

Manufactured Homes (Residential Parks) Amendment Bill 2024

Explanatory Notes

Short title

The short title of the Bill is the Manufactured Homes (Residential Parks) Amendment Bill 2024.

Policy objectives and the reasons for them

The Manufactured Homes (Residential Parks) Amendment Bill 2024 (the Bill) will amend the *Manufactured Homes (Residential Parks) Act 2003* (the Act) to improve consumer protections in residential parks balanced with reasonable industry viability.

The Bill contributes to the objectives of *Homes for Queenslanders*, the *Queensland Housing Strategy 2017-27* and the *Queensland Housing and Homelessness Action Plan 2021-2025* (the Action Plan) to ensure:

- residential parks are fair and transparent
- the legislative framework for residential parks is contemporary and meets community expectations
- the residential park business model is sustainable for home owners and park owners.

Specifically, the Bill delivers on Action 18 of the Action Plan which committed to address concerns about site rent increases and unsold homes in residential parks.

The Bill will address concerns about site rent increases by limiting the bases that can be used to increase site rent and limiting the amount by which rent may be increased annually to ensure greater clarity and predictability for home owners.

The Bill will address concerns about delays in selling manufactured homes by streamlining the sales process and introducing a scheme which requires park owners to reduce site rent and to buyback vacant manufactured homes that remain unsold after 18 months. In addition to addressing the problem of unsold homes, this scheme will also create appropriate incentives that apply downward pressure on site rent and upward pressure on quality because park owners will have incentives (avoiding reduced rent and the buyback itself) to ensure rents are fair and parks are desirable places to live.

Amendments in the Bill will also provide greater transparency for home owners and prospective home owners about residential parks and improve consumer confidence by introducing new registration requirements for residential parks and information and disclosure requirements on park owners.

The Bill also includes consequential amendments to the *Fire and Emergency Services Act 1990*.

The Act amendments

In residential parks, consumers own their manufactured home but rent the land it is sited on from a park owner. The relationship between home owners and park owners is regulated by the Act. Modern residential parks are typically marketed as ‘lifestyle’ communities for people aged over 50 years and as an alternative to retirement villages, which are regulated by the *Retirement Villages Act 1999*.

The residential parks industry has experienced steady growth over the last 10 years. At 1 March 2024, there were 203 residential parks in Queensland with 25,506 sites, home to approximately 38,000 home owners. Analysis commissioned by the department estimates that approximately 10,000 more manufactured homes in 55 new residential parks are planned for development in Queensland over the next decade.

About half of all residential parks are listed on the register of residential parks as mixed-use. These parks contain manufactured homes, as well as holiday accommodation, caravans or other dwellings. However, most home sites (87 per cent) are in purpose-built parks, containing only manufactured homes. Six operators, each owning nine or more parks, account for almost 40 per cent of all parks and 60 per cent of all home sites in Queensland. Concentration of residential park ownership is expected to continue, with five operators expected to be responsible for over 75 per cent of new developments.

Following calls from manufactured home owners for reform, the Action Plan included a commitment to address concerns about site rent increases and unsold homes in residential parks. Home owners are vulnerable to unaffordable site rent increases, inability to sell their homes when they need to, and potentially, unfair business practices because:

- many home owners are pensioners on low, fixed incomes
- despite consumers facing similar risks, there are fewer protections for consumers in the Act compared to the *Retirement Villages Act 1999*
- home owners can have limited understanding of the risks posed by increased site rent and being unable to sell their home
- home owners have limited capacity to move or downsize if rents become unaffordable.

Modern manufactured homes in purpose-built parks cannot be moved without significant expense and are unlikely to be accepted into other parks. If a home owner faces unaffordable site rent increases, they may have no option but to sell, while remaining liable for site rent until their home is sold. Park owners retain significant control over factors influencing the sale of homes, including rent levels, park amenity and maintenance. Park owners often act as selling agents and in developing parks, may preference sale of their own, newly built homes to recover construction costs and their development margin.

Residential parks have unique features leading to market failures that adversely impact on home owners, justifying strong regulatory intervention. Home owners bear the costs and risks of home ownership combined with exposure to rental increases and the insecurity and lack of power and control that comes from renting, not owning, the land on which their home sits. If rents become unaffordable or the park otherwise no longer suits them, for example, because they need to move into residential age care, consumers have few options as they cannot practically move their home, access the equity in it, or rent it out to cover costs. They can sell their home, but must pay rent until it is sold, while having limited control over factors influencing the sale such as the level of site rent payable and the condition and amenity of the park.

It is important that consumers can reasonably predict the ongoing costs of living in a residential park. The amendments in the Bill aim to increase certainty, giving immediate relief to existing home owners from large, unpredictable and unsustainable rent increases, particularly from market rent reviews (which can frequently result in single year rent increases upwards of 10%) and from

other bases for increasing site rents that have the effect of increasing rent at much faster rates than the age pension.

Amendments to the *Fire and Emergency Services Act 1990*

Consequential amendments to the *Fire and Emergency Services Act 1990* update terminology and references to assignment agreements to reflect changes to the sales process in the Act and ensure the continued operation of provisions.

Achievement of policy objectives

Amendment of the Act

The Bill delivers on Action 18 of the Action Plan which committed to address concerns about site rent increases and unsold homes in residential parks. This commitment was recently endorsed by *Homes for Queenslanders* which noted that the government will continue to modernise the housing legislative framework to improve consumer protections in residential parks while making sure it is still viable for investors and operators to provide this housing option.

Key areas of focus in the Manufactured Homes (Residential Parks) Amendment Bill 2024

The Bill achieves the policy objectives by:

- 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.

Site rent increases

The Act requires that site rent increase mechanisms must be set out in a site agreement but it does not limit the methods that can be used to increase site rent, or the amount of increase to site rent that can be applied. The Bill will address concerns about unpredictable and high site rent increases by:

- prohibiting market rent review-based increases in any new site rent agreements
- voiding terms in current site rent agreements that provide for market rent review-based increases and providing an alternative framework for park owners to increase site rent more fairly and predictably
- capping annual general site rent increases at the higher of the Consumer Price Index (CPI) or 3.5 per cent
- creating a regulation-making power to prescribe the approved bases for site rent increases that can be used, to prevent unclear formulas being used in site agreements.

These measures will provide clarity and certainty for consumers about their future costs when they purchase a manufactured home and enter into a site agreement, allowing them to plan and budget appropriately.

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.

Other provisions in the Bill related to site rent include:

- updating the objects of the Act to include protecting home owners from unfair or excessive increases in site rent and preserving the safety and security of tenure for home owners
- redefining CPI and requiring CPI-based increases to be calculated based on the “weighted average of eight capital cities all group CPI” to align rent increases more closely to increases in the age pension
- requiring park owners to provide a fee-free option to pay site rent.

Transparency and accountability measures

Amendments in the Bill will provide greater transparency and consumer confidence by introducing new obligations for residential parks which include:

- A requirement to produce a ‘park comparison document’ and make it accessible on a park’s website. This will help create competitive downward pressure on site rents and upward pressure on quality by enabling consumers to be informed and objective about affordability, facilities and services on offer as they ‘shop around’ and choose a park, without being subject to sales tactics and representations of the lifestyle offered.
- A requirement to prepare and provide home owners with a maintenance and capital replacement plan for the park. This will require park owners to be more transparent about how income from site rent is spent in the park that home owners have invested in.
- A requirement for new parks to provide information to the regulator and become registered to operate a residential park, with existing parks deemed to be registered from commencement, and the chief executive given powers to request relevant information.

Regulation-making powers in the Bill will allow a regulation to prescribe the criteria on which a residential park may be exempt from requirements to have a website and prepare a maintenance and capital replacement plan. These criteria will be designed in consultation with stakeholders to mitigate the disproportionate administrative burden of these provisions on parks with a very small number of sites.

Sales processes and unsold homes

The Bill simplifies the sales process for pre-owned homes by removing the seller’s option to assign a site agreement and enabling new agreements to be made between a buyer and a seller. The Bill also includes minor amendments to the existing sales process to streamline disclosure requirements and to require new agreements to carry over some beneficial terms from the seller’s site agreement.

The Bill introduces a new buyback and site rent reduction scheme for homes that remain unsold after 18 months, which will operate similarly to obligations on retirement village operators. Home owners with eligible homes (those that have been built on site or transported to site as part of the development of the park) will be able to opt into the scheme six months after providing the park owner with the opportunity to sell the home, where it has not sold and they are no longer residing at the home. If the home has not sold in a further six months, the park owner must apply a site rent reduction of 25 per cent, and if the home hasn’t sold 18 months after the park owner was given the opportunity to sell, the park owner is required to purchase the home at an agreed price.

