Manufactured Homes (Residential Parks) Amendment Bill 2024

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Committee Secretary
Housing, Big Build and Manufacturing Committee
Parliament House
George Street
Brisbane Qld 4000

BY POST/EMAIL – hbbmc@parliament.qld.gov.au

Dear Committee Secretary

RE: Manufactured Homes (Residential Parks) Amendment Bill 2024

The Urban Development Institute of Australia Queensland (the Institute) appreciates the opportunity to provide a submission to the Housing, Big Build and Manufacturing Committee (the Committee) on the Manufactured Homes (Residential Parks) Amendment Bill 2024 (the Bill).

The Institute is the peak body representing the large and diverse property industry and has a long history of providing advice and feedback to government on a range of issues and topics impacting the industry. The Institute's Seniors Living and Residential Care Policy Committee is part of the Institute's extensive and consultative structure of committees and panels and has oversight of issues relating to the development of housing for seniors and relevant aspects of local planning schemes and state government legislation to help ensure that our industry can meet the accelerating growth of seniors' needs in our community. The broad experience and input from the committee has informed the Institute's submission.

The Institute supports the Bill's policy objective to improve consumer protections in residential parks. However, the Bill is disproportionately weighted toward responding to a small percentage of residents who participated in a Manufactured Home Owner Survey. As a result, the Bill fails to adequately understand its impact on the future viability of residential parks and will not provide the support required by industry to supply this essential housing type to the growing number of Queensland seniors. If implemented, the Bill will threaten an already crippled housing pipeline and could reduce housing supply by around 1,500 homes per year, amid the worst housing crisis the state has seen since World War II.

The Institute strongly opposes the Bill in its current form.

The contents of the Bill have been reviewed by the Institute and we provide our comments for the Committee's consideration.

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Background and previous comments

The Institute's views expressed in this submission are consistent with those views expressed by the Institute in response to the C-RIS and subsequent discussions with the Department on many occasions, including the Institute's warning that reform of this scale will ostensibly reduce housing supply amid a housing crisis. A summary of the main points in our previous submission is provided in Attachment 1.

The Institute has reiterated on many occasions that its members are supportive of sensible and considered measures to provide greater levels of consumer protection. The Institute has had a long standing interest in Manufactured Homes, operating a dedicated policy committee since 2009. Over this time, the Institute has consistently engaged with park owners, all levels of government and residents to ensure the effective and careful delivery of quality communities. The proposed Bill seeks to apply a 'one-size fits all' approach and mistakenly applies the findings of a survey with a small and non-representative sample to provide greater levels of consumer protection. In reality, the Bill proposes a suite of aggressive and ill-conceived measures that will effectively sterilise an entire housing typology which has been increasingly relied upon by many Queenslanders as a safe, secure, affordable, and appealing home. The proposed measures essentially equate to rent capping and will distort an important part of the housing market. The measures also threaten to reduce the quality of existing parks, and may devalue the existing value of homes in existing parks, as a misguided attempt to protect vulnerable residents.

Comments on the Bill

The Institute's comments on the Bill focus on the site rent and sale of homes aspects and are discussed in detail below. While the Institute strongly opposes the contents of the current Bill, high level recommendations have been made under each heading based on years of industry experience, with the intent to enable workable outcomes for both park owners and home owners, without changing the objectives of the Bill.

Specific comments on the provisions in the Bill and recommended changes or actions are provided in Attachment 2.

Top three priorities

The Institute has approached the review of the Bill and our responses and recommendations through the lens of the following three key priorities:

1. Housing supply in Queensland is inadequate, housing rental vacancy rates are very low, housing affordability is at crisis levels, which is all forecast to deteriorate further
2. Home owners' wealth and security is paramount and relies on a successful and viable park operation
3. Park operators need to be able to respond appropriately to disproportionate charges without the lengthy delays associated with a Tribunal decision.

Site rent

Rent increase data

The Institute is concerned that there was a lack of critical analysis of sufficient rent increase data as it does not align to industry experience. According to the Institute's research, market reviews **have not resulted** in massive increases. In fact, the market can move up or down in line with public sentiment (referred to as "real estate cycles"). A market review provides the ability to align rents according to their true worth, which under the system proposed in the Bill, will end up varied and vastly different across a community and comparable communities, depending on the starting point. The assumption that market will always be above CPI or some fixed method is incorrect. Commonly, park owners do not always perform market reviews where the site rent is already at, or is close to, market levels.

While the Bill offers a "carrot" that rents for new agreements can be agreed between the park owner and the home owner at a market rate disclosed in the comparison document, this will:

- result in home owners paying different levels of site rent across the park and thereby creating unfairness amongst home owners
- result in park owners being required to carry site agreements paying below market rates of site rent for potentially long periods of time until a home owner decides to sell
- not be a sufficient replacement or alternative to the loss of the park owner's ability to perform a market review.

Issues with rent controls

The Bill's proposal to cap site rents to the higher of CPI or 3.5% fails to consider a park owner's increases in costs (which change other than by the CPI), the diversity of arrangements and offerings already present and that have been well established in residential parks over the past 20 to 30 years, and market movements in site rent.

As noted in previous submissions on this matter, this proposal effectively amounts to rent control, which is not imposed on any other private sector in any state and would put a swift halt on investor interest in this sector and further growth in Queensland. The Victorian Government, in their recently released Housing Statement explains the reasons why rent control does not work and states:

> *"Rent control is a policy that, on the surface, appears to address the issue of affordable housing by limiting the amount landlords can charge for rent. But despite its intentions, international examples have shown rent control often worsens the housing crisis by discouraging investment in housing, reducing the quality of rentals and distorting the housing market."*[1]

It is concerning that the Bill intends introducing a rent control mechanism that has been proven in other jurisdictions to worsen a housing crisis by discouraging investment in the relevant sector. The Institute does not support any measure that does not strike an appropriate balance and that will have a materially adverse impact on park owners' long term ability to viably operate residential parks. Measures such as this are not consistent with the object of the Act of *"encouraging the continued growth and viability of the residential park industry in this State"* as they are not

[1] Victoria's Housing Statement 2024-2034

"encouraging" nor will they result in *"continued growth and viability of the residential park industry in this State"*.

