

# Manufactured Homes (Residential Parks) Amendment Bill 2024

## Explanatory Notes for Amendments to be Moved During Consideration in Detail by the Honourable Meaghan Scanlon MP

### Title of the Bill

The Manufactured Homes (Residential Parks) Amendment Bill 2024.

### Objectives of the Amendments

The amendments will improve clarity, address stakeholder feedback and resolve unintended consequences identified during committee consideration of the Manufactured Homes (Residential Parks) Amendment Bill 2024 (the Bill) by:

- extending the timeframe for parties to agree on the resale value of a home at each valuation stage under the buyback and site rent reduction scheme
- clarifying that a park owner will not have committed an offence by failing to buyback a manufactured home where there is an unresolved dispute about removing the home from the scheme due to non-compliance
- clarifying that applications to extend the buyback period under the buyback and site rent reduction scheme are exempt from alternative dispute resolution processes
- clarifying the frequency at which CPI increases which replace market rent reviews may be undertaken
- clarifying that direct debit is an approved way of paying site rent and establishing a regulation making power to prescribe other approved ways of paying site rent
- clarifying that requirements to carry over specific terms of a former site agreement into a new site agreement are subject to any changes to the former site agreement made in accordance with the *Manufactured Homes (Residential Parks) Act 2003* (the Act), such as changes to utility charges
- resolving technical issues to ensure cooling-off provisions apply as intended to the sale of pre-owned manufactured homes
- correcting minor typographical and technical issues.

### Achievement of policy objectives

*Extending the timeframe for parties to agree on the resale value of a home under the buyback and site rent reduction scheme.*

The Bill requires that when a home owner joins the buyback and site rent reduction scheme, parties must agree on the resale value of the eligible home within 7 days. Where parties cannot agree on the resale value, they must appoint a registered valuer to determine the resale value of the home

within a further 7 days. Parties must agree on the resale value when the home owner joins the scheme, 6 months after joining the scheme and 9 months after joining the scheme.

Amendments to the Bill increase the timeframe for parties to agree on a resale value from 7 days to 14 days at each interval in the valuation process to provide more time for parties to reach an agreement.

*Park owner does not commit an offence for failing to enter into a buyback contract where there is an application before the tribunal for removal of the home from the buyback scheme due to unresolved noncompliance.*

The Bill currently provides that a park owner does not commit an offence by failing to enter into a buyback contract if the home owner has made an application to the tribunal about whether the home is eligible to join the scheme, or where an application for an extension to the buyback period has been commenced by the park owner.

Amendments to the Bill will make similar provision for circumstances where a park owner has applied to the tribunal to remove the manufactured home from the scheme due to unresolved non-compliance with the scheme by the home owner.

*Clarifying that applications to extend the buyback period under the buyback and site rent reduction scheme are exempt from alternative dispute resolution processes*

Sections 62ZC and 62ZD of the Bill provide avenues for a park owner to apply to the tribunal for an extension of time for buying back a manufactured home as part of the buyback and site rent reduction scheme.

Section 116 of the Act regulates applications to the tribunal and applies if a party to a residential park dispute proposes to apply for an order in relation to the dispute. In most instances a party cannot apply to the tribunal for an order without first complying with alternative dispute resolution procedures. However, Section 116(5) lists exempt provisions which are not required to comply with alternative dispute resolution procedures.

Section 14A of the Act defines the meaning of a residential park dispute. Applications to the tribunal for an extension of time for the buyback period are not explicitly residential park disputes within the definition of 14A, therefore it is unclear whether alternative dispute resolution provisions apply to these applications.

To remove any doubt and facilitate timely applications, amendments to the Bill clarify that applications to the tribunal in these circumstances are exempt from alternative dispute resolution provisions.

*Clarifying the frequency at which CPI increases which replace market rent reviews may be undertaken.*

The Bill provides that where a market rent review has been removed from a site agreement, and the site agreement includes no other basis for increasing site rent, that site rent may be increased on the basis of CPI (a default CPI increase).

Market rent reviews often occur once every 3 or 5 years. However, the Bill is unclear on whether the default CPI increase which replaces the market rent review occurs annually, or on the same schedule as the market rent review. Amendments to the Bill clarify that default CPI increases cannot occur more than once per year.

*Clarifying that direct debit is an approved way of paying site rent.*

The Bill requires park owners to nominate 3 options for home owners to pay site rent from a list of approved ways of paying site rent established in new section 63.

Approved ways of paying site rent include deposits to a financial institution account nominated by the park owner, however a number of stakeholders have raised concern that this may not be sufficiently broad to allow direct debit, a common payment method for paying site rent.

