b) if it is impractical to obtain data for the range of site rents mentioned in paragraph (a) or data is not available for that range—the range of site rents usually charged for comparable sites in comparable residential parks in comparable localities to the locality the park is in; or

(c) if it is impractical to obtain data for the range of site rents mentioned in paragraph (a) or (b) or data is not available for that range—general

trends in rent for residential accommodation in the locality the park is in.’

The term may only be added on assignment of the site agreement, may be added without the agreement of the seller or the buyer and takes effect when the assignment takes effect. However, the park owner must advise the buyer, through use of an approved form (when providing a copy of the documents under section 45(2) of the Act), of the addition of the market review term to the site agreement and the date on which the next market review will occur. The park owner must also notify the seller of the addition of the term to the site agreement and the date on which the next market review of site rent will occur, as soon as possible (but within 3 days) after providing the information to the buyer.

167 More than 1 home owners committee

Clause 33 inserts section 167 to provide that if there is more than one home owners committee for a residential park, the home owners may, by election within three months after the commencement of section 167, establish a single home owners committee.

168 Existing park owner to give chief executive information for record of residential parks

Clause 33 inserts section 168 to provide that for the purposes of providing information to the chief executive for the record of residential parks, existing park owners are taken to have opened the park 2 months after commencement. This complements section 139C(1) which requires new park owners to provide the chief executive with specified information within 28 days after opening the residential park.

This inserted section ensures that in the development of a residential parks record, the chief executive is provided with information regarding all the residential parks that currently exist in Queensland.

Subdivision 3 Transitional provisions for proceedings

169 Converted Caravans

Clause 33 inserts section 169 to provide that any application made to a court or tribunal in relation to a converted caravan that has not been decided before the commencement of the section is to be decided as if the section has not commenced.

The application to the tribunal could relate to a dispute about an agreement for the positioning of a converted caravan on the site, or a dispute about

whether a person is entitled to a site agreement in relation to a converted caravan.

Sections 169(2) to (4) also provide that if an application (in relation to a converted caravan) is made to the tribunal within three years of commencement of the section, the converted caravan was positioned on the site prior to commencement and the applicant owned the converted caravan prior to commencement, the court or tribunal must decide the application on the basis of the structural characteristics of the converted caravan at the time of commencement and as if the Bill had not commenced.

170 Tribunal may consider whether term of site agreement is void under s 159(1)

Clause 33 inserts section 170 to provide the tribunal with authority to consider whether a term included in a site agreement prior to assent is void because it has been prohibited by regulation, pursuant to section 25B(1). The provision complements new section 159 which operates retrospectively by providing that a term included in a site agreement before assent is void to the extent that it contains a term that would be prohibited under section 25B(1) if it was entered into after assent.

171 Undecided applications to tribunal for particular orders

Clause 33 inserts section 171 to provide that if a park owner has made an application to the tribunal for the termination of a site agreement on the grounds that the home owner is not occupying the manufactured home positioned on the site as the home owner's principal place of residence prior to assent, the tribunal must decide the application as if the amending Act had not commenced.

Clause 33 also inserts section 171 to provide that if an application is made prior to the commencement of section 171 by a home owner who considers a site rent increase under section 69 is excessive, the tribunal is to consider the application as if the amendments had not commenced.

172 Undecided application to tribunal for order about proposed increase in site rent

Clause 33 inserts section 172 to provide that if an application is made to the tribunal under section 71(7) by a park owner who is seeking an increase in site rent which is not provided for in the site agreement (and the home owner does not agree to the proposed increase), prior to the commencement of section 172, the tribunal is to consider the application as if the amendments had not commenced.

173 Documents tribunal may consider on application for site rent reduction

Clause 33 inserts section 173 to provide that section 72(2) only applies to an application made to the tribunal by a home owner for a reduction in site rent under section 72(1) following assent.

174 Tribunal's review of utility cost

Clause 33 inserts section 174 to provide that section 74(2) and (3) only apply to a utility cost notice given after the commencement of section 174. This ensures the time limit of 28 days in which the home owner may apply to the tribunal if they receive a notice under section 73(2) only applies in relation to a utility cost notice given after the commencement of this section.

175 Tribunal's power to make particular orders

Clause 33 inserts section 175 to provide that sections 39(2) and (3) and 40A of the amended Act only apply to an application to the tribunal for a termination order made on or after the commencement of section 175.

Clause 34 – Amendment of schedule (Dictionary)

Clause 34(1) amends the dictionary to omit the definition of 'site agreement dispute' as the definition of 'site agreement dispute' has been amended and inserted as new section 14A.

Clause 34(2) defines particular terms used in the Bill.

The definition of 'amending Act' for part 21, division 3 is located in section 156.

The definition of 'assent' for part 21, division 3 is located in section 156.

The definition of 'commencement' for part 21, division 3 is located in section 156.

The definition of 'converted caravan' is located in section 10A.

The definition of 'market review of site rent' means a review of site rent the outcome of which is decided by comparing the site rent payable for a site in 1 or more residential parks or the rent payable for other residential accommodation.

The definition of 'prohibited agreement' means an agreement or a term of an agreement which works to terminate the site agreement and is entered

into on the same day as, or prior to the park owner and home owner entering into the site agreement.

The definition of ‘site agreement dispute’ is located in new section 14A.

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