Manufactured Homes (Residential Parks) Amendment Bill 2024

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PALM LAKE RESORT HERVEY BAY HOMEOWNERS ASSOCIATION INC.

Submission to Housing, Big Build And Manufacturing Committee

2024 Amendment Bill to the Manufactured Homes (Residential Parks) Act 2003

The Palm Lake Resort Hervey Bay Homeowners Association (the Association) appreciates the opportunity to make a submission to the Committee on the 2024 Amendment Bill to the Manufactured Homes (Residential Parks) Act 2003.

The members of the Association have endorsed this submission at a General Meeting on 07 Apr 24.

Subject to the matters specifically addressed below, the Association generally supports the intent of the Bill and the proposed amendments but feels that there are a number of areas that have been overlooked and some proposed amendments that may cause detriment to Homeowners and should not proceed.

Overview of Palm Lake Resort Hervey Bay

Palm Lake Resort Hervey Bay is a "Built for Purpose" Manufactured Homes Resort of 209 residences with a live-in Caretaker Residence. Constructed in two stages with approx. one hundred homes built by Baclon Pty Ltd from 2007 to 2012 and then a further 109 homes constructed by Palm Lake Resort Pty Ltd from 2013 to 2015. There are approximately 400 residents. The Resort is in Hervey Bay which is 300 km from Brisbane on the Fraser Coast. The park's residents are a mixture of aged pensioners, Self-funded Retirees and some still in the workforce. Except for a couple of under 50's living with parents, most residents are between 60 and 100 years of age.

There is at least one current QCAT dispute with Palm Lake Resort Pty Ltd which has been in process for over 10 months. Since Palm Lake Resort Pty Ltd purchased the Resort, there have been more than 10 Park Disputes, of which about 50% were finalised through QCAT processes. There are also complaints lodged with the Department of Housing Regulatory Services Unit regarding Palm Lake Resort Pty Ltd actions – or lack of same.

This submission focusses on aspects of the Amendments that the Association strongly supports and aspects that appear to be unclear or detrimental to Homeowners and are in opposition to the declared intent of the Bill -

- introducing new measures to limit the ways in which residential parks can increase site rent,
- introducing new requirements on park owners to improve transparency and accountability to home owners,
- simplifying the home sales process and introducing new provisions which support home owners who are having difficulty selling their home and who need to exit a park,
- making provisions around termination of site agreements fairer for consumers.

ISSUES ADDRESSED IN THE BILL

Site rent increases

The Association strongly supports the removal of Market Rent Reviews, the standardisation of Site rent increases and the setting of CPI to mean the "weighted average of eight capital cities all group CPI".

The use of CPI as a site rent determinant remains an issue because the factors used to create the CPI do not equate to the factors that affect the park Owners operating cost increases. In many cases the CPI increase creates excessive profits for Park Owners. Use of "commercial – in – confidence" rationale by Park Owners to deny Residents clear visibility of costs of operations in the Parks needs to be fully addressed to create true transparency.

The Association submits that the Park Owner should be required to provide clear visibility of its costs.

The imposition of a 100 point penalty with regard to the Site rent increase basis is also supported but as with many such penalties within the Act, having any transgression enforced will depend entirely on the capacity of the Regulatory Authority to do so – an organisation that is, from a "customer viewpoint", severely under resourced.

The Association submits that the resourcing of the regulatory Authority should be increased.

Transparency and accountability measures

The Association strongly supports the Transparency and Accountability measures as this is an area that the Association has been seeking to gain visibility through negotiation and correspondence with Palm Lake Resort Pty Ltd since the Company became the Park Owner, over 10 years ago – with little success.

Section 86 C Complying with the Maintenance and Capital Replacement Plan uses the phrase "must take reasonable steps to comply". Experience to date with the Park Owner in regard to anything "reasonable" shows that a definition of "reasonable" is required. In the current version of the Act, a Park Owner is not to "reasonably" refuse to assign a Site Agreement but there little to no evidence that assignment of a Site Agreement has ever been agreed to by Palm Lake Resort Pty Ltd.

The Association submits that a definition of reasonable should be included in the amendments.

An option that would enhance this process is that the Bill should stipulate a nonexclusive list of what would be reasonable for a Park Owner to consider in coming to its decision and a list of matters that cannot (in any circumstances) be considered.

Sales processes

The Association does **not** support the removal of Site Agreement Assignment provisions.

