



Supporting Home Owners Rights with Government

Submission on the Financial Abuse of Homeowners living in Residential Parks in Queensland

**To
Annastacia Palaszczuk
The Premier of Queensland**

**The
Department of Communities, Housing, and Digital Economy
Minister for Housing Leanne Enoch
Member of Queensland Parliament**

**And
Minister for Seniors and Disability Services Craig Crawford
Member of Queensland Parliament**

It is vital that action is taken immediately to ensure that those living in manufactured parks are treated fairly, the financial abuse of these residents be immediately recognised and investigated.

Urgent amendments are required to the legislation NOW on this issue.

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On the 9th of July 2017 statements were published from Premier Palaszczuk who stated the need for “a major shake-up of the industry” and from Minister de Brenni that “People have invested significant amounts of money and pay significant fees to live in these villages and manufactured homes. They have a very real right to be heard.”

It is now 2022 and the problems reported by Advocates and Residents in 2017 to the Government Enquiry are unchanged, they obviously were not heard or acted upon and AMHO asks - why not?

They promised new dispute resolution processes would be brought in along with enforceable behaviour standards for village operators. Premier Palaszczuk said *“consultation conducted by the Government over the past 18 months had found the rights of people who live in retirement villages just aren’t in line with the expectations of the community. Seniors living in residential parks were found to be facing similar issues. We must ensure our Queensland seniors can enjoy peace of mind in their retirement years, by giving them stringent consumer protections they need and deserve.”*

She said she wanted the new laws to take effect before the end of the year 2017. *“Our seniors and retirees have given so much to Queensland over their working lives. It’s only fair and proper that they should be able to retire with peace of mind and security.”*

In 2017, according to Government figures 17,000 Queenslanders lived in 185 parks and urgently needed to have their seniors’ rights protected. However, the changes to the Act were insignificant and did not provide the protection needed, but gave park owners more power – why? In 2022, according to Government figures 45,000+ Queenslanders now live in over 300 Manufactured Home Parks, with many more planned as park owners have profits of 65%+, the largest profits for their shareholders of any industry in Australia on the backs of retired Queenslanders living on fixed incomes – how can this be?

BACKGROUND:

Alliance of Manufactured Home Owners Inc. (AMHO) is a not-for-profit organisation. AMHO is an unpaid volunteer staffed association assisting Manufactured Home Owners in residential parks and villages throughout all of Queensland and working to ensure their rights within the Government and the present Legislation.

Feedback and matters of concern from our members throughout the State, allows AMHO to keep abreast of problems and matters which can, and do, affect its members (and all manufactured home owners), and that may require further investigation or action such as this submission on financial abuse.

AMHO is cognisant of the fact that the Act cannot be overly prescriptive in nature and that it must address a balance of rights between park owners and home owners. Nevertheless, AMHO hopes that the concerns expressed in this submission will not only be addressed in future framing and consideration of amendments of the present Act.

The most urgent issue that needs to be immediately corrected is a gross error in the present Act that was placed in the original in 2003 by this government. The use of All Groups Brisbane CPI should not have been a part of this Act in allowing site fee increases, and now this sits at 7.3% and rising and becoming a financial burden on those that live in this housing sector. Despite making the Minister aware in July last year and in person in September this year, it continues to not be addressed as a major financial issue affecting the welfare of these older Queenslanders.

AMHO submits that manufactured home owners are *unique* because manufactured home parks (MHP's) have specific characteristics which cause them to comprise of a *unique* way of living and accommodation. Manufactured Homes fall into an obscure area of owning real estate, a freehold title but not owning the land it is sited on, hence not coming under tenants as in rented premises, or owners of a private home and land scenario.

Thus, this can lead to aspects that demand careful consideration and focus when drafting or amending Legislation for this area. The future legislation and amendments should be able to move with the change in the Manufactured Homes growth and modifications of Parks / Resorts of different formats and design. Therefore, more consultation with the homeowners and the

stakeholders on the content of the Act is necessary to ensure there are not more errors placed in this legislation that can do harm and are presently doing harm to these homeowners.

