

## Manufactured Homes (Residential Parks) Amendment Bill 2024

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## Oceanside · Burnett Heads

**Submission:** Manufactured Homes Review, Strategic Policy and Legislation  
Housing and Homelessness Services, Department of Communities  
Housing and Digital Economy  
GPO Box 690, Brisbane Qld 4001  
hbbmc@parliament.qld.gov.au

**Matter Under Enquiry:** Manufactured Homes (Residential Parks) Amendment Bill 2024

**Date:** 10 April 2024

**From:** Phillip Stewart – Director of Operations  
Shane Mackenzie – General Manager  
RV Lifestyle Village Oceanside Pty Ltd

**Address:** [REDACTED]

**Email:** [REDACTED]  
[REDACTED]

### Executive Summary

By the Department's own estimates, approximately 10,000 additional new homes were created in residential parks in the 10 years to 2023. If the regulation of the sector fails to meet the needs of homeowners, as is claimed, why has the sector been so successful and attractive to purchasers of new homes?

The proposed amendments to the *Manufactured Homes (Residential Parks) Act 2003*:

- Do not reflect the breadth of the values of homes or profile of homeowners to which the *Manufactured Homes (Residential Parks) Act 2003* applies: homes in residential parks can range from \$100,000 in value to over \$2,250,000;
- Are evidently based on flawed modelling and fail to consider the true cost to the sector, particularly in terms of the tax and GST implications of the buyback scheme;
- Will create disharmony amongst homeowners as a result of neighbouring homeowners in the same park paying different rents;
- Disincentivise a park owner's continued investment in shared facilities and services;
- Threaten the viability of the residential parks sector and the solvency of park owners in Queensland, accordingly deterring investment in the sector. This will ultimately result in a greater concentration of ownership of parks, and therefore power, with a small number of larger operators, which is clearly inconsistent with the stated aim of the amendments.
- Seek to retrospectively impose obligations on park owners, notwithstanding the existence of legally binding contracts, which is poor governance and inconsistent with fundamental legislative principles; and
- As a result, will almost certainly reduce the supply of affordable housing for retirees, therefore locking up conventional housing stock at a time when housing supply and affordability is at a critical point.

RV Lifestyle Village Oceanside Pty Ltd ABN: 49 621 707 391

E [REDACTED] | [REDACTED]  
[REDACTED]@ [REDACTED] www.rvlifestylevillage.com.au

### General Position on the Amendments

As a park owner, we are supportive of any initiative aimed at improving fairness and transparency in the sector provided there is consideration for circumstances, needs, and desires of all impacted parties.

The residential park sector in Queensland has grown considerably in recent years and is playing an increasingly important role in the housing market, which is under severe pressure. Our park, located in coastal regional Queensland, has attracted many homeowners who would have sold their large family home in metropolitan areas across the country thus freeing up housing stock for workers and younger families in those areas.

The growth of the sector has attracted considerable private and institutional capital due to its characteristics as a sound and stable investment. The continued attraction and retention of capital in the sector will be critical to maintain supply of new homes and parks, and the upkeep of existing parks. Supply of new homes and parks will be critical to maintaining the balance of supply and demand, and accordingly affordability of housing provided by the sector. Any measures that have the effect of deterring investment in the sector, or threatening the viability of parks, will ultimately only harm existing and prospective homeowners. Further, despite the attraction of new capital and the presence of a handful of larger and more prominent operators, the reality is the sector is a fragmented one with a large proportion of parks owned by private operators. These are often family businesses that are capital constrained and whose solvency will be severely threatened by some of the proposed amendments. Any loss from this segment of Park Owners will lead to further concentration of market power in the hands of the few prominent operators. Such an outcome is diametrically opposed to the stated position of the regulator.

The modern manufactured home park is more often a luxury lifestyle destination for retirees, rather than the old 'trailer park' style of affordable housing. Homeowners are attracted to residential parks for the lifestyle and community benefits and, again anecdotally, in many cases own multiple properties or have sold their previous home for multiple-millions of dollars. The average price of new homes in our park is now well over \$700,000, and an overwhelming majority of homeowners in our park possess large motorhomes or caravans, boats, four wheel drives, and regularly take overseas holidays. It is not unusual, particularly in South East Queensland and increasingly so in regional areas, for the price of a manufactured home to exceed \$1,000,000, and we are aware of a park where new homes are listed for sale for over \$2,250,000. Homeowners in our park have had successful careers in business, as tradespeople, or as professionals such as lawyers, accountants, or engineers. They are well informed, sophisticated, and it would be unfair to cast them as vulnerable or downtrodden. This context is important in considering the regulatory framework applicable to manufactured home parks. A "one size fits all" approach is not appropriate when you consider the breadth of home values across parks in Queensland: clearly the rules relating to a park in which a typical home's market value is \$100,000 should be different to one with homes valued at a million dollars or more. The current regulatory structure has allowed the industry to mature and offer a product that has proved to be very attractive to active retirees and in particular the affluent baby boomer cohort. The participants who have entered the market in recent times are financially well off, are financially literate and want the luxury retirement lifestyle that today's parks offer.

