Manufactured Homes (Residential Parks) Amendment Bill 2024

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SUBMISSION TO THE HOUSING, BIG BUILD & MANUFACTURING COMMITTEE RE MANUFACTURED HOMES AMENDMENT BILL 2024

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After two years AMHO's intense lobbying of the Queensland Government highlighting the ineffective and not fit-for-purpose *Manufactured Homes (Residential Parks) Act 2003 (MHRP),* Meaghan Scanlon, the Minister of Housing, Local Government, Planning & Public Works introduced the *Manufactured Homes Amendment Bill 2024* into Parliament on Thursday 21 March 2024. After the first reading the Bill was passed on to your Committee.

We note that these amendments seek to change the MHRP to improve consumer protections in residential parks balanced with reasonable industry viability. However, most will be largely ineffective given the continued imbalance of power in the relationship between the Park Owner and the Home Owner.

We had been promised last year that there would be minor amendments to the MHRP while a complete review of the Act was undertaken. However, the path the Government has chosen is based on the narrow focus of the Issues Paper Survey in June 2022 and the Consultation-Regulatory Statement Impact and feedback received in June last year. This is because it fits with *Queensland Homelessness Action Plan 2021-2025* (QHAP), the *Homes for*

Queenslanders, the Queensland Housing Strategy 2017-2027 (QHS) released in February 2024, a re-release of a Strategy issued under a previous Housing Minister, Mick De Brenni.

The 2023 C-RIS document's Feedback Form was extremely difficult to complete. However, more than 2200 homeowners submitted their views. It would be interesting to know the numbers of feedback forms commenced online but then abandoned! AMHO advocated for hard copy feedback forms and despite initial reluctance, this was eventually forthcoming. The saving grace of the feedback form was that every question had a section for further comment which many home owners used to describe the problems they were experiencing in their parks – problems that had been advised to government many times before!

Our members asked:

Why is it that under the MHRP where they own, insure and maintain their homes, renting only the land on which the home sits, do home owners have less rights than tenants in the wider community under the *Residential Tenancies & Rooming Accommodation Act 2008 (RTRA)? Under the RTRA* a tenant's financial commitment extends to a bond of about one month's rent in advance, whereas home owners in residential parks have paid hundreds of thousands of dollars to buy in to what is an excellent housing model?

Why are home owners not considered the major (or at very least an equal) stakeholder in the relationship with the park owner?

Why does the MHRP, which seeks to ensure the viability of the industry not see that if this model becomes unsustainable for home owners there will be no industry?

Why should home owners in residential parks have to be patient while experiencing behaviours by park owners, which are always found reasonable by the Residential Services Unit (RSU), the Department charged with ensuring compliance of the Act? At a meeting in January 2023 the Acting Executive Director, of the RSU confirmed that the RSU does not have the power to protect home owners. The Act does not give the RSU what they need as the MHRP has insufficient Proscripted Laws in the Provisions of the Act and must be rewritten.

Why does the government not understand that the dispute mechanism is broken, taking up to five years to have matters resolved through the QCAT system?

Why during dispute mechanisms should home owners pay the demanded increased rent to park owners until the tribunal rules? We know there are QCAT cases where home owners won their case, however the park owner appealed, and using their legal might the matters are still not settled 5 years later.

Why has **Section 71** not been addressed? This clause allows site fee increases as a result of increased operational, repair or upgrade costs? The park owner only has to give notice to at least 4 sites, and, if 75% of them agree in writing, the increase proceeds. If they do not agree, then the park owner can implement the dispute mechanism (QCAT).

Fortunately, the park owner will not be able to use the proposed buy-back scheme to justify site fee increases. Park owners own the land, infrastructure, and communal facilities, with a business model enjoying between 65% and 85% profit margin, and home owners should not be further legislated to contribute to maintain and improve. Home owners are renters for the purposes of Centrelink and rent assistance. Why is it that under the MHRP they can be held responsible for maintaining and improving an asset they have non-exclusive rights to use but do not own?

Why are park owners including infrastructure (Service and Access fees) in Utility Charges. **Section 99A** needs to be clarified as renters should only be paying for usage. Some parks do not display utility bills and other refuse to allow home owners to view them, so how are home owners to see that the park owner is not charging more than is being charged? RSU have been advised of these issues but have found that there is compliance with the requirements of the legislation.