The site rent increases that are the subject of the Bill are **agreed** mechanisms between park owners and home owners in site agreements, in relation to which full disclosure and consideration has been given before they were entered into. The majority of these would have been entered into during the growth phase of the industry over the last 10 years with full knowledge of what those mechanisms are and mean for residents' site rent going forward. In these circumstances, it is not good policy to interfere with these agreed contractual relations. The Institute is aware of some examples where fixed percentage mechanisms have been agreed in coming years with a deferred market review in exchange for capital upgrades, but the effect of the Bill will be for those arrangements to be reconsidered.

The Institute is concerned that the rental control proposed in the Bill will negatively impact the entire model upon which the park is maintained, operated, and improved. This will also be to the detriment of the quality of home owners' living environments over time. The suggestion that parks can accommodate these changes by setting a more appropriate site rent, will only be relevant for a new community that is yet to be developed – but this will just mean that site rents will be set higher and will be more costly as a result. Existing communities cannot be re-engineered in this way without consequences. In fact, the imposition of rental controls are likely to force significant alterations to maintenance programs of existing parks, which is likely to ultimately risk the devaluation of some existing properties.

Investor intention

Residential parks[2] are a specific housing market solution that, together with retirement villages, housed 7.6 percent of Queensland's over 65 population in 2022[3]. With around 1.6 million Queenslanders aged over 50 years, residential park communities represent an affordable and valued housing option for this demographic. At 27 October 2023, there were 24,542 residential park sites with manufactured homes across Queensland [4],indicating that residential parks are a feature of the modern housing landscape, which provide older persons with a greater sense of security around their housing choice.

The continuation of market value by the review mechanism is critical to acceptance and investment in the sector and its growth by the commercial investment market and investors/financiers. A lack of financier and investor confidence in the sector is likely to lead to a withdrawal of funding for this product in Queensland and stagnate the market, causing some operators to halt further development of new parks or cause existing parks to close (impacting on delivery of additional supply). The number of homes generated over the coming years will be less and will not cater for the number of people who previously sought this type of housing. The end result will be more people in the private rental market and ultimately, push more vulnerable Queenslanders onto the social housing waitlist, which will exacerbate the current shortfall of affordable and social housing supply.

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[2] Queensland Government Manufactured Homeowners Survey, 2022
[3] 2022 Census Data
[4] Queensland Government, Open Data Portal

Additional expenses for park owners

Many residential parks offer premium facilities and have exclusive amenities, which home owners want the benefit of. These facilities need to be appropriately budgeted for, noting that grounds and maintenance costs alone go up higher than 3.5% or CPI. Increases in rent should be able to accommodate larger disproportionate increases to costs (including Council rates, utilities, waste removal, taxes, salaries, insurance etc.). The Bill's removal of market reviews and introduction of rent controls, coupled with the existing almost non-operational Section 71 (which enables increase in site rent to cover special costs), now gives park owners nowhere to turn when it comes to covering their costs through site rent.

Commercial viability

The Institute is pleased the Bill introduces an avenue for a site agreement to be varied where it can be demonstrated that a park would not be commercially viable without significantly reducing the park owner's capacity to carry out its responsibilities. However, under the Bill's proposal the variation order needs to made after the commencement of a site agreement and may take several years to resolve. The Institute is also concerned that the criteria to apply will be unachievable as a park would need to be on the brink of closing before being able to apply for a variation order given that a park owner's responsibilities under Section 17 are simply the bare minimum and are not everything that a park owner does with respect to a community.

There are several provisions in the Bill that provide possible ways for park owners to seek exemptions / dispensations / variations that reference "commercial viability". The term is not defined and how it is interpreted could potentially be disadvantageous to park owners if it were to refer to the ability to make a profit (and not a loss), the ability to make a commercial return on investment, or something else. Some Court decisions on this topic in other contexts are varied. To add to the confusion, in the explanatory notes for the Bill, at page 19, in relation to Section 194, "financially viable" is mentioned rather than "commercially viable", which arguably has an entirely different meaning. These possible exemptions / dispensations / variations therefore provide no certainty for park owners.

Increased jurisdiction for Tribunal

The Bill introduces a number of provisions that provide jurisdiction to the Queensland Civil and Administrative Tribunal (the Tribunal) to determine certain disputes. The Tribunal is already severely under resourced, the extent of which has been acknowledged by the Tribunal President in their recent Annual Report[5]. The Bill directs new forms of disputes created by the Bill to the Tribunal, which will exacerbate the current resourcing issues and extend the timeframes beyond the current significant wait times for a decision to be made. The Tribunal President has expressed concerns over the growth of the Tribunal's jurisdiction each year, having increasing breadth, diversity, complexity, and volume. It is critically important that the Tribunal is backed by sufficient government funding to be able to resource the backlog of work along with any new disputes raised as a result of the Bill.

[5] QCAT Annual Report 2022-23

Should the resourcing issues and time delays currently being experienced by the Tribunal not be sufficiently addressed, park owners will be forced to seek out other ways to make their park viable. Manufactured homes parks operators will be forced to minimise the maintenance standard and program / facilities offering and just comply with the park owner's responsibilities under Section 17 as a bare minimum, rather than sustaining the uncertainty and time delay in having the Tribunal consider a variation order. The quality of services and facilities in manufactured homes parks will be impacted for residents as a result.

