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THE VOICE FOR MANUFACTURED HOME OWNERS

Submission Dated 30th January 2022

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Communities, Housing and Digital Economy

Queensland Government

Issues affecting manufactured home owners, and potential improvements to, the Manufactured Homes (Residential Parks) Act 2020, regarding on selling of manufactured homes by the home owner

Manufactured Homes (Residential Parks) Act 2003

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BACKGROUND:

Alliance of Manufactured Home Owners Inc. (AMHO) is a not-for-profit organisation, unpaid volunteer staffed association assisting Manufactured Home Owners in residential parks and villages in all of Queensland.

AMHO provides its members with information and insights on matters pertaining to the *Manufactured Homes (Residential Parks) Act 2003* (the Act), but the main thrust of AMHO's endeavors is to provide maximum assistance and authoritative advice when problems arise concerning residential park living AMHO helps its members interpret and understand their site agreement and the relevant legislation, and gives practical and hands-on assistance to members engaged in meetings with park owners/managers, mediation or disputes before the Tribunal.

Members receive personalized assistance with compiling applications, submissions, and evidence, and AMHO support and assist in dispute matters.

In order to achieve this AMHO issues a quarterly newsletter, maintains a website, email, and phone contact for our members. Holds public meetings and offers an advice line for all members. AMHO is administered by a Management Committee, consisting of 8 members, and also liaison persons in many parks where we have active members.

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. Additionally, AMHO is active in seeking changes to current legislation and has committee members who have participated in advisory committees, consultations, meetings, and working groups of Government.

BACKGROUND CONTINUED:

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, but nevertheless hopes that the concerns expressed in these submissions will be addressed in future framing and consideration of amendments of the present Act.

AMHO submits that manufactured home owners are *unique* because manufactured home parks have specific characteristics which cause them to comprise of a *unique* way of living and accommodation. Manufactured Homes falls 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.

One rule, fits all does not now apply, with changes in Manufactured Home Parks and Villages, 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.

Restrictions and rules are part of living in a Manufactured Home Park / Resort / Village, and the Act has managed to address many unfair, and illegal rules, and behaviours, of those who owned these premises. 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 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.

In general, these home owners represent a captive market situation from which there is no easy exit for reasons of cost, hindrance from park owners and their agents, limited market options, and tighter

controls and restrictions on the home owners with unfair or ambiguous clauses in site agreement, when wishing to sell on. In the wider spectrum of housing this can lead to exploitation and pressure on the seller and buyer.

Summary of Submissions

This submission outlines the relevant points being addressed as concerns by AMHO and Manufactured Home Owners under the Manufactured Homes (Residential Parks) Act 2003. Predominately this will be about issues in respect an owner on-selling of a manufactured home in a residential park or resort. There are also two other points that are of observance of content of the Act and are being included and noted in this submission as a matter of concern and for further discussion.

- 1.** This submission will address certain identified points in Part 7 - Assignment of home owner's interest in site agreement, and Part 9 - Sale of a Manufactured Home Positioned on Site.
- 2.** Alliance of Manufactured Home Owners Inc. (AMHO) and its members are raising issues involving the on-selling of manufactured homes, and the perceived inadequacy in the present Act to address these matters in a clear and fair manner. This submission will outline those issues and offer proposals.
- 3.** Recommendations will also include changes for the Park Owners and their "agents", in the area of responsibility and liability, hindrance and interference, with more direction, that does not allow site agreements to include contradictory points that interfere with or lessen the home owners' rights during the process of selling, or conflict with the Act purely by omittance of clearer wording.
- 4.** There is a real requirement that the area of the wording of description of a manufactured homes be updated, with many new parks and resorts constructing homes that are not relocatable and therefore it is now confusing in the Act, as to the true definition in regard to this Act of what a manufactured home constitutes.

Submission Points and Recommendations:

Part 7 Division 1: Assignment of home owner's interest in site agreement

43 *Hinder proposed assignment*

- (1) *The park owner under the agreement must not hinder the proposed assignment of the seller's interest.***
- (2) *The park owner does not contravene subsection (1) if, under this part, the park owner reasonably refuses to consent to a proposed assignment of the seller's interest.***

48 *Park owner's consent required*

- (1) *The assignment of the seller's interest is not effective unless the park owner has consented to the assignment.***
- (2) *The park owner may give the consent only by signing both copies of the form of assignment.***

49 *Consent to assignment of seller's interest*

- (1) *After the buyer and seller sign the form of assignment, the seller must give the park owner a written request for the park owner's consent to the assignment.***
- (3) *The park owner must not unreasonably refuse to consent to the assignment.***

Identified Issue 1: Part 7. Div. 1. s43 (1) (2) and Div 2. s48. (1) (2) and s49. (1) (3)

When a home owner notifies and presents the appropriate paperwork, once the home owner has a buyer for their home, there have been incidents of a Park Owner or their agent, prolonging this process even though there are time limits in the Act for this response, and return of the documents or notices. Many home owners are too intimidated to question or complain to the Park Owner or their agent regarding hinderance of their assignment, as they may further hinder or delay their selling.

