Alliance
Of Manufactured Home Owners INC

Supporting Home Owners with Government

Response to the Consultation Regulatory Impact Statement

Residential parks – addressing concerns about site rent increases and sale of homes

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Prepared by the Management Committee

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Consultation Regulatory Impact Statement – Summary
Strategic Policy and Legislation

The Alliance of Manufactured Home Owners Incorporated acknowledge that the Department of Communities, Housing and Digital Economy (DCHDE) intention is "*to deliver improvements to the regulation of residential parks to address concerns about site rent and unsold manufactured homes.*" And that "*this is a commitment under the Queensland Government's Housing and Homelessness Action Plan 2021-2025.*" However, the Consultation Regulatory Impact Statement (C-RIS) is based only on the two issues contained in the Queensland Housing and Homelessness Action Plan 2021-2025 and subsequently does not include the many other difficulties we are presently facing living under the Manufactured Homes Residential Parks Act.

AMHO believes this document provides very little for existing homeowners, as pages 10 – 12 apply to new site agreements, and all changes will rely on the ethical practices of the park owners. More importantly it fails to acknowledge that the dispute mechanism is broken.

THIS IS OUR RESPONSE –

Key Problem 1: Unsustainable and unpredictable site rent increases

Paragraph 5 shows a complete lack of understanding of the situation, stating *"Fairness also requires that prospective home owners fully understand when a site rent basis will result in declining affordability for them over time, before they sign a site agreement*". I can assure you that amongst all the glossy media advertising both television and print, this fact is never made clear. Prospective home owners are seduced with wonderful scenes of groups of people enjoying all the facilities on television advertising, which sales people then continue to build upon to finalise the sale.

This type of selling does not come with any 'BUYER BEWARE" statement, as it is the compounding of large site increases, known and unknown such as CPI and Market Rent Reviews, controlled by the park owner who has also chosen the incorrect CPI for rents (Brisbane All Groups CPI), that affects all future affordability.

Our members have reported varying responses when employing a Lawyer to read through the site agreement. Replies have ranged from "*all looks okay*" to "*no point as they won't change anything for you.*" We know the only negotiation available with the site agreement is the statement - "*if you don't sign you cannot live here*."

Key Problem 2: Delays in selling a manufactured home

You have stated "*Delayed sales can occur due to the complexity of the process outlined in the regulatory framework and where park owners have low incentives to assist with sales.*" We disagree with this statement and show below how park owners are using the sales of preowned homes to their advantage making further profits.

We know that the pre-owned homes are advertised by some park owners showing a weekly site rent price, that is $10 - $20 above the highest in the park. With each sale made during the year another price rise is taken, with each new home owner unaware they are paying a higher rent than anyone else in the park. When Market Rent Reviews come around the highest rent in the park is touted as proof that it is the market price.

This strategy can only be achieved by park owners refusing to allow the seller's site agreement to be assigned to the buyer as per the Act. As the Park Owner has the right to prevent the sale going ahead, the seller and buyer must always agree to whatever the park owner demands to complete the sale.

We have also been advised of home owners having sold their home through a Real Estate Agent, paying the appropriate commission and the park owner has demanded another selling commission be paid before agreeing to the sale. Their reasoning being, because the buyer had visited the park on a previous occasion and their name was on their books, even though that particular home was not on the market at that time.

Causes / contributors

The C-RIS identifies six causes contributing to the problems which are summarised below.

Cause 1: Consumers have difficulty making informed choices when entering a residential park

Site agreements have been growing over the years, most are no longer the standard Manufactured Homes document and some up to 300 pages in length, taking advantage of the amendments made to Section 69 of the Act in 2019. The Act now allows the site agreement to override the Act, which according to the DCHDE was an "***unintended consequence"*** however, we see no attempt to remedy this in the C-RIS document and ask – **why, no correction?**

The Act now allows imposing park rules on home owners that are not valid under the Act as terms of the Site Agreement, forcing home owners to sign away their rights.