In any event, a variation order is an insufficient fallback to the loss of a market review provision by operation of the Bill as it will require a park owner to carry the cost of a home owner with a non-market level of site rent for a long period of time. Often, home owners reside in their homes for significant periods of time, and a park owner will be disadvantaged the longer the home owner resides in their home and remains party to their site agreement. This will force park owners to consider setting the site rent for new site agreements at a much higher rate in order to compensate for this. This all just results in a distorted market that gives rise to unfairness for all involved.

Additionally, the amendment prohibiting market reviews commences on assent, but this provision does not commence until a date to be fixed by proclamation. As such, this avenue will not be available to park owners from the date of assent through to the date of proclamation. During that time, the existing procedures of either an assignment or a new site agreement will be available. However, for an assignment, a park owner will be disadvantaged because they would have already lost the market review clause by operation of the Bill but will not be provided with the opportunity to increase the site rent at the time of sale as the Bill proposes.

As recommended in our previous submission to the Department, a better approach is to add more protections and measures as to the process rather than doing away with established and agreed concepts altogether. These protections and measures include:

- improved education
- further standardisation of site agreements
- precontractual disclosure requirements
- improvements to the market review process, including ensuring experienced valuers are undertaking market rent valuations and balancing or alleviating unexpected rent rises
- deferred rent or hardship arrangements if sales are delayed
- nomination of a panel of valuers by the Department for site rent market reviews to address home owner market review concerns
- consideration of improved dispute resolution arrangements and legal support for home owners.

Sale of homes

The Institute did not support the buyback and site rent reduction scheme in its previous submission (refer Attachment 1). The driver for this option (concerns with sales delays) does not accord with industry experience. On the whole, residents have not previously reported issues with inordinate sales delays and, some operators even have a waitlist for established homes. The Institute is very concerned buyback arrangements will incur costs and administrative burdens on the park owners that could impact residential park viability.

The Institute is also concerned that the fundamental premise of the buyback arrangements is to assume fault by the park owner as to the cause of the delay when that may not be the case at all. The proposal neither reflects the identified driver for this option nor the practical circumstances of each sale.

A park owner has no control over the state and condition of the home, which will affect whether a home is saleable or not, regardless of its value. An unappealing home is still unappealing even at its market value. This will disadvantage park owners when they have had nothing to do with the cause of the inability to sell.

It is inherently inconsistent in principle for a park owner to be required to pay compensation where a site agreement is terminated due to the home owner's conduct. If a termination order is made, presumably the home owner's conduct will be sufficiently serious to warrant a termination. It does not make sense for a park owner to be penalised for a home owner's inappropriate conduct.

The Bill is flawed in that the last time at which a resale value is to be agreed is nine months and seven days after opt in to the buyback, but completion of the buyback agreement could be much longer after that. This means that the agreed buyback amount might not reflect the resale value at the relevant time that the buyback agreement is completed. The Institute recommends another provision be added to the Bill to allow the resale value to be determined before the due date to complete the buyback agreement.

The Institute also remains concerned about the impact of the Bill's buyback provisions on small, older, and regional residential parks, where it will be extremely challenging for parks to source and / or raise the funds required for buyback through financiers or elsewhere. Such funds can only be raised by reducing spending on other matters beneficial to home owners.

While the Institute does not support the buyback and site rent reduction scheme, we appreciate the Department taking our previous concerns into consideration and is pleased that Retirement Village-style exit funds have not been prohibited through this Bill, leaving the door open to this model if chosen by the operator.

Review period

The Bill proposes to replace Section 145 to cause a review to be undertaken after three years of commencement. The objective of the review is to consider whether the amendments have achieved an appropriate balance between industry viability and consumer protection; and whether any further amendments are required to achieve an appropriate balance between industry viability and consumer protection.

The Institute recommends that this provision includes how park owners' interests will be addressed if the three year review finds that some of the reforms should be wound back. For example, if it is decided that market reviews should be allowed in some cases after all, will park owners be given a statutory right to re-introduce them (as they would have been omitted from all new site agreements in that three year period) and will the operation of the mechanism be suspended in existing site agreements? The details of how this will work needs further clarification.

Consultation and assumptions

The Institute raises concerns with the approach to consultation on the C-RIS, which was heavily weighted toward addressing some park residents' concerns. The Department undertook a Manufactured Home Owner Survey of present and former home owners within manufactured homes parks which informed the Department's ranking of the options presented in the C-RIS. The Department reported receiving over 2,200 responses to the survey, which represented approximately 5.6% of all residents living in manufactured home parks in Queensland. [6]

As stated in the Department's Decision Impact Analysis Statement [7], "*Data collected from the 2022 survey has been the primary source of information for analysing and quantifying the problems being experienced by home owners and assessing the impact of potential options for delivering improvements related to site rent increases and sale of homes.*"

The Institute highlights that there are approximately 200 residential parks in Queensland, with around 24,500 sites[8] and 60.5% of home owners live with a partner[9]. Over 40% of all residential parks are owned by just six park operators.

The Institute is concerned that due to the sheer number of residents in comparison to park operators, the Bill has attempted to respond to the loudest, most dominant voice. It is fully expected that more submissions would be received from park residents as the survey was tailored specifically toward residents. The Department did not sufficiently engage with industry throughout the process. The Institute is extremely disappointed that the concerns of park operators were not sufficiently considered through the consultation period or at the time of drafting the Bill. The result of the poor consultation process is a poorly considered Bill which has the potential to worsen the housing crisis and ultimately, conditions for existing residents of parks. Under the proposed arrangements, there is very little motivation to improve existing assets, nor redevelop sites to offer improved communities. Under this proposal, the investment implications for Queensland are significant, with national companies operating in this space indicating a desire to immediately redirect capital to other states, including New South Wales and Western Australia, to deliver the same product.

The Department has made the assumption that a majority of home owners receive a pension. This assumption was based on the Manufactured Home Owners survey where 53.6% of respondents received a full aged pension. The Institute highlights that there are over 39,000 residents living in a residential park in Queensland therefore only around 5.6% of all residents were represented in the survey data. The Institute is concerned the apparent assumption that all home owners are pensioners is incorrect. The amendments as they apply to home owners in more modern parks with high-end homes are therefore not explicable or appropriate.