One of the objectives of the Act and the proposed amendments is that "*the residential business park model is sustainable for home owners and park owners.*" The proposed amendments do not meet this basic principle. The amendments put at risk the financial viability of the manufactured home park model and ultimately park owners as well. The reasons why are summarised below.

1. The proposed amendments to the Act have the effect of re-writing the provisions of existing site agreements. Such a precedent would demolish business confidence, not just in the Manufactured Homes sector, but by

fundamentally undermining the credibility of the State of Queensland as a place to invest and do business if the law cannot be relied upon. It amounts to the introduction of retrospective legislation which is universally accepted as bad governance and is contrary to the fundamental legislative principle of not adversely affecting rights retrospectively. If the provisions are to be enacted, then they should only apply to site agreements entered into after the date of proclamation.

2. The two proposed amendments which most threaten the viability of the sector are the prohibition of market rent reviews and the buyback scheme. The rationale of each of those changes are fundamentally in conflict – that is, a market valuation approach to the setting of rent is seen as not acceptable or fair, yet adoption of a market valuation for the buyback scheme is?
3. The buyback scheme arguably represents the biggest threat to the viability of parks. It introduces an unquantifiable and unpredictable financial obligation which may render park owners insolvent. In a slow market, which is undoubtedly when the buyback scheme would mostly operate, the snowball effect of multiple buybacks could bankrupt a park owner. This uncertainty is likely to see debt and equity capital withdraw from the sector. The reality is that if a park owner with finite capital is faced with an obligation to buy back a home under the scheme, that will come at the cost of other maintenance or services.
4. The proposal for a buyback scheme and the mechanics of its operation are fundamentally flawed in a number of respects:
  - a. The scheme provides a framework which involves valuers independently settling differences of opinions as regards home sale prices between home owner sellers and park owners. However, the authors of the background papers consider that these same valuers cannot be relied upon to act independently when engaged to perform a market rent review. Clearly this is a contradiction in terms.
  - b. The failure to consider the GST implications. The DIAS specifically notes the tax implications (including GST) have not been considered. The DIAS estimates the ten year cost to industry of the site rent revenue and buyback scheme proposals at \$5,749,000. We estimate the true cost to industry, when considering the GST implications, over the 10 years would be in the order of \$28,230,455. Our workings are attached as an appendix.
  - c. The scheme focuses solely on setting the sale price of the home. What about the other conditions usually found in a purchase contract? Consider for example such matters as, subject to the sale of the buyer's existing residence, subject to the results of building and pest inspections, and extended settlement conditions. How is the seller protected when proposed Section 62S legislates that the seller cannot refuse an offer equal to or greater than the buyback price?
  - d. The failure to consider the circumstances leading to the home having remained unsold for a long period. Our park has seen a small number of resales of homes and in all cases the park owner has initially been appointed as the selling agent. 80% of the completed sales were sold (under contract but not yet settled) in less than one month after we were appointed as selling agent. Of the homes currently listed for sale, two have been listed for nearly 12 months with us as selling agent, and, subsequently, with an external real estate agent. Those two homes have an asking price of considerably more than the selling price of an equivalent new home, and it is clear, based on overwhelming feedback from prospective buyers, that is the reason they have remained unsold. Is the buyback scheme a downside protection/'get out of jail free card' for homeowners with unrealistic price expectations?

- e. The underlying rationale is in error. On page 2 of the Explanatory Notes for the bill makes the following statement “*Many home owners are pensioners, on low fixed incomes.*” Whilst that may be true in older parks this is not the case now. Sale prices of new homes in current developments can exceed \$2,250,000 and median sale prices are circa \$700,000.
5. The market rent review process is the only mechanism whereby the needs of homeowners and park owners can be balanced over the long term and its prohibition is simply destructive to the viability of residential parks.
- a. Investment in a manufactured home park is a long term decision for a developer, easily thirty years or more, and conceivably a lifetime decision for a homeowner. There were practical proposals documented in the C-RIS to improve the operation of the market review process and these should be implemented as the first option. A fixed rate of site rent increase, whether or not it is aligned with movements in the CPI, does not provide the required degree of flexibility to allow for changes in operating costs and conditions over the long term.
  - b. The site rent is an all-encompassing fee payable by the homeowner combining a long list of costs which are incurred by the park owner but would otherwise be incurred by a homeowner living outside a park. The benefits of living in a park include not paying council rates or body corporate fees, and having access to an often extensive list of facilities and services. The park owner bears the costs of such facilities and services, funded from collection of site rents. The park owner provides gardening and grounds maintenance, access to facilities such as swimming pools, tennis courts, bowling greens, cinemas, art and craft facilities, and gymnasiums. If not living in a park, the resident would pay fees for access or membership to these facilities with such fees in all cases being driven by market forces. In addition to these costs there are the overhead costs incurred by the park owner in managing and maintaining the park. Staff wages, insurance and utilities being three of the major components in this category.
  - c. The costs of operating a park are driven by market forces. An obvious example is insurance premiums which have skyrocketed in recent years. Our park insurance premiums increased over 25% from 2022 to 2023. These cost increases do not align with movements in the CPI or some fixed percentage. There are many examples of operating cost increases outstripping the CPI. How will park owners respond in an environment where their costs increase at a rate faster than their revenue? If the only available mechanism for rent reviews is based on a fixed rate or capped CPI then park owners will end up being forced to cut their costs.
  - d. The market rent review process incentivises park owners to continue to maintain facilities and services in their parks in the long term. If a park owner fails to continue to invest in facilities, even after all homes are sold, they will be penalised in a market rent review.
  - e. The absence of a market rent review mechanism invariably means homeowners in the same park will pay different rents, yet have access to the same services and facilities. This has been identified by Associated Residential Parks Queensland as an issue “that frequently causes anger amongst purchasers of a home in a park” (C-RIS, page 60). Generally, this arises when a homeowner enters a park in its early stages of development when not all facilities may have been built, and the rent is set accordingly. Homeowners who purchase earlier in the development of a park accept their rent will be adjusted accordingly as facilities are completed. In the absence of a market review mechanism, there is no means of seeing that neighbouring homeowners pay the same rent.