Other measures to improve consumer confidence

Other amendments in the Bill will improve the consumer protections provided in the Act. These include:

- Providing the Queensland Civil and Administrative Tribunal (the tribunal) with a wider range of options when it makes an order that a site agreement be terminated. Currently, home owners whose site agreement is terminated for a breach of their site agreement are required to remove their home from the site, which is often impractical. The amendments will ensure that where relocation of a manufactured home is unfair, that the home may instead be transferred to the park owner (with the home owner’s consent) in exchange for reasonable compensation. The

Act will also provide further guidance to the tribunal when making compensation orders, including that the value of the home, as positioned on the site, should be considered when an order is made on the termination of a site agreement.

The Bill also includes a requirement that, within three years of amendments commencing, a review will occur on the impact of the reforms and the extent to which they achieved an appropriate balance between industry viability and consumer protection and, if not, what changes are needed to achieve that balance.

Alternative ways of achieving policy objectives

The amendments in the Bill are the result of extensive policy analysis, including jurisdictional comparisons, and extensive consultation with a broad range of consumer, home owner, park owner, community and industry stakeholders over recent years.

Consultation included the release of a Consultation Regulatory Impact Statement (C-RIS) which outlined regulatory options to respond to key issues identified in residential parks including unpredictable site rent increases and difficulty for residents when leaving the park. Following this process, a Decision Impact Analysis Statement (DIAS) was approved by Government and will be released in conjunction with the introduction of the Bill.

This Bill contains the policy options identified as most effectively balancing improved consumer protections in residential parks, ensuring reasonable industry viability, whilst also generating the greatest net benefit to the Queensland community.

Estimated cost for government implementation

It is anticipated that Government will receive a modest benefit of \$80,700 in savings from reduced costs associated with disputes over 10 years. However, the DIAS did not consider potential costs to the tribunal arising from transitional provisions that will permit park owners to seek an order to allow a substitute basis for site rent increases to replace prohibited market reviews.

There will be relatively small costs to the Department administering the Act to establish and maintain the registration system for residential parks. It is not anticipated that additional resources will be required to implement the reform package and implementation costs will be met through existing budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with the fundamental legislative principles (FLP) in the *Legislative Standards Act 1992*. Aspects of the Bill that raise possible FLP issues, and justifications for any breaches, are addressed below.

Sufficient regard to the rights and liberties of individuals

Section 4(3) of the *Legislative Standards Act 1992* states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

Amendments within the Bill will impact on the rights and liberties of individuals by affecting the operation of site agreements regulated by the Act. 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. However, this retrospective effect is required and

is justified to achieve the policy objective of creating greater fairness and predictability for potentially vulnerable manufactured home owners.

Limiting site rent increases to the higher of CPI or 3.5 per cent, prohibiting market rent reviews and allowing site rents to increase on resale of a manufactured home

Provisions in the Bill will affect the operation of existing site agreements by imposing new limitations on how site rent may increase for manufactured home owners.

Clause 18 of the Bill prohibits terms of a site agreement which provide for a market review of site rent, and clause 24 requires an alternative site rent increase basis in the site agreement to be used (or a default basis of CPI) if no other basis exists. Clause 14 limits site rent increases to amounts that are no greater than the higher of CPI or 3.5 per cent. These amendments will impact the right of park owners to increase site rent as set out in their site agreements with home owners and will likely adversely impact the revenue a park owner anticipated when entering the site agreement with a home owner.

To provide some balance to impacts on park owners while enabling greater site rent increase predictability for home owners, clause 33 modifies processes when a home owner sells their manufactured home to give park owners an opportunity to increase site rent and change how site rent increases when a home is sold to a new incoming home owner. Previously, a seller of a manufactured home could assign their existing site agreement entirely and may have benefitted from a higher sale price because they were on-selling a home with beneficial site agreement terms, such as a comparatively low level of rent and a less inflationary site rent increase basis. Under the Bill, the right to assign these terms will be lost, in exchange for more predictable and sustainable site rent increases for both existing and incoming home owners while they are living in the park. Evidence from the 2022 survey of manufactured home owners indicates that assignment of a site agreement happens less frequently than new home owners entering a new site agreement, with most incoming home owners (74 per cent) indicating that they signed a new site agreement and only 26 per cent signing an assignment agreement.

The impacts on the rights and liberties of park owners and home owners are justified because the reforms are necessary to achieve the policy objective of more predictable site rent increases for home owners in residential parks, while ensuring greater transparency about the ongoing cost of living in a park at the time consumers commit to purchasing a home. Once a home owner has moved into a residential park, they have limited market power, given their obligation to pay site rent until they find a buyer willing to assume their obligations under a site agreement. Additionally, disputing annual site rent increases can be a time consuming, unpredictable, stressful and costly process.

Application of the site rent increase reforms to existing agreements is also necessary to ensure current home owners have some relief from excessive and unaffordable site rent increases and are not disadvantaged compared to new home owners. Ensuring that site rent increases are fair and transparent for current home owners as well as new home owners will support community harmony within residential parks and provide older members of the community with more confidence in residential parks as a housing option.

To mitigate impacts of these provisions on existing site agreements, a number of safeguards have been included in the Bill. The Bill includes provisions which allow the tribunal to alter a site agreement where the alternative site rent increase basis to a voided market review is lower than the increase cap and increases on the existing alternative basis would not be enough to support the viability of the park.

To ensure greater transparency of rent settings, provisions will require park owners to be open and transparent about the setting of site rent and how this can increase in new agreements, by requiring this information to be published in their residential park comparison document.

Definition of CPI

Clause 25 prescribes a new definition for CPI to be used in site rent increases notwithstanding the CPI specified in the site agreement. The clause will specify that the CPI used is to be the weighted average of eight capital cities all groups consumer price index. Clause 13 of the Bill requires that this definition be used for CPI-based increases despite any alternative definition established in a site agreement. This may impact the rate of future site rent increase for home owners and park owners depending on how a previously used definition in a site agreement compares to the new definition. This change will apply to existing site agreements but will not undo any increase already imposed. The application of the new consistent CPI definition is justified to establish a more uniform and consistent framework for site rent increases which provides clarity for home owners, and means that increases based on CPI will more closely align with changes to the age pension.

Provisions for termination orders underway but not decided on commencement

Clause 24 inserts provisions which establish how certain amendments will operate during the transition to the amended Act. Section 187 provides that the new part 6, division 3 will apply in relation to a termination application made under the former section 38 that has not been decided at the time of commencement. The new termination provisions will apply for the purpose of deciding a termination order, and for the purpose of making a compensation order. These provisions may affect the rights of park owners who have applied for a termination order under previous conditions where the tribunal could only make an order for the home owner to provide vacant possession of the site and could only make a compensation order for terminations on the limited grounds mentioned under former section 38 (1)(f). However, the tribunal would have discretion to determine if it is fair in the circumstances to make a compensation order, or to consider the matters listed as relevant in the new provisions when making their termination or compensation order. Applications for termination are very rare because of the serious emotional and financial consequences for a home owner of having their site agreement terminated, and because of this it is appropriate that the tribunal have the broadest discretion and powers to make orders that are fair and reasonable in the circumstances, including making orders about compensation, when deciding matters that were underway at commencement as they would for new applications commenced after assent.

Site rent reduction and manufactured home buyback scheme – impacts on the rights and liberties of individuals

Clause 12 sets out the Bill's new site rent reduction and buyback scheme. Under this scheme, home owners with eligible homes (homes that were not transported on to site by a home owner or former home owner) can choose to participate in to the scheme six months after providing a notice of their intention to sell the manufactured home. During this period, park owners have the opportunity to sell the home. If the home remains unsold after six months, and they have ceased to reside in the home, the home owner can opt into the scheme. If the home has not sold in a further six months, site rent must be reduced by 25 per cent and at 12 months from opt-in, the park owner is required to purchase the home at an agreed price. These provisions impose obligations on parties that were not required at the time the site agreement was entered into.

These provisions require a park owner to deal with manufactured homes sited on their land in particular ways including requirements to obtain valuations, apply a site rent reduction of 25 per cent after a specified period, and by requiring them to buy back manufactured homes from home owners if the home has not sold 12 months after the home owner opts into the scheme (which can only happen 6 months after the home owners gives the park owner notice of intention to sell). This scheme applies a site rent reduction and requires the park owner to purchase the home within the specified period, which may adversely impact the rights and liberties of the park owner. This is justified to ensure that there is an appropriate framework of incentives on park owners to facilitate the timely resale of homes in their parks and to safeguard the interests of vulnerable consumers

who own a home in a residential park) but who no longer live in that home and wish to sell it, ending their contractual relationship with the park owner.

The application of this scheme to existing site agreements is necessary to ensure equal treatment of existing and future home owners given the indefinite length of site agreements. To mitigate the impact of retrospectivity to the extent that the scheme applies to site agreements entered prior to the creation of the buyback scheme, the scheme includes an 18-month total timeframe including an initial 6 month selling period prior to opt-in and an additional 12 month selling period before a buyback is required. These timeframes apply prospectively, meaning that eligibility periods will not include any time before the amendments come into effect, regardless of how long the manufactured home remained unsold during that period. This ensures a minimum notice period of 12 months for park owners before a site rent reduction is applied (at the 12 months point) and 18 months before any buyback obligations fall due.