The Institute has been unable to provide full commentary on the likely impacts of the Bill in this submission, as no draft regulations have been prepared. It is imperative that, in preparing draft regulations, the Department undertakes meaningful consultation with industry representatives to

[6] Manufactured Homeowners Survey
[7] Residential parks: site rent and sale of homes – Decision Impact Analysis Statement
[8] Department of Housing – Residential Parks (Manufactured Homes) Register
[9] Manufactured Homeowners Survey

ensure the requirements are appropriate, and that the level of detail prescribed strikes the right balance between the interests of home owners and park operators.

Similarly, the comprehensiveness of the Institute's commentary has also been curtailed by the lack of access to information regarding:

- the Department's modelling of the impact of the Bill's negative effect on the flow of investment to Queensland for delivery of this type of dwelling
- the resultant calculation of the reduction in the number of residential parks dwellings which will be delivered in Queensland between now and 2046
- whether this means the Queensland Government will fail to meet its dwelling targets, either for this typology or for dwellings overall, as set out in *ShapingSEQ* and other regional planning instruments
- the forecast numbers of Queenslanders who, without access to an affordable, residential parks home, will move to the social housing waitlist as the only other housing option available to them on fixed or other lower incomes.

Conclusion

Residential parks provide affordable and resort style accommodation that meets the needs of more than 39,000 older Queenslanders. Indeed, in the recent announcement of the draft South East Queensland Regional Plan, the Deputy Premier advised that, "over the next 25 years the number of older people aged 65 years or older will increase." Should the Queensland Government want to see the sector continue to perform a role meeting the needs of older Queenslanders, it is necessary that this sector can continue to grow to operate viably and grow to meet housing needs.

Home owners have made significant investment into their homes and the amenities that residential parks provide. The Institute is concerned that the impacts of the Bill will result in reduced services and maintenance so that parks can viably operate. This symbiotic relationship relies on operators continuing to maintain the park to the same or better standard to protect the home owner's investment over the longer term. Effectively, operators are custodians of the home owner customer's wealth and there are serious consequences for all parties should the park no longer be financially viable.

Put simply, maintaining a viable residential park industry is critical to meeting Queenslanders' housing needs, providing well serviced parks, and delivering a housing option that presently suits most residential park home owners. Removing the ability to undertake a market review of site rent without providing a viable alternative will compromise the ability for park operators to continue to deliver well serviced parks. It will also discourage investment into future parks in Queensland, further exacerbating the Queensland housing crisis.

The Institute urges very careful consideration of the contents of the Bill by the Committee, particularly within the context of the Institute's concerns about the impact of the reforms on future investment in this housing typology in Queensland, the impact of these reforms on housing supply and the potential unintended consequences on existing communities, including the potential for these reforms to curtail the capacity for maintenance of current parks, to the financial detriment of current home owners.

The Institute appreciates the opportunity to provide comment on the Bill and would like the opportunity to be invited by the Committee to appear as a witness at the public hearing. Please contact Principal Policy Advisor, Marianne Hocking [redacted] should you have any questions or would like to discuss this submission further.

Yours sincerely,
Urban Development Institute of Australia Queensland

[redacted]

Kirsty Chessher-Brown
Chief Executive Officer

ATTACHMENT 1: Summary of previous comments provided to the Department

Comments on the Consultation Regulatory Impact Statement

The Institute approached the review of the Consultation Regulatory Impact Statement (C-RIS) by drawing on the vast experience of its members that either own, develop, or provide services to parks and home owners. We are mindful of concerns raised by residents of some residential parks and highlight that not all residential parks maintain the same high standard as our members' operations.

As stated in our submission, the Institute's view is very clear that the option proposed to prohibit a market review of site rents would have the real potential to reduce residential park home supply and exacerbate available housing supply and affordability problems for the growing number of older persons in Queensland. With market rent reviews removed as an option, there is a serious risk that development and capital for land lease projects will be diverted to other states. This is a real concern at a time when housing supply in Queensland is inadequate, housing rental vacancy rates are very low, and housing affordability is at crisis levels.

Periodic market rent reviews maintain the overall property value in relation to the wider market and assists with equalising rent within parks to ensure fairness for all home owners. Rents are a measure of the current demand for homes, which is an incentive for the development of new homes and are needed to maintain the ongoing viability of residential parks. The provision of sufficient rent ensures that the common areas and communal facilities are not only maintained to an acceptable and expected standard but are also improved and upgraded where necessary over time. Establishing market value by the review mechanism is critical to investment in the sector, its growth by the commercial investment market and investors/financiers and ultimately to ensuring these dwellings continue to be delivered for Queenslanders.

Another important consideration is that a greater of Consumer Price Index (CPI) and 3.5% site increase cap would not reflect increases in statutory expenses (i.e. rates, wages, insurance etc) from year to year. In recent years increases to park running costs have well exceeded CPI. In the absence of the opportunity to increase site rents by more than CPI to adequately cover operating costs, the viability of residential park operations would be eroded over time, eventually leading to the closure of a facility due to the inability to cover operating costs, including meeting regulatory requirements.

A summary of the Institute's response to each of the options in the C-RIS is provided below.

<u>Option 1: Status Quo</u>

The Institute considers that in general the existing framework works well and is reflected in high home owner satisfaction levels in surveys conducted by members. The Institute recommends no or limited change to existing legislative protections and processes to avoid distressing and disruptive uncertainty to the residential park community. The Institute does support increasing disclosure/education for consumer protection to further assist home buyers to understand their purchase and their future ongoing costs over the life of the site agreement.