- **Reinstatement of Site Agreement Assignment provisions.**

The nature of the proposed change has insufficient regard to the rights of individuals as required by Section 4(3) of the *Legislative Standards Act 1992*. The Explanatory Memorandum acknowledges (at page 5) that 'These provisions operate prospectively from commencement of the amendments. However, notwithstanding their prospective operation, these provisions will impact site agreements in place prior to commencement by imposing new obligations that were not required at the time of entering the agreement. In this sense, provisions may impact the rights of parties retrospectively.'

The Explanatory Memorandum then states that this removal of existing contractual rights is 'required and is justified to achieve the policy objective of creating greater fairness and predictability for potentially vulnerable manufactured home owners.'

We submit that this is not the case. Rather than creating greater fairness and protecting vulnerable homeowners, the current proposed draft in fact entrenches an inappropriate, and potentially illegal current practice where some Park Owners use their stronger bargaining position to refuse a Site Agreement assignment on existing terms and require a buyer to enter into a new Site Agreement with many altered conditions (including higher Site Rent, changed rent review mechanisms and the like). This at a time when commercial imperatives make application to QCAT for relief totally impractical.

Many of the provisions of the Site Agreement were 'hard won' by Home Owners and directly affect the amount a new buyer is willing to pay for the Manufactured home.

We submit that the introduction of s70B does not go far enough in protecting the Home Owners from the possible misuse by a Park Owner of its position.

The Explanatory Memorandum states that to 'ensure reasonable balance for park owners, the Bill removes provisions which allow a home owner to assign their current site agreement at the time a home is sold, including site rent terms. This will enable park owners to update the basis for site rent increases and amount of site rent paid, at the time when homes turn over. This will prevent long-term misalignments with market prices and reduce the impact of site rent increase restrictions that will apply while home owners are living in the park.'

If a park owner feels disadvantaged by a rent level not matching the market, there are clear provisions in the Act for the park owners to take up the issue through the same dispute process as applies to a home owner for any other type of dispute.

We petition the committee to not change the assignment provisions as it will entrench the current unacceptable behaviour of some Park Owners regarding rent increase process. The preferred option is to streamline the dispute resolution processes to remove it as an impediment to the current assignment provisions.

The Association submits that the dispute resolution process needs to be streamlined if any changes to the Act are to be effective (see further below).

The Association submits that the current assignment (sale) provisions should not be removed.

- ***Alternative to Reinstatement – introduce stronger protection for Home Owner at time of sale***

If the above submission is not accepted, the Association believes that the new process for replacing the current 'assignment' provisions do not provide adequate protection for Home Owners.

Proposed s70B requires a Park Owner, before each general increase day, to declare the site rent, or the range of site rent, that is payable from the general increase day for a site agreement entered into by a new home owner.

The Bill does not establish any criteria with which a Park Owner must comply when establishing that maximum site rent or range of site rent. It allows a Park Owner unfettered decision making power and control. The setting of a maximum level or range of site rentals will have an immediate effect on the value of homes. It is unrealistic to argue that having established a maximum that a Park Owner could apply something lower.

The Association submits that the introduction of a mechanism which the Park Owner must follow in determining the maximum site rent (or range) is the minimum necessary to protect Home Owners in line with the objects of the Bill.

The Bill does not provide any mechanism by which Home Owners can dispute the 'maximum' levels set by the Park Owner. Even a home Owner that has not yet indicated an intention to sell should have the right to apply to QCAT for an order that the maximum is unreasonable and for an order by QCAT as to the appropriate level.

The Association submits that it is essential that:

- *the onus be on the Park Owner to justify the 'maximum level' of site rent, as most Home Owners are unlikely to have funds to engage specialist advice; and*
- *a quick application process is established (e.g. by way of exemption to s116 (2)) to allow the matter to be dealt with by the Tribunal promptly.*

Proposed s 31E. The Explanatory Memorandum states that the "Bill also includes minor amendments to ……require new agreements to carry over some beneficial terms from the seller's site agreement. "

The relevant proposed provision requires the Park Owner to ensure the terms of a site agreement entered into between the buyer and the park owner are the same terms as applied under the site agreement between the seller and the park owner, before the sale of the manufactured home, in relation to the following matters:

- the utilities included in the site rent payable for the site;
- the communal facilities, services and other amenities included in the site rent payable for the site;
- a matter prescribed by regulation.

The Association submits that there is insufficient justification to allow 'other beneficial provisions' to be removed by the Park Owner at the time of sale.

