



Review of site rent increases and sale of homes in residential parks

Issues paper for stakeholder consultation

June 2022

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Purpose of this paper

Action 18 of the Queensland Government's *Housing and Homelessness Action Plan 2021-2025* commits the Queensland Government to deliver improvements for residential (manufactured home) parks to address concerns about site rent increases and unsold manufactured homes.

The Department of Communities, Housing and Digital Economy (the department) has prepared this issues paper to outline issues identified with site rent increases and unsold manufactured homes, and seek community input on these issues to help identify what improvements are required.

Along with this issues paper, the department has released a survey to gather data and other information from consumers about their experience of living in a residential park. Details of how to access this survey can be found at <https://www.chde.qld.gov.au/about/initiatives/residential-parks-improvements>.

The issues paper sets out the concerns with site rent increases and unsold homes that have been identified to date. These concerns have been raised in correspondence, submissions and petitions and in meetings with:

- individual home owners
- home owner and park owner peak groups
- legal and consumer advocacy groups
- members of parliament on behalf of their constituents.

The issues paper was also informed through observations made by the department in seeking to secure compliance with the *Manufactured Homes (Residential Parks) Act 2003*.

Feedback on this issues paper will inform a Consultation Regulatory Impact Statement (Consultation RIS) to enable a more complete understanding of the problems. The Consultation RIS will seek to identify the cause of the problems identified in this issues paper and in the feedback provided.

Subsequent stages of the RIS process will identify whether and why there is a need for intervention, identify policy options to address the problems, and provide a cost-benefit analysis of options for resolving the identified problems.

For more information on the process of developing a Consultation RIS, please see *The Queensland Government Guide to Better Regulation*, available at:

<https://www.treasury.qld.gov.au/resource/queensland-government-guide-better-regulation/>

Submissions on this paper are invited until 15 August 2022. Discussion questions have been included to guide the content of submissions. However, the department welcomes any feedback you have on this issues paper, including on matters not discussed in this paper that you believe should be addressed.

Context

The residential (manufactured home) parks industry has experienced steady growth in Queensland over the last ten years. Targeted to the over 50s market, the popularity of 'lifestyle villages' is driven by factors including the relative affordability of homes, their low maintenance, location, often with extensive community facilities and services, and as an alternative to retirement villages.

At the time of the last major survey of manufactured home owners in 2013 there were 168 residential parks in Queensland containing 14,000 manufactured home sites¹. As of 4 May 2022, there were 202 residential parks in Queensland listed on the public register. These parks contained a total of 23,453 manufactured home sites with 99 listed as 'mixed-use', containing both manufactured homes and

¹ *Manufactured Homes Survey Report 2013*.

caravans or other forms of accommodation. The remaining 103 residential parks are listed as 'purpose-built' parks containing only manufactured homes.

Despite a relatively even split of mixed-use and purpose-built parks, purpose-built parks account for approximately 87 per cent of all manufactured home sites. The median number of sites for a mixed-use park is 8 sites with the largest park containing 220 sites. The median number of sites for a purpose-built park is 192 sites with the largest park containing 530 sites.

Purpose-built residential parks are typically marketed as seniors-focused accommodation providing a retirement living and lifestyle community. At the time of the 2013 survey, 88 per cent of home owner respondents were aged 65 or over, 90 per cent had an income of under \$40,000 and nine out of ten were receiving a pension or part pension.

The legal relationship between the owner of a residential park and the owner of a manufactured home positioned on a site in that residential park, is set out in the site agreement and is regulated by *Manufactured Homes (Residential Parks) Act 2003* (the Act).

The Act defines a manufactured home as a structure, other than a caravan or tent that has the character of a dwelling house; is designed to be able to be moved from one position to another; and is not permanently attached to the land. Converted caravans are excluded from this definition, except in limited circumstances.

The Act defines a residential park as an area of land that includes sites to rent for positioning manufactured homes, common areas, and facilities for the personal comfort, convenience, or enjoyment of persons residing in manufactured homes positioned on the site.

The main objective of the Act is to regulate, and promote fair trading practices in, the operation of residential parks to:

- protect home owners from unfair business practices
- enable home owners, and prospective home owners to make informed choices by being fully aware of their rights and responsibilities in their relationship with park owners.

These objectives are advanced by describing home owners' and park owners' rights and obligations; facilitating disclosure of information and regulating the site agreements, sale of abandoned manufactured homes and variation of site rent.

The Act's objectives also include supporting the growth and viability of the residential park industry and providing certainty for the residential park industry in planning for future expansion.