Recommendation 1: Part 7. Div. 1. s43 (1) (2) and Div 2. s48. (1) (2) and s49. (1) (3)

Proposal to have the wording in all areas concerning on selling be “Park Owners and their Agents”. Proposal to have in all areas where there is presentation of paperwork to the Park Owner or their Agent, the time limit to be 7 days for return, to the home owner, of this documentation. A proposal that there is an increase in the penalty for noncompliance or a liability on the Park Owner or their Agent to have compensation awarded if there is a financial loss to the Home Owner due to the delay.

50. Dispute resolution and application to tribunal about refusal to consent to assignment

- (1) This section applies if the park owner refuses, or is taken to have refused, to consent to the assignment of the seller’s interest.**
- (2) The seller may, subject to section 116, apply to the tribunal for an order (the assignment order) that the park owner consent to the assignment of the seller’s interest on a day (the consent day) stated in the order.**

Identified Issue 2. Part 7. Div 2. s50. (2)

When this situation occurs, of the requirement of a home owner, to apply to the tribunal for mediation or adjudication, due to the Park Owner or their Agent not consenting on the sale, or in any way interfering or hindering the sale by the home owner, this can be a lengthy process. Though it is essential and positive to have this avenue of recourse as provided with the present Act, the time frame for any resolution can lead to disadvantaging the home owner in:

- (a) the home owner may lose the purchaser due to the delays.*
- (b) the home owner may incur expenses in having to take this matter to the tribunal if the buyer of the property cancels the purchase.*
- (c) the home owner can find all this a very stressful exercise, given the age group of those living in manufactured homes, and the procedures involved in on selling, health issues are a concern if there is perceived negative or intimidating behaviour by the Park Owner or their Agents.*

Recommendation 2: Part 7. Div 2. s50. (2)

Proposal that the wording be included that the home owner may apply for compensation if there is a case against the Park Owner or their Agents of hindrance and unreasonable refusal to consent of assignment. And due to that case being established in favour of the home owner, compensation can be awarded where proven that there was a financial loss to the home owner due to this refusal of consent.

PART 9 Sale of a Manufactured Home Positioned on Site

Division 1. Home Owner's Right to Sell Manufactured Home

56. Right to Sell

The home owner under a site agreement has the right to sell the manufactured home positioned on the site.

57. Placement of 'for sale' sign on site

(1) This section applies if -

(a) the home owner under a site agreement intends to offer the manufactured home positioned on the site for sale, and:

(b) *the agreement provides for the placement of a "for sale" sign, in relation to the home, on the site.*

Identified Issue 1. Part 9 Div 1. s56 and s57 (1) (b) (3)

A proposal for changes to the terms for which a home owner's rights are limited for the on selling of their home in a manufactured home park, with the inclusion in many site agreements in respect of matters that are restrictive and occur only for the benefit of the Park Owner.

Some park owners will not allow a "for sale" sign, others will only allow it to be inside the window of the home that is for sale, and then these signs can also be required to be of a certain size, or of their design only, and predominately too small to have any real sale or visual impact.

There is little the home owner can do in promoting their home for sale within the site of the park, and therefore this is even more hindrance of their rights, these points should be available to be negotiated or included in consultations when selling, not as part of a site agreement.

Though the park owner does own the land that the manufactured home is sited on, there does appear to be an attempt to thwart fair attempts for a resident to sell, promote and advertise their home for sale, even on the outside of the park site or, also subtle interference from the Park Owner or their Agents towards the seller.

Recommendation 1. Part 9 Div 1. s56 and s57 (1) (b) *Therefore this submission is proposing a change to the Act for an amendment, to all parks / resorts/ villages consisting of manufactured homes to be under the same obligations and rules. That rule may be worded, that all home owners may place a "for sale" sign on the front of their home, either on the exterior of the home or in the front / side area of the home, of a size that is agreed upon with the Park Owner and the home owner. This sign should be permitted to be applied also through any registered selling agent the home owners choose to use, not just one designed by the park owners.*

Though it is the prerogative of the park owner under the present legislation, to lessen or not allow any advertising within the site of on selling homes, some scope of negotiation or flexibility with these rules can lessen selling being so restrictive and difficult than it is presently for home owners. Surely this comes under fair practices by the Park Owners and their agents.

(2) The home owner must give the park owner notice of intention to offer the home for sale before placing a sign on the site.

(3) If the home owner gives a notice to the park owner under subsection, the park owner must not restrict the placement of the sign on the site, as allowed under the agreement.

Identified Issue 2. Part 9 Div 1. s57 (2) and (3) *This point is where there is confusion and misuse outside of the Act, by the park owners, to restrict owners to advertise and promote their home by placing in the site agreements constrictive rules about “for sale” signage and promotion of their sale in the site agreement.*

Recommendation 2. Part 9 Div 1. s 57. (2) and (3)

AMHO propose that these points be clarified under the Act as negotiable

Part 9. Div 1. s58. (1) and Part 9. Div 1. s58. (2).

58. Park owner not to interfere with sale

(1) The park owner for a residential park must not hinder the sale by a home owner of the home owner's manufactured home positioned on a site.

(2) Without limiting subsection (1), the park owