



Queensland

Manufactured Homes (Residential Parks) Amendment Act 2010

Act No. 46 of 2010



Queensland

Manufactured Homes (Residential Parks) Amendment Act 2010

Contents

		Page
1	Short title	6
2	Commencement	6
3	Act amended	6
4	Amendment of s 4 (Objects of Act)	6
5	Omission of s 7 (Notes in text)	7
6	Amendment of s 10 (What is a manufactured home)	7
7	Insertion of new s 10A	8
	10A What is a converted caravan	8
8	Insertion of new s 14A	8
	14A What is a site agreement dispute	8
9	Amendment of s 25 (Written agreement)	9
10	Insertion of new ss 25A and 25B	10
	25A Application to tribunal—plain language	10
	25B Prohibited terms of site agreements and prohibited park rules	10
11	Amendment of s 36 (Termination of site agreement by agreement between home owner and park owner)	11
12	Amendment of s 38 (Termination of site agreement by tribunal)	12
13	Amendment of s 39 (Vacant possession of site to be given after making of termination order)	12
14	Amendment of s 40 (Compensation may be payable in particular circumstances)	13
15	Insertion of new s 40A	13
	40A Other orders	13
16	Amendment of s 45 (Notice of proposed sale and assignment)	14
17	Amendment of s 49 (Consent to assignment of seller's interest)	14
18	Amendment of s 69 (Notice of increase in site rent)	14

Contents

19	Amendment of s 70 (Home owner may apply to tribunal for order about site rent increase)	15
20	Amendment of s 71 (Notice of proposed increase in site rent) . .	16
21	Amendment of s 72 (Site rent reduction on application to tribunal by home owner)	16
22	Amendment of s 73 (Utility cost in site rent)	17
23	Amendment of s 74 (Tribunal review of utility cost and reduction in site rent)	18
24	Insertion of new pt 11, div 5	18
	Division 5 Prohibition on particular conduct	
	74A Park owner not to threaten, intimidate or coerce home owner	19
25	Amendment of s 89 (Notice board)	19
26	Insertion of new s 91A	19
	91A Notice of change of business hours contact telephone number	19
27	Amendment of s 95 (Fraudulent or misleading conduct)	20
28	Amendment of s 96 (Harassment or unconscionable conduct) . .	20
29	Insertion of new s 99A	20
	99A Separate charge by park owner not to be more than cost of supply for use of utility	20
30	Amendment of s 100 (Establishment of committee)	21
31	Insertion of new pt 19A.	21
	Part 19A Record of residential parks	
	139A Record of residential parks.	21
	139B Inspecting record of residential parks.	22
	139C Park owner to give chief executive information for record of residential parks	22
32	Amendment of pt 21, div 2, hdg (Transitional provisions)	22
33	Insertion of new pt 21, div 3	23
	Division 3 Transitional provisions for Manufactured Homes (Residential Parks) Amendment Act 2010	
	Subdivision 1 Preliminary	
	156 Definitions for div 3	23
	Subdivision 2 General provisions	
	157 Existing agreements involving converted caravans . .	23
	158 Form and content of site agreements.	24

159	Prohibited terms of site agreements and prohibited park rules	25
160	Particular existing agreements to terminate site agreement	25
161	Park owner's notice on receiving notice of proposed assignment of seller's interest	26
162	Park owner's notice on refusal of consent to assignment	26
163	Notice of increase in site rent	26
164	Notice of proposed increase in site rent	26
165	Utility cost notice	26
166	Variation of site agreement on assignment to allow site rent to be increased in accordance with market review	27
167	More than 1 home owners committee	28
168	Existing park owner to give chief executive information for record of residential parks	28
Subdivision 3 Transitional provisions for proceedings		
169	Converted caravans	29
170	Tribunal may consider whether term of site agreement is void under s 159(1).	30
171	Undecided applications to tribunal for particular orders	30
172	Undecided application to tribunal for order about proposed increase in site rent	30
173	Documents tribunal may consider on application for site rent reduction.	31
174	Tribunal's review of utility cost	31
175	Tribunal's power to make particular orders.	31
34	Amendment of schedule (Dictionary)	31



Queensland

Manufactured Homes (Residential Parks) Amendment Act 2010

Act No. 46 of 2010

**An Act to amend the Manufactured Homes (Residential Parks) Act 2003
[Assented to 5 November 2010]**

The Parliament of Queensland enacts—

1 Short title

This Act may be cited as the *Manufactured Homes (Residential Parks) Amendment Act 2010*.