The Act was last reviewed in 2017 with the passage of the *Housing Legislation (Building Better Futures) Amendment Act 2017*. These amendments included priority amendments related to site rent increase processes, dispute resolution and precontractual disclosure, which sought to improve consumer knowledge, park owner transparency, and reduce disputes.

Site rent increases

Overview

In residential parks, a home owner buys their manufactured home (from a manufactured home supplier, the park owner or a departing home owner) and rents the land their home is sited on from the park owner. A home owner pays site rent for the right to that position in the park, and for access to the park amenities. The amount of site rent is agreed between the home owner and the park owner in a site agreement. Site agreements also cover the arrangements for increasing site rent over time.

The Act allows two types of site rent increases: those provided for in the site agreement (general increases) and increases to cover special costs (special increases). Different requirements and limitations apply depending on the type of site rent increase proposed by the park owner.

General increases in site rent

General increases occur in accordance with the site agreement between a home owner and park owner. The Act provides Consumer Price Index (CPI) and market review as examples of a basis for a general increase, but other bases can apply. General increases are regulated under Part 11 Division 2 of the Act.

The Act limits general increases to once per year, using a single basis at a time, however a site agreement may provide that a different basis can apply, on say, every third year.

A residential park will generally have the same increase day for each site with that basis for an increase. Home owners must be given a notice of general increase at least 35 days before the increase takes effect.

Additional requirements apply where the basis for increase is a market review of site rent.

The Manufactured Homes (Residential Parks) Regulation 2017 (the Regulation) prohibits misleading calculation of site rent increases.

Market reviews of site rent

Market reviews are a common type of general increase, where site rent is increased by comparing rents with those payable in other residential parks and other residential accommodation.

A park owner must engage a registered valuer to do a market valuation and consult with the home owners committee (or a proportion of home owners if there is no committee) about the market review at least 63 days before the general increase day. In their market valuation, the registered valuer must disclose any connection to, or agreement with, the park owner that may call into question the independence of the valuation.

How general increases in site rent increases can be disputed

Under the Act, a home owner or group of home owners who want to challenge a site rent increase must follow a 3 stage dispute resolution process, which starts with park-level negotiation and if not resolved, followed by mediation, and then a hearing by the Queensland Civil and Administrative Tribunal (QCAT).

For a general increase in site rent, the onus is on the home owner to dispute the increase, if they believe the increase is excessive. A group of home owners may also dispute an increase jointly.

When considering if an increase is excessive, QCAT can consider a range of matters (s.70(5)) including site rents in nearby residential parks, the amenity and standard of the park's facilities, increases in operating costs, and anything else it considers relevant.

Site rent decreases

A home owner may seek a reduction in site rent if they believe the amenity or standard of the residential park's common areas or facilities has substantially decreased, or a communal facility or service has been withdrawn.

A reduction may also be sought if a service or amenity described in advertising or pre-contractual documentation is not provided, if utilities included in site rent become separately measured and payable by the home owner, or the utility stops being available.

Applications for a site rent reduction also follow the 3 step dispute resolution process.

Special increases in site rent

Special increases allow a park owner to propose an increase in site rent to cover 'special costs' not provided for in the site agreement. Special increases are regulated under the Act and may only cover specific types of cost, including:

- significant increases in operational costs in relation to running the park, including significant increases in rates, taxes or utility costs for the park (an 'operational cost')

- the cost of significant repairs in relation to common areas or communal facilities in the park that the park owner could not reasonably have foreseen and could not reasonably have obtained insurance to cover (a 'repair cost')
- the cost of significant upgrades to the common areas or communal facilities in the park (an 'upgrade cost').²

To increase site rent to cover a special cost, a park owner must give written notice to home owners describing the increase and providing an opportunity for home owners to respond in writing, either agreeing to or disputing the increase.

For an upgrade cost, where notice is provided to more than 4 home owners, 75 per cent of home owners must agree with the increase. For all other special increases, the park owner cannot increase the rent unless the home owner agrees. If this consent is not given, the 3 step dispute resolution process is applied, and the onus is on the park owner to apply to QCAT to have the increases approved for any home owners that did not agree.

To make an order approving a special increase in site rent, QCAT must be satisfied that unless the site rent is increased as proposed, the residential park will not be commercially viable without significantly reducing the park owner's capacity to carry out their responsibilities under the Act.