One rule fits all does not now apply, with changes in Manufactured Home Parks / Villages and, now including Lifestyle Resorts, and more expensive and upmarket facilities, that then bring in more complex site agreements and many more rules put in place by the Park Owners and their agents. Because the site agreement is a licence and not a lease it can be manipulated in favour of the Park Owner and makes the home owner open to issues outside of the Act that infringe on their rights and legal status.

Now that there is an Act and legislation to support Manufactured Home Owners, and being relatively new in its formation and standing, it is timely to continue to address some areas of concern by home owners in the Act, and to continue to maintain it as a fair and equitable bench mark for their rights.

Summary of Submission

This submission outlines the relevant points being addressed, as concerns by AMHO and Manufactured Home Owners under the Manufactured Homes (Residential Parks) Act 2003. Focus will be about issues in respect of financial older abuse of residents who live in a residential park and will give attention to the impact the present legislation has on this area of their lives in respect of their financial future.

It is important to ensure that if government is mindful to introduce policies or legislation to assist specific groups in the community, the assumption that wealth increases with age is true for only a minority of older people.

The gap between richer older people and poorer older people is widening and the main financial problem faced by older people is that many simply do not have sufficient income to live on, facing income streams that are ultimately outstripped by their expenses.

What is needed is strengthening safeguards for vulnerable older people and increasing government understanding of financial abuse of older persons living in these residential parks, so that responses can be targeted appropriately. Financial and psychological abuse are the most often reported forms of elder abuse.

1. Alliance of Manufactured Home Owners Inc. (AMHO) and its members are raising issues involving the matter of financial abuse of older Australians in these parks, and the errors and perceived inadequacy in the present Act to address these matters in a manner that allows more recourse on those Park Owners and Park Managers, whose conduct falls into this category.
2. Through this Act they are able to practice unfair business practices and to use the Act through a mistake made in the formation of this Act in 2003 in respect of site fee increases under the CPI All Groups Brisbane which is being ruthlessly enforced to financially abuse these homeowners.
3. Recommendations will also include changes for the Park Owners and their “agents”, in the area of responsibility and liability, in behaviour, communication and general dealings in matters of finances of these homeowners.
4. It will also show the areas that are being used by park owners to abuse and manipulate residents, with unfair business practices and the devastating way they impact financially on those living on fixed incomes in this housing sector.
5. This submission emphasises that financial elder abuse should be responded to in such a way that prioritises an older person’s autonomy and independence, their fundamental right to make decisions that affect their lives, and their right to enjoy a self-determined life according to their personal circumstances. Not to be manipulated, intimidated and harassed by the owners or their agents.

Financial Abuse defined for this Submission

- when one person uses financial power and control over another
- refusing to include you in financial decisions
- taking control of someone else's finances
- taking money out of a person’s bank account without authorisation or approval
- someone takes away your access to your money
- manipulates your financial decisions
- withholding financial documentation
- incurring expenses that are not substantiated or consented too

The financial abuse of older people is a complex health and social problem that can have devastating physical, emotional and social consequences for older people, their families, and their communities. The abuse of older people occurs within a complex interplay of individual, interpersonal, community and social factors. It can be challenging to identify abuse when it occurs, as there is no single type of older person who is at risk, and no single type of person

who may cause harm. Many times financial abuse is perpetrated by a stranger, who is in this a case the owners of these residential parks or their agents.

The World Health Organisation defines elder abuse as a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person. Abuse can be deliberate or unintentional. It can occur once or many times. Abuse can be misusing an older person's finances, or threatening verbal and emotional abuse that then relates to psychological abuse. It can also lead to older people needing more help from the health and aged care systems, government benefits, and other services. Health issues increase and peace of mind declines. These additional years should be active and enjoyable, and characterised by high levels of wellbeing and financial and personal security.

This submission is about highlighting the area of Financial Abuse which also brings into play Emotional and Psychological Abuse in Manufactured Homes Parks by Park Owners and Park Managers. In doing this submission we also hope to make the Housing Minister Ms Enoch, and her department of Communities, Housing and Digital Economy, as well as the Premier of Queensland act now to address these issues. This abuse is due in part to the actions of this government and lack of care in drafting of the legislation over the years that should be protecting these vulnerable older Queenslanders.