Why has the additional C-RIS recommendation around retirement village-style exit fees become a **Non-Legislative response?**

On page 195 of the DIAS it states ***"Make clear that there can be no charging of exit fees to home owners – Amend the Act to resolve ambiguity around charging retirement village-style exit fees and clarify that such fees are prohibited under the Act"*** *– Response – "**This option was supported by home owners but tended to not be supported by industry representatives".*** There are home owners with this type of exit fee, disguised as communal refurbishment fees, already in site agreements which can demand tens of thousands of dollars as exit fees (a couple paid $30,000). When these parks were sold, the new owners have refused to remove this clause, but continue to advertise that their villages have **"NO EXIT FEES"**.

AMHO has visited two villages who are impacted by this arrangement and can assure the Committee that not one cent seems to have been spent on the communal facilities for many, many years – leaky roof, old carpet, window furnishings torn and coming away from the tracks, cracked tiles, potholes in roads and poor lighting – trip hazards. Again, the government has been advised of this issue but because the site agreement sets out this requirement there is nothing they can do. The Act must be amended to ensure the protection of homeowners.

The Explanatory Notes accompanying the Bill on page 2 states "***Residential parks have unique features leading to market failures that adversely impact on home owners, justifying strong regulatory intervention".*** Also "***Despite consumers facing similar risks, there are fewer protections for consumers in the Act compared to the Retirement Villages Act 1999?"*** However, notes that "***Industry and park owners favour the status quo, advocating for improved consumer education"*** as they did in the 2017-19 Review of the Act. No amount of education will take away from the fact that there is an imbalance in the relationship which is supported by an Act which is biased in favour of the park owner.

The danger in highlighting the inequities is that the viability of the industry will suffer because if prospective home owners knew how vulnerable they would be under the present Act, they would be reluctant to proceed. This then impacts on current home owners wishing to leave the park when they need more support than is available to age in place.

There are two additional objects of the MHRP:

- ***Protecting home owners from unfair or excessive increases in site rent; and***
- ***Preserving the safety and security of tenure of home owners***

These objects will increase protection for home owners. However, the home owner still bears a disproportionate level of risk in this housing model.

AMHO is uncertain how the proposed amendments will achieve these additional objectives in practice. This may become clearer when the Regulations are released. It is certainly not obvious at this stage.

Other changes align with the options proposed under the Consultation-Regulatory Impact Statement (C-RIS):

REMOVAL OF THE MARKET RENT REVIEW as a method of increasing site fee rent increases. Explanatory Notes state – "***The amendments in the Bill aim to increase certainty, giving immediate relief to existing home owners from large, unpredictable and unsustainable rent increases, particularly from market rent reviews (which can frequently result in single year increases upward of 10% and from other basis for increasing site rents that have the effect of increasing rent at much faster rates than the age pension)".***

AMHO agrees with removal of the Market Rent Review as park owners have demanded Market Rent Rises as high as 30%. It should be noted that the increased rent must be paid until QCAT rules on the matter – this can take up to five years with the park owners appealing decisions. There is no incentive for park owners to expedite the matter as the increased fee continues to be paid. If a homeowner refuses to pay the increase, the park owner can issue a Form 6 – Remedy to Breach – and take the matter to QCAT requesting a termination of the site agreement.

CAPPING THE ANNUAL GENERAL SITE RENT INCREASE AT THE HIGHER OF CPI OR 3.5% - CPI definition is "the weighted average of eight capital cities all groups consumer price index" which more closely aligns with changes to the aged pension.

AMHO believes that this does not give the certainty about site fee increases that is required for home owners and draws your attention to the Explanatory Notes page 1 ***"The Bill will address concerns about site rent increases by limiting the bases that can be used to increase site rent and limiting the amount by which rent may be increased annually to ensure greater clarity and predictability for home owners".***

AMHO believes that it should read "**Capping the annual general site rent increase at the LOWER figure of CPI or 3.5%."** This would ensure greater clarity and predictability for home owners and a preferred option. Another option would be **"to remove the use of CPI.**"

How can a cap of 3.5% be in place when a higher CPI will override it? Home owners will have no protection from high inflation. Park owners are not affected as home owners are by CPI rent increases, food, costs of medicines, Doctors, insurance, home maintenance, etc. Pensions have only risen by more than 2% annually once in the last decade (in 2022 because of inflation increases pensions rose by 4%). Why should all the pension increase given to pensioners be spent on site rent to companies who are making massive profits?

