

Manufactured Homes (Residential Parks) Regulation 2017

Explanatory notes for SL 2017 No. 181

made under the

Manufactured Homes (Residential Parks) Act 2003

General Outline

Short title

Manufactured Homes (Residential Parks) Regulation 2017 (the Regulation)

Authorising law

Sections 25B, 61 and 146 of the *Manufactured Homes (Residential Parks) Act 2003*.

Policy objectives and the reasons for them

Residential (manufactured home) parks are a form of community living where residents own their home and enter a site agreement to rent the site their home is sited on in a residential park, from a park owner. The arrangement also allows the home owner non-exclusive use of the park's common areas and communal facilities.

The *Manufactured Homes (Residential Parks) Regulation 2003* (2003 Regulation) came into effect on 1 March 2004 and was due to expire on 1 September 2014. On 18 August 2016, pursuant to section 56A(1) of the Statutory Instruments Act 1992, the Governor in Council approved the Statutory Instruments Amendment Regulation (No. 1) 2016 which exempted the 2003 Regulation from expiry for a further 12 months on the basis that the *Manufactured Homes (Residential Parks) Act 2003* (the Act) is being reviewed. This follows exemptions from expiry in 2014 and 2015 on the basis that the Act was being reviewed. The review of the Act has occurred as part of the Queensland Housing Strategy 2017-2027.

The Regulation will prescribe the prohibited 'special terms' in site agreements to protect home owners from unfair business practices that undermine the objects of the Act. The Regulation will also retain the limit on the commission a park owner can charge a home owner for acting as a selling agent.

Special terms in site agreements

Section 21 of the Act allows 'special terms' to be included in a site agreement. While there is a need for flexibility to include special terms in site agreements that suit the individual circumstances of the parties and of the residential park, some special terms developed by some park owners are unduly prejudicial to home owners and unnecessary to reasonably protect the park owner's legitimate interests. These types of special terms are inconsistent with, and undermine, the objects of the Act.

The Act provides for a head of power in section 25B, to prohibit particular types of special terms by regulation.

The prohibition of particular special terms will apply to both new and existing site agreements. This is necessary due to the long-term, inter-generational nature of site agreements and the potential for such special terms to continue as part of existing site agreements for many years into the future. Such terms would affect not only current home owners, but also people who purchase homes and are assigned a home owner's interest under a site agreement.

In January 2014, the Queensland Civil and Administrative Tribunal (QCAT) determined that some terms in a proposed site agreement prepared by a park owner did not comply with the Act (*De Maid v C&K Anderson Pty Ltd* [2014] QCAT 10). The types of special terms to be prohibited by the Regulation were identified by an examination of this decision, from feedback received during the review of the Act and the relevant New South Wales legislation.

Maximum fee a park owner may charge for acting as a home owner's agent in selling a manufactured home

The Act provides in section 61 that, in acting as the home owner's agent, the park owner must not charge the home owner a fee greater than the amount prescribed in the Regulation. This restriction is necessary because the park owner is likely to have a unique advantage in selling homes sited in their park due to their knowledge of the park and how it is operated and because prospective purchasers of manufactured homes sited in that park will approach the park owner directly to inquire about homes available to purchase.

For these reasons, many home owners will feel that the park owner is best placed to sell their home, creating an incentive on the park owner to charge higher commissions where there is limited competitive pressure from external agents. Similarly, if the park owner is acting as a selling agent for multiple home owners, there would be an incentive created to charge higher commissions in exchange for preferential treatment of the homes being sold by those home owners paying a higher commission.

The commission limit set out in the Regulation has been in force since 2004 and was based on the commission limit applying to real estate agents selling residential property provided in the *Property Agents and Motor Dealers Regulation 2001* at that time.

Achievement of policy objectives

The *Manufactured Homes (Residential Parks) Regulation 2017* (MHRP Regulation) will achieve the policy objectives by:

- prescribing prohibited special terms in site agreements to exclude special terms that are inconsistent with the objects of the Act and are unfair; and
- continuing to prescribe the maximum fee a park owner may charge for acting as a home owner's agent in the course of selling a manufactured home.

Prohibited special terms

Section 25B of the Act relevantly provides that a park owner must not include a special term in a site agreement that is prohibited from being in a site agreement under the Regulation. There is a penalty of 100 penalty units for breaching this requirement.

A park owner must not attempt to enforce a special term in a site agreement that is prohibited by the Regulation and there is a penalty of 100 penalty units for breaching this requirement.

A term of a site agreement is void to the extent it contains a prohibited special term. Section 25B also provides that 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 the Regulation. In such a case, the tribunal may declare that a stated term of the site agreement is either: void; is not void; is void to a stated extent; or the tribunal may make an order varying a stated term of the site agreement.

Maximum fee under a selling authority

Under section 60, a home owner may, by signed notice (a selling authority), in the approved form, appoint the park owner as the home owner's agent to sell, or to negotiate the sale of, their manufactured home.

Section 61 of the Act provides that a park owner must not, under a selling authority, charge a home owner a fee for the agency that is more than the amount prescribed in the Regulation. There is a maximum penalty of 100 penalty units for breaching this requirement.

Consistency with policy objectives of authorising law

The Regulation is consistent with the main object of the *Manufactured Homes (Residential Parks) Act 2003*: that is, to protect home owners from unfair business practices; and 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.

Inconsistency with policy objectives of other legislation

The regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Regulation will benefit both park owners and home owners by providing clarity and promoting fair and consistent practices. This is likely to reduce time-consuming, expensive and upsetting disputes going to QCAT about residential parks.

Manufactured home owners are not expected to face any costs of implementation and are expected to significantly benefit from the protection provided to them from a prohibition on the use of unfair special terms.

There may be some relatively minor costs to park owners in obtaining legal advice to ensure that their proposed site agreements do not contain any prohibited special terms and, for those park owners that have such terms, the cost involved in changing their site agreements as required.

Consistency with fundamental legislative principles

Consideration has been given to whether section 3 may be in breach the fundamental legislative principle (FLP) set out in 4(2)(a) and (3)(g) of the Legislative Standards Act 1992 requiring that legislation have sufficiency regarding rights and liberties and does not adversely affect rights and liberties, or impose obligations, retrospectively.

The prohibition of particular special terms applying to both new and existing site agreements is considered necessary due to the long-term, inter-generational nature of site agreements. In these circumstances, there is the potential for exploitative and undesirable special terms to continue as part of existing site agreements for many years into the future, affecting not only current home owners, but also people who purchase homes and are assigned a home owner's interest under a site agreement.

Section 3 will commence on 1 October 2017; one month after the remaining provisions in the Regulation commence. This will allow sufficient time for the Department of Housing and Public Works to undertake an education and communication campaign to ensure that home owners, the residential parks industry, park owners and the legal profession know about the requirements imposed by the Regulation as well as to ensure that park owners site agreements do not contain any prohibited special terms.

Consultation

Consultation was undertaken as a part of the Housing Strategy. Concerns were raised by stakeholders regarding unfair special terms used in some site agreements. To address these concerns the Regulation will prohibit particular types of special terms. Stakeholders are broadly supportive of the Regulation.

The Queensland Productivity Commission has confirmed that a Regulatory Impact Statement is not required for the proposal.