A Site Agreement at Thyme Morayfield (Serenitas) contains Annex 6.1(b) which states*: "To the extent that any Park Rule is not a valid Rule under the Act, that Rule is deemed to be removed from the Park Rules and included as part of this Site Agreement and the Homeowner agrees to comply with that rule as if it was a term of this Site Agreement."* Why is the Government allowing such blatant arbitrary impositions by park owners of rules that are not allowed in Park Rules under the Act? This case has been brought to the attention of the Regulatory Services Unit, but under the changes to the Act in 2019 this is now legal.

Cause 2: Complexities and inefficiencies with the assignment process

The problem is that very few parks **will allow assignment which is already permitted under the Act**, and as they have the final say on whether the prospective buyer will be permitted to live in the park, the seller and buyer must abide by whatever the park manager demands to complete the sale.

Cause 3: Fairness and equity issues associated with site rent increases

The Market Rent Review must be removed as a mechanism of rent increases. Even though this process offers a path to QCAT via the Form 11, it takes a minimum of 2 to 3 years, with some taking 4 years to reach a final Tribunal decision. If the home owners have a win on a technicality, owners will appeal and as most park owners are now using the same legal firm, a 1,000-page appeal document will be sent, along with advice to get yourself a lawyer. The Form 11 process for a market rent review of Negotiation, Mediation, and finally QCAT is left to run its course, if the home owners do not have legal representation or a valuer, as park owners know that at QCAT their valuer will be regarded as the only expert witness in the room, regardless of what home owners can present as evidence it will not be recognised.

However, if a lawyer and valuer is employed by home owners in the initial stages, park owners will negotiate immediately, and this is not how the Act is supposed to work.

We note that you state in the final paragraph that using "*CPI+ X% will constantly outpace fixed sources of income such as the age pension. However, these bases are more transparent, providing prospective home owners an opportunity to factor declining affordability into their purchasing decisions."*

Those who purchased their homes back in low inflation years of around 1% or less had no knowledge of a future where a global pandemic would cause rampant inflation. So our question to Government is "**why is it always the purchaser of these homes who is at fault because they find they cannot afford the large yearly increases now demanded by park owners?"**

It is the CPI, market rent reviews and fixed percentage increases that are responsible for artificially inflating the market rent over time, and are totally unacceptable.

CPI All Groups Brisbane is the wrong CPI being used by park owners, who place it in their site agreements because it is in the Dictionary. CPI must be removed as a way to raise rents and any increase in rent must be linked to the Federal increases in the Aged/Disabled Pension of home owners. By linking and limiting rent increases back to the increase in pensions and set at 1% will ensure an affordable and sustainable housing model for both park and home owners.

We know that park owners were expanding and making healthy profits back when the CPI was running at 1%, many assisted by the Stapled Structure Tax Minimisation*(see below) put in place by John Howard to provide affordable housing. We know of one park that collects $3M in rent from 304 villas with annual outgoings of less than $700K. This shows ample scope for park owners to grow their business without making this housing model unsustainable for home owners, as currently it is the home owners who are bearing all of the risk.

Stapled Structure Tax Minimisation* - Stapled Structures is achieved by the company or private park owner, for taxation purposes splitting the entity into two. One becomes a corporate trustee entity which holds all the land, facilities, and infrastructure, while the other is the operational arm of the business with all income and expenses as a normal business operation. At every quarter when the BAS Statement is due to be lodged, the operational business does, what is called a stapled transfer to the corporate entity. In other words, they are "leasing the village from the corporate entity" and then effectively transferring up to 70% of profits to make a loss. Therefore, they can legally claim a loss to get a return on their BAS Statement. The corporate trustee entity will only pay 15% tax and the Tax Office advised that they only have to show the books of the operational arm to the Queensland Government, perpetrating the myth to government that they are at risk of not being viable.
Source *Australian Taxation Office, Gaura Gupta, Director Infrastructure Strategy Public Groups & International