2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- (a) section 9;
- (b) section 10 to the extent it inserts section 25A;
- (c) sections 11, 16, 17, 18, 20, 22, 23, 24, 26, 29, 30 and 31;
- (d) section 33 to the extent it inserts section 156 to the extent that section 156 defines *commencement*;
- (e) section 33 to the extent it inserts sections 158, 160 to 168, 172 and 174;
- (f) section 34(2) to the extent it inserts the definitions *commencement*, *market review of site rent* and *prohibited agreement*.

3 Act amended

This Act amends the *Manufactured Homes (Residential Parks) Act 2003*.

4 Amendment of s 4 (Objects of Act)

- (1) Section 4(1) and (2)—
renumber as section 4(2) and (3).
- (2) Section 4—
insert—

-
- ‘(1) The main object of this Act is to regulate, and promote fair trading practices in, the operation of residential parks—
- (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.’
- (3) Section 4(2), as renumbered, from ‘The’ to ‘by—’—
omit, insert—
 ‘The main object is achieved by—’.

5 Omission of s 7 (Notes in text)

Section 7—

omit.

6 Amendment of s 10 (What is a *manufactured home*)

Section 10—

insert—

- ‘(2) A ***manufactured home*** does not include a converted caravan.
- ‘(3) However, if a park owner and the owner of a converted caravan enter into an agreement, that would be a site agreement if it related to a manufactured home, for a site on which the converted caravan is positioned or intended to be positioned—
- (a) the converted caravan is taken to be a manufactured home; and
 - (b) the agreement is taken to be a site agreement.
- ‘(4) To remove any doubt, it is declared that an agreement entered into under another Act or a former Act, other than the repealed *Mobile Homes Act 1989*, is not a site agreement under subsection (3).

[s 7]

Example—

A residential tenancy agreement entered into under the *Residential Tenancies and Rooming Accommodation Act 2008* is not a site agreement under subsection (3).’.

7 Insertion of new s 10A

After section 10—

insert—

‘10A What is a *converted caravan*

A *converted caravan* is a structure that—

- (a) as originally designed, was a caravan; and
- (b) is no longer a caravan because of a structural addition or structural alteration.’.

8 Insertion of new s 14A

Part 2, after section 14—

insert—

‘14A What is a *site agreement dispute*

‘(1) A *site agreement dispute* is—

- (a) a dispute between the parties to a site agreement about the parties’ rights and obligations under the agreement or this Act; or
- (b) a dispute about whether a person is entitled to have a park owner enter into a site agreement with the person; or
- (c) a dispute about whether a park owner is entitled to have a person enter into a site agreement with the park owner.

‘(2) However, neither of the following is a site agreement dispute—

- (a) a dispute about whether a person is entitled to have a park owner enter into a site agreement with the person relating to a converted caravan;

- (b) a dispute about whether a park owner is entitled to have a person enter into a site agreement with the park owner relating to a converted caravan.’

9 Amendment of s 25 (Written agreement)

- (1) Section 25(4)(d) to (g)—

renumber as section 25(4)(i) to (l).

- (2) Section 25(4)(a) to (c)—

omit, insert—

- ‘(a) be easily legible; and
- (b) if it is produced by any mechanical or electronic means, for example, by a typewriter or computer—be in at least 12 point font; and
- (c) be written in a precise way; and
- (d) be clearly expressed in plain language; and
- (e) precisely identify the site; and
- (f) state each party’s name and address; and
- (g) state a phone number, if any, of the home owner; and
- (h) state a business hours contact phone number, for the park owner or, if a park manager has been appointed, the park manager; and’.