Those who purchased their homes back in low inflation years of around 1% or less had no way of knowing that a global pandemic would occur causing rampant inflation. Our question is "**why is it always the purchaser of these homes who is at fault because they find they cannot afford the large yearly increases now demanded by park owners?"**

We know that park owners were expanding and making healthy profits back when the CPI was running at 1%, many assisted by the Stapled Structure Tax Minimisation* (see below) put in place by John Howard to provide affordable housing. We know of one park that collects $3M in rent from 304 villas with annual outgoings of less than $800K. This shows ample scope for park owners to grow their business without making this housing model unsustainable for home owners, as currently it is the home owners who are bearing all of the financial risk.

Staples Structure Tax Minimisation** – Stapled Structures is achieved by the company or private park owner, for taxation purposes splitting the entity into two. One becomes a corporate trustee entity which holds all the land, facilities, and infrastructure, while the other is the operational arm of the business with all income and expenses as a normal business operation. At every quarter when the BAS Statement is due to be lodged, the operational business does, what is called a stapled transfer to the corporate entity. In other words, they are "leasing the village from the corporate entity" and then effectively transferring up to 70% of profits to make a loss. Therefore, they can legally claim a loss to get a return on their BAS statement. The corporate trustee entity will only pay 15% tax and the Tax Office advised that they only have to show the books of the operational arm to the Queensland Government, perpetrating the myth to government that they are at risk of not being viable. ****Source Australian Taxation Office, Gaura Gupa, Director Infrastructure Strategy Public Groups & International

We also draw your attention to the Stockland Prospectus dated 19 July 2021 when they were purchasing Halcyon, where on page 6 it boasts of a "**High quality recurring income for occupied portfolio with an operating margin of 65% …. Strong revenue operating margins with low ongoing capital expenditure" …. This when CPI was 1%!**

Solana Lifestyle Resorts, a wholly owned subsidiary of Stockwell, who is now developing Residential Parks, with Bribie Island completed and others newer parks in Hervey Bay, Mackay and Agnes Water. Prospective investors were given the opportunity to participate in the Stockwell Mortgage Income Trust – FM Class (Solana Resorts) with an offer of 10.5% pa, paid monthly, at a time when interest rates in the market were at 1.5%!

REVIEW OF AMENDMENTS – the Minister has given a commitment to review the legislation in three years and park owners may request a review after two years. We appreciate this commitment, as the last review was started in 2017 and finally passed in 2019, shifting the balance of power to further favour the park owners. A Member of the DCHDE would later admit during a meeting in early 2023 that there were "**unintentional consequences"** due to changes to the Act in 2019. Park owners took advantage of their new power, some even imposing park rules on home owners that are not valid under the Act as terms of the Site Agreement, forcing home owners to sign away their rights.

Site Agreements at Thyme Morayfield (Serenitas) contains Annex 6 1(b) which states - *"To the extent that any Park Rule is not a valid Rule under the Act, that Rule is deemed to be removed from the Park Rules and included as part of this Site Agreement and the Homeowner agrees to comply with that rule as if it was a term of this Site Agreement".*

This case was brought to the attention of the Regulatory Services Unit, but under the 2019 Amendments to the Act, this action by the park owner is legal, but is it ethical?

COMPARISON DOCUMENT for residential parks similar to those used for Retirement Villages. AMHO agrees with this amendment as it will provide transparency for future home owners when choosing a park. We are, however, unsure how this will be managed by the RSU with its current resourcing.

SIMPLIFICATION OF THE SALES PROCESS – new site agreement for the buyer rather than assignment – we know this is happening in a majority of cases now, as the Explanatory Notes ***advise 74% new vs 26% assigned.*** The assignment process will, however, be available for the transfer of the home to a family member or other party living in the home but not listed on the current site agreement. AMHO knows of many park owners who are refusing to assign pre-owned home site agreements, which explains the figures mentioned in the Explanatory Notes. This can be explained as the park owner has the right to prevent the sale. Therefore, the seller and buyer must agree to whatever the park owner demands to complete the transaction. The issue of a new site agreement continues to allow the park owners to increase the rent with every sale, pushing up site rents and causing disharmony, as home owners discover they are paying much higher site rent fees than their neighbours for the same product.

The new amendments provide a way to possibly force the park owner to agree, however, AMHO cannot imagine any person wanting to buy into their "final home" in a village where

they had to force the park owner at QCAT to admit them into the park. In the Statement of Compatibility page 12 it states "***Giving QCAT the power to order a park owner to enter into a site agreement with a prospective home owner if QCAT considers the park owner has unreasonably refused to do so will be effective to ensure that home owners are not indefinitely locked into site agreements when they wish to move and have identified a suitable new owner and to ensure the accommodation options of suitable prospective home owners are not irrationally or unreasonably limited".***

REGISTRATION – All parks must be registered with the Regulatory Services Unit (RSU) – those on the register at the present time, are considered to be registered. The RSU will have expanded powers to ensure the Register is kept up to date, providing the Department with more accurate information in the future.