1. Issues related to site rent increases

1.1 Affordability of site rent increases for manufactured home owners

Manufactured home owners frequently voice concern about the declining affordability of residential park living due to ongoing and compounding site rent increases. Some home owners find that the rent increase exceeds what they had budgeted for, and that over time site rent is increasing more quickly than their income impacting their ability to meet other expenses. Home owner representative groups have provided the department with case studies and examples to highlight this issue.

The demographic of manufactured home owners is relevant when considering affordability. Older Queenslanders on fixed incomes may be less able to absorb substantial increases in living costs where this outstrips any increase in the aged pension. Manufactured homes in residential parks have historically been considered an affordable housing option for people (predominantly retirees), with sufficient capital for an upfront investment but limited capacity to increase income to cover increases in ongoing costs.

At the time of the 2013 survey, 88 per cent of home owners were aged 65 or over, 90 per cent had an income of under \$40,000 and nine out of ten were receiving a pension or part pension. Results from the survey of manufactured home owners will update these figures and provide information about the impact of increased site rents on affordability for home owners.

The Act makes no specific provision regarding the age and circumstances of home owners, although many residential parks have a clear marketing focus on older Queenslanders and retirement living, and residential parks are often marketed as an alternative to retirement villages.

The Act seeks to protect consumers by regulating the process and limiting the frequency of site rent increases, but not the amount of, or basis for, an increase (other than limiting increases to using only a single basis at a time). This is a matter of contract between the parties. Precontractual disclosure documents are intended to draw attention to important contractual details in proposed site agreements such as the process for site rent increases, prior to a home owner committing to the site agreement.

1.2 Rising cost of park expenses

During previous consultation, park owners highlighted the rising costs of operating a residential park, and in particular, insurance costs. Park owners have expressed concern that CPI-based rent increases may be insufficient to cover increases in the cost of maintaining the park.

² Part 11 Division 3 of the Act

Understanding the different costs associated with running a residential park, and how these change over time, is important when reviewing the legal framework for site rent to ensure residential parks remain viable.

1.3 Prospective manufactured home owners may not understand arrangements for site rent increases when purchasing their manufactured home

The Act requires that home owners receive precontractual disclosure documents in a staged process over 21 days. This is to give home owners time to consider the terms of their site agreement and to seek legal and financial advice.

However, home owner organisations and legal advocacy groups say that despite these provisions, home owners continue to sign site agreements without advice and without understanding key details such as the basis and frequency of site rent increases. These groups point out that it is difficult to find lawyers and financial advisers with expertise in the Act who can give appropriate and timely advice. The lack of accessible advice and information, or a home owner's decision not to get advice, may mean some home owners do not fully appreciate the potential impact of site rent increases at the time of signing their site agreement.

Under the *Queensland Housing and Homelessness Action Plan 2021-2025* the department is examining how to improve access to precontractual advice in residential parks (and retirement villages) to help resolve housing issues and disputes. More information on this project can be found on the final page of this issues paper.

1.4 Difficulty in predicting future cost of site rent

While a site agreement and precontractual disclosure documents describe the basis, or method to be used for the review of site rent, unless the basis is a fixed percentage or amount, it is difficult for a home owner to estimate or predict the future cost of site rent. This could be considered a limitation on a person's ability to make an informed decision about buying a manufactured home and, once they have bought into the park, to planning and budgeting for future expenses.

Market-based reviews of site rent in particular, which involve a subjective assessment of value by an independent registered valuer, are unpredictable and may exceed home owners' expectations of what is reasonable. In a period of rising inflation, some home owners are now also concerned about the potential unpredictability and scale of CPI-based increases.

1.5 Limited options for home owners unable to afford site rent increases

A defining feature of manufactured homes under the Act is that they are not permanently fixed to the land and may be moved from one location to another.

However, moving a manufactured home is expensive and inconvenient, and finding another site for the home is also likely to be difficult. Therefore, once a consumer has bought a home in a residential park, the option of 'taking your business elsewhere' if unhappy with the service or price, is not an option that is likely to be viable.

Manufactured homes in Queensland's 110 mixed-use residential parks may be more movable. However, as at May 2022, these parks accounted for only 13 per cent of residential park sites, as the industry moves towards purpose-built and retiree-targeted lifestyle communities.

Another consideration is that some of a manufactured home's value is attributable to its siting in a residential park and the lifestyle, facilities and amenity available in the residential park. This creates a barrier to relocation as a response to site rent increases, as home owners risk losing a proportion of their investment.