- (3) Section 25(4)(i)(iii), as renumbered, from ‘varied’—

omit, insert—

‘varied, including that, under the Act, the tribunal may—

- (A) make an order increasing the site rent on application by the park owner; or
- (B) make an order reducing the site rent on application by the home owner; and

Note—

Part 11 (Varying site rent) states the circumstances in which the orders may be made.’.

10 Insertion of new ss 25A and 25B

After section 25—

insert—

‘25A Application to tribunal—plain language

- ‘(1) A home owner under a site agreement may apply to the tribunal to consider whether a special term of the site agreement is not clearly expressed in plain language.
- ‘(2) If the tribunal considers the term is not clearly expressed in plain language, it may do 1 or more of the following—
 - (a) make an order varying the terms of the site agreement in the way the tribunal considers appropriate;
 - (b) make an order prohibiting the park owner from using the same or a similar term in any other site agreement entered into after the order.

‘25B Prohibited terms of site agreements and prohibited park rules

- ‘(1) A regulation may prohibit—
 - (a) a stated type of special term in a site agreement; or
 - (b) a stated type of park rule.
- ‘(2) A park owner must not include a special term in a site agreement that is prohibited from being in a site agreement under subsection (1).

Maximum penalty—100 penalty units.
- ‘(3) A park owner must not make a type of park rule that is prohibited under subsection (1).

Maximum penalty—100 penalty units.
- ‘(4) A park owner must not attempt to enforce—
 - (a) a special term in a site agreement that is prohibited from being in a site agreement under subsection (1); or
 - (b) a park rule of a type that is prohibited under subsection (1).

Maximum penalty—100 penalty units.

- ‘(5) A term of a site agreement is void to the extent it is or contains a term that is prohibited under subsection (1).
- ‘(6) A home owner may apply to the tribunal to consider whether part or all of a stated term of a site agreement is void under subsection (5).
- ‘(7) On application under subsection (6), the tribunal may do 1 of the following—
 - (a) declare that a stated term of the site agreement is void;
 - (b) declare that a stated term of the site agreement is not void;
 - (c) declare that a stated term of the site agreement is void to a stated extent;
 - (d) make an order varying a stated term of the site agreement.’.

11 Amendment of s 36 (Termination of site agreement by agreement between home owner and park owner)

- (1) Section 36(3), penalty, ‘for subsection (3)’—

omit.

- (2) Section 36—

insert—

- ‘(4) A park owner must not—
 - (a) enter into a prohibited agreement; or
 - (b) vary a site agreement to include a term under which the parties to the site agreement agree to terminate the site agreement.

Maximum penalty—200 penalty units.

- ‘(5) A prohibited agreement is void.
- ‘(6) A variation of a site agreement as mentioned in subsection (4)(b) is void.’.

12 Amendment of s 38 (Termination of site agreement by tribunal)

(1) Section 38(1)(d)—

omit, insert—

‘(d) the home owner is using the site other than as a place of residence;

Example of the home owner using the site as a place of residence—
the home owner using the site as rental accommodation’.

(2) Section 38(2)—

omit.

(3) Section 38(3) and (4)—

renumber as section 38(2) and (3).

13 Amendment of s 39 (Vacant possession of site to be given after making of termination order)

(1) Section 39(2) to (5)—

renumber as section 39(4) to (7).

(2) Section 39—

insert—

‘(2) Subsection (3) applies if a termination order is made on a ground mentioned in section 38(1)(f).

‘(3) When deciding the termination day under subsection (1), if the tribunal is satisfied it is just and equitable to do so having regard to the particular circumstances of the case, the tribunal may postpone the day the termination order would otherwise have effect to a stated day not later than 1 year after the day of the termination order.

Examples of particular circumstances—

- the home owner’s personal and financial circumstances, including the home owner’s health, age and mobility
- the availability and location of alternative accommodation at a similar cost

- the financial impact on the park owner, if any, of postponing the day the termination order would otherwise have effect
- any other financial or social considerations the tribunal considers appropriate’.

(3) Section 39(5), as renumbered, ‘subsection (4)’—

omit, insert—

‘subsection (6)’.

(4) Section 39(7), as renumbered, ‘subsection (4)(a)’—

omit, insert—

‘subsection (6)(a)’.