To ensure equity and mitigate any financial hardship that may arise from these requirements, the Bill also includes provisions enabling park owners to seek a one-off 6-month extension of time where they have made all reasonable efforts to sell the home, and ongoing extensions when the buyback would cause the park owner undue financial hardship.

Site rent reduction and manufactured home buyback scheme – property rights

Section 4(3)(i) of the *Legislative Standards Act 1992* states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation provides for the compulsory acquisition of property only with fair compensation.

Where the owner of an eligible manufactured home opts into the buyback scheme, a park owner is obligated to buy that home from the home owner at the end of the buyback period at an agreed value or a value set by a registered valuer. In exchange for the buyback payment, the park owner receives ownership of the manufactured home which can be resold. Thus, while the Bill will require a park owner to buy a manufactured home in their park, the home owner receives, and the park owner pays, an amount based on a fair, and if required, independent, valuation as required under the amendments. These amendments are justified given that once the park owner buys back the manufactured home, they may do with it as they wish, including to sell it to a new incoming home owner.

Sufficient regard to the institution of Parliament

Section 4(2)(b), 4(4)(a) and (b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament. This includes only allowing delegation of legislative power in appropriate cases.

Regulation-making powers

The Bill includes regulation-making powers to prescribe:

- approved site rent increase bases that can be used for increasing site rent, to deliver the reform objective of fair and transparent rent increases (Clause 43)
- the content of park comparison documents, to deliver the reform objective of increasing transparency (Clause 31)
- the content of, and how parks must publish maintenance and capital replacement plans, to deliver the reform objective of increasing transparency (Clause 46)
- a prohibition on the operation of unregistered residential parks, with more detailed registration requirements to improve compliance capabilities of the regulator and deliver the reform objective of increasing transparency (Clause 31).

These regulation-making powers are necessary to ensure the detailed requirements of these provisions can be developed in consultation with stakeholders. This also ensures that regulations can be updated in response to changing economic and market conditions. These regulations will be

subject to potential disallowance by the Legislative Assembly under section 50 of the *Statutory Instruments Act 1992*.

Transitional regulation-making power

The Bill also includes a transitional regulation-making power at clause 49. This power provides that a regulation (a ‘transitional regulation’) may make provision of a saving or transitional nature. These matters are deemed necessary to allow or facilitate the transition from the operation of the pre-amended Act to the operation of the amended Act, and the amendments in the Bill do not make sufficient provision for that.

A transitional regulation may have retrospective operation to a day not earlier than the day the transitional regulation-making power commences.

The transitional regulation-making powers in the Act, and any transitional regulation-making under the power expire two years after the section commences. The Bill contains amendments which change significant components of the residential park regulatory framework. This two-year period recognises this and allows for limited essential refinements to be made if necessary.

Expiry of the transitional regulation power at any lesser period could compromise the effectiveness of possible transitional regulations to respond to unforeseen issue or impacts that arise in the implementation of the reforms. Further, any regulation prescribing a transitional regulation is subject to potential disallowance by the Legislative Assembly under section 50 of the *Statutory Instruments Act 1992*. The measure is needed to manage issues that may emerge in the transition to the new arrangements.

Consultation

In June 2022, the Department released an issues paper and survey for the purposes of understanding issues, seeking feedback, and obtaining demographic data and other information necessary to inform the C-RIS released in May 2023.

The survey released in 2022 sought to gather data on the experiences of home owners in residential parks. The Department received 2,201 completed surveys. This represents approximately 5.7 per cent of the estimated 38,753 manufactured home residents in Queensland. Following feedback on the issues paper and survey, the Department identified that the two key issues impacting home owners were unsustainable and unpredictable site rent increases, and barriers to exiting the park due to potential delays in sales of home owner’s manufactured homes.

On 15 May 2023, the government released the C-RIS and a summary, for community consultation over a period of six weeks. Facilitated workshops across Queensland included a forum for industry and peak groups and 7 home owner workshops with approximately 226 participants.

Alongside workshops, stakeholders were able to provide written submissions or complete a survey. Over 2,700 submissions were received in response to the C-RIS, including more than 2,600 from home owners, 18 from park owners, and 21 from consumer and industry representative groups.

Feedback on the C-RIS was polarized and included diverse views from home owners and park owners about the extent of problems with site rent increases and unsold homes, their causes and impacts, and on the options to address problems.

Overall, home owners were generally supportive of the reforms, with many saying that the reforms did not go far enough and wanting stricter caps on rent increases. Industry and park owners largely

favoured the status quo, advocating for improved consumer education and improvements to the transparency and independence of existing site rent increase processes.

Legal groups such as Queensland Law Society and Caxton Legal Service supported the policy objectives in the C-RIS and said the problems identified were consistent with their experience. They generally supported the preferred options as striking a balance between consumer protection and industry viability.

Consistency with legislation of other jurisdictions

The legislation governing manufactured homes and residential parks greatly varies across jurisdictions and the Act is not part of any uniform legislative scheme. Residential park industries are different across each jurisdiction. For example, unlike Western Australia and South Australia, Queensland uses a perpetual lease model, rather than one that focuses on short term leases.

In New South Wales, site rent can be increased on a fixed basis (such as CPI or a percentage), or by provision of a notice by the park owner. Increases by notice cannot occur more than once per year. There is no restriction on the amount by which site rent can be increased by notice, as the provision does not impose any limitations on the site rent increase amount. New South Wales legislation does not address the assignment of agreements.

The Bill would align Queensland with Western Australia by prohibiting market rent reviews though it would provide further regulation by imposing a cap on site rent increases. In Western Australia, tenants may sell their manufactured home and assign their site agreement in accordance with precontractual disclosure requirements. This is similar to current requirements in Queensland, and by removing assignment this Bill would see Queensland taking a different path.

No other jurisdiction has a buyback or site rent reduction scheme for unsold vacant manufactured homes, although schemes of this nature have become increasingly common in other jurisdictions' retirement village laws.

Queensland will also be the first jurisdiction to impose a statutory limit on the rate at which site rents may increase by capping the maximum general increase in site rent under any agreement at the higher of 3.5 per cent or CPI.

Notes on provisions

Part 1

Clause 1 provides the short title of the Bill.

Clause 2 provides for a staged commencement of provisions in the Bill. Under this clause:

- Provisions in Part 2, Division 3 of the Bill commence 6 months after the Bill receives assent, and include the requirement for home owners to be given multiple site rent payment options.
- Provisions in Part 2, Division 4 of the Bill commence on a day to be fixed by proclamation. This includes provisions related to residential park comparison documents, changes to home selling processes, new registration requirements for residential parks, and requirements around maintenance and capital replacement plans. Consequential amendments to the *Fire and Emergency Services Act 1990* reflect changes in the sales process, and also commence by proclamation.
- By default, other provisions, including provisions in Part 2, Division 2 of the Bill commence on assent and include provisions related to termination of site agreements, the buyback and site rent reduction scheme, limiting site rent increases to the higher of CPI or 3.5 per cent, prohibiting market rent reviews and requirements for CPI-based increases to be based on the Weighted Average of Eight Capital Cities All Groups CPI.

Part 2

Clause 3 provides that the Bill amends the *Manufactured Homes (Residential Parks) Act 2003*.

Clause 4 introduces new objects to the Act to provide greater recognition to the importance of protecting home owners from unfair or excessive increases in site rent, and preserving the safety and security of tenure for home owners living in residential parks. This change seeks to modernise the objects of the Act and reflect the changing nature of parks where homes are typically sold on-site, and are rarely moved from one location to another. These changes necessitate stronger protections for home owners which reflect the high cost of entering a residential park, and the barriers to exiting a park where relocation of a home is impractical and expensive, and a significant proportion of a manufactured home's value is attributable to its siting in a park. This clause also strengthens an existing object of the Act by providing that the Act facilitates participation by home owners in the maintenance and operation of the park as an aspect of the 'affairs of the park', complementing the amendments requiring park owners to develop maintenance and capital replacement plans and provide these to home owners and home owner committees.

Clause 5 adds to the list of residential park disputes in section 14A of the Act, disputes regarding the eligibility of a home for the buyback and site reduction scheme, and disputes following non-compliance with the scheme.

Clause 6 provides definitions of 'compensation order' and 'termination day' for the division and directs readers to the relevant sections containing these definitions.

Clause 7 removes subsection 38(1)(f) and 38(2) which relate to terminations of site agreements where the park owner proposes to use the land for another purpose. These subsections are replaced by section 39 in other amendments which replicates the effect of these subsections.

The heading of section 38 is also updated to clarify that terminations in that subsection now relate to the conduct of the home owner.

Clause 8 establishes a new framework for terminations of site agreements by the tribunal, inserting new sections 39A – 39E.