1.6 Disparity in bargaining power between home owners and park owners and the difficulty of disputing rent increases

The Act allows home owners and park owners to negotiate on matters such as site rent, and the basis for site rent increases. However, concerns have been raised that there is little incentive for the park owner to compromise during negotiations on the site agreement, particularly where an existing home

is being sold and the park owner is entitled to receive site rent from the selling home owner until the sale is completed. It is argued that this creates a disparity in bargaining power between the prospective home owner and park owner about terms of the site agreement at the point of purchase.

The Act encourages and protects the rights of home owners to create a home owners committee, giving home owners some support when dealing with a park owner. However, not all residential parks have a home owners committee, and for those that do, the role they play in the park may vary, with some committees focusing on advocacy, while others are focused more on community and lifestyle matters.

Some home owners are concerned that the existing 28-day period for initiating a dispute about a site rent increase is insufficient, particularly where home owners may wish to organise themselves to act collectively.

Home owners have raised concerns that some home owners do not have expertise, or the energy, to advocate for themselves effectively. Further, it is argued that the law and legal processes involved in disputing a site rent increase is a further impediment to home owners seeking to challenge a site rent increase. Older or vulnerable home owners may see the park owner as a person of authority and may be unwilling to question decisions or instructions out of fear of conflict or reprisal.

In particular, home owners have argued that the process to challenge the outcome of a market review is complex and intimidating, particularly as the onus is on the home owner. They suggest that many owners lack the expertise and capacity to gather evidence and the confidence to challenge a professional valuation. The cost for a home owner or home owner group to obtain an alternative market valuation would also be significant.

Home owners have also raised concerns that where a site rent increase is disputed, they must continue to pay the higher amount until the dispute is resolved, and that delays in receiving a hearing may result in their next site rent increase falling due before disputes over the previous increase are resolved, adding significant complexity.

To assist home owners, the department funds the Queensland Retirement Village and Park Advice Service (QRVPAS) to provide independent legal advice and information. This service helps to inform and advise home owners about the applicable law. However, most home owners will need to represent themselves in the dispute resolution process. Self-representation is likely to be more difficult for home owners as they age.

The department also provides advice and general information to home owners about the Act and engages with park owners to encourage best practice. However, compliance action by the department is limited to matters which attract a penalty under the Act. This means the department's role is typically limited to ensuring appropriate processes are followed and it cannot become involved in disputes about the content of a site agreement that otherwise complies with the Act. These issues must be resolved using the dispute resolution processes in the Act.

The department is progressing an action under the *Queensland Housing and Homelessness Action Plan 2021-2025* to explore options to improve Queenslanders' access to pre-contractual advice about residential (manufactured home) parks and retirement villages and access to timely and consistent decision-making to help them resolve housing issues and disputes.

1.7 Formulas that can only increase site rent

There are only limited circumstances in which site rent may decrease, such as where the amenity or standard of the residential park's common areas and communal facilities has decreased substantially. Rent review formulas used for general site rent reviews in manufactured home parks can only be used as the basis for an increase. However, home owners have argued that they should be able to benefit from a decrease in value which might happen during periods of no inflation or deflation, or due to market corrections after periods of growth. While this does not apply in periods of sustained housing growth, this imbalance arguably contributes to a persistent upwards pressure on site rents in residential parks.

1.8 What constitutes a basis for a general increase in site rent?

The Act provides that a general site rent increase cannot use multiple bases at one time. The Act provides the example of a market review of site rent which also includes a CPI component as an increase that is prohibited under the provision.

Stakeholders have expressed uncertainty about whether this provision prohibits site rent increases based on a formula with multiple components, or alternatives. Simple examples of these kinds of increases include “CPI+1 per cent” or “CPI or 3 per cent, whichever is higher”.

Examples have been provided of more complicated formulas including:

$R \times C + (X/Y + Z/Y)$ where:

Where:

“R” represents the Site Rent paid during the preceding year

“X” represents the increase in local government charges

“Z” is the increase in land tax

“Y” represents the total number of sites in the park

“C” represents the percentage increase of the CPI for the preceding year.

It is also understood that there are site agreements where the park owner has discretion to determine a site rent increase amount. For example, “Greater than or equal to 5 per cent at the park owner’s discretion”.

The department’s Regulatory Operations unit report that uncertainty about the meaning of ‘basis’ has resulted in disputes and complaints to the department where park owners and home owners disagree about whether a basis is permitted or not.