We also draw your attention to the Stockland Prospectus dated the 19th July 2021 when they were purchasing Halcyon, where on page 6 it boasts of a **"High quality recurring income for occupied portfolio with an operating margin of 65% …. Strong revenue operating margins with low ongoing capital expenditure" …. this when CPI was 1%!**

Cause 4: Imbalances in market power, consumer knowledge and expertise
The Manufactured Home Residential Parks Act 2017 Amendments to Section 69A-E shifted the balance of power in favour of park owners and we ask why? Where are the changes needed in the C-RIS to repair the damage that has been done to home owners, who are the victims of what the DCHDE admitted in a meeting, were the **"unintentional consequences"** of their changes to the Act in 2019 allowing site agreements to override the Act?

Cause 5: Limited incentives to sell pre-owned manufactured homes
This mainly occurs when the parks are in their early stages, park owners are anxious to make the sales for new homes to take the first profit, and need the site agreement in place to begin the fortnightly rental which will be paid forever.

When the park is full, they still advertise "Homes for Sale" and place enquirers names on a list to be contacted when a home becomes available for sale. Most park owners refuse to assign current site agreements, demanding a new site agreement at a higher price. As the park owner has the right to refuse the buyer entry into the park, both seller and buyer must give in to the park owners demands for the sale to proceed and finalise.

Cause 6: Manufactured home owners are unable to easily exit the park when conditions change
This has all been covered in the above responses proving that the park owners have too much power.

Options considered in the C-RIS

The C-RIS considers a range of options to address the identified problems and achieve the policy objectives including:

OPTION 1 – Status Quo
NO - Not Acceptable the Manufactured Homes Residential Park Act must be changed.

OPTION 2 – Require residential parks to publish a comparison document
YES – Similar to the online model used for Retirement Villages. This would definitely require park owners to provide better transparency, assisting prospective purchases, but does not go far enough.

OPTION 3 – Simplify the sales and assignment process
NO – This option proposes non-assignment of the sellers site agreement and claims making the purchaser sign a new site agreement would be advantageous, when it is an opportunity to increase site rent, as happens now. Many Park Owners are refusing to assign pre-owned home site agreements and as they have the right to prevent the sale, the seller and buyer must agree to whatever the park owner's demands to complete the sale.

OPTION 4 – Limit site rent increases to a prescribed basis
NO - we require the removal of CPI, market rent reviews and Section 71. We know that park owners were expanding and making healthy profits back when the CPI was running at 1%, many assisted by the Stapled Structures Tax Minimisation* put in place by John Howard to provide affordable housing. Therefore,1% is acceptable as a percentage figure to raise rents annually. This ties in with the Federal increase of aged/disabled pensions, bringing affordability back into play for home owners. We know of one park that collects $3M in rent from 304 villas with annual outgoings of less than $700K.

OPTION 5 – Improve the market rent review process
NO not even a consideration – the market rent review must be removed.

Option 6 – Prohibit Market Rent Review –
YES - but 1% only is acceptable as a percentage figure, along with removal of CPI and Section 71 of the Act.

Option 7 – Limit site increases to the higher of CPI or a fixed percentage (for example 3.5%)
NO – we require the removal of CPI, market rent reviews and Section 71 and 1% cap only is acceptable as a percentage figure, in line with Aged and Disabled pensions.

Option 8 – Limit site rent increases to CPI
NO - we require the removal of CPI, market rent reviews and Section 71 and 1% cap only is acceptable as a percentage figure, in line with Aged and Disabled pensions.

Option 9 – Require expense-based calculations for increases above CPI
NO CPI must be removed - as park owners are not affected by inflation the same way home owners are with rapidly rising food prices, CPI rent increases, costs of medicines, Doctors, vehicle registration, insurances for homes, etc. We require the removal of CPI, market rent reviews and Section 71.