The Association submits that the proposed section, if it is to remain, should be amended to:

- *Clarify what is meant by 'in relation to ……. utilities included in the site rent payable for the site'. Is this meant to simply refer to the list of utilities to be provided, or to protect other beneficial provisions. For example, will it cover an agreed maximum level of water consumption charges, an allowance of 'free' water up to an agreed level, a special arrangement in relation to offsetting of solar power output against power usage.*
- *Establish a broader range of 'protected rights' rather than simply relying on the prospective and as yet uncertain contents of future regulation.*

Proposed s 31 (Refusal to enter into site agreement) requires that a Park owner must not unreasonably refuse to enter into a site agreement with a prospective home owner. A prospective home owner who considers the park owner has unreasonably refused to enter into a site agreement may, subject to section 116, apply to the tribunal for an order under subsection.

This right for a prospective Home Owner to seek recourse is illusory: the prospective buyer will not wait for the outcome of an application which is 'subject to section 116'.

In addition, there is no recourse for the existing Home Owner, who having lost a willing buyer may suffer real economic loss and ongoing expenses as a result.

The Association submits that it is essential that, if the Park Owner refuses to enter into a site agreement with a prospective buyer:

- *the existing Home Owner has recourse,*

- *the onus be on the Park Owner to justify that the withholding of consent is reasonable, as most individuals are unlikely to have funds to engage specialist advice; and*
- *a quick application process is established (e.g. by way of exemption to s116 (2)) to allow the matter to be dealt with by the Tribunal promptly.*

Unsold homes

The new buyback and site rent reduction scheme for homes that remain unsold after 18 months, appears to be beneficial and supporting the Homeowner, but although it seems to be a simple scheme, it has many provisions that may make it unworkable, depending on the will of the Park Owner and the capacity of the Homeowner.

The Association submits that the proposed provisions of the buy back scheme may be impractical and should be reconsidered.

Other measures to improve consumer confidence

Amended Termination processes appear to be beneficial to Homeowners, especially for those in purpose built Parks where the practicalities of relocating a manufactured home are difficult.

The widened QCAT powers in relation to termination are also supported.

ISSUES NOT ADDRESSED IN THE BILL

The matters submitted here often have provision in the Act, but complaints are very difficult prove. The Regulatory authority often only seeks comment from the Park Owner and then accepts that input and dismisses the complaint as not having sufficient evidence or only being from one resident. The Corporate power of Park Owners often overrides individual complaints – partly because of the lack of regulatory will power or resources to fully investigate complaints. The ability of Park Owners to continue these behaviours often constitutes Elder Abuse and should be fully addressed as soon as possible.

Re-sale of pre-owned houses

At least one Park Owner is ignoring the MHRP Form 9 and has an exclusive Sales Agreement that they make sellers sign up to. It has 90-day exclusivity, admin charges and other clauses that are not allowed under the Act. The Company use the excuse that they are not the agents but use a Third party to act as Agent, ignoring the fact that the onsite seller (caretaker) is employed directly by the Park Owner and the Agent is a subsidiary of the Park Owner. This “Third party” arrangement is not explained to Sellers who believe they are using the Park Owner as seller. This matter has been raised with Regulatory Services, the Queensland Ombudsman and the previous Minister for Housing over two years ago with no satisfactory outcome. The Park Owner continues to ignore the MHRP Form 9.

The Association submits that sales representatives for manufactured homes should be subject to the same level of regulation as real estate agents.

Bullying

Some Park owners receive many reports of bullying and harassing behaviour by caretakers from residents. Management mostly refuses to investigate - taking the word of the Caretaker over the residents - in the majority of cases. Often, Management accuses the Resident of lying and being vindictive, without any proof since they do not properly investigate the complaints.

The Association submits that a mandatory Code of Conduct should apply to Park Owners and its staff.

Flawed dispute resolution process.

Park Owner Corporate Management know that they have the upper hand and consistently stonewall on many issues. Unless a Resident or group keeps pushing an issue – usually to the Tribunal, Management often puts out a negative response and ignores any further correspondence.

The change to the Dispute Process in the Act where three separate steps are required: Negotiation, Mediation and Tribunal – with additional costs and paperwork required to go from mediation to Tribunal has created a significant barrier to Homeowners seeking redress of many issues. Most disputes where the Homeowner(s) are not satisfied with a Park Owner response to a dispute, must be prepared to spend at least two years before being able to get an outcome – and not always one that is acceptable.

The Association submits that the dispute resolution process needs to be streamlined if any changes to the Act are to be effective.

Breaches of the Act

The Act is quite complex and has many provisions that require both Park owners and Homeowners to follow but a prime example is provisions of the Site Agreement. Many manufactured homes Park Owners believe that they do not need to follow the Act or just plain ignore it. This is an abuse of Power brought about by the cumbersome and time consuming process for a Homeowner who believes a Site Agreement provision has been breached, to remedy the breach. A site Agreement breach is separate from other disputes about the Act which require either a Dispute Notice process or a complaint directly to the Department of Housing, Regulatory Services Unit (RSU).