<u>Option 2: Require residential parks to publish a comparison document</u>

The Institute is open to further comparison information which enables prospective home buyers to compare parks. Concern is raised about the manual nature of such an exercise for park owners. It is noted that following introduction of this requirement under the retirement villages legislation

in 2018, there have been nine versions of the approved form and no communications to sector about what changes have been made and when changes were made. The consequence is an increase in staffing requirements and compliance costs. The Institute does see, through engagement with the Institute, an opportunity to progress to an automated notification system and an ability to update documents automatically without manual Word document management and processing.

Option 3: Simplify the sales and assignment process

In general, the Institute supports simplifying the sales and assignment process, as sales can be unnecessarily constrained and confusing when an older site agreement uses dated language. We are concerned that the proposed reform would have unintended consequences for home owners and park owners and should be worked through in detail with the Institute, prior to introduction/adoption.

Option 4: Limit site rent increases to a prescribed basis

The Institute does not support any option that does not include an option for market reviews to occur and be considered when calculating site rent increases. The proposed prescribed rent increase bases do not fully account for the dynamics of the residential park and wider housing market. It does not factor in the costs faced by residential park owners which do not necessarily align to measures such as the CPI. Our experience also indicates that the application of a new rent increase basis to only new site agreements can create undesirable community division with home owners that are party to other arrangements.

Option 5: Improve the market rent review process

The Institute supports this option. Periodic market rent reviews maintain the overall property value in relation to the wider market, and helps rents equalise within parks. While the present market review arrangements are adequate as the legislation requires the arm's length appointment of a professional registered valuer, the Institute supports setting up a government or industry body (e.g API, Valuers Registration Board etc) appointed panel of appropriately experienced valuers to allay any concerns of bias or valuation issues. The key issue of unsustainable and unpredictable site rent increases, potentially could also be assisted by an option (resolved with the Institute) that provided that if a substantial rent increase occurs (say above 10 percent) that this is phased in over three years (with ordinary rises), or the prescription of set market review intervals.

Option 6-9: Prohibit market rent reviews Limit site rent increases to the higher of CPI or a fixed percentage (for example 3.5%) Limit site rent increases to CPI and Require expense-based calculations for increases above CPI

The Institute cannot support removal of market reviews or mechanisms that would cause market residential park rents to lose touch with the wider rental market. Rents are a measure of the current demand for homes, which is an incentive for development of new homes, and are needed to maintain the ongoing viability of residential parks and ensure the common areas and communal facilities are maintained to an acceptable and expected standard. The establishment of market value by the review mechanism is critical to acceptance and investment in the sector and its growth by the commercial investment market and investors/financiers. Removal of the market review option is likely to cause a lack of confidence in the sector by financiers and may lead to the withdrawal of funding for this product, which will then have the effect of stagnating the market

and affecting the delivery of additional supply. It will also lead to less reinvestment in communities which will ultimately disadvantage home owners.

Implementation of options 7-9 all present forms of rent control that interfere in parties' contractual relations and negotiations, which will ultimately see site rents lose touch with the wider market. It must be stressed that no other private ownership sectors are subject to this type of rent control and leases are reset to market levels at lease end or by market review clauses. Should government wish to set rents, then government owned residential parks might be more effective or, alternatively, Government funded subsidies to achieve the desired outcome. Residential parks (with longer effective leases than other residential) require market review options to ensure their market relevance.

Requiring expense-based calculations for increases above CPI creates a further complicated assessment for home owners and resultant differing views, which is likely to engender disharmony in the community. It is also unlikely to account for particular maintenance or other park issues, which would differ across each residential park in Queensland.

Whether a site rent increase mechanism is appropriate will depend on each residential park in terms of how it is structured, funded, and modelled – such that the ability for each park to establish and maintain its own suitable site rent increase mechanism is fundamentally important.

Option 10: Require maintenance and capital replacement plans

The Institute does not support requiring maintenance and capital replacement plans. It is concerned by the potential cost of these in the initial set up and ongoing cost of quantity surveyors to set up the schedules for repairs and maintenance, particularly for smaller and older parks. The explicit plans would also open up potential for discord among home owners as individual views are taken over technical plant matters. This cost would ultimately flow through in higher rent and add to rent cost concerns rather than necessarily helping the situation. Ultimately, any maintenance plan will be disturbed by unexpected plant item breakdowns with a major expense – as often occurs. It is noted that there is already a legislative requirement for operators to maintain the community. Some guidance might be provided by the Department indicating basic levels of maintenance that might reasonably be expected in a park if this is a concern.

Option 11: Establish a limited buyback and site rent reduction scheme for unsold manufactured homes

The driver for this option (concerns with sales delays) does not accord with industry experience. On the whole, residents do not report issues with inordinate sales delays and some operators have a waitlist for established homes. Home owners generally understand they are in control of the sales process by their power of setting the price and presentation of the home. The Institute is very concerned buyback arrangements would incur costs and administrative issues on the park owner that could impact residential park viability.

While buyback obligations are imposed on retirement village operators, this occurs in a different framework that allows a deferred management fee on sale of the home, operator control for a period of 6 months and an option to refurbish the homes that is recouped on sale of the home.

The Institute considers a buyback arrangement would require similar arrangements for residential parks but are an unnecessary cost and complication in the residential park sector and contrary to the reason many choose residential parks. The fundamental differences between residential parks

and retirement village models need to be understood and acknowledged in the legislative framework.

The impact of buyback provisions would likely be crippling for small, older, and regional residential parks. Residential park owners will not be favoured by financiers in raising funds by buyback and, in any event, funds will be reduced to the community and impinge on the services and maintenance available to other home owners. The Institute would however welcome a discussion on ensuring hardship provisions are in place, such as deferred site rents whilst the home is on the market and unoccupied (provided ordinary site rent increase provisions remain).