Option 10 – Require maintenance and capital replacement plans
NO – This is the park owner's asset and you cannot legislate for this as it should already be in place as part of normal business practice. The current MHRP Act states that park owners must maintain communal facilities to a standard which is fit for use by home owners. Many are not doing this which forces the home owners to institute the dispute mechanism. This is the Park Owner's responsibility and the Alliance asks how would compliance be ensured and by whom?

The basis of this business is that the park owners rent the land to the home owner for the home's we purchase to stand upon, and agrees to supply and maintain the communal facilities for home owners use on a non-exclusive basis. You cannot legislate a private business to develop and implement a maintenance and capital replacement plan

Option 11- Establish a limited buyback and site rent reduction scheme for unsold manufactured homes.
YES - Providing it does not restrict owners trying to sell, as some park owners insist they are the only people who can sell preowned homes in the park. Home owners have advised of having sold their home through a Real Estate Agent paying the appropriate commission, and the park owner demanded another selling commission be paid before agreeing to the sale.

Eighteen months is too long and payment of site rent for up to 18 months is unacceptable and would mean financial hardship for a resident moving to aged care or to the executors of an estate. We are also concerned that park owners are now demanding the site rent be paid by families while they wait for probate, when the site rent should be a debt on the estate and not a requirement to pay the fortnightly rent while waiting for the estate to settle. This decision shows the park owners reliance on "cash flow" with little thought to their "cash cows"!

AMHO'S AGENDA for 2023

The Alliance's priority is immediate amendments to The Manufactured Homes (Residential Parks) Act while it is being rewritten, as in its current form the Act offers very limited protection for Home Owners.

1. **Removal of the Market Rent Review** as a basis for site fee rental increases.

2. **Removal of CPI "ALL GROUPS BRISBANE"** in the dictionary as a basis point to raise rents due to the extreme volatility. The Government Statistician has confirmed that rents do **NOT** belong in this category and questions why it was legislated into the Act in 2003? Homeowners subjected to this increase have NO ability to question in QCAT!
3. **Removal of Special Costs Raising Rents Section 71** – Park Owners own the land, infrastructure, and communal facilities. Homeowners rent the land on which their home sits and have the use of the communal facilities. The Park Owner's business model while enjoying between 65% and 85% profit margin, should not require homeowners to contribute to running costs for the land, infrastructure or communal facilities.
4. **More transparency** in respect of the park owners' financials and costs, they need to be more accountable when raising site fees and produce these financials to the homeowners.
5. **The Annual Site Fee increase a cap or ceiling written into the Provisions of the Act.** . Annual increases in rent should be applied at flat 1% and no greater to ensure affordability so that it does not outstrip the fixed incomes of residents and to protect the long-term viability of this housing market sector. Pensions have only risen by more than 2% annually once in the last decade (in 2022 because of inflation increases pensions rose by 4%).
    a. **Increases under Section 69B be restricted to once per year** and not increased during that year when a new contract is signed.
6. **Increased power for the Regulatory Services Unit** to enforce compliance of Park Owners. Fines are small and the cost of prosecuting high, such a system does not encourage compliance.
7. **A more efficient and effective dispute mechanism**
    a. **Appointment of an independent Ombudsman** - QCAT is not fit for purpose and is taking 2-3 years to hear disputes and has no power to enforce their rulings, hence many park owners just ignore them or appeal decisions when residents have a win, with the full might of their legal resources. An Ombudsman who specialises in disputes under the MHRP Act can give binding rulings on all matters relevant to residential parks.
    b. **Site Rental Fee Increase clause 69E(4)** - where there is a disputed site rental fee increase, the increase should not commence until the dispute is resolved. At the present time the increased fee must be paid until the dispute is settled.

NOTES –

At a meeting with the Acting Executive Director, Regulatory Services Unit (RSU) in late January 2023, he confirmed that the RSU does not have the power to protect the home owners. The Act does not give them what they need as the Manufactured Homes (Residential Park) Act has insufficient Proscripted Laws in the Provisions of the Act and must be rewritten.