1.9 CPI increases are being applied inconsistently

The Act defines CPI to mean the ‘all groups’ consumer price index for Brisbane published by the Australian statistician. This definition provides the meaning of CPI when interpreting the Act, but the Act does not clearly create a requirement to use this definition to calculate a CPI-based increase. Whether site rent can increase with reference to CPI and the details of how that increase is calculated is agreed by the parties in the site agreement.

Some home owners have expressed concern that CPI percentages or the CPI period are applied inconsistently when determining a CPI increase. This may be because a site agreement is insufficiently precise about which CPI (for example, for which capital city) or what CPI period is to be used, or because the terms of the site agreement are misinterpreted or misapplied by a park owner.

The department has also been advised that some residential parks specify unusual CPI figures in their site agreement such as the ‘all groups’ consumer price index for Sydney as the basis for site rent increases.

Home owners have also raised concerns about whether the All Groups CPI for Brisbane is the most appropriate metric for site rent increases when it is influenced by fluctuations in unrelated services or goods such as fuel.

The department’s Regulatory Operations unit report that uncertainty around CPI-based increases is a common cause of enquiry to the department. Disagreements between home owners and park owners about the appropriate calculation of a site rent increase must be dealt with using the dispute resolution provisions in the Act.

1.10 Normalisation of higher site rent amounts

Manufactured home owners have raised concern that park owners are often able to impose higher site rent amounts on an incoming home owner who chooses a new site agreement (rather than being

assigned the terms of an existing site agreement) when they purchase a previously-owned manufactured home.

There are concerns that where a new site agreement sets a higher site rent, park owners can use this increased amount as a justification for increases across the rest of the park during a market review of site rent.

Conversely, other home owners have raised concerns about different site rents being payable for different sites within a residential park. For example, older agreements may have a lower weekly site rent or a different increase basis, or site rent may be higher for sites with greater levels of amenity. Some home owners believe this is unfair and think that the site rent for all sites within a residential park should be the same.

1.11 Relationship between park owner and valuer

Under the Act, the park owner may choose a registered valuer to undertake a market valuation. This differs from comparable processes for engaging a valuer under the *Retail Shop Leases Act 1994* and *Retirement Villages Act 1999*, which require that both parties agree on the valuer, and provide mechanisms for the chief executive of the department administering each Act to appoint a valuer, where agreement cannot be reached.

Registered valuers must comply with relevant legislation and the Australian Property Institute Rules of Professional Conduct, which require them to carry out their duties ethically, competently and in good faith. Complaints against a registered valuer may be lodged with the Valuers Registration Board of Queensland.

The Act also requires a registered valuer to state in the market valuation any connection to, or agreement with, the park owner that might call into question the independence of the valuation. A home owner who opposes the market valuation based on this connection or agreement must dispute the increase using the dispute resolution processes in the Act.

Home owners and other stakeholders have expressed concerns about the relationship between the park owner and the registered valuer, who is selected and paid by the park owner. Stakeholders argue that valuation is not an exact science and there can be arguments to support the upper or lower range of estimated market rents. Stakeholders have also been concerned that the established client / customer relationship with the valuer is not with the home owners but with the park owner.

The Act allows for QCAT to appoint an independent valuer in limited circumstances, including where consultation was not adequate, a market valuation was not provided, the increase differs from the market valuation, or where the basis or methodology for the review was not clear or reasonable. The Act does not explicitly allow an independent valuer to be appointed due to a perceived or actual conflict of interest unless the market valuation is otherwise unreasonable.

1.12 Act is unclear on relevant considerations for comparison and valuation

The Act defines a market review of site rent as a review of site rent decided by comparing the site rent with 1 or both of the following:

- a) The site rent payable for a site in 1 or more residential parks; or
- b) The rent payable for other residential accommodation

Site rent valuations generally involve comparing one park to another within the same broad locality. The factors considered when making an assessment include location, density, amenity, as well as the level and standard of facilities. The average capital value of a house within the suburb and movement in house prices may also be considered for benchmarking the relative desirability and value of a location.

Stakeholders have argued that there is limited guidance for home owners, or for QCAT on the scope of valid considerations for market reviews. This makes it difficult to assess whether a market review increase is appropriate.

1.13 Limited basis for comparison between some parks

Approximately 64 per cent of residential park sites (45 per cent of parks) are located within the Gold Coast, Sunshine Coast, Logan City and Moreton Bay regional local government areas. This means it is possible to compare parks for the purpose of market rent reviews in these locations, but there are limited opportunities for comparison outside of these areas, particularly in remote and regional areas.