- Section 39 replicates sections 38(1)(f) and 38(2) and re-establishes the grounds for park owners to terminate a site agreement where they propose to use the land for another purpose and have a document certified by local government that it is lawful for that site to be used for the proposed purpose.
- Section 39A specifies that a termination order may specify the day on which a termination of a site agreement takes effect. This day may not be more than 1 year from the date the tribunal makes the order. This provides scope for the tribunal to set a termination day based on what is fair and reasonable in the circumstances.
- Section 39B replaces former section 39 which required a home owner to provide vacant possession of a site when a site agreement is terminated. Section 39B allows the tribunal to instead determine whether to order that the home owner provides vacant possession of the site (removing the home) or vacant possession of the manufactured home (transferring ownership of the home to the park owner and leaving the home in place). The tribunal can only order vacant possession of the manufactured home where the home owner consents to this order. This section includes guidance to the tribunal on matters that it may take into consideration when making a termination order which includes the cost and practicality of relocating the home to another location, submissions by the home owner and park owner about whether the home should be relocated, the availability of alternative locations for the home, the condition and saleability of the home, the purchase price of the home and the comparative value of the home if it needs to be removed from the site, and anything else the tribunal considers relevant. The intent of this section is to ensure the tribunal is empowered to recognise circumstances where it is more reasonable for the home to be resold on site.
- New section 39C provides that where a termination order is made, the tribunal may make a compensation order that the park owner pay the home owner compensation. This section applies to termination orders made when the site will be used for another purpose (such as park closure) and other terminations such as where there has been unremedied breaches of the site agreement. Without these amendments, the tribunal could not order compensation except where the park owner proposed to use the land for another purpose. The intent of these provisions is to recognise the diversity of residential parks and the significant investment many home owners have made into living in a purpose-built residential park where much of a home's value is attributable to its location on the site. This section includes guidance to the tribunal on matters that may be considered when making a compensation order where the home will be removed, or where it will remain on site, while also ensuring the tribunal can consider other relevant circumstantial factors to ensure fairness for both parties.
- New section 39D provides that an amount payable to a home owner under a compensation order is recoverable as a debt.
- Section 39E enables the tribunal to seek independent expertise to determine the appropriate level of a compensation order in relation to the value of a manufactured home. Where this occurs, the park owner is required to pay the costs associated with this expertise but must be given the opportunity to be heard on the matter of appointing the valuer.

Clause 9 includes consequential amendments to reflect renumbering of provisions.

Clause 10 enables a home owner to seek an extension of time to comply with a termination order. When an extension is sought, the termination order is suspended until the application is decided. When considering the application, the tribunal may extend the period for termination or make any other order the tribunal considers appropriate.

Clause 11 makes provisions for the proceeds of a sale of a manufactured home following the abandonment of the home. The priority is to settle any security interests registered for the home first, followed by covering the reasonable costs associated with selling the home, as well as the expenses related to removing, storing and selling personal effects. The intent of this provision is to ensure consistency with the *Personal Property Securities Act 2009* (Cwlth) and other amendments made by this Bill.

Clause 12 creates the framework for a buyback and site rent reduction scheme for unsold vacant homes in a residential park. Under this scheme, eligible manufactured homes, whose owners have opted into the scheme and remain unsold, are required to have their site rent reduced by 25 per cent 6 months after the home owner has joined the scheme. Subsequently, the park owner must purchase the home at a mutually agreed price 12 months after the home owner has opted into the scheme.

Before a home owner can opt into the scheme, the manufactured home must be on the market for at least 6 months, and the park owner must have had an opportunity to sell the home in that time. Together, this allows a total of 18 months for a park owner to try to sell the manufactured home before a buyback becomes applicable.

This clause inserts Part 9A into the Act to establish the scheme as follows:

- Section 62A provides that the purpose of this new part of the Act is to establish the buyback and site rent reduction scheme.
- Section 62B provides definitions relevant to the part with directions to relevant sections.
- Section 62C establishes eligibility requirements for a home to participate in the scheme. To be eligible, the home must not have been moved onto the site by a home owner or former home owner. The intent of these section is to target the scheme at manufactured homes which were sold on site by a park owner, a former park owner or another party who benefited from the sale of the home on site and exclude park owners where they merely provided a vacant site for a home already owned by a home owner.
- Section 62D establishes the concept of a buyback agreement which requires a park owner to buy an eligible home at the end of the scheme.
- Section 62E establishes the concept of a buyback period, which provides days for when the buyback is required based on relevant circumstances, this being 12 months after the home owners opts into the scheme, or a later date which is 14 days after receiving the letter of probate, or another date fixed by the tribunal.
- Section 62F provides that a home is ‘sold’ only if the sale of the home has been completed.
- Section 62G establishes the meaning of references in the part to eligible home owners and park owners for the purpose of the buyback and site rent reduction scheme.
- Section 62H provides that division 2 (sections 62H-M) apply where a home owner joins the scheme by giving the park owner an opt-in notice.
- New section 62I establishes the concept of ‘buyback amount’ which is the amount that the home must be bought for under the scheme. The buyback amount is the amount the parties agree, or the amount set by the appointed valuer.

- Section 62J provides that once a home owner has joined the scheme, the home owner and park owner must agree on the resale value of the home within seven days of the home owner joining the buyback scheme. If they cannot agree, they must appoint a registered valuer to determine the resale value of the home.
- Section 62K makes provision for park owners and home owners to revisit the agreed sale price for the manufactured home six months after the initial valuation. Parties must agree within seven days, and if they cannot agree, they must appoint a valuer to determine the resale value of the home. This ensures that the agreed sale price can be realigned to changes in the market conditions over time.
- Section 62L makes provision for park owners and home owners to revisit the agreed sale price for the manufactured home nine months after the initial valuation. Parties must agree within 7 days, and if they cannot agree they must appoint a valuer. This ensures that the agreed sale price can be realigned to changes in market conditions once more prior to the buyback occurring.
- Section 62M makes provisions for where parties cannot agree on appointing a valuer where required under sections 62J, 62K and 62L. Where parties cannot agree on a resale value within seven days and cannot agree on appointing a valuer within a further seven days, the park owner must notify the chief executive in the approved form. Where this occurs, the chief executive must decide the valuer within 14 days, and the parties must appoint the valuer decided by the chief executive.
- Section 62N requires that, before a home owner can opt into the buyback scheme, the home owner must have notified the park owner of their intention to sell the home. This section ensures the park owner has an opportunity to provide necessary information for the buyback scheme and is drafted in anticipation of the buyback and site rent reduction scheme commencing prior to amendments to sale processes. When sale provisions commence, additional amendments to this section will commence which clarify that the notice required under this section is the same notice required as part of the new sale processes.
- Section 62O requires the park owner to notify the home owner about the availability of selling services and provide details about the site rent for a buyer of the manufactured home. As above, this requirement will be incorporated into the general sales processes once amendments to the sales process commences.
- Section 62P requires that, to join the buyback scheme, the home owner must have notified the park owner of their intention to sell. Additionally, the home owner must not be residing in, accessing or otherwise using the home. If the park owner offers selling services, the park owner must have been appointed to sell the home for a period of at least 6 months. Once these conditions are met, the home owner can join the scheme by providing an opt-in notice.
- Section 62Q provides that, where a home owner joins the buyback scheme, the park owner may choose to take over selling of the home if they are not already doing so. To do this, they must provide notice to the home owner, who must then appoint the park owner as the seller of the home under a selling authority within 7 days. Where the home owner does not comply with this requirement, the eligible home owner is considered not to have joined the scheme.
- Section 62R establishes that division 5 (sections 62R – 62X) applies where a home owner has joined the scheme.
- Section 62S provides that a home owner cannot refuse an offer to buy the manufactured home that is equal to, or more than, the buyback amount. This ensures that home owners cannot delay selling the home to get a higher price while relying on the buyback as a default

sale price. This incentivises home owners to pursue ordinary sales of their manufactured home to a third-party buyer.