- f. Given the long term nature of a residential park site agreement, to restrict the methods of rent reviews to a fixed rate or capped CPI would over time result in severe distortions in the rents payable across the industry. With operating cost growth often outpacing CPI, over time the effect will be the erosion of any profitability of residential parks. This is clearly not good for the longevity of the model.
- g. The proposed sections 194 and 195 acknowledge, through their construction, that the prohibition of market rent reviews have the potential to threaten the commercial viability of parks. While not specified, any expert appointed pursuant to section 195 would almost certainly be a valuer, yet the underlying theme of the amendment is that valuers can't be relied upon to perform market rent reviews to determine site rents under existing site agreements.
- h. Separately, the reality of market forces means that a growth in the market rent for a park will be accompanied by growth in the market value of the home itself which the homeowner will enjoy should they choose to sell.

The proposals relating to the buyback scheme, the prohibition of market rent reviews, and the capping of rent increases are painfully one sided. They all result in the homeowner being insulated from the commercial and market-driven realities of home ownership. Obviously homeowners outside parks do not enjoy the same benefit. How is it fair that a resident outside a park is exposed to uncapped increases in the cost of their council rates (or rent, if they are not a home owner), water, gas, electricity, and recreational activities but a homeowner in a park has the benefit of a rent cap or a guaranteed sale of their home if the market is a bit tough? As such it is not consistent with the notions of equity and fairness espoused as one of the guiding principles of the amendments.

The result of the proposed amendments will be homeowners in residential parks enjoying all the upside of ownership of a manufactured home, but leaving any adverse outcomes such as market downturns or high inflation to be worn solely by the park owner. This will result in a lack of investment in the sector, and no doubt the departure of existing capital. This will clearly result in a reduced supply of housing, which can only be a bad thing for homeowners, and the housing market in general.



Shane Mackenzie  
RV Lifestyle Village Oceanside Pty Ltd

Encl.

#### Appendix – GST impact of buyback scheme

The following example is based on the estimated 2022 average home sale price – as advised by the Deputy Director at the 2 April 2024 public briefing.

1. The Park Owner is registered for GST – which is a given.
2. The home meets all the buyback scheme qualifying criteria and is bought back by the Park Owner at \$518,000.
3. The home is subsequently sold by the Park Owner for \$518,000.
4. On the face of it there has been no cost to the Park Owner other than the administration, holding and opportunity costs identified in the DIAS. This is the stated position of the Department. However, it fails to take into account GST payable by the Park Owner on that subsequent sale.
5. When the Park Owner sells the home, it incurs a GST liability of 1/11<sup>th</sup> of the sale price of \$518,000, in other words \$47,090.
6. Therefore, in this example, if the Park Owner buys and sells for the home for the same price it actually suffers a loss of \$47,090.
7. This real and verifiable loss is entirely ignored in the cost/benefit analysis of the buyback scheme.

The DIAS on page 204 estimates 1,199 homes are sold per year. A proportion of these would participate in the buyback scheme, with the total cost of the GST impact outlined above as follows:

- (a) At 2.6% of re-sales in the buyback scheme \$14,679,836 – based on DIAS assumptions;
- (b) **At 5% of re-sales in the buyback scheme \$28,230,455 – our considered estimate;**
- (c) At 10% of re-sales in the buyback scheme \$56,460,910 – our higher end of the scale scenario;

On the Department's own assumptions the ten year GST cost is \$14,679,836, which is nearly three times greater than the cost estimated of the scheme in the DIAS of \$5,749,000 (page 155).