Home owners are concerned that comparisons made within small markets potentially leading to upwards pressure on site rents, as each increase is justified by the most recent increase in the nearest park in that region.

1.14 Consultation that must occur with home owners in the preparation of a market valuation

Under the Act, the home owners committee must be consulted about a market review of site rent at least 63 days before the general increase day. Where there is no home owners committee, 25 per cent of home owners must be consulted (or if the park has fewer than 9 sites, the home owners for at least two of the sites).

Consultation may be done by either the park owner, or the registered valuer. Manufactured home owners have argued that there is no guidance on the level or adequacy of consultation required (for example, a town hall-style meeting with home owners) or whether a park owner undertaking consultation is obligated to accept and pass on written submissions from home owners to the registered valuer.

Other concerns with the valuation process include that home owners are not guaranteed to have contact with the registered valuer or to be consulted early in the process. This means that home owners might not be able to provide input or challenge assertions made in the market valuation, other than later disputing the site rent increase.

1.15 'Goodwill offers' related to market review of site rent

Some home owners have complained about park owners proposing market reviews of site rent, while providing a second offer for a lesser amount if the home owner agrees not to dispute the lesser amount. These have colloquially been called 'goodwill offers'.

Representative groups say that these goodwill offers make home owners feel intimidated, particularly where the home owner feels both offers are excessive.

Park owners say that they are entitled to make a goodwill offer, and the process of making a lower offer alongside a baseline amount they may otherwise have legitimately charged, provides a structured and efficient way for a new site rent to be agreed.

1.16 Appropriateness of approval process for special increases

Increases in site rent to cover special costs are for exceptional circumstances where the park would not be commercially viable without the increase, or where the increase will pay for an upgrade that is supported by a majority of home owners.

As there has been limited feedback on the provision for a special increase since its introduction in 2017, the department would like to hear from home owners and park owners about whether they have used the process and whether it is considered effective and fair.

Discussion questions related to site rent increases

1. Has this issues paper appropriately described the issues related to site rent in residential parks? Are there any other aspects to these issues that should be considered?
2. Are there any significant issues related to site rent in Queensland residential parks not covered in this issues paper? If so, what are they?
3. What issues do you think are the highest priority to resolve?
4. Is there anything else you wish to tell us about site rent increases in Queensland residential parks?

Sale of manufactured homes

Overview

Home owners have a right to sell their manufactured home positioned on the site in a residential park. The sale of a manufactured home in an established residential park typically involves three parties, these being the seller (the existing home owner), the buyer (the prospective home owner) and the park owner who owns the land the home is sited on.

Home owners may sell their manufactured home personally, appoint the park owner to act as their selling agent by signing a selling authority, or engage an independent real estate agent.

A park owner cannot charge a fee for the sale of a manufactured home unless there is a selling authority in place and the park owner is the effective cause of the sale. The fee for a park owner selling the manufactured home must not be more than the amount prescribed by the Regulation. Under the Regulation this is \$900 + 2.5 per cent of sale price over \$18,000. Home owners may seek to negotiate fees lower than this prescribed amount.

Where a manufactured home positioned on a site in a residential park has been purchased by a buyer, the buyer can be assigned the interest of the seller under their existing site agreement or enter into a new site agreement. The park owner must not hinder assignment of the site agreement by unreasonably refusing to consent to a proposed assignment of a site agreement.

2. Issues related to sales

2.1 Complexity of sales process and lack of clarity around timing and notifications

The department has received feedback that the process for selling a manufactured home is overly complex. This includes the number of forms that must be completed, a lack of clearly defined processes or approved forms, and the differences in the process to assign an existing site agreement compared to entering into a new site agreement.

This complexity may contribute to confusion, stress and uncertainty during a sale, increase the chance of disputes or misunderstandings occurring, and add unnecessary administrative burden. It may also contribute to delays in selling the home or the loss of potential sales.

2.2 Assignment

Under the Act, a prospective home owner purchasing a manufactured home may choose whether they are assigned the existing site agreement or enter into a new site agreement with the park owner. Stakeholders suggest these options are often not understood or effectively communicated to prospective home owners.

The existence of the two options adds complexity to the process of selling a home, and some stakeholders have questioned whether assignment remains a valuable and effective process. Many home owners value the ability to assign their existing site agreement, as the introduction of less favourable terms, such as higher site rent, may have an impact on the sale price for the home. Other home owners have stated their preference for a new site agreement when buying into a park and say that the process of being assigned the former home owner's site agreement is confusing.