- Section 62T requires the park owner to purchase the manufactured home from the home owner at the conclusion of the buyback period. However, it also ensures the park owner will not have committed an offence where they have made all reasonable effort to complete the sale but were impeded by the home owners' acts or omissions.
- Section 62U provides a framework for a park owner to notify a home owner where the home owner's acts or omissions are preventing a sale and advises them on necessary actions. Upon receiving this notice, the home owner must act within 28 days. Where they do not act, the park owner may apply to the tribunal to remove the home from the scheme.
- Section 62V requires a park owner to reduce site rent by 25 per cent where the home has remained unsold for 6 months after the home owner has joined the scheme. This implements the site rent reduction aspect of the scheme.
- Section 62W clarifies the site rent reduction noted above does not need to be provided to future home owners or disclosed as part of precontractual disclosure processes.
- Section 62X provides the order at which the proceeds of a sale under a buyback scheme are applied. This order first addresses any amount owed to another person under a registered security interest, followed by the home owner's share of any valuations paid for by the park owner. Subsequently, it covers the payment of reasonable costs associated with selling the home, and finally, any remaining amounts are paid to the park owner.
- 62Y ensures that a court may order a park owner to complete a buyback of a manufactured home where they are found to have committed an offence for not buying back the home as required by the scheme.
- Section 62Z gives the tribunal the power to resolve a dispute over whether a manufactured home is eligible to join the scheme.
- Section 62ZA ensures a home owner can recover any overpayments made due to a failure of the park owner to reduce site rent as required by scheme.
- Section 62ZB provides that if a home owner is given a notice under section 62U and does not take the stated steps within 28 days, the park owner may apply to the tribunal to remove the home from the scheme. The tribunal may make necessary orders in the circumstances, such as ensuring that the park owner is compensated for the home owner's share of the cost of valuations.
- Section 62ZC enables a park owner to apply to tribunal for an extension of time for the purchase of the manufactured home. Under this provision, an extension may be granted where the park owner is likely to suffer undue financial hardship if the order is not made and the order would not be unfair to an eligible home owner having regard to any submissions made by the home owner. The intent of this provision is to ensure residential parks remain viable notwithstanding requirements of the buyback scheme. Park owners may apply for an extension of time under this provision more than once. This ensures the viability of the park, and consequently, prevent any negative impact on the experiences of other home owners living in the residential park.
- Section 62ZD provides an alternative framework for a one-off extension of time for the purchase of a manufactured home under the buyback scheme which uses different criteria. Under this provision, a park owner may apply to the tribunal for a six-month extension. This may be granted if the tribunal is satisfied that (1) the park owner is unlikely to be able to sell the eligible home in the time required, (2) the park owner has taken all reasonable steps to sell the eligible home, and (3) the order would not be unfair to the park owner considering the impacts on all parties. This provision reflects the intent of recommendations made during an independent review of mandatory exit payments in Queensland retirement

villages. These provisions offer more accessible mechanisms to extend the buyback timeframe, taking into account market conditions. They will require evidence of reasonable attempts to sell the unit rather than focusing on establishing the financial hardship of a park owner.

- Section 62ZE clarifies that a park owner will not have committed an offence for failing to enter into a buyback agreement where there is an unresolved dispute about the eligibility of the home. Where the tribunal determines that a home is eligible, it must set a date by which the buyback is required.
- Section 62ZF establishes that division 8 (sections 62ZF – 62ZK) applies where a valuer has been appointed under the scheme to establish the resale value of an eligible home.
- Section 62ZG establishes requirements for a valuer who is determining the resale value of a manufactured home to take submissions from the home owner and park owner. It ensures that each party may make submissions to the valuer and requires that those submissions be shared with the other party who may provide a response to the submission.
- Section 62ZH provides that when determining the resale value of a manufactured home, the valuer must assess the value as if the home was sold in the park on the basis that the park would continue to operate. The valuer is required to consider the following:
 - the submissions of both parties
 - the condition, quality and presentation of the home
 - the location of the home in the park
 - the site rent payable for the home to be located in the park
 - communal facilities, services and amenities provided in the park
 - previous sales in the park and comparable parks
 - any other matters the valuer considers relevant.
- Section 62ZI seeks to ensure the valuer who has been appointed to determine the resale value of a manufactured home has sufficient information to undertake the valuation. Under this section, a valuer may provide notice to a park owner requesting information in relation to the park, the home, the site or site agreement, previous sales made in the park, the price of new homes in the park and a copy of the maintenance and capital replacement plan. The park owner must provide the requested information unless they have a reasonable excuse.
- Section 62ZJ requires that a valuer must disclose any connection or agreement with the park owner that may call into question the independence of the valuation.
- Section 62ZK establishes how the valuation of the resale value of a home is paid for under the buyback scheme. Under this section, the park owner pays for the full valuation upfront, however the home owner is liable for half this valuation cost which is paid from the sale amount when the home is sold due to the operation of section 62X.

Clause 13 inserts section 69AA which provides that references to CPI in a site agreement are taken to be references to the All Groups Index Numbers for the Weighted Average of Eight Capital Cities and that this change is intended to apply to all site agreements, including those that have prescribed alternative definitions of CPI. Subsequent transitional provisions clarify that this definition of CPI applies to site agreements entered into before commencement of these changes.

This section implements the policy of establishing a CPI which is standardised across all site agreements and defining CPI as that which has the closest relationship with changes in the age pension (noting that the age pension is adjusted with reference to a range of measures including CPI, the Pension and Beneficiary Living Cost Index and the Male Total Average Weekly Earnings). Prior to amendments in this Bill, the Act defined CPI to be the All Groups CPI for

Brisbane. However, the Act did not impose any requirements for site agreements to use that definition in relation to CPI-based increases. This resulted in parks choosing a variety of different CPIs, and in some circumstances seeking to use different CPIs based on what was beneficial at the time. Defining and standardising CPI-based increases is intended to reduce complexity for home owners and improve the comparability of site agreements and parks. Changes to the definition of CPI also seeks to minimise the differences between site rent increases based on CPI, and age pension indexations which reference CPI. This is to ensure that during periods where rent increases are based on high CPI index numbers, home owners can expect proportionally similar increases in their pension.

Clause 14 amends the Act to omit references to market reviews of site rent from the examples that are given in section 69A of the Act, as bases for increasing site rent that may be included in a site agreement.

Clause 15 limits annual general increases in site rent to the higher of CPI or 3.5 per cent. This means that despite any increase basis or terms provided for in a site agreement, a general increase in site rent cannot exceed 3.5 per cent or CPI where CPI is higher than 3.5 per cent. For example, if a site agreement provided for an increase of 5 per cent per annum, if the last published annual change in CPI was 4 per cent, the general increase in site rent must be reduced down to 4 per cent. Section 69B(5) clarifies the meaning of CPI increase as the percentage change over 12 months between the last quarter ending prior to the reference day, which is the last day for giving notice under section 69E of a general rent increase, and the corresponding quarter in the previous year.

Clause 16 removes section 69D from the Act, which required park owners to arrange for interested entities to be consulted in the preparation of a market valuation for a market review of site rent. This provision is no longer required due the removal of market rent reviews from the Act.

Clause 17 removes section 69E (2) of the Act which previously required that a notice of general increase in site rent for a market rent review would include a copy of the market valuation. This provision is no longer required due the removal of market rent reviews from the Act. The clause also makes consequential amendments to the numbering of the section.

Clause 18 implements the prohibition of market reviews of site rent in new and existing site agreements by voiding the terms of a site agreement which provide for a market review of site rent.

Clause 19 removes section 70A which permits the tribunal to appoint an independent valuer to assist when determining a dispute over whether a market review of site rent resulted in an excessive site rent increase. This provision is no longer required due the removal of market rent reviews from the Act.

Clause 20 amends section 71(1)(c) to remove provisions which specified that a special increase in site rent cannot be wholly or partly based on a market review of site rent. This provision is no longer required as market rent reviews can no longer be used as a basis for increasing site rent from commencement of relevant sections. This section also clarifies that a park owner's obligations under the buyback and site rent reduction scheme cannot be the basis for a special increase in site rent under section 71. It is intended that where a park owner cannot afford a

buyback under the scheme, they should seek an extension on the buyback from the tribunal rather than passing this cost on to other home owners as a special increase in site rent.

Clause 21 amends section 95 to replace the word ‘consumer price index’ with CPI, for consistency.

Clause 22 updates definition for ‘exempt provision’ in relation to section 116 of the Act which establishes the process for dealing with residential park disputes. Exempt provisions do not need to progress through the staged dispute resolution process in the Act and may go directly to the tribunal for determination. Exemption provisions include provisions related to terminations of site agreements, abandonment orders, the buyback scheme and site rent reduction scheme, and orders allowing the park owner to access the site in a residential park.

Clause 23 inserts a requirement for the Minister to start a review of the effect of the amendments to the Act included in this Bill within 3 years of this section commencing. The review must decide whether the amendments have achieved an appropriate balance between industry viability and consumer protection, and whether any further amendments to the Act are required to achieve an appropriate balance. This requirement has been included in the Act in recognition of the significant impact that amendments to the Act are likely to have on home owners and park owners. It emphasises the need for a post-implementation review to ensure that the amendments have achieved an appropriate balance between the interests of different parties.