14 Amendment of s 40 (Compensation may be payable in particular circumstances)

Section 40, heading—

omit, insert—

‘40 Compensation order’.

15 Insertion of new s 40A

After section 40—

insert—

‘40A Other orders

- ‘(1) This section applies if the tribunal makes a termination order, in relation to a site agreement, on the ground mentioned in section 38(1)(f).
- ‘(2) With the consent of the home owner, the tribunal may order the park owner to make a comparable site within the park available to the home owner for the positioning of the manufactured home.
- ‘(3) However, the tribunal can not make an order under subsection (2) if the tribunal is satisfied there is no comparable site available.
- ‘(4) If the tribunal makes an order under subsection (2), the tribunal—

[s 16]

- (a) must make an order varying the site agreement to identify the comparable site; and
 - (b) may make any other order, including an order varying the site agreement in another way, the tribunal considers appropriate in relation to the comparable site.
- ‘(5) Subsection (2) does not prevent a compensation order under section 40(2) being made in favour of the home owner.’.

16 Amendment of s 45 (Notice of proposed sale and assignment)

Section 45(2)—

insert—

- ‘(c) written advice by the park owner of the amount of the site rent payable by the seller when the park owner received the notice.’.

17 Amendment of s 49 (Consent to assignment of seller’s interest)

Section 49(5)(b)—

omit, insert—

- ‘(b) give the seller written notice—
 - (i) of the decision and the reasons for it; and
 - (ii) that the seller has the right to apply to the tribunal if the seller is dissatisfied with the refusal.

Maximum penalty—20 penalty units.’.

18 Amendment of s 69 (Notice of increase in site rent)

- (1) Section 69(2)(d)—

omit.

- (2) Section 69(3) and (4)—

renumber as section 69(4) and (5).

(3) Section 69—

insert—

‘(3) The park owner must also state in the notice that if the home owner considers the increase is excessive, the home owner may apply to the tribunal, within 28 days after receiving the notice, for an order reducing the amount of, or setting aside, the increase.

Maximum penalty—100 penalty units.’.

19 Amendment of s 70 (Home owner may apply to tribunal for order about site rent increase)

(1) Section 70(3)(b) to (j)—

renumber as section 70(3)(d) to (l).

(2) Section 70(3)(a)—

omit, insert—

‘(a) the range of site rents usually charged for comparable sites in comparable residential parks in the locality of the park;

(b) if it is impractical to obtain data for the range of site rents mentioned in paragraph (a), data is not available for that range or it is just and equitable to do so in the particular circumstances—the range of site rents usually charged for comparable sites in comparable residential parks in comparable localities to the locality the park is in;

(c) if it is impractical to obtain data for the range of site rents mentioned in paragraph (a) or (b), data is not available for that range or it is just and equitable to do so in the particular circumstances—general trends in rent for residential accommodation in the locality the park is in;’.

20 Amendment of s 71 (Notice of proposed increase in site rent)

- (1) Section 71(2) to (10)—
renumber as section 71(3) to (11).
- (2) Section 71(1)—
insert—
 - ‘(c) the proposed increase in site rent is necessary for the park owner to cover—
 - (i) significant increased operational costs in relation to the park, including significant increases in rates, taxes or utility costs for the park; or
 - (ii) unforeseen significant repair costs in relation to the park; or
 - (iii) significant facility upgrades in relation to the park.
- ‘(2) However, the proposed increase in site rent can not be based on a market review of site rent.’.
- (3) Section 71(7), as renumbered, ‘subsection (4)’—
omit, insert—
‘subsection (5)’.
- (4) Section 71(9), as renumbered, ‘section 70(3)’—
omit, insert—
‘section 70(3)(d) to (l)’.
- (5) Section 71(11), as renumbered, ‘subsection (9)(a) or (c)’—
omit, insert—
‘subsection (10)(a) or (c)’.

21 Amendment of s 72 (Site rent reduction on application to tribunal by home owner)

- (1) Section 72—
insert—

‘(c) a communal facility or service as follows has not been provided at the park—

(i) a communal facility or service described in advertising, done by or for the park owner, of which the home owner was aware before the site agreement was entered into;

(ii) a communal facility or service described in a document made available to the home owner by the park owner before the site agreement was entered into.’.