Alternative site rent review option

Given the importance of market reviews in regulating site rent, the Institute put forward an alternative option for the Department to consider (in its letter dated 3 August 2023) that would provide greater certainty for both residents and park operators. The proposed option uses a combination of both market and annual review mechanisms to provide certainty for industry and residents in the rent review process. The proposed option (explained below) allows for site rents to be reviewed annually using a fixed review mechanism whilst allowing for realignment to ensure consistency with the wider market through a three-year market review reset. The identification of minimum time periods for both site rent and market reviews provides certainty to park residents by setting the time period at which site rent changes would be implemented.

Reviews of site rent between market reviews could be undertaken to determine annual increases through a fixed review mechanism. That mechanism may be any of the following, as disclosed to the prospective park residents in the site agreement:

- a specified percentage
- CPI + a specified percentage
- CPI or a specified percentage whichever is the greater
- CPI + increase in taxes, rates and charges levied or payable under an Act and insurance premiums above the CPI.

CPI does not accurately reflect operational cost increases; nor does it provide the predictability that home owners (or park operators) are seeking, and therefore it was not included as an option.

These market review parameters would creating a better and fairer process, rather than doing away with the concept of market review altogether.

Creating a more streamlined and easier dispute process and giving QCAT more funding and resources will allow any home owner issues to be addressed and alleviate the concerns of home owners while retaining growth and investment in the sector.

ATTACHMENT 2 - Specific comments

The following table provides specific comments on provisions in the Manufactured Homes (Residential Parks) Amendment Bill 2024 (the **Bill**), including any drafting issues or nuances. The comments appear in groupings of specific themes proposed to be amended or introduced through the Bill.

Comment no.	Section/s of Bill	Comment	Recommended change or action
Termination and Termination Orders			
1.	Section 39B(2)	This should be extended beyond merely where the home owner consents to also where the Tribunal orders it is appropriate. In that regard, a home owner may refuse to consent despite them having no plan or evidence of wanting to relocate the home, and thus the benefit of this alternative order will be lost. The factor in Section 39B(3)(b) is relevant to this issue thus indicating its importance.	The Institute recommends that the words "or where the Tribunal orders it is appropriate" are inserted after "consent of the home owner".
2.	Section 39C(1)	It is inherently inconsistent in principle for a park owner to be required to pay compensation where a site agreement is terminated due to the home owner's conduct. If a termination order is made, presumably the home owner's conduct will be sufficiently serious to warrant a termination. It does not make sense for a park owner to be penalised for a home owner's inappropriate conduct.	The Institute recommends that reference to Section 38 be deleted from Section 39C(1).
3.	Section 39E	The Institute is concerned about the fairness for the park owner to have to pay the valuer's costs where the termination is due to the home owner's conduct under Section 38. This should instead be taken into account in arriving at the compensation order or in distributing the sale proceeds.	The Institute recommends that amendments are made to Sections 39C and 39E to this effect.
Buybacks			
4.	Section 62E(b)(ii)	If an eligible home owner passes away, their executor / personal representative / beneficiaries automatically become a home owner by operation of the definition of "home owner" in Section 8 of the Act, and as such this provision will never be operational. The intention seems to	The Institute recommends amending the Bill by including new provision that states that if a buyback agreement is entered into and the eligible home owner dies before

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		be that if the eligible home owner dies before completion of the buyback agreement that the eligible home owner has entered into with the park owner, then the payment of the buyback amount under that agreement is not due until 14 days after the park owner is shown probate. If this is correct, the provision should be amended to make that clear.	completion of that agreement, then the agreed buyback amount under that buyback agreement is due for payment on the later of: a) The date agreed; and b) The date that is 14 days after the park owner is shown the probate of the eligible home owner's will or letters of administration of the eligible home owner's estate.
5.	Sections 62J, 62K, 62L, 62O, 62Q and 62ZI	The Institute highlights that "7 days" to agree on the resale value, and "7 days" to appoint a registered valuer to provide a valuation is an unrealistic timeframe. The various references in these provisions to 7 days should be extended so as to ensure that the required action will be achievable in the timeframe. For example, the buyback period commences on the eligible home owner giving the park owner an opt-in notice, but the park owner has no way of anticipating when this notice might be given. Section 62J then requires agreement to be reached on the resale value within 7 days. It is considered impractical for the park owner and home owner to have the necessary information, to communicate that information and to reach agreement in that short timeframe. This issue is even more pronounced during holiday seasons, like Christmas/New Year and Easter.	The Institute recommends that the permitted timeframe be extended (e.g. 14 or 21 days) and/or refer to 'business days' to accommodate public holidays.

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6.	Section 62L	This section is inconsistent with the explanatory memorandum, which states that the 6 month and 9 month valuations are calculated from the date of the initial valuation. The explanatory memorandum has the better approach because otherwise, if any of the valuations happen later than the assumed 'timetable' (e.g. due to having to appoint/engage with a valuer), then it shortens the period to obtain the next valuation and may unnecessarily duplicate costs and processes. This is also the case given that the Bill does not provide a timeframe within which the relevant valuation must be provided.	The Institute recommends that Section 62L(2) be amended to refer to the date the resale value was last agreed or the date a valuer last determined the resale value.
7.	Section 62L	The last date for agreement to be reached on the resale value under the buyback provisions is 9 months and 7 days after the start of the buyback period under section 62L, however the actual date that the buyback agreement is completed can be months or potentially years after that resale value is agreed under section 62E. For example, orders by a Court (e.g. probate) or the Tribunal can take months or years after the application is made. In these circumstances, the actual value of the home at the point in time when the buyback agreement must be completed may be materially different to the agreed resale value (e.g. if the home falls into disrepair, if the market changes). Under the *Retirement Villages Act*, the buyback price is agreed shortly before the due date to buy back the unit, meaning that the price is generally reflective of the then current market value. This same principle should apply under the buyback provisions in the Bill.	The Institute recommends including a mechanism for agreement on the buyback price shortly (say 7 or 14 days) before the due date for completion of the buyback agreement.
8.	Section 62M	The reference to "immediately" ought to be changed to an achievable timeframe. A party may wish to seek legal advice before acting.	The Institute recommends that the reference to "immediately" is deleted and replaced with a more achievable timeframe (e.g. 10 business days).
9.	Section 62P	It should be specified that the factors in (1)(b) and (c) need to remain the case to be able to remain in the scheme. If these criteria cease to be met, then either the home owner is removed from the buyback scheme or the	The Institute recommends that amendments are made to Sections 62P to contemplate that if the criteria for joining