Clause 24 inserts provisions which establish how certain amendments will operate during the transition to the amended Act. It inserts new sections 186 – 196 which have the following effect:

- Section 186 provides definitions for the terms: ‘amendment Act’, ‘former’, ‘new’ and ‘variation order’.
- Section 187 provides that new provisions related to termination of site agreements under part 6, division 3 will apply in relation to applications for a termination under the former section 38 that have not been decided at the time of commencement. This ensures that the tribunal has the full scope of options available to make determinations over unresolved applications for termination following commencement of the Bill, including for applications which are already underway.
- Section 188 clarifies that in the buyback and site rent reduction scheme, the initial six-month period before a home owner can join the buyback scheme starts at the commencement of those sections. It does not include any period when the home was in the process of being sold by the park owner prior to the commencement date. This ensures a minimum of 18-months in total from the commencement of the Bill before a park owner may be liable to purchase a manufactured home under the scheme.
- Section 189 clarifies that references to CPI in site agreements must use the definition CPI specified in section 69AAs, irrespective of whether the site agreement was entered into before or after commencement of amendments.
- Section 190 clarifies that the prohibition on market reviews of site rent will apply to all site agreements, irrespective of whether the site agreement was entered into before or after commencement of amendments.
- Section 191 provides that if a site agreement includes a market rent review clause and a general increase notice for a market review was given to a home owner before the provisions prohibiting market rent reviews came into effect, but the general increase day

for the market rent review falls after the commencement of this prohibition, the market review may be completed. However, the increase amount must not exceed the cap on site rent at the higher of CPI or 3.5 per cent.

- Section 192 provides that where a market review of site rent has been removed from a site agreement in accordance with this Bill, and the site agreement includes other bases for increasing site rent, those other bases may be used to increase site rent in the place of the market review of site rent despite any contrary terms in the site agreement. For example, where a site agreement included a repeating schedule where years 1 and 2 had a CPI-based increase and year 3 had a market review of site rent, the market review in year 3 could be replaced by a CPI-based increase.
- Section 193 makes provision for circumstances where a market rent review is removed from a site agreement under section 69F, and the site agreement includes no other basis for site rent to increase. In this circumstance, the park owner may increase site rent on the basis of CPI.
- Section 194 creates grounds for a park owner to apply to the tribunal for a ‘variation order’ within 2 years of commencement. The purpose of this is to amend the site agreements in their park where the market rent review clauses were removed in accordance with the Bill, as park owners believe that the alternative basis for increasing site rent, as specified in the agreement, is insufficient for the park to remain financially viable. Park owners cannot make an application for a variation order where the alternative basis for increasing site rent is based on CPI.
- Section 195 empowers the tribunal to seek advice from an appropriately qualified and independent expert to assist the tribunal to determine a fair and reasonable basis for increasing site rent when a park owner seeks to vary a site agreement under new section 194. The costs for this advice must be met by the park owner, who must first be advised of this cost and provided an opportunity to be heard on the matter of appointing the expert.
- Section 196 establishes the criteria on which the tribunal may vary site agreements when hearing an application made in accordance with section 194. To adjust site agreements in this circumstance, the tribunal must be satisfied that, if a variation order is not made, the operation of the park would not be commercially viable without significantly reducing the park owner’s capacity to carry out the park owner’s responsibilities. In deciding the application, the tribunal may have regard to the range of considerations established in this section, and anything else the tribunal considers relevant, when determining what is a fair and reasonable replacement basis for increasing site rents.

Clause 25 amends the dictionary in Schedule 2 of the Act, removing references to market valuation and termination order, and adding new definitions for ‘buyback agreement’, ‘buyback amount’, ‘buyback and rent reduction scheme’, ‘buyback period’, ‘compensation order’ and ‘convicted’. These definitions refer to the sections of the Act where particular terms are defined. This clause also changes the definition of ‘CPI’ in The Act from the ‘all groups consumer price index for Brisbane published by the Australian Statistician’ to the ‘All Groups Consumer Price Index number that is the weighted average of the 8 capital cities published by the Australian Statistician’. The intent of this change, which operates in conjunction with other amendments which require this definition to be used for CPI-based site rent increases, is to provide a consistent definition of CPI that improves the comparability of site rent increases. It also provides better alignment between increases in site rent and increases in the age pension (noting that CPI is the lower range of several bases for indexing the age pension).

Clause 26 specifies that a dispute between a park owner and a home owner about how site rent should be paid is a residential park dispute. Residential park disputes must follow the dispute resolution processes established in Part 17 Division 1 of the Act for resolving the dispute. This clause also makes consequential renumbering to section 14A.

Clause 27 amends the Act to require that home owners be provided with multiple payment options for the payment of site rent. The purpose of these provisions is to expand consumer choice and autonomy over how site rent can be paid. It provides greater flexibility for home owners to change this payment option if their circumstances change. This clause amends section 63 and inserts new sections 63A, 63B and 63C into the Act.

- Section 63 replicates the existing approved ways of paying site rent but omits provision for other methods agreed by both parties to be an approved method.
- Section 63A requires a park owner to nominate at least 3 approved ways for a home owner to pay site rent. It also requires that at least 1 of the nominated ways is a method that does not incur a cost to the home owner other than bank fees or other account fees usually payable by the home owner's transactions.
- Section 63B provides that a home owner may change their nominated way of paying site rent by providing a notice to the park owner. Where a park owner is given notice, they must provide a response stating the day when the new way of paying site rent takes effect. This day cannot be more than 20 days from when the home owner provided their notice.
- Section 63C allows home owners or park owners to propose another approved way of paying site rent other than a nominated way and allows this way to be used where both parties agree in writing to its use. A home owner may choose to revert back to a nominated way of paying site rent in accordance with section 63B.

Clause 28 provides how new requirements to give home owners choice over how they pay site rent applies to existing agreements which were entered into prior to these requirements commencing. These transitional provisions ensure existing home owners receive the same benefits from the amendments in this Bill as new home owners, by having options for paying site rent. This clause inserts section 197 which requires that, within 12 months of commencement, a park owner must nominate at least 3 approved ways for payment of site rent for existing home owners, ensuring at least one of those methods do not impose additional fees. Home owners must be notified of these methods, which are taken to be nominated ways of paying site rent included in their site agreement. This ensures that they have the capacity to change their payment method over time if they choose to do so.

Clause 29 amends the dictionary in schedule 2 to include a definition of 'approved way' and 'nominated way' with directions to the relevant sections.

Clause 30 amends section 14A, which establishes the meaning of a residential park dispute. These amendments provide that a dispute between an assignor/assignee and the park owner where the park owner has refused to consent to an assignment is a residential park dispute. This reflects the changes to the sales and assignment processes in the Act. Under these changes, buyers enter into new site agreements, and assignment is specifically reserved for transfers to family members. For example, assignment could occur when transferring the site agreement to a spouse living in the manufactured home who is not currently a party to the site agreement, especially when the primary home owner needs to move into aged care.

Clause 31 inserts a new Part 4 into the Act, which implements a new registration process and prohibits the operation of an unregistered residential park. It also introduces requirements for parks to create and publish a residential park comparison document.

Division 2: Registration

Sections 18-18F establish the new registration framework for residential parks in Queensland. This system replaces the previous framework which required park owners to notify the chief executive within 28 days of starting to operate a residential park and permitted the chief executive to record the residential park on a register. Under the new framework, it becomes an offence to operate an unregistered residential park. The chief executive has expanded powers to require information to ensure a proposed residential park is suitable for registration and can make requests for information to ensure the register remains up to date. The main purpose of these changes are to enable the Department to have sufficient information to ensure proper oversight of residential parks in acknowledgement of the significant investment made by consumers who buy manufactured homes in these parks. This information will also assist the chief executive to monitor the impact of legislative reforms to enable effective post-implementation review of changes. This is achieved through the insertion of sections detailed below.

- Section 18 provides definitions for ‘information’, ‘registered’, ‘residential park register’ and ‘unregistered residential park’ for the purpose of this part.
- Section 18A provides that a person may apply to the chief executive to register a residential park and establishes the information that must accompany an application. A regulation can prescribe further information needed as part of a registration and set a fee for applying to register.
- Section 18B empowers the chief executive to register or refuse to register a residential park and provides a framework for this decision to be made. The chief executive must decide within 90 days about whether to register a residential park. The chief executive may only register a park where satisfied that there is sufficient information to complete the records to be contained in the register. If the chief executive refuses to register a park, a prospective park owner may dispute this decision.
- Section 18C creates a requirement for the chief executive to keep a register of residential parks and prescribe the information that may be included on the register as set out in the section, including any other information prescribed by regulation. This section also allows the chief executive to keep the register in a form considered appropriate, including in electronic form.
- Section 18D provides that a person may inspect the register of residential parks by paying a fee prescribed by regulation and makes provision for the chief executive to make information contained on the register available at a place decided by the chief executive, including electronically.
- Section 18E requires park owners to notify the chief executive of material changes to information on the register within 28 days unless they have a reasonable excuse. This would include, for example, where a new site rent payable for new sites has been declared, the park rules have been amended, or the number of manufactured homes in the park changes.
- Section 18F permits the chief executive to request from a park owner information relevant to the register by providing a notice to the park owner, with the park owner given at least 30 days to respond.

Division 4: Residential park website and comparison document

Sections 18G-18L implement new requirements for park owners to prepare a residential park comparison document for their park and host that document on a website for the park (or a website for multiple parks in their portfolio). Park owners must also include a link to this document on any advertisements on their website for the sale of a manufactured home. The purpose of these provisions is to better enable prospective home owners to shop around, understand their options and select a residential park which best suits their needs prior to engaging directly with sales people for a particular park. The comparison document is intended to replace the initial disclosure document parks are currently required to prepare. This is achieved through the insertion of sections detailed below.