Section 69A - Basis for site rent increase must be stated in site agreement
The park owner must ensure the site agreement states ***the basis*** *for working out the amount of an increase in the site rent.*

This means anything can be put into a site agreement, including exit fees or rules that are illegal under the Act, as the site agreement now over rides the Act.

This Legislation written by the Department is not fit for purpose and does not support the main object of the Act which is –

(a) To protect home owners from unfair business practices; and
(b) To 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.

Section 71 must be removed – home owners cannot be required to contribute to upgrading of facilities, covering increased costs or upgrades to communal facilities. Home owners rent the land and have non-exclusive use of the communal facilities. Ownership of the land, communal facilities and infrastructure remains vested in the Park Owner, **it is their asset**.

We need an independent Ombudsman as QCAT is not fit for purpose, taking 2-3 years to hear disputes and has no power to enforce their ruling, hence many park owners just ignore them or appeal decisions when residents have a win, with the full might of their legal resources. Most park owners are now using the same legal firm, and a 1,000-page appeal document will be sent, along with advice to get yourself a lawyer. This is not the way QCAT should operate.

Impact mitigations under consideration for reform options

The Government Regulator and Strategic Policy and Legislation have failed in this section as Residential Park comparison documents, maintenance and capital replacement plans, and buyback requirements should apply to every residential park corporate and privately owned. Many of the smaller caravan /mixed use parks with some manufactured homes have been purchased by Serenitas who are now clearing the sites ready for redevelopment. Also, many of these mixed parks manufactured homes are on RTA Leases instead of Manufactured Homes site agreements, putting their tenure at risk.

A cap increase on rent MUST be set at 1% and NO greater, as park owners are making profits of 65%+. Park owners have not been transparent with the Queensland government with taxation only paying 15% tax as confirmed by the Deputy Commissioner for the Australian Tax Office using Stapled Structure Tax Minimisation* (see page 4 paragraph 7)

Rent increases of 3 – 5% will have severe impacts on homelessness of home owners, as the compounding affect over the years is not sustainable and we know the park owners were making 65%+ profits when the CPI was at 1% in 2021 (see Stockland Prospectus information page 4).

Additional recommendations identified by Government

The objects of the Act should be amended to include protecting consumers from unfair site rent increases and to preserve security of tenure for home owners?
YES – How can Government continue to believe that Park Owners viability is at risk, when this is an extremely profitable industry? Stockland has sold its entire Retirement Village portfolio to concentrate on the more profitable Manufactured Homes sector. Their Stockland Prospectus dated the 19th July 2021 when they were purchasing Halcyon, on page 6 boasts of a **"High quality recurring income for occupied portfolio with an operating margin of 65% …. Strong revenue operating margins with low ongoing capital expenditure" …. this when CPI was 1%!**

The Act should be amended to require registration and suitability requirements for residential parks and park owners, similar to those applying to retirement villages.
YES

A registration system for manufactured homes should be developed which allows home owners to register ownership of manufactured homes, and supports buyers to confirm that the seller of their home is the legal owner.
YES

The Act should be amended to allow a manufactured home owner to sell their home where their site agreement is terminated by QCAT under section 38 of the Act, for example where there are unremedied breaches of the site agreement. This would allow a home owner to recoup their investment in the home as positioned on the site rather than being required to give vacant possession of the site.
YES

The Act should be amended to clarify that where a site agreement is terminated because the park owner is seeing to use the land for another lawful purpose, the compensation order by QCAT may consider the reasonable purchase price for the home if it was sold as positioned on the site.
YES

Amend the Act to resolve any ambiguity around retirement village-style exit fees and clarify that such fees are prohibited.
YES

The Act should be amended to provide a more contemporary definition of a 'manufactured home'.
YES

Amend the Act to specify a definition for CPI that must be used for a CPI-based increase of site rent in the future.
NO the CPI MUST be removed from the Act as a way to increase rents.