An example of the above is the instance where Palm Lake Resort Pty Ltd in about 2018 at Hervey Bay inserted a clause in new Site Agreements placing the responsibility for maintaining Fences and Driveways on a Site onto the Homeowner. No changes were made to existing Site Agreements and effectively, no homeowner was aware of the change. New Homeowners accepted the clause as part of the

normal process and existing Homeowners had no knowledge of its existence until a homeowner asked for a rusted fence to be repaired and was told it was their responsibility. The clause is in fact in all Palm Lake Resort site agreements across all Resorts. The Regulatory Authority response to a complaint about it was that "the Clause is not a prohibited term, and that the complainant should seek redress through the Dispute process".

The Association submits that a Park Owner should be required to advise the Homeowner Committee of any changes to a Park's Site Agreement and Special terms in the same manner that Park Rules are amended.

Changes to the "Park Rules"

The Act is very clear on what constitutes a Rule in a lifestyle park in QLD and the Act is very clear that only a limited number of topics can be included as Park rules. Many manufactured homes parks owners believe that they can add or change or impose new rules on homeowners by implementing "policies" outside the Act – even though the Act does not allow it. This is an abuse of Power since within the Act, the process for implementing or changing park rules is also very clear. However, for a homeowner or homeowners committee to argue against a new rule is very difficult as the park owners regularly ignore any argument about new rules by saying but it is their right to manage what goes on in their park. Homeowners in a Park where rules are issued outside the Act Process suffer depression, lack of empowerment, feelings of worthlessness, confusion and anger at the inability to have any real say in how their lives are managed or conducted. More than 12 months can be spent dealing through the dispute process to have the Park Owner be shown to be wrong but still ignore any ruling by just ignoring it.

The Association submits that issuing Rules outside the normal process should be regulated by the Act and not require Homeowners to commence a dispute.

Failure to honour commitments made & withdrawal of facilities & services.

There are many examples of failure to honour commitments made & withdrawal of facilities & services by Palm Lake Resort management, but one recent example is the agreement made at QCAT and the refusal to honour the main elements by claiming they were done - even though the evidence was that not much had been at all. Management refused to accept the evidence.

A QCAT Direction was issued by the Tribunal Member on 1 November 2022. In the decision the Palm Lake management agreed to a number of certain actions to be completed within 6 months of the Directions being issued.

In February 2023 the lead applicant for the 400 Homeowners in the dispute advised the Park Owner by e-mail, that little to no action was apparent at the Resort and sought advice as to actions taken. No response was received. On Wednesday 3 May 2023, the Applicant received an e-mail from the Park Owner representative stating that all actions were complete, and any discrepancies should be notified – having accepted untrue statements from their onsite caretaker as to works completed. The

Homeowner responded indicating that little to no actions had been completed and requested evidence of any actions taken to complete the agreed works. No evidence has been supplied- just assertions of work completion.

The lead applicant responded advising that unless actions were commenced immediately, the Homeowners would seek redress in accordance with the Manufactured Homes and QCAT Acts. The Park Owner replied stating that going to QCAT did not bother them.

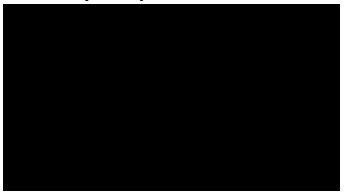
As enforcement of QCAT decisions is only available through the Supreme Court, the Lead Applicant advised the Park Owner that Supreme Court enforcement was the next step and provided further photos of work areas that had received no treatment. The application to the Supreme Court for an Enforcement Warrant was unsuccessful. Palm Lake management have used this outcome to imply the agreement is no longer valid – even though this is untrue. Eighteen months after the agreement was made, minimal actions have been completed.

Management have made many promises to communicate and actively participate with the Association but not while QCAT proceedings were underway. The Association still waits to see or receive any such correspondence from Senior management.

The Association submits that there should be a mechanism for enforcement of QCAT decisions, especially nonmonetary decisions, apart from seeking an enforcement warrant through the Supreme Court.

In Conclusion, the Bill addresses a number of issues with site rent increases and unsold homes at Qld Residential Parks which the Association supports and some that are not supported. The Association believes the Bill and the proposed amendments have missed a number of areas that constitute elder abuse that need to be addressed urgently.

The Association considers it appropriate to provide a consolidated response to all these matters. The Association submission does not pre-empt Palm Lake Resort Hervey Bay Homeowners from responding individually.



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