AMHO acknowledges the Governments wish to exempt the smaller mixed-use parks However, it is often these smaller mixed parks who will have placed manufactured homes on RTRA Leases instead of Manufactured Homes site agreements, putting their tenure at risk. Therefore, we believe that they definitely require oversight by the department. In any case, if smaller parks are not required to comply with registration, comparison documents and maintenance and capital replacement, how can the data collected by the Department be accurate and how will the department be able to monitor unregistered parks?

MAINTENANCE & CAPITAL REPLACEMENT SCHEME (MCR) – This will ensure that the communal facilities and infrastructure remains in usable condition, as a significant proportion of the manufactured home's value is attributable to its siting and the facilities of that park. This scheme will provide home owners with confidence that their home will retain its value. However, AMHO is uncertain as to how this will be achieved by the Department with its current resources.

AMHO is pleased park owners will be required to provide a copy of the approved MCR to Home Owner Committees (HOC) at no charge and understand that home owners may request a copy, but there may be a charge. We are unsure at this stage what this means for parks where there is no HOC in place. However, home owners will now know that some of the profit earned from their rent will be spent maintaining the facilities, which always remains the park owner's valuable asset. Many home owners have experienced the park owner closing facilities included in their site agreement when these have become unsafe and needing repair, claiming there are no funds available for the repair and reinstatement of the facilities. Home owners at one park waited two years for a bowling green to be replaced while paying for the right to use it in their site fees.

At another park it took 5 years of fighting to have the park owner repair the bowling green (it was unlevel) due to poor workmanship during construction by the park owner.

METHODS OF PAYMENT OF SITE FEE RENT – home owners must be given multiple site rent payment options. This clause will come into effect for new site agreements on royal assent and for existing home owners the park owner will have 12 months to introduce this change. AMHO is very pleased to see this amendment, as even though the Act already contains multiple site rent payment options, park owners prefill the site agreement to only allow Direct Debit and if you don't sign "well you can't live here".

We have one elderly member who has refused to pay by Direct Debit since her bank account was hacked and is now paying her rent directly into the Park Owners bank account. However, nine months ago the Park Manager began sending the rent payments back to her account, marked as a "refund" and demanded she reinstate the Direct Debit option. She was threatened that if she did not conform, they would issue a Form 6 for nonpayment of rent and take her to QCAT. The RSU has not been able to assist with this matter, advising that her site agreement states she must pay by direct debit, and so it continues to this day.

DISPUTE MECHANISM – QCAT remains in place and given that a majority of cases brought before them deal with the excessive increases as a result of Market Rent Reviews, it would be expected that there will be a lower volume of cases and hopefully a more expedient process. There are still home owners who have been fighting Market Rent Reviews for five years and still have not received a final Tribunal decision. It should be noted that a QCAT decision is not binding. To enforce the QCAT decision, the matter needs to progress to a Magistrates Court and beyond, well into the vast world of legal minefields.

AMHO has found that over the last few years park owners have become very litigious, many not entering into the spirit of the Form 11 which offers the opportunity to negotiate. However, if the home owners have a win at QCAT, park owners appeal. Most park owners are now using the same Legal Practice. An example of the might of the park owner is a QCAT dispute which the homeowners won, the park owner lodged an appeal (outside the appeal timeline) and a 1,000-page appeal document was sent to the home owners, along with advice *"get yourself a lawyer"* which goes against QCAT's own objectives. This is a form of intimidation. We know that one home owner was advised by the Tribunal Member to *"just walk away because unless you can afford a Barrister you will not win".* Another has been asked *"why don't you just move out?"*

AMHO has always maintained that QCAT is the wrong forum to hear and make decisions about MHRP disputes. Also, there is no assurance that the Tribunal Member hearing the case is actually knowledgeable about the MHRP. We were promised the establishment of a new entity, similar to an Ombudsman, and AMHO is very disappointed that it has not happened and ask why not?

BUY-BACK SCHEME - This clause seeks to help in two instances – the death of the home owner or the home owner moving into care, as government believe that the present market for homes is buoyant and selling quickly. This is not the point – home owners have the right to choose their own listing agent (and to negotiate commission rates, something which is not possible with park owners as they usually use the highest legislated commission rate). Just because the market is buoyant now does not mean that it will always be so.