Home owners have told the department they were not made aware of the option to be assigned a site agreement at the time they purchased their home.

Many park owners prefer to provide home owners with new site agreements. This allows park owners to update rules or annexures and include new clauses, including for rent reviews. Several park owners have told the department that the process of assignment adds an unnecessary layer of administration. They argue that offering a new site agreement is a more transparent way of conducting business.

2.3 Park owners are incentivised to sell newly developed manufactured homes over pre-existing ones

Home owners have frequently shared their perception that park owners have an incentive to prioritise the marketing and sale of newly developed manufactured homes over existing homes sold under a selling authority. It is argued that the park owner derives greater profit (and can pay off construction costs) from the sale of newly constructed homes that they have built on-site.

The incentive for park owners to promote the sale of pre-owned homes is limited to receiving the sales commission, which is restricted. However, the park owner also continues to receive full site rent while the home remains unsold. Consumer advocates have raised concerns that this misalignment of incentives may potentially create a conflict of interest for the park owner when acting for a seller.

Home owners may appoint their own real estate agent, including if they are concerned about how their home is being marketed by the park owner. However, home owners may lose access to on-site advertising such as notice boards in the sales office of the residential park. Further, a park owner approached by a consumer seeking to buy a home in the park is under no obligation to make that prospective purchaser aware of homes being sold independently by home owners.

2.4 Hindering of the sales process

Home owners have raised concerns about sales being blocked and frustrated by park owners either directly through failing to complete the assignment process, or by restricting the access of real estate agents and prospective purchasers. Home owners have also complained of park owners redirecting prospective home owners to purchase a new home the park owner is selling when they make an enquiry about an existing home being sold by the manufactured home owner.

Another example of potential hindering of sales provided by home owner representatives is that some park owners have made consent to an assignment of a site agreement conditional on the buyer agreeing to a site rent increase to align site rent amounts with the rest of the park.

Although hindering the sale of a manufactured home or hindering the assignment of a site agreement (unless refusal is on a reasonable basis) is prohibited under the Act, this can be difficult to prove, and the issue continues to be raised by home owners.

2.5 Home owner's ability to place 'for sale' signs to market their manufactured home

The Act states that where a site agreement provides for placement of a 'for sale' sign, the home owner must give the park owner notice of their intention to sell their home before placing the sign on the site. Where this occurs, the park owner must not restrict the placement of the sign.

This provision is reflected in the template site agreement published by the department, which asks whether home owners may place 'for sale' signs and if there are any restrictions on the size or placement of the sign.

This seeks to ensure home owners and park owners agree upfront about the positioning of 'for sale' signs and to protect the home owner's right to market their home. However, some home owners do not feel confident to negotiate the special terms of a site agreement and instead view site agreements on a take-it-or-leave-it basis. Additionally, the future sale of a home may not be a focus of negotiations at the point of buying into a park.

It has been argued that restricting the placement of 'for sale' signs increases the difficulty for home owners to sell their homes where they do not appoint the park owner as the selling agent.

2.6 Delays in sale

Home owners and their families have raised concerns about the negative impact of delays in sale of a manufactured home. In a previous survey of home owners, 31 per cent of respondents had been trying to sell their home for two or more years, with some examples of homes taking up to over six years to find a buyer.

Until a manufactured home is sold or removed from the park, home owners are unable to access their equity and must continue to pay site rent. Home owners can continue to live in their manufactured home until it is sold, but this may not be possible where the home becomes unsuitable due to the home owner's age or illness or where home owners need to move into an aged care facility. Access to care or alternative accommodation may be dependent on the home owner accessing the capital invested in their manufactured home within a reasonable time.

2.7 Use of associated third-party selling agents to avoid restrictions on park owner sales in the Act

As outlined above, the Act and the Regulation restrict the fees payable to a park owner for the sale of a manufactured home under a selling authority. The park owner must not charge more than the amount prescribed by the Regulation and must not charge a home owner a fee unless the park owner is the effective cause of the sale. These restrictions do not apply to real estate agents or other sellers appointed by the home owner.

The department has received complaints about park owners establishing legally separated third-party selling entities and seeking to have home owners grant this entity exclusive selling rights to the home. This could arguably disadvantage home owners where that selling entity charges more than the maximum selling fee or otherwise includes terms of sale that would be restricted under the Act if the park owner was the selling agent.

2.8 Use of 'exit fees'

The department has received complaints and questions about the use of particular 'exit fees' such as a 'capital replacement fee' or re-sale charge in the site agreement. These fees are being charged upon sale, regardless of whether the home owner appoints the park owner as selling authority.