There is a real requirement for a strengthening of the laws and putting in place a better understanding of how the financial, emotional, and psychological abuse can differ from one situation to another depending on the persons living environment. Living in a residential park is a unique environment that needs to be fully investigated and scrutinised in respect of the continuing financial abuse of elder people choosing this housing option in their later years.

The building of manufactured home parks is increasing at a rapid rate, and there is a real time need to address this area of abuse and to ensure the rights and future financial security and freedoms of these homeowners.

Emotional or psychological abuse

Sec. 96 of the Act - Harassment or unconscionable conduct

The park owner for a residential park for which site agreements are in force must not engage in harassment or unconscionable conduct in the operation of the park or in acting as a home owner's agent to sell, or to negotiate the sale of, a manufactured home.

Examples of harassment—

- using, or getting a third party to use, threatening or intimidating language or behaviour towards a home owner or prospective home owner for a site
- engaging in conduct that would make a person feel unwillingly compelled to comply with the park owner's request or demand requiring a home owner or prospective home owner for a site to comply with conditions that are not reasonably necessary for the protection of the park owner's legitimate interests.
- if it is reasonably apparent that a home owner or prospective home owner for a site cannot understand relevant documents, taking unfair advantage of the home owners, or prospective home owner's, lack of understanding in relation to the documents
- exerting undue influence or pressure on, or using unfair tactics against, a home owner, prospective home owner for a site, or a person acting for a home owner or prospective home owner for a site.

The management of a manufactured homes park are the caretakers of their residents and as such they have a duty of care to not abuse those roles and use them for intimidation, verbal and written abuse, and harassment of those residents. The Act does not go far enough in deterring this behaviour and attitude. There is also an increase in the number of people being affected health wise and psychologically due to the financial pressures placed on them when they move to a residential park.

Submission Points on Financial Abuse in Residential Parks and Recommendations:

Point 1. The Act Part 10 Site rent

63 How site rent to be paid

- (1) The home owner under a site agreement must pay the site rent payable under the agreement in an approved way.
- (2) If the agreement states an approved way for payment of the site rent, the home owner must pay the site rent in the way stated.

Increases in site agreement fees can be a significant factor in how they need to budget for the future and also any other areas of control of their finances. Allowing direct access to their bank accounts with direct debit can create the possibility of financial misconduct, with little avenue of reproach by the homeowners in compensation. These homeowners should at all times have control over their finances not the park owners, using this coercive behaviour when signing contracts, it limits their rights and power base.

Economic and Financial pressures or difficulties associated with home ownership are a concern to all older persons. With living in a manufactured home there is a level of consideration of their finances and budget that many do not contemplate when signing up to their site agreements.

This form of financial abuse in these parks is often committed privately, and the abuse is purely based on the age of the victim as they have to be over 50 to live in these residential parks and the average age is 70+, being a very vulnerable demographic.

Recommendations Point 1.

1. **The recommendation** is for stricter guidelines to be set on the access by the park owners to debiting of monies from the resident's accounts. There are many accounts of extra expenses purported by the park management to be payable and deducted without approval of the residents. Often residents have difficulty getting reimbursement and the only avenue open to them is usually QCAT. This is time consuming, frustrating, and confusing to many residents who either are intimidated by the system, or just cannot be bothered, and hence this misconduct is allowed to thrive.
2. **The recommendation** is that residents be able to have more control over the access by park owners and managers and be able to use the direct credit option, giving them full control, not permitting park owners access to their funds for payment of their site fees

and any other costs that are agreed. We have been advised of payments being taken without permission, causing residents to have insufficient funds left for food and medicines until their next pension payday. This could be an item to be placed in the site agreement and the Act to enable full control to remain with the resident at all times and allowing them to change to another option of payment if they choose.

Many sales agents and park owners tell purchasers they can only pay by direct debit and as people are concerned if they do not agree they will lose the contract. There is a need for change to this in the Act to state that the purchaser can choose any form of payment for paying the site fee and is not to be pressured into one option.