Explanatory Notes on page 4 state ***"The Bill introduces a new buyback and site rent reduction scheme for homes that remain unsold after 18 months, which will operate similarly to obligations on retirement village operators"***.

AMHO would remind Government that residents living in retirement villages pay much lower fortnightly fees throughout their tenure at the village, with operators taking a large fee upon finalisation of the sale, which encourages a quick sale. Requiring MHRP home owners to pay site rent fees on a vacated home for up to 18 months is unfair and not viable in the situations it is meant to assist, with a small decrease in site fees after six months of only 25%. There is no incentive for the park owner to expedite a sale as the site rent fee keeps coming, placing financial hardship for a home owner moving to aged care or to the executors of an estate.

AMHO is also concerned that Park Owners are demanding the site rent continue to be paid by families while they wait for probate to finalise, and the estate to settle. In the past it had become a debt on the estate. In this time of grieving relatives, many suffering mortgage stress, they will not be unable to pay the site rent on this vacant home and may not be allowed under the site agreement to rent it out. If the estate is slow to settle, and the home vacant with rent unpaid, the park owner could declare this home as "abandoned" and take possession. This is an additional risk for an already vulnerable demographic. Remember once the home is built, the park owner takes their first profit, then the money will flow forever, as even when the home owner dies or moves into care the rent must be paid until a new owner moves in. An incredible "cash cow" business model, money doesn't even stop for death!

AMHO agrees with the amendment that the Park Owner may not use Section 71 (increase site fee rent to allow for unexpected expenditure) to facilitate the buy-back home under this scheme.

As you will see from this submission, there are many problems with the MHRP – and these amendments, while most are welcome, will do very little to address the concerns of home owners who, for years, have endured the shortcomings of this ineffective, not fit-for-purpose piece of legislation, many exacerbated by the changes made in 2019. All the problems outlined in our submission to the C-RIS were happening in 2017 and were advised to government at that time. Government officials simply ignored them!

We must have this change:

- **Capping the annual general site rent increase at the <u>LOWER</u> figure of CPI or 3.5%."** This would ensure greater clarity and predictability for home owners. How can a cap of 3.5% be in place when a higher CPI will override it? Home owners must have protection from high inflation. We know that park owners were expanding and making healthy profits back when the CPI was running at 1%. **Why is it always the purchaser of these homes who is at fault because they find they cannot afford the large yearly increases demanded by park owners?**

We agree with:

- The removal of the Market Rent Review – it is a mechanism which legally allowed exploitation of the rental market.
- The implementation of a Comparison Document and the Maintenance and Capital Replacement Scheme but this must be for ALL parks – and we note that ALL parks should be registered. It takes no effort for any park, no matter the size of the park, to provide to be transparent with the publishing of relevant information so that prospective buyers can see what they are buying.
- Providing home owners with options for the method of payment of their site rent fee.
- The Minister's commitment to review these amendments in three years.

We see little value in:

- The simplification of the sales process – nearly 100% of park owners are not assigning site agreements under the current Act – this is because they have the opportunity to increase the site rental fee with every sale. All this change does is legalise what they are doing now.
- The Buy-back scheme as apart from the reduction of site fee rent by 25% after 12 months, serves no purpose as it takes away the choice of listing agent while maintaining a financial burden on the seller or if the seller has passed away, the executors of the will.

Finally, we ask:

- Why is the Dispute Mechanism remaining with QCAT which we have always maintained is the wrong forum for these matters? We have advocated for an Ombudsmen whose decisions are binding and who will have specialist knowledge of the MHRP – removing highly paid lawyers from the equation.
- Why have the issues of Exit Fees, lack of clarification of utilities charges and the inequitable Section 71 (home owners contributing to the upkeep or improvement of the park owners' assets) not been addressed?

CONCLUSION:

While these amendments will provide some relief for home owners in residential parks, it is obvious that they do not go nearly far enough, and further work must be undertaken urgently to ensure that the legislation acknowledges that there needs to be a more equal distribution of power between the two key stakeholders – park owners and home owners. In fact, given the financial commitment of home owners, they should not be bearing the disproportionate share of the risk.

We look forward to addressing the Committee at one of the hearings to be conducted later this month.

Alliance of Manufactured Home Owners Inc (AMHO) Management Team

8 April 2024

ALL DIRECT QUOTES taken from the Explanatory Notes, the Statement of Compatibility and Decision Impact Analysis Statement are shown using this font and colour.