The Act prohibits a park owner from charging a fee upon the sale of the manufactured home unless the charge is made under a selling authority and the park owner is the effective cause of the sale. The Regulation also prohibits a site agreement from requiring a home owner to pay other charges without fully explaining the charge.

Park owners who charge these fees may argue that the Act permits fees and charges paid in addition to site rent, and if these charges are fully explained to a home owner who then agrees, they are valid.

This uncertainty has resulted in disputes and complaints to the department.

2.9 Home ownership and deceased estates

Under the Act, the definition of a home owner includes a person who obtains an interest in a site agreement as the personal representative, or a beneficiary of the estate of a deceased individual who owned a manufactured home in a residential park.

Home owners are uncertain about whether the interest in the site agreement is transferred to the beneficiary, and if the beneficiary has an automatic right to reside in the manufactured home.

It is suggested that this issue most commonly arises where the beneficiary is not within the targeted demographic of the residential park and the park owner wishes to restrict them from living in the park and does not agree to an assignment of the site agreement.

This issue is further complicated by the fact that, while purpose-built residential parks commonly target their marketing towards seniors, they do not have an automatic age discrimination exemption under the Act and must apply to QCAT for this exemption.

2.10 Park owners may not understand their obligations as sellers

Some home owners have expressed concern that during the selling and buying process, some rights and responsibilities provided for in the Act are not accurately described by park owners or their staff. For example, where a buyer is provided with the impression that they must enter into a new site agreement when purchasing a manufactured home, when in fact the buyer has the option of being assigned the seller's interest in the existing site agreement.

Park owners must comply with the Act and must not engage in conduct that is fraudulent or misleading in the operation of the park or in acting as the home owner's agent to sell a manufactured home. However, conduct and representations made by a park owner or their staff may also be the result of a misunderstanding or misapprehension about the law or the site agreement. This may cause misunderstandings; particularly where prospective home owners are focussed on the lifestyle on offer in the park and do not obtain independent advice about the meaning of the site agreement before they enter it.

2.11 Lack of clarity around proof of ownership of a manufactured home

Home owners have expressed concern that unlike other types of home ownership, there is no register that records the owners of manufactured homes. This may make it difficult for, or cause concerns to, a person buying a manufactured home to ensure they are doing so from the legal owner.

Discussion questions related to selling manufactured homes

1. Has this issues paper appropriately described matters related to selling manufactured homes in Queensland residential parks? Are there any other aspects to these issues that should be considered?
2. Are there any significant issues related to selling manufactured homes in Queensland residential parks that this issues paper does not cover? If so, what are they?
3. What issues do you think are the highest priority to resolve?
4. Is there anything else you wish to tell us about selling manufactured homes in Queensland residential parks?

Have your say

Submissions to the department

Responses and submissions may be emailed to MHconsult@chde.qld.gov.au or mailed to:

MH Consultation
Legislation and Reform
Strategic Policy and Legislation
Housing and Homelessness Services| Department of Communities, Housing & Digital
Economy
GPO Box 690, Brisbane QLD 4001

Survey

The department has also published a survey to gather information on the current state of the manufactured homes industry and the people who live there. To find more information on this survey, please visit <https://www.chde.qld.gov.au/about/initiatives/residential-parks-improvements> or call 13 74 68.

Review of dispute resolution in manufactured homes and retirement villages

The department is also undertaking a review of dispute resolution and precontractual advice in retirement villages and residential parks. For more information on this review, and how you can be involved please visit <https://www.chde.qld.gov.au/about/initiatives/review-dispute-resolution-retirement-villages>.

Useful contacts

Regulatory Services (Department of Communities, Housing and Digital Economy)

Regulatory Services administers the *Manufactured Homes (Residential Parks) Act 2003*. This includes investigating alleged breaches of the Act.

Department of Communities, Housing and Digital Economy
GPO Box 690, Brisbane, QLD 4001
Phone: 07 3008 3450

Email: regulatoryservices@chde.qld.gov.au Website: www.chde.qld.gov.au/housing

Queensland Retirement Village and Park Advice Service (QRVPAS)

Specialist service funded by the Department of Communities, Housing and Digital Economy providing free information and legal assistance for home owners and prospective home owners in residential parks in Queensland.

Caxton Legal Centre Inc.
1 Manning Street, South Brisbane, QLD 4101
Phone: 07 3214 6333

Email: caxton@caxton.org.au Website: www.caxton.org.au