- Section 18G creates the requirement for a park owner to maintain a website for their park(s) unless they are exempt. It creates the power for a regulation to specify the criteria on which a park would be exempt from this requirement.
Section 18H requires the comparison document to be in the approved form and allows a regulation to prescribe information that must be included in a comparison document, and detail how the document must be formatted. This section also outlines the purpose of a residential park comparison document, specifying that a comparison document gives general information about the communal facilities, services and amenities available in the park, the site rent payable by home owners, including new home owners entering the park, the frequency of site rent increases and the basis on which site rent increases can be calculated, and details of what utilities are included in site rent.
- Section 18I requires the park owner to prepare a residential park comparison document.
- Section 18J requires a park owner to publish the comparison document prominently on their website unless they are exempt from the requirement to have a website. This section also requires a person selling a manufactured home in a residential park to specify that the home is a manufactured home regulated under the Act and provide a link to the relevant comparison document.
- Section 18K requires a park owner to give a copy of the comparison document to a person requesting the document within 7 days, and allows a regulation to prescribe a maximum fee for the provision of the document to that person.
- Section 18L requires a park owner to update their residential park comparison document where there are material changes to the facts presented in the document. A copy of the updated document must be provided to the chief executive when a change is made. A residential park comparison document may need to be updated, for example, when a park owner has declared a new incoming site rent for new manufactured home owners who are entering the residential park.

Division 5: Cancelling registration

Sections 18M-18O establish processes for cancelling the registration of a residential park.

- Section 18M permits the chief executive to deregister a residential park upon receiving a written request by the park owner where the chief executive is satisfied that cancelling the registration is appropriate.
- Section 18N permits the chief executive to deregister a residential park of the chief executive's own initiative when the park is no longer operating, or the park owner is proposing to stop operating the park and the chief executive is satisfied that cancelling the registration of the park is appropriate. Where this occurs, the chief executive must notify the park owner of the proposed cancellation and provide time for the park owner to object and provide evidence that the park is continuing to operate.

- Section 18O provides that where registration of a park is cancelled, the register may be updated with a statement that the park is no longer operating, the date the registration was cancelled, and whether the registration was cancelled at the request of the park owner or by the chief executive's own initiative.

Division 6: Offences related to unregistered residential parks

Sections 18P-18R include provisions which make it an offence to operate an unregistered residential park.

- Section 18P makes it an offence to operate an unregistered residential park.
- Section 18Q makes it an offence to induce a person to reside in, or purchase, a manufactured home in a park, or enter into a site agreement or pay site rent in a residential park they know, or ought to reasonably know, is unregistered. This includes the publication of a document inviting individuals to do these things, but it does not include solely seeking expressions of interest in a residential park.
- Section 18R allows the chief executive to seek an order from the District Court to stop a person from operating an unregistered residential park and makes provision for the court to make any order, including interim orders it considers appropriate.

Clause 32 amends the Act to require site agreements to be written and in the approved form. Currently, site agreements need to be in writing and meet the criteria prescribed by regulation but do not need to be in an approved form. This change is intended to standardise site agreements, improve consistency of agreements and make it easier for legal practitioners to give advice to prospective home owners and home owners about key aspects of a site agreement.

Clause 33 establishes new requirements to streamline and simplify the sales process. The new requirements consolidate the current processes of entering into a new site agreement and assigning an existing site agreement into a single process that applies to most home owners and prospective home owners. Division 2 provides details of the process of entering into site agreements and Division 3 outlines requirements for certain terms of site agreements to be carried over, while Division 4 provides circumstances in which an assignment of an existing agreement may occur.

- Section 29 prohibits a park owner from entering into a site agreement with the buyer of a manufactured home unless the home owner has been given the relevant precontractual disclosure documents for the manufactured home. Home owners must receive precontractual disclosure documents at least 21 days before entering into a site agreement unless this time period is reduced by waiver under section 30. This removes the staged aspect of precontractual disclosure that was previously required by the Act and enables the simultaneous provision of key documents, ensuring that all necessary documentation is readily available for prospective home owners to seek precontractual legal advice.
- Section 30 allows home owners to waive their right to a 21-day precontractual disclosure period and reduce this period to a minimum of 7 days where they have sought legal advice on their site agreement and signed a waiver document.
- Section 31 prevents a park owner from unreasonably refusing to enter into a site agreement with a prospective home owner where a seller is proposing to sell the home to a buyer. This protection is carried over from the previous sale process for assigning site agreements to ensure that a park owner cannot unreasonably interfere with the sale of a home by refusing to enter into a site agreement without a reasonable excuse.

- Section 31A maintains existing provisions in the Act which make it an offence for a park owner to restrict a person's right to obtain independent legal advice.
- Section 31B ensures home owners must be given a copy of their site agreement within 10 days of the agreement being signed by the park owner, to ensure home owners have a record of their agreement.
- Section 31C provides that Division 3 (sections 31C-31H) will apply to instances where a home owner enters into an agreement to sell the home and the home will continue to be located on site in the residential park after the sale.
- Section 31D provides definitions for Division 3 including the terms 'buyer' and 'seller' with direction to relevant sections.
- Section 31E requires that certain terms of a site agreement must be carried over into a new agreement when a manufactured home is sold on site from an existing home owner to a buyer. These terms include the utilities included in site rent payable for the site, the communal facilities, services and other amenities included in site rent payable for the site, and any other matters prescribed by regulation. This ensures that certain aspects of a home owners site agreement which contribute to the value proposition of the site are maintained between agreements. This preserves the value of that site agreement in the sales process. Notably, provisions which must be carried over do not currently include the site rent payable for the site as this can be reset on sale to ensure site agreements can incrementally realign site rent amounts with the broader market on resale of the manufactured home.
- Section 31F ensures that despite requirements for certain terms of site agreements to be carried into new agreements on resale, these terms can be altered where both parties agree to the alteration.
- Section 31G clarifies that a variation of a site agreement by mutual agreement under the previous section cannot be required by the park owner or be made a condition for the park owner to consent to entering into a site agreement.
- Section 31H specifies that site rent in a new site agreement cannot exceed the amount declared by the park owner under section 70B. This means that once per year, the park owner may declare the site rent for new site agreements in the park and must apply this amount to all new site agreements.
- Section 31I provides a definition for 'form of assignment' for new provisions on assignment.
- Section 31J establishes a new, more limited framework for a site agreement to be assigned from a home owner to a relative (as defined) when the park owner consents to assignment. These provisions are to allow assignment of site agreements to people when this does not involve the sale of the manufactured home, for example where a home owner seeks to assign the site agreement to their spouse who is living in the manufactured home but is not a party to the site agreement. In these circumstances, sales provisions which involve the creation of a new site agreement with site rent to be set at the level declared in section 70B are not intended to apply and site agreements are required to be assigned as written.
- Section 31K requires an assignment to be in the approved form and provides processes for the assignor and assignee to each sign 2 copies of the form of assignment.
- Section 31L makes provision for the assignor and assignee to request assignment of the site agreement from the park owner and provides that a park owner cannot unreasonably refuse to consent to the assignment. Where the park owner does not provide a response consenting to, or refusing to consent to the assignment, they are taken to have refused to consent to the assignment which will enable a dispute to be initiated over whether the refusal was unreasonable.

- Section 31M specifies that disputes about whether a park owner should assign a site agreement from an assignee to an assignor must be resolved using the dispute resolution processes in the Act. It specifies that the tribunal may make an assignment order where satisfied that the park owner has unreasonably refused to consent to the assignment.

Clause 34 omits sections of the Act related to assignment of site agreements on resale of a manufactured home. These provisions have been replaced by the new sales provisions in the Act which apply to the sale of both new and existing manufactured homes, and the more limited assignment provisions in section 31J-31M.

Clause 35 inserts section 55A which adds definitions relevant to the division, including the definitions of ‘buyer’, ‘default notice period’, ‘disclosure documents’, and ‘seller’.

Clause 36 inserts sections 56A-56C which establish new requirements around the sale of a manufactured home, including requirements for the sale agreement to be in writing, requirements for home owners to notify park owners of their intention to sell, and provide contact details to allow the park owner to supply precontractual disclosure documents.