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		park owner should be entitled to apply to remove them from the buyback scheme.	the scheme cease to be met, then the home owner is removed from the scheme.
10.	Section 62Q(1)	This appears to be an error and will lead to unintended consequences. An eligible home owner can only join the scheme if the park owner offers selling services and is appointed to sell the home as per Section 62P. Section 62Q appears to suggest that a home owner can join the scheme without having appointed the park owner to sell the home, which is not the case under Section 62P.	The Institute recommends that this be re-drafted to provide for the section to apply where an eligible home owner has not opted to join the scheme and is either selling the home themselves or via an agent.
11.	Section 62T	Should the home be significantly damaged or destroyed or the home owner does anything detrimental to the home, a park owner should be exempted from having to buy back the home.	The Institute recommends that an exemption be added in these (or similar) circumstances.
12.	Section 62X(2)(a)	For this to apply, a park owner would need to have rights to have access to and discuss information with the holder of the Security Interest, should the home owner not provide this information.	The Institute recommends that Section 62X(2)(a) be expanded to provide for this.
13.	Section 62Z	There is nothing in this provision about the terms of that buyback agreement or the relevant price at which the home is to be bought back. This will need to be dealt with also.	The Institute recommends that Section 62Z be expanded to provide for this.
14.	Section 62ZB	This should be extended to where the home owner no longer satisfies Section 62P(1)(b) or (c) as referred to above to enable that home owner to be removed from the scheme.	The Institute recommends that an additional provision be included that enables a homeowner to be removed from the scheme.
15.	Section 62ZE	Reference to an application under Section 62ZB should be added to the applications referred to. It would be unfair if this was not otherwise the case.	The Institute recommends an additional provision be added referring to a situation where Section 62ZB applies.
16.	Section 62ZH	(2)(a) - The focus is on the present and not the future – such that the words "will continue to be" should be replaced with "is". (2)(b) – The phrase "operating normally" is vague and uncertain. (4) – The words "or the response" should be replaced with "and the response" as both must be considered (not one or the other).	The Institute recommends that amendments be made to this effect, and that additional clarity is provided around the phrase "operating normally" with specific guidance as to what this means. Consultation with qualified valuers in this

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			regard may assist to ensure that appropriate terminology is used to avoid confusion or misunderstanding about the basis on which the valuation is undertaken.
17.	Section 62ZJ	The benefit of disclosure about a connection to the park owner is questionable, having regard to the fact that: • the valuer's engagement is agreed between the parties or determined by the Chief Executive; and • the determination of resale value is final. There is no appeals process in the Bill once the valuer's determination has been made. If the requirement is to remain, it would be more constructive and useful if the valuer's independence was stated in the first notice given under Section 62ZG, rather than only after all of the work has been done. It is envisaged that disclosure of a valuer's connection with the park owner at the end stage where the report is delivered will result in conflict / dispute with the home owner about the determined resale value due to a perception that the valuer has not acted impartially.	The Institute recommends expanding Section 62ZG to incorporate this disclosure by the valuer and remove section 62ZJ. Alternatively, remove this requirement from the Bill altogether as registered valuer's have duties and standards to meet in undertaking the valuation process and disclosure in the context of the Bill has no legal consequence.
18.	Section 116(5) (amendment proposed by clause 22 of the Bill)	A park owner will not have sufficient time to go through steps 1 and 2 (which a park owner would not be able to reasonably estimate as they rely on third parties, including QCAT mediation availability for step 2) before being able to apply to the Tribunal and only then be able to receive the benefit of Section 69ZE while the application is being decided.	The Institute recommends that reference to sections 62ZC and 62ZD are added to the list of provisions referred to.
Site rent increases			
19.	Section 69AA	The proposed reference to the Eight Capital Cities CPI is irrelevant. Given that it is Qld legislation, it relates to Qld property and the operation of the Qld land lease community market, it would instead make more sense for the All Groups CPI for Brisbane to be used. That is the most common	The Institute recommends that references to "Eight Capital Cities CPI" are deleted and replace with "All Groups CPI for Brisbane".

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		CPI that is used in site agreements. The Institute is not aware of any site agreement utilising the Eight Capital Cities CPI. Further, this does not take into account that the CPI may be abolished, or the categories that define or comprise the CPI may change over time.	
20.	Sections 192 and 193	The Institute does not consider that either of these are a sufficient fallback for a park owner who has lost a market review provision. A market review is designed as an irregular review interval to be a different form of catch-up mechanism that an annual increase method in intervening years does not achieve. Simply reverting to the annual increase mechanism is therefore insufficient. If it is the intention that the cap in section 69B applies, then this should be made clearer in the drafting.	The Institute recommends that Sections 192 and 193 be amended to: • provide for the greater of CPI and 3.5% to be used; • provide for the park owner at their discretion and without referral to the Tribunal to pass on an increase in site rent based on an increase in costs over what would have been the market review period that are not covered by the annual increases over that period (or, if that is not applicable, the greater of CPI and 3.5%); and/or • loosen the stringent requirements of Section 71, which at this stage are unachievable for park owners unless the park is on the brink of financial ruin.
21.	Section 193(2)	This is vague and should use similar wording to Section 192(2).	For consistency, the Institute recommends using wording similar to section 192(2). Further, the provision could be clarified to say 'increase the site rent by a percentage equal to the CPI increase' or similar.
22.	Section 194(2)	These exclusions are unfair given that, as discussed above, they provide an insufficient fallback for a park owner that has lost a market review clause.	The Institute recommends that Section 194(2) is deleted.