(2) Section 72—

insert—

‘(2) The tribunal may consider any of the following documents for subsection (1)—

(a) the site agreement;

(b) the home owner’s information document for the residential park;

(c) any relevant advertising made available to the home owner by the park owner before the site agreement was entered into;

(d) any other document the tribunal considers is relevant.’.

22 Amendment of s 73 (Utility cost in site rent)

(1) Section 73(2)—

omit, insert—

‘(2) The park owner must within 14 days after the change event happens give the home owner a notice (a **utility cost notice**) stating the following—

(a) the utility cost factored into the site rent payable under the agreement and how the utility cost has been worked out;

(b) the date the change event happened;

(c) the site rent payable from that date;

[s 23]

- (d) if the home owner disputes the utility cost, the home owner may apply to the tribunal, within 28 days of receiving the notice for—
 - (i) an order reducing the site rent payable from the change of event day by the amount the tribunal considers appropriate; or
 - (ii) another order the tribunal considers appropriate.

Maximum penalty—10 penalty units.’.

23 Amendment of s 74 (Tribunal review of utility cost and reduction in site rent)

- (1) Section 74(2) and (3)—
renumber as section 74(4) and (5).
- (2) Section 74—
insert—
 - ‘(2) The home owner under the site agreement mentioned in subsection (1)(a) may apply to the tribunal for an order under subsection (4).
 - ‘(3) The home owner mentioned in subsection (1)(b) may apply to the tribunal, within 28 days after receiving the notice, for an order under subsection (4).’.
- (3) Section 74(4), as renumbered, example, ‘subsection (2)(b)’—
omit, insert—
‘subsection (4)(b)’.
- (4) Section 74(5), as renumbered, ‘subsection (2)’—
omit, insert—
‘subsection (4)’.

24 Insertion of new pt 11, div 5

Part 11—

insert—

‘Division 5 Prohibition on particular conduct

‘74A Park owner not to threaten, intimidate or coerce home owner

‘The park owner under a site agreement must not threaten, intimidate or coerce, or attempt to threaten, intimidate or coerce, the home owner to—

- (a) agree to an increase in the site rent; or
- (b) refrain from seeking a review, under this part, of the site rent.

Maximum penalty—200 penalty units.’.

25 Amendment of s 89 (Notice board)

- (1) Section 89(3)—

renumber as section 89(5).

- (2) Section 89—

insert—

‘(3) A regulation may prescribe a type of information that the park owner must make all reasonable attempts to display on the notice board during a prescribed period.

‘(4) The park owner must make all reasonable attempts to display the type of information prescribed under subsection (3) on the notice board during the period.

Maximum penalty—5 penalty units.’.

26 Insertion of new s 91A

After section 91—

insert—

‘91A Notice of change of business hours contact telephone number

‘If a business hours contact telephone number for the park owner, or the park manager, stated in the site agreement under

[s 27]

section 25(4)(h) changes, the park owner must give the home owner written notice of the change within 7 days after the change.

Maximum penalty—10 penalty units.’.

27 Amendment of s 95 (Fraudulent or misleading conduct)

Section 95, ‘the park.’—

omit, insert—

‘the park or in acting as a home owner’s agent to sell, or to negotiate the sale of, a manufactured home.

Example—

A park owner must not in advertising or in precontractual negotiations—

- (a) indicate that the site rent will only ever increase in accordance with increases in the consumer price index; or
- (b) indicate that the site agreement can only be terminated by the home owner.’.

28 Amendment of s 96 (Harassment or unconscionable conduct)

Section 96, ‘the park.’—

omit, insert—

‘the park or in acting as a home owner’s agent to sell, or to negotiate the sale of, a manufactured home.’.

29 Insertion of new s 99A

Part 14, after section 99—

insert—

‘99A Separate charge by park owner not to be more than cost of supply for use of utility

‘(1) This section applies if—

-
- (a) under a site agreement, the home owner is required to pay the park owner for the use by the home owner of a utility at the site; and
 - (b) the use is separately measured or metered.
- ‘(2) The park owner must not charge the home owner an amount for the use of a utility that is more than the amount charged by the relevant supply authority for the quantity of the service supplied to, or used at, the site.
Maximum penalty—20 penalty units.’.