Point 2. Site Fee increases

At present there are four ways that Park Owners are able to increase the site fees in residential parks. The Act only permits three but again this is the park owners manipulating these site agreements. Their excuse is that “it does not state in the Act that we cannot do it”. Why do they need this many? In private rentals they do not have these many options and this is just the land being rented. It is now time we established a one only model for site fee increases? The balance of financial power is too slanted to the park owners, and is exacerbated by the error in the Act with CPI (confirmed by the Department of Statistics), and also with the inclusion of Special Costs and Market Reviews, therefore increasing the rise in financial abuse and manipulation of the Act.

- **CPI All Groups Brisbane**

The current June 2022 quarter All Groups Brisbane CPI has come out as 7.3%. Therefore, those homeowners who have CPI in their site agreements will have their annual site fee increased by 7.3% in this quarter. Each park has a different date to process a site fee and after consultation with the Department of Statistics we know it will get higher.

June 2022	Sept 2022	Dec 2022	Mar 2023	June 2023
CPI Confirmed	CPI Forecast	CPI Forecast	CPI Forecast	CPI Forecast
7.3%	8.6%	9.8%	10.1%	10.5%
\$201.19	\$203.63	\$205.87	\$206.43	\$207.18
An increase of \$711.36 pa	An increase of \$838.76 pa	An increase of \$955.24 pa	An increase of \$984.36 pa	An increase of \$1,023.36 pa

AMHO has presented two submissions to the government about this problem and has been ignored, the first in 2021. Their answer is always the same, quoting the *Queensland Housing and Homelessness Action Plan 2021-2025*, **which has nothing in it about problems caused by CPI rises.**

We, the Queenslanders who have chosen this once affordable option to live out our retirement, releasing much-needed family homes back into the community need action now! We cannot wait for the slow movement of the Government which plans to release a Consultation Regulatory Impact Statement by early 2023 and then slowly grind its way through the processes, with our fingers crossed that this time we will be heard and that the Legislative changes will be made in years to come.

In the park Thyme Resort in Morayfield they have just received a site fee increase of 2% plus the present CPI of 7.3%. This is a blatant form of manipulation of the site fee increase and means a 9.3% increase in one year for residents on fixed incomes. The Federal Government pension increase may indeed cover the cost of this 2022 rent rise but leaves nothing to cover the cost of living expenses of food, energy, medications and insurance. The park owner who is already earning massive profits for his shareholders being the only beneficiary of the pension increase.

(a) Site Fee Increases CPI – Recommendations

We need action and require an Amendment by the Queensland State Government now on this bungle made with the incorrect CPI formula presently in the Act.

1. Immediate cessation of any increases in rent for manufactured home owners and rents to remain at existing levels **until** this entire process reaches a conclusion and is implemented into law by royal accent and agreed upon through parliamentary procedure.
OR
2. Implementation of a 1% **ONLY** annual increase in rent until this entire process reaches a conclusion and is implemented into law by royal accent and agreed upon through parliamentary procedure.

This government department made this error, and the homeowners are paying for it. This financial abuse is on the shoulders of this department and government, and you need to fix it now.

(b) Market Reviews

This area was included in the Act in 2017. In most cases this can be applied every three years for site fee increases to the homeowners. Though the Act states that they must use an independent valuer and compare like for like in parks, this rarely happens and is openly abused and manipulated by the valuer and park owners.

Most corporate park owners use the same valuer and then collude to ensure that they get the outcome they want, not what is legal or right. So, this inclusion in the Act has allowed park owners to manipulate the Act and the system with little recourse by the homeowners.

Why is this model being placed in this Act, there is no other business models that have this component in their costings, and the actual asset is the one the park owner owns, not the homeowners, so if it increases in value why should the homeowners have to pay more.

Most park owners do not pay land tax, so if any rates are applied to any of these parks, this should be absorbed into their operating costs, not to the cost for homeowners to subsidise.

(b) Market Reviews Recommendation.