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23.	Clause 43 of the Bill.	This amendment unnecessarily restricts parties' contractual relations and freedom to contract; and seems unnecessary given the significant restrictions already imposed by the Bill. On its own, this amendment would be acceptable – but not also with the significant site rent increase restrictions imposed by the Bill.	The Institute recommends that clause 43 of the Bill is deleted.
Site rent payments			
24.	Section 63	Direct debit is not listed as an approved way. Direct debit is the most common form of method to pay site rent that is used throughout Queensland. The amendments may effectively exclude direct debit payment methods entirely for new site agreements going forward. This lacks foresight as the majority of home owners see this as a beneficial payment method allowing them to "set and forget". Other payment methods will only significantly add to park owners' administrative time and costs. Direct debit is very similar in operation to proposed Section 63(f) in any event. The deletion of the ability to agree another method as an approved way would be beneficial to retain due to there being varying payment methods being created regularly in recent years, and home owners might want to pay by these new methods if they are "tech savvy". The prohibition on an ability to agree other ways seems disadvantageous to both parties, especially where it is proposed that a home owner can choose one of three methods of payment in any case.	The Institute recommends that Section 63 is amended to include reference to "direct debit". The Institute recommends that the words "another way agreed on by the park owner and the home owner" are reinserted in Section 63.
25.	Section 63A	This provision does not address the fact that the home owner must choose one of the nominated ways. This appears to be necessary in light of Section 63B, and therefore needs to be provided for.	The Institute recommends that Section 63A be amended to provide for the home owner to nominate the approved way in which they choose to pay the site rent.
Registration			

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26.	Section 18A(4)	The further information should not extend beyond the information stated in Section 18A(3), as otherwise compliance may be unachievable and park owners will not understand the relevant requirements before applying.	The Institute recommends that additional clarity is provided by rewording subsection (4) to "The chief executive may, by notice given to the applicant, ask the applicant for further information in relation to the matters specified in section 18A(3) as the chief executive reasonably requires to decide the application".
27.	Sections 18E and 18L	What is a "material change" is not defined.	The Institute recommends that a definition for or examples of "material change" be provided.
Resale of homes			
28.	Section 29(3)	The disclosure documents must be given at least 21 days before 'entering into the site agreement', which is ambiguous. This could be clarified to avoid confusion about the meaning of 'entering into the site agreement'. If a prospective home owner signs the site agreement then he/she could withdraw the offer at any time before the park owner signs the site agreement. This might be necessary in circumstances where, for example, the prospective home owner cannot wait until the 22nd day before signing (e.g. an overseas holiday). It is suggested that this section could therefore refer to the disclosure period being 21 days before the park owner enters into the site agreement, or wording similar to that seen in section 84 of the *Retirement Villages Act* could be used.	The Institute recommends amending Section 29(3) to refer to a period 'at least 21 days before the park owner enters into the site agreement'.
29.	Section 31	This section provides that a park owner must not unreasonably refuse to enter into a site agreement with a prospective home owner. This section is inconsistent with the explanatory memorandum which states that it will only apply to the sale of an existing home by a selling home owner. This exclusion should be added to section 31, otherwise *every* prospective home owner will have a right to apply to the Tribunal if the park owner refuses to accept them (including on the first sale of homes).	The Institute recommends amending Section 31 to reflect the intent stated in the explanatory memorandum.

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30.	Section 31E	(a) – This should be subject to the Act (for example, a notice under Section 73 of the Act). (b) – There could in fact be more facilities and services available at the time a later site agreement is entered into, which will not be "the same" as the old site agreement.	The Institute recommends (b) be amended to provide an exception where additional site facilities and services have been added since the old site agreement was entered into.
31.	Section 31H	This is an insufficient fallback to the loss of a market review provision by operation of the Bill as it will require a park owner to carry the cost of a home owner with a non-market level of site rent for a long period of time. Often, home owners reside in their homes for significant periods of time, and a park owner will be disadvantaged the longer the home owner resides in their home and remains party to their site agreement. This will give rise to various levels of site rent being payable in a park. Most communities endeavour to achieve and maintain one level of site rent throughout the community so that the position is fair for all home owners. The proposal will do the opposite and will only cause unfairness amongst home owners given that a park owner will not be empowered to maintain a consistent site rent throughout the community. Additionally, the amendment prohibiting market reviews commences on assent, but this provision does not commence until a date to be fixed by proclamation. As such, this avenue will not be available to park owners from the date of assent through to the date of proclamation. During that time, the existing procedures of either an assignment or a new site agreement will be available. However, for an assignment, a park owner will be disadvantaged because they would have already lost the market review clause by operation of the Bill but will not be provided with the opportunity to increase the site rent at the time of sale as the Bill proposes.	The Institutes recommends removing this process and instead recommends the approaches discussed in its submission.

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32.	Section 31J	The Bill does not specify how "relative" status is proven for the park owner to be able assign the home owner's interest in a site agreement to another person.	The Institute recommends that Section 31E be amended to clarify this.
33.	Section 56A(3)(b)	This should instead reference the declaration in Section 70B. It should also be noted that this rate may change depending on when the site agreement is entered into, as some time may elapse between then and when the site agreement is entered into.	The Institute recommends that the section is amended to instead refer to Section 70B.
Maintenance and capital replacement plan			
34.	Sections 86B-86D	These are only shell-like provisions, inserted without details, which are to come at a later time. The evident purpose of these requirements is also unclear. It is impossible for the Institute to make submissions about this when the detail of what is really going to be required by these provisions is not known. The provisions should therefore be excluded from the Bill, and the detail worked through all at once for this to be a meaningful exercise. Otherwise, this will give rise to unintended consequences.	The Institute recommends that Sections 86B-86D are deleted.