30 Amendment of s 100 (Establishment of committee)

- (1) Section 100(2) to (4)—
renumber as section 100(3) to (5).
 - (2) Section 100—
insert—
- ‘(2) Only 1 home owners committee may be established for a residential park.’.

31 Insertion of new pt 19A

After section 139—
insert—

‘Part 19A Record of residential parks

‘139A Record of residential parks

- ‘(1) The chief executive may keep a record of residential parks that contain manufactured homes.
- ‘(2) The record must contain the information about residential parks given to the chief executive under section 139C.
- ‘(3) The chief executive may keep the record in the way the chief executive considers appropriate, including, for example, in electronic form.

‘139B Inspecting record of residential parks

- ‘(1) A person may, on payment of any fee that may be prescribed under a regulation, inspect, or get a copy of details in, the record—
 - (a) at a place or places decided by the chief executive; or
 - (b) by using a computer.
- ‘(2) The chief executive may publish information contained in the record at the times, and in the way, decided by the chief executive.

‘139C Park owner to give chief executive information for record of residential parks

- ‘(1) The park owner for a residential park must, within 28 days after opening the residential park, give the chief executive notice, in the approved form, of the following information unless the park owner has a reasonable excuse—
 - (a) the name of the park;
 - (b) the address of the park;
 - (c) the postal address of the park;
 - (d) the number of manufactured home sites provided in the park;
 - (e) any other information about the park prescribed under a regulation.

Maximum penalty—5 penalty units.

- ‘(2) The park owner for a residential park must, within 28 days of a change in the information that is recorded in the record for the park, give the chief executive notice, in the approved form, of the change unless the park owner has a reasonable excuse.

Maximum penalty—5 penalty units.’.

32 Amendment of pt 21, div 2, hdg (Transitional provisions)

Part 21, division 2, heading, after ‘provisions’—

insert—

‘for Act No. 74 of 2003’.

33 Insertion of new pt 21, div 3

Part 21—

insert—

‘Division 3 Transitional provisions for Manufactured Homes (Residential Parks) Amendment Act 2010

‘Subdivision 1 Preliminary

‘156 Definitions for div 3

‘In this division—

amending Act means the *Manufactured Homes (Residential Parks) Amendment Act 2010*.

assent means the start of the date of assent of the amending Act.

commencement means the commencement of the provision in which the word appears.

‘Subdivision 2 General provisions

‘157 Existing agreements involving converted caravans

‘(1) This section applies to an agreement, that would be a site agreement if it related to a manufactured home, between a park owner and a home owner providing for the positioning of a converted caravan on a site and—

- (a) entered into under, or purportedly under, this Act; and
- (b) in force immediately before assent.

[s 33]

- ‘(2) Despite the amended Act, other than this section, and subject to section 169, the agreement—
- (a) is taken to be a site agreement; and
 - (b) continues, under this Act, according to its terms.
- ‘(3) In this section—
- amended Act* means this Act as amended under the amending Act.

‘158 Form and content of site agreements

- ‘(1) Despite section 25, the provisions mentioned in subsection (2) apply only for—
- (a) a site agreement entered into after commencement, whether or not the site agreement has been varied; or
 - (b) a variation of a site agreement entered into before commencement if the variation was made after commencement.
- ‘(2) For subsection (1), the provisions are as follows—
- (a) section 25(4)(a), (b), (d) and (h);
 - (b) section 25(4)(i)(iii) to the extent it requires a site agreement to include a statement that, under the Act, the tribunal may—
 - (i) make an order increasing the site rent on application by the park owner; or
 - (ii) make an order reducing the site rent on application by the home owner.
- ‘(3) Section 25A(1) applies only if the special term of the site agreement mentioned in that section is—
- (a) part of a site agreement entered into after commencement, whether or not the site agreement has been varied; or
 - (b) a variation of a site agreement entered into before commencement if the variation was made after commencement.