That this must be removed from the present Act as not applicable and open to financial abuse of the homeowners. Government removed it from the Retirement Villages Act 1999 but not the Manufactured Homes (Residential Parks) Act 2003. Surely this should have been done at the same time and why wasn't it? These are similar housing sectors catering for older people and who deserve to have the same protection as retirement villages or any place that houses older people.

(c) Division 3 Increase in site rent to cover special costs

In section 71A of the Act and included in the 2017 amendments we have another way to increase site fees by the option for the park owner to include "special costs". There is not real definition in the Act and again this can be open to manipulation and financial abuse.

To our knowledge no park owner has used this as there is a requirement to present financial data to residents or QCAT to get approval. There is no other part of the Act that demands the park owners be financially accountable to the homeowners providing financial proof for the site increase, so they have never used it. Park owners under the Act do not have to prove the need for rent rises, as the Act simply gives them the right to raise rents of their fixed income residents every year, regardless of their massive profit margins, while never providing proof.

(c) Division 3 Increase in site rent to cover special costs - Recommendation

That this part of the Act be removed as not proven to be applicable or in line with increases in rent of a site fee. The owner should have allowed for operating costs for any unforeseen issue that may arise on their asset of the land and infrastructure of which the homeowners have not ownership nor right financially. Can they take the pool when they leave?

(d) Increasing the site rent on new site agreement contract

This has been going on too long, where new people buy into the park and not only are they not told they can have the site agreement assigned from the previous owner (if on selling of the home), the park owner or agent will produce a new site agreement which has a higher site fee than the one that was implemented at the last site fee increase of all the present homeowners.

This is a form of ratcheting up the site fees that is not ethical, but their view is that it does not say in the Act they cannot do it, so they do. This has now become the norm for new residents, who do not know what the site fee applicable in the park has been set at for that year. They will be given the highest site rent fee in the village when purchasing their home and then usually another site fee increases when the next rent rise period comes up which often is less than the twelve months regulated in the Act.

(d) Increasing the site rent on new site agreement contract – Recommendations

Take out the option to assign site agreements as this is the only way to ensure at this time that the new homeowner is paying what the set site fee is in the park at that time and the park owners will not allow it or stall the process so people are scared they will lose a sale or purchase.

Instead add a clause that states that all new site agreements must comply with the existing site fee increases payable at the last site fee increase of which the present homeowners are paying.

This will stop disputes with assignment of contracts which has become a contentious issue and ensure that park owners and their agents cannot use another form of site fee increases outside of the Act. If this is regulated in the Act, then they can no longer push two site fees increases on new purchasers in one year and use it as a price indicator when a market review is done.

Conclusions

All the above are areas that are of major concern to AMHO and these homeowners. They know they are being financially used and abused by the very Act that is supposed to protect them and no one cares or acts to assist them. Park owners continue to strip back services, while pushing rents up and inventing new charges for residents to pay.

There is significant proof that has been presented to the department of Communities, Housing and Digital Economy and to Ms Enoch the Housing Minister for a long time that support these submissions and points in this document, so why is it taking so long to address these concerns? Most were raised in 2017 and can even be found in reports written in 2014. Even now they are NOT acknowledged and taken seriously, as due process plods along with no guarantee that these significant areas of financial abuse will be changed in a timely manner or even make the required changes to the Act made now, why?

If this department and government fails to address this now, then they are both complicit in this abuse and the misuse of this Act. You made the mistakes in this legislation and lessened the rights and protection of those living in this housing sector and we will not allow this to continue. We will be a louder voice wherever and when ever we can to make sure if there is NO positive action taken immediately, in respect of the incorrect CPI, and the other areas we have continually highlighted. We will not accept issue papers, survey and impact statements that claim there is no need for legislative changes. We will push this agenda of there being allowable financial abuse by this government and their departments such as CHDE and RSU who should be protecting these older people and are not doing their job. Time is not standing still for this abuse and nor should this government.

AMHO is hopeful that the decision makers recognise and consider the fact that a substantial proportion of the Manufactured Home Owner demographic, are older and aged persons, unversed in legal and organizational matters, and often without the health or energy to battle bureaucracy, or to persist in the face of park owner inaction or non-compliance. Government must implement the changes to the Manufactured Homes (Residential Parks) Act 2003 now, to ensure that adequate consumer protection measures are in place and the financial viability and security of those living in this housing sector are met.