- Section 56A creates new processes for a person who proposes to sell their manufactured home. Firstly, home owners are required to notify the park owner of their intention to sell. Upon receiving this notice, the park owner is required to give the home owner information relevant to the sale including whether the park owner offers services for the sale of manufactured homes, and what the site rent will be for a new home owner who buys the manufactured home. Whether a park owner offers sale services is relevant to the buyback provisions in the Act. The park owner must be appointed as the seller of the manufactured home where selling services are available, in order for the home owner to be eligible for the buyback scheme. Where selling services are not offered by the park owner, the home owner may be eligible for the buyback scheme despite the park owner not being appointed to sell the home. Disclosure of the selling price for new home owners will ensure the seller can notify potential buyers of what their site rent will be, as this can change on resale of the home.
- Section 56B creates requirements for sale agreements which mandates them to be in writing, be in the approved form, and include the information prescribed by regulation. This is intended to improve consistency of sale agreements and ensure they meet minimum standards. This helps home owners understand the risks, benefits and processes associated with buying a manufactured home in a residential park. The provision continues existing limitations preventing sale agreements from being completed until precontractual disclosure processes have been followed and a site agreement has been entered into.
- Section 56C requires a home owner to provide details of a buyer to a park owner when a seller other than the park owner is selling the manufactured home. On receiving this information, park owners must provide the buyer with the relevant precontractual disclosure documents for the manufactured home within 7 days and must not charge a fee which is more than an amount prescribed by regulation.

Clause 37 is a consequential amendment to reflect renumbering in the Act.

Clause 38 omits the definitions of notice of intention to sell and seller services from section 62B to enable staged implementation of amendments. This section, and new sections which provide updated definitions for these terms will commence by proclamation at the same time as provisions updating sales processes.

Clause 39 replaces reference to the notice of intention to sell in section 62N with a reference to the notice of intention to sell that needs to be provided as part of the new sales processes. The purpose of this amendment is to integrate the provisions related to the buyback and site rent reduction scheme which commences on assent, and the sales provisions which commence later by proclamation. This ensures temporary requirements are created which apply to a buyback on assent but are then replaced once the new sales sections commence.

Clause 40 omits section 62O which requires park owners to provide information in response to a notice of intention to sell as part of the buyback and site rent reduction. These requirements are integrated into provisions related to the sale of manufactured home in section 56A and are no longer needed once sale provisions commence.

Clause 41 makes consequential amendments (similar to those above) for the integration of buyback provisions which commence on assent with sales provisions which commence by proclamation by adding appropriate references to the notice of intention to sell under the sales provisions in section 56A.

Clause 42 ensures that a valuer can request a copy of a maintenance and capital replacement plan when valuing the resale value of a manufactured home under the buyback provisions once provisions related to maintenance and capital replacement plans have commenced. This enables the staged implementation of provisions to commence at different times.

Clause 43 inserts new requirements into the Act which require site agreements, entered into after commencement of these provisions, to use prescribed terms for increasing site rent. A regulation may prescribe the terms for increasing site rent that may be used in a site agreement.

Clause 44 inserts new section 70B which establishes requirements as part of the updated sales process to require park owners to declare what site rent will be for new site agreements. This site rent amount must be disclosed in residential park comparison documents and ensures transparency for buyers about what the maximum site rent will be if they choose to buy a manufactured home in a residential park. These declarations must be made before the general increase day in the park and apply from the general increase day. These declarations can only be made once per year. Amendments in this Bill specify that a new site agreement cannot set the site rent for a manufactured home being sold in a residential park above this declared amount.

Clause 45 provides that the tribunal can consider whether an increase in costs is attributable to a failure of the park owner to meet their obligations under a maintenance and capital replacement plan when considering an application related to a special increase in site rent. It also includes consequential renumbering to the considerations listed in 71C(4).

Clause 46 inserts new requirements for park owners to prepare and implement maintenance and capital replacement plans (MCR plans) for the residential park. These plans are designed to improve transparency and encourage open communication and consultation on a park's maintenance and capital replacement priorities. This clause inserts new sections 86B – 86E.

- Section 86B requires MCR plans to be in an approved form and creates the power for a regulation to prescribe the information that must be included in the plans, establish

procedures for completing the plans, prescribe other requirements related to the plan, and establish the intervals at which plans must be revised. The park owner must provide copies of the MCR plan to the chief executive within 28 days when there are material changes to the plan, and at intervals prescribed by regulation.

- New section 86C requires park owners to take reasonable steps to comply with their MCR plan and creates a regulation-making power to enable the prescription of specific actions that need to be taken as a part of these reasonable steps.
- New section 86D requires park owners to provide updated copies of the MCR plan to the home owners committee in the park within 28 days of the MCR plan being revised. Individual home owners may also request a copy of the MCR plan which must be provided within 7 days. Park owners must provide the MCR plan to the home owners committee free of charge but may charge a fee that is not more than an amount prescribed by regulation for individual home owners requesting the plan.
- New section 86E creates a regulation-making power to prescribe the criteria for a residential park to be exempt from MCR plan requirements. Parks which meet these criteria are exempt from MCR plan requirements.

Clause 47 amends the Act by inserting new Part 17A to modify the framework for parties to review a decision by the chief executive on particular matters. Under this new framework, when the chief executive makes a reviewable decision, they must give an information notice for the decision, such as a decision to register a residential park. If a party disagrees with the decision, they must, in first instance, seek an internal review by the chief executive. An internal review of the decision must be dealt with by a person who did not make the original decision and holds a more senior office. They may either confirm the decision, amend the original decision or substitute the decision with another decision. If the person disagrees with the outcome of the internal review, they may then seek an external review which is undertaken by the tribunal. This clause inserts new sections 118 - 123.

- Section 118 provides definitions for ‘affected person’, ‘information notice’, ‘internal review’, ‘internal review decision’, ‘original decision’ and ‘QCAT information notice’ for the purposes of new Part 17A.
- Section 119 specifies that a decision may only be reviewed by the tribunal if it has first undergone an internal review.
- Section 120 provides that a person who receives (or is entitled to receive) a decision notice for a decision may apply to the chief executive for an internal review of the decision.
- Section 121 requires the application for internal review to be made in writing within 28 days of receiving the information notice (or becoming aware of the decision) and include sufficient information for the chief executive to decide the application. The period within which an application for an internal review is to be decided may be extended by the chief executive.
- Section 122 requires the chief executive to review the decision within 20 days (or a longer period of time agreed by parties) after receiving the application and provide a QCAT information notice related to the review. If a review is not completed within this timeframe the chief executive is taken to have affirmed the original decision, enabling the applicant to proceed to external review.
- Section 123 enables the affected person to apply to the tribunal where they have received a QCAT information notice following the internal review of the decision.

Clause 48 omits former sections related to the record of residential parks which have been replaced by the new registration requirements in the Bill.

Clause 49 provides transitional provisions for the Bill and inserts new sections 198 – 202 in the Act.

- Section 198 ensures that all residential parks currently recorded on the register of residential parks are taken to be registered as a residential park under the new registration requirements in section 18A. This ensures continuity of operation for these parks and allows for information relevant to the register to be collected progressively from existing parks to mitigate the administrative burden of this process.
- Section 199 clarifies that site agreements entered into prior to requirements for site agreements to be in the approved form, are not required to be in the approved form.
- Section 200 provides that where an assignment has commenced with provision of a form of assignment prior to the amendments to sales and assignment provisions commencing, the interest in the home can be assigned in accordance with the legislation in force prior to those provisions commencing. This ensures the continuity of these processes.
- Section 201 provides that where the new requirements to provide a notice of intention to sell as part of the new sale process commences and replaces the requirements in the buyback provisions, a notice of intention to sell under the buyback provisions will be taken to be considered the same notice for the purpose of meeting the requirements to join the buyback scheme in section 62P.
- Section 202 clarifies that any terms for increasing site rent which are included in a site agreement prior to the commencement of provisions limiting site rent increases to prescribed bases remain valid after the commencement of those provisions. However, this does not apply where the basis is market review of site rent as the Bill voids market review terms in all site agreements from commencement of those provisions.
- Section 203 creates a transitional regulation-making power that permits a regulation to make provision of a saving or transitional nature where such provisions are necessary to transition to the operation of amendments, and the Act is insufficiently clear on how that transition needs to occur. This provision is intended to facilitate timely and effective responses to transitional issues and to provide clarity where needed on matters stemming from unforeseen circumstances that might not have been anticipated during drafting of the Bill. Given the complexity of amendments, and the significant changes made to processes in the Act, these provisions provide an important safeguard to ensure the operation of the legislation.

Clause 50 amends Schedule 1 to remove reference to the initial and supplementary disclosure documents and insert reference to a manufactured home owner's information document. This document will replace the supplementary disclosure document and largely include the same information. The initial disclosure document will, in effect, be replaced by the new residential park comparison document which will include new information to enable more effective comparison of residential parks at earlier stages of a home owner's search for a manufactured home in a residential park. The information requirements in the former supplementary disclosure documents and the new manufactured home owner's information document are generally similar.

Clause 51 amends the Dictionary in Schedule 2 to remove and add or update definitions as required.

Clause 52 establishes Schedule 1 of the Bill which sets out consequential amendments to other relevant pieces of legislation.

Schedule 1

The Bill includes consequential amendments to the *Fire and Emergency Services Act 1990* which reflect changes to the sales process. Provisions continue to apply to the new process in which buyers are required to enter into new site agreements on resale of a manufactured home.

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