‘159 Prohibited terms of site agreements and prohibited park rules

- ‘(1) A term of a site agreement, included in the site agreement before assent, is void to the extent it is or contains a term that would be prohibited under section 25B(1) if it were included in the site agreement after assent.

Note—

See also section 170 (Tribunal may consider whether term of site agreement is void under s 159(1)).

- ‘(2) A park owner must not attempt to enforce—
- (a) a special term, in a site agreement, that is void under subsection (1); or
 - (b) a park rule of a type that is void under subsection (1).

Maximum penalty—100 penalty units.

‘160 Particular existing agreements to terminate site agreement

- ‘(1) This section applies if—
- (a) before commencement, a park owner and a home owner—
 - (i) entered into a prohibited agreement relating to a site agreement; or
 - (ii) varied a site agreement to include a term under which the parties to the site agreement agree to terminate the site agreement; and
 - (b) the site agreement is in force.
- ‘(2) A site agreement or other agreement is void to the extent it is or contains the prohibited agreement.
- ‘(3) The variation of the site agreement is void.

‘161 Park owner’s notice on receiving notice of proposed assignment of seller’s interest

‘Section 45(2)(c) applies only for a notice of the proposed assignment of the seller’s interest in the site agreement received by the park owner after commencement.

‘162 Park owner’s notice on refusal of consent to assignment

- ‘(1) Section 49(5)(b) applies only for a written request, made after commencement, by a seller for the park owner’s consent to an assignment of the seller’s interest in the site agreement.
- ‘(2) Section 49(5)(b) as in force immediately before commencement continues to apply for a written request, made before commencement, by a seller for the park owner’s consent to an assignment of the seller’s interest in the site agreement.

‘163 Notice of increase in site rent

‘Section 69(3) applies to a park owner only if the notice of increase in site rent required to be given under section 69(2) is given by the park owner to the home owner after commencement.

‘164 Notice of proposed increase in site rent

‘Section 71(1)(c) and (2) applies whether or not the site agreement mentioned in section 71(1)(a) was entered into before or after commencement.

‘165 Utility cost notice

‘Section 73(2) applies only for a utility cost notice given after commencement.

‘166 Variation of site agreement on assignment to allow site rent to be increased in accordance with market review

- ‘(1) This section applies if—
- (a) a site agreement was entered into before commencement; and
 - (b) the site agreement does not contain a clause permitting the site rent to be increased based on a market review of site rent.
- ‘(2) The park owner under the site agreement may, by complying with subsection (4), vary the site agreement by adding the following term to the site agreement—
- ‘The site rent may be increased in accordance with a market review of site rent no more often than once every 3 years after the site agreement was entered into, that has regard to—
- (a) the range of rents usually charged for comparable sites in comparable residential parks in the locality of the park; or
 - (b) if it is impractical to obtain data for the range of site rents mentioned in paragraph (a) or data is not available for that range—the range of site rents usually charged for comparable sites in comparable residential parks in comparable localities to the locality the park is in; or
 - (c) if it is impractical to obtain data for the range of site rents mentioned in paragraph (a) or (b) or data is not available for that range—general trends in rent for residential accommodation in the locality the park is in.’
- ‘(3) The term—
- (a) may be added to the site agreement only in conjunction with an assignment of the site agreement; and
 - (b) may be added to the site agreement without the agreement of the seller, buyer or any other future home owner; and
 - (c) takes effect when the assignment takes effect; and

- (d) when added, is taken to be a term of the site agreement for all purposes under this Act.
- ‘(4) However, subsection (3)(d) only applies if—
- (a) at the same time as the park owner gives a copy of the site agreement and disclosure documents for the park to the buyer under section 45(2), the park owner also gives the buyer notice, in the approved form—
 - (i) of the addition of the term to the site agreement; and
 - (ii) of the date on which the next market review of site rent will happen; and
 - (b) the park owner, as soon as possible after giving a notice under paragraph (a), but within 3 days after doing so, gives the seller a copy of the notice.

‘167 More than 1 home owners committee

- ‘(1) This section applies if, immediately before commencement, there was more than 1 home owners committee for a residential park.
- ‘(2) The home owners for the park may, by election conducted among themselves within 3 months after commencement, establish a single home owners committee.
- ‘(3) Sections 100(3) to (5) apply in relation to a home owners committee elected under subsection (2).