Improve how existing precontractual disclosure documents and site agreements present information, particularly around future costs.
YES

Preferred options of the Alliance of Manufactured Home Owners -

Option 6 – Prohibit Market Rent Review –
YES - but 1% only is acceptable as a percentage figure, along with removal of CPI and Section 71 of the Act.

There are very little in the options offered by Government that will change the many challenges presently being experienced by home owners, apart from Option 6 – Prohibit Market Rent Review. However, most of the **Additional Recommendations would be welcomed and strongly supported.**

We ask where are the extra powers needed for the Regulatory Services Unit to ensure compliance with the Act. Fines need to be increased from a maximum of $3,700 for 20 points for breaches of the Legislation/Law to stop unscrupulous business practices already being experienced by home owners. We need disincentives for park owners to stop unfair business practices.

Where are the changes to the broken dispute mechanism – we need an Ombudsman

Where are the changes to Section 69 to repair the damage made by Government in 2017 when major changes were made allowing site agreements to override the Act, the **"unintentional consequences" they spoke of?**

There has been NO mention of rolling back the damaging Amendments made to the legislation in 2017 by the Government Regulator and Strategic Policy & Legislation and Minister for Housing.

Questions for consultation

1. Does this document appropriately describe the problems and causes of problems with site rent increases and sale of homes in residential parks? If not, what has been missed or described incorrectly?
   NO – Refer to above responses

2. Do you agree with the proposed policy objectives identified in this document? If not, what should the objectives be?
   NO – Refer to above responses

3. Does the proposed package of reforms strike an appropriate balance between protecting home owner interests and preserving the viability and growth of residential parks? How could this be improved?
   NO – Refer to above responses

4. Do you think the preferred package of options are likely to improve the transparency, fairness and sustainability of site rent increases and the sale of homes in residents parks?
   NO – Refer to above responses

5. Which options identified in the C-RIS are more appropriate, or are more likely to achieve the identified policy objectives?
   NONE – Refer to above responses

6. Are there options not identified in this document which would strike a more appropriate balance, or would better achieve the policy objectives? If so, please provide detail.

   Section 69A-E must be completely abolished and rewritten to provide protections outlined above into the Provisions / Laws that must be followed by park owners or fines will apply. Fines need to be increased from a maximum of $3,700 for 20 points for breaches of the Legislation / Law to stop unscrupulous business practices already being experienced and utilised as normal by some park owners.
   This would provide disincentives onto park owners to stop unfair business practices as the current state of legislation is unacceptable.

7. Does the C-RIS appropriately describe the likely impacts of the options for all stakeholders? If not, what are the likely financial and non-financial impacts and who will be affected?
   NO – Refer to above responses

8. Are there any unidentified costs or unforeseen significant impacts from the preferred package of options, or other options discussed? If so, what are they?
   Refer to above responses

The Process of Feedback by Home Owners

The Feedback Form created to provide feedback from home owners has caused much angst in the community, and the claim that it will take around 30 minutes to complete is ridiculous. The inability for many to understand and complete the form became obvious in the first week with many complaints from our members, such as "***I've been in business all my life and regard myself a practical and sensible person, so why did it take me 4 hours to complete?"*** Our many visits to parks confirmed that people were just throwing their hands up saying ***"it's all too hard I don't understand it"***. Many started the online process and did not finish; it would be interesting to see the figures for this. Others did the Feedback on a paper form and then went online to complete after taking up to 3 hours to work out what was needed. A Member of Parliament attempted the form after complaints from constituents and was horrified at what had been presented to this demographic.

The explanation section before each question was confusing by constantly changing what view the answer was required from, for example - *your policy objectives, likely impacts, impacts not considered, impacts that will achieve your policy objectives, was it described accurately, etc.* Home owners thought they had already told you the problems in the previous Survey in June, and this would be a confirmation you had understood. On Friday 23rd June members advised they could not access the online form, so who was monitoring the process?