Amendments to the Bill clarify that direct debit is an approved way of paying site rent by providing direct debit as an example of payments made to a financial institution account nominated by the park owner. Amendments also add a regulation-making power to prescribe approved ways of paying site rent.

*Clarifying that requirements to carry over specific terms of a former site agreement into a new site agreement are subject to changes to utility charging.*

Section 31E in the Bill requires that park owners ensure the terms of a site agreement entered into between the buyer and the park owner are the same terms applied under the site agreement between the seller and the park owner before the sale of the manufactured home. This requirement applies to utilities included in the site rent payable for the site, the communal facilities, services and other amenities included in the site rent payable for the site and other matters prescribed by regulation.

Section 73 of the current Act requires utilities costs to be removed from site rent where those utilities become separately metered and the cost becomes payable by the home owner, or where the utility stops being available.

Amendments to the Bill clarify that requirements to carry over site agreement terms under section 31E of the Bill are subject to any changes to the site agreement which occur in accordance with the Act, for example, changes made in relation to utilities under section 73 of the Act.

*Resolving technical issues to ensure cooling-off provisions apply appropriately to the sale of pre-owned manufactured homes*

A person buying a manufactured home has a cooling-off period during which they can terminate their site agreement under section 33 of the Act. Section 34 of the Act provides that where a site agreement is terminated using the cooling-off period, the sale agreement for the home is automatically terminated.

The current wording of provisions related to the automatic termination of the sale agreement may be interpreted as only applying where the park owner is the party selling the manufactured home. This may create issues for pre-owned manufactured homes sold by a party other than the park owner and result in a buyer using their cooling-off period remaining liable for the sale agreement.

Amendments to the Bill update section 34 of the Act to clarify that the automatic termination of the sale agreement also applies where the home is sold by a party other than the park owner, and makes consequential amendments replacing references to the park owner with references to “the seller”.

## **Alternative ways of achieving policy objectives**

There is no alternative way to achieve the policy objectives.

## **Estimated cost for government implementation**

There are no additional anticipated financial costs for government arising from the amendments to be moved during consideration in detail.

## **Consistency with fundamental legislative principles**

The amendments are consistent with fundamental legislative principles.

## **Consultation**

The amendments to the Bill are based on comments made by the Housing, Big Build and Manufacturing Committee (the committee) in their report on the Bill (Report No. 6, 57<sup>th</sup> Parliament), and issues identified by stakeholders including through submissions to the Committee and at the public hearings of the Committee on 22, 23 and 26 April 2024.

# Notes on provisions

## Part 1

*Amendment 1 – 3* amend Clause 12 of the Bill to extend the timeframe for parties to agree on a resale value for the home in sections 62J, 62K and 62L from 7 days to 14 days.

*Amendment 4* corrects a typographical error in the Bill.

*Amendment 5* amends Clause 12 of the Bill to add reference to section 62ZB to section 62ZE in the Bill. This specifies that the park owner will not have committed an offence against the requirement to buyback the home under section 62T(1) where there is an ongoing dispute about removing the home from the scheme for noncompliance by the home owner under section 62ZB.

*Amendment 6* amends Clause 22 of the Bill to specify that applications to the tribunal for an extension to the buyback period under sections 62ZC and 62ZD are exempt from alternative dispute resolution requirements under section 116 of the Act.

*Amendment 7* amends Clause 24 of the Bill to clarify in section 193 that a site rent increase based on CPI where there is no alternative basis to market rent review may be undertaken no more than once per year and may be undertaken annually despite any other frequency for market rent reviews provided for in the site agreement.

*Amendments 8 - 11* amend Clause 27 of the Bill to clarify that direct debit is an approved way of paying site rent in section 63 by providing it as an example and creates a regulation making power to prescribe additional approved ways of paying site rent.

*Amendments 12 - 16* amend Clause 33 of the Bill to specify that requirements for the park owner to ensure particular terms related to utilities are included in a site agreement with the buyer under section 31E(a) are subject to changes to the site agreement made in accordance with the Act, for example, changes to utility charges in the site agreement made in accordance with section 73 of the Act.

*Amendment 17* amends Clause 33 of the Bill to specify that section 34 of the Act (which provides for the automatic termination of a site agreement when the cooling-off period is used) applies where, in conjunction with the site agreement, a prospective home owner and seller of a manufactured home enter into a sale agreement for the home. This clarifies that the seller and park owner do not need to be the same party for this section to apply. This amendment also replaces reference to the park owner with reference to “the seller” throughout the section.