‘168 Existing park owner to give chief executive information for record of residential parks

‘If a person was a park owner for a residential park immediately before commencement, for section 139C, the person is taken to have opened the park 2 months after commencement.

‘Subdivision 3 Transitional provisions for proceedings

‘169 Converted caravans

- ‘(1) This section applies if—
- (a) before assent, an application was made to a court or tribunal relating to a relevant matter; and
 - (b) the application has not been decided.
- ‘(2) This section also applies if—
- (a) an application is made to a court or tribunal, on or after but within 3 years after assent about a dispute mentioned in subsection (5), definition *relevant matter*, paragraph (b) or (c) about a converted caravan; and
 - (b) the converted caravan was positioned on a site in the park before assent; and
 - (c) the applicant owns the converted caravan and owned it immediately before assent.
- ‘(3) The court or tribunal must decide the application as if the amending Act had not commenced.
- ‘(4) For an application mentioned in subsection (2)(a), the court or tribunal must decide the application on the basis of the structural characteristics of the converted caravan on assent.
- ‘(5) In this section—
- relevant matter*** means—
- (a) an agreement between a park owner and a home owner providing for the positioning of a converted caravan on a site; or
 - (b) a dispute about whether a person is entitled to have a park owner enter into a site agreement with the person relating to a converted caravan; or
 - (c) a dispute about whether a park owner is entitled to have a person enter into a site agreement with the park owner relating to a converted caravan.

‘170 Tribunal may consider whether term of site agreement is void under s 159(1)

- ‘(1) A home owner may apply to the tribunal to consider whether part or all of a stated term of a site agreement is void under section 159(1).
- ‘(2) On application under subsection (1), the tribunal may do 1 of the following—
 - (a) declare that a stated term of the site agreement is void;
 - (b) declare that a stated term of the site agreement is not void;
 - (c) declare that a stated term of the site agreement is void to a stated extent;
 - (d) make an order varying a stated term of the site agreement.

‘171 Undecided applications to tribunal for particular orders

- ‘(1) This section applies if—
 - (a) before assent—
 - (i) an application for a termination order was made to the tribunal under section 38(1)(d); or
 - (ii) an application was made to the tribunal under section 70(2); and
 - (b) the application has not been decided.
- ‘(2) The tribunal must decide the application as if the amending Act had not commenced.

‘172 Undecided application to tribunal for order about proposed increase in site rent

- ‘(1) This section applies if—
 - (a) before commencement, an application was made to the tribunal under section 71(7) as then in force; and
 - (b) the application has not been decided.

‘(2) The tribunal must decide the application as if the amending Act had not commenced.

‘173 Documents tribunal may consider on application for site rent reduction

‘Section 72(2) applies only in relation to an application to the tribunal for an order under section 72(1) made after assent.

‘174 Tribunal’s review of utility cost

‘Section 74(2) and (3) applies only for a utility cost notice given after commencement.

‘175 Tribunal’s power to make particular orders

‘Sections 39(2) and (3) and 40A apply only for an application to the tribunal for a termination order made after assent.’.

34 Amendment of schedule (Dictionary)

(1) Schedule, definition *site agreement dispute*—
omit.

(2) Schedule—
insert—

‘amending Act, for part 21, division 3, see section 156.

assent, for part 21, division 3, see section 156.

commencement, for part 21, division 3, see section 156.

converted caravan see section 10A.

market review of site rent means a review of site rent the outcome of which is 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.

[s 34]

prohibited agreement, in relation to a site agreement, means any of the following agreements, or terms of an agreement, between a park owner and a home owner if the agreement is entered into before or on the same day as the park owner and the home owner enter into the site agreement—

- (a) a term of the site agreement to terminate the site agreement;
- (b) another agreement, or a term of another agreement, to terminate the site agreement;
- (c) a term of the site agreement requiring the home owner to enter into an agreement with the park owner at some later time to terminate the site agreement.

site agreement dispute see section 14A.’.

© State of Queensland 2010