

Manufactured Homes (Residential Parks) Amendment Bill 2024

Submission No: 50
Submitted by: Queensland Law Society
Publication:
Attachments:
Submitter Comments:

15 April 2024

Our ref: [SS:EL]
[REDACTED]

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

By email: hbbmc@parliament.qld.gov.au

Dear Committee Secretary

Manufactured Homes (Residential Parks) Amendment Bill 2024

Thank you for the opportunity to provide feedback on the Manufactured Homes (Residential Parks) Amendment Bill 2024 (**Bill**) to amend the *Manufactured Homes (Residential parks) Act 2003* (Qld) (**Act**). The Queensland Law Society (**QLS**) appreciates being consulted on this important paper.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This response has been compiled by the QLS Elder Law Committee (**Committee**), whose members have substantial expertise in this area. In preparing this submission, we have not conducted a detailed review of the Bill. Therefore, our comments are limited to the general concepts set out in the Bill and do not relate to the drafting of specific clauses in the Bill.

QLS broadly supports the objectives of the Bill. Overall, we consider the Bill strikes an appropriate balance between enhancing home owner protections and ensuring the ongoing financial viability of residential parks.

Site rent increases

QLS supports the prohibition on market rent reviews. Our Committee members report that the majority of disputes about site rent increases are caused by market reviews. Therefore, removing market reviews as an option, including those in existing site agreements, will make site rent increases fairer and more sustainable.

Further, QLS supports the limitation on general increases in site rent, with increases above this limit to be regarded as “special increases” that must be approved by home owners or the Tribunal.

Comparison document

QLS supports the requirement for park owners to develop and maintain a comparison document for a residential park that includes information to help prospective home owners compare parks.

In addition to the matters required to be disclosed in the comparison document set out in proposed section 18H, we recommend that park owners be required to disclose what percentage of the site rent constitutes profit.

Residential parks generate their ongoing profit from site rent, in the sense that site rent not only covers the costs of operating the park but also includes a profit component for the park owner. In comparison, the regular levies charged in retirement villages are a cost-recovery exercise only with no profit component, as the villages profit from the exit fees and capital gain share when units are sold.

In the current regulatory environment, retirement villages are required to disclose to prospective residents the profits they will earn from the resident (i.e. the quantum of the exit fees and village's capital gain share). That profit component is locked in at the time when the resident enters the village, and cannot change during the term of the residence. However, residential parks are not required to disclose to prospective home owners the extent to which the site rent constitutes profit for the park owner. The park owner is free to increase the profit component during the course of a home owner's time in the park via site rent increases.

Although residential parks and retirement villages operate under different business models and regulatory frameworks, potential home owners may compare residential parks and retirement villages when deciding where to live. Therefore, disclosing the profit component of residential park site rent in the comparison document will arm buyers with more easily comparable information when considering their options.

Further, consideration should be given to requiring that profit proportion being fixed for the duration of each home owner's time in the park.

New site agreements

QLS supports the requirement for a buyer of pre-owned a manufactured home in a residential park to sign a new site agreement with the park owner, with certain prescribed terms of the seller's site agreement carried over. This will simplify the sales process.

However, we are concerned that the Bill removes Part 7 of the Act entirely in relation to site agreement assignments, but does not replace some of the protections that were included in Part 7. For example, under section 51D of the Act, when a buyer terminates their assignment agreement within the cooling-off period, the sale agreement between the buyer and the seller is taken to have automatically ended. However, the Bill removes this provision, which leaves the parties' rights unclear in this instance.

Further, there is no corresponding provision to allow the automatic termination of a sale agreement between a buyer and a seller (who is not the park owner) when a new site agreement is terminated during the cooling-off period. While section 34 of the Act provides for the automatic termination of a sale agreement between the buyer and the park owner when the site agreement is terminated during the cooling-off period, there is no automatic termination provision where

Manufactured Homes (Residential Parks) Amendment Bill 2024

the seller under the sale agreement is not the park owner. Unless the sale agreement contains an automatic termination clause, the buyer could remain liable under the sale agreement despite terminating the site agreement.

We recommend that you review the protections under Part 7 that will be omitted and reinstate those protections that should still be applicable to assignments and to sale agreements where the seller is not the park owner.

Home sales

QLS supports allowing home owners to sell their home on-site in circumstances where their site agreement has been terminated by the Queensland Civil and Administrative Tribunal (the **Tribunal**) under section 38 of the Act, rather than requiring vacant possession.

Tribunal's powers

The Bill gives the Tribunal additional review powers, for example to alter the basis of a site rent increase under a site agreement. However, the Explanatory Notes to the Bill, when identifying the financial impacts flowing from the amendments, do not specify that additional resources will be required for the Tribunal.

Since its establishment in 2009, the Tribunal has been continually vested with new or expanded jurisdictions, which often require additional funding commitments to meet demand for the Tribunal's services. For this Bill, and for all new or expanded jurisdictions, there should be regular reviews of the Tribunal's initial and ongoing funding needs.

While the Tribunal continues to explore ways to respond to the breadth of its growing remit, in our view, it remains constrained by existing funding allocations. Therefore, we strongly recommend that additional funding and resources be provided to the Tribunal to ensure it can meet any additional demand for its services.

Regulation-making power

We note that the Bill allows regulations to prescribe additional detail, such as other matters required to be included in the comparison document. We understand the regulations have not yet been developed and are not available for consultation in tandem with the Bill. We would welcome further consultation after the regulations have been drafted.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [REDACTED] or by phone on [REDACTED]

[REDACTED]
President