Older persons should be able to enjoy human rights and fundamental freedoms when residing in any residential park, including full respect for their dignity, beliefs, needs and privacy, and for the right to make decisions about their care and the quality of their lives. Around 15 per cent of the Australian population is aged over 65 – approximately 3.7 million people. Australia has an ageing population, and this number is predicted to rise to 23 per cent of the population by 2055. Older persons should be treated fairly regardless of age and as this housing sector grows, so should this Act and their protections under it.

Where there is a large population of older Australians in an enclosed environment such as a manufactured homes park, this can create a habitat of availability for management or owners of these parks to act in a manner that is contrary to the law and human rights, without fear of retribution due to having a perceived “captive audience” and all-consuming power over the residents.

Residents who have been long term residents of manufactured homes have expressed that they would not have entered into these types of accommodation arrangements had they had been better informed about the costs associated with their future financial obligations. The present figures of the incorrect CPI are making those obligations unsustainable and out of context with the private rental sector.

Further, the following areas of concern and financial vulnerability identified by its members:

- increases in Site Fees and other service fees
- continuing to pay fees until the unit is sold
- feeling of loss of control and power
- village closures or eviction threats
- not simple dispute mechanisms in place
- legal inequalities of homeowners vs park owners.

These notes below taken from the FPQS inquiry 2015, still apply today. Many, many reviews, plans, papers, inquiries and consultations have taken place since this document, and yet we can unfortunately say the same thing today is occurring. Older Australians are still being pushed to the back when legislation is written and change needs to occur in areas other than aged care and retirement villages. There is a need for a shake up in this housing sector too as it is growing rapidly and affecting thousands more older Queenslanders.

There are many areas such as these residential parks that are falling through the cracks in being seen as another area open to abuse in the housing sector on many levels. These unfair business practices, unethical behaviours and the way many of these parks are operating are not being scrutinised enough. These park owners are actively ignoring their responsibilities and the Act in how they treat their income stream, these older people, and there is nothing and no one that is applying pressure on them to change and be accountable.

Regulatory Services Unit needs a bomb under it, they do little to protect these homeowners which is their mandate and have not prosecuted one park owner since the 2003 commencement. They allow this abuse and behaviour to continue as there is no accountability by these park owners or their agents and no incentive to make changes and act with integrity to these older persons.

Dispute Resolution Over Site Fee Increases

The usual department fallback reply of concerns about the increases in site fees is to tell homeowners to do a Form 11, contact Caxton Legal and go to QCAT. Most importantly, why is there a requirement for homeowners to have to pay the proposed increase while the matter is in dispute and under investigation with the Tribunal?

The onus should have to be on the park owner to have to show to QCAT why there is a need to have the site fee increase implemented and the homeowners should not have to pay the increase until a decision has been made and until an order given either for the increase, a lesser amount or no increase. Where are the rights of these residents? Where is the responsibility, accountability and transparency of the park owners to show cause and supporting evidence unless there is a dispute and all the pressure put on the homeowners to pay immediately without proof?

This system of dispute is broken and should be removed from the Act, with the park owners having to show what the increase is for, what it represents for the homeowners, and to have to gain approval for all site fee increases that come under this Act.

Disputes in QCAT are presently taking up to three years and if appealed by the park owner take many more years along with the payment under dispute having to be paid still. There should be no increase in payment due until the hearing has been held and an order made.

References:

Elder abuse joint issue paper Queensland Law Society Feb 2022

*National Elder Abuse Prevalence Study: Final Report
JULY 2021 by Australian Institute of Family Studies*

*Elder Abuse Prevention Unit Elder Abuse
Statistics in Queensland: Year in Review 2020 –21*

National Seniors reporting on elder abuse

The Queensland Law Society and the Public Advocate's joint publication, 'Elder Abuse: How well does the law cope in Queensland?' was released in June 2010,

Our nation's shame; Sector-led engagement in the next National Plan to Respond to the Abuse of Older Australians- May 2022 – Elder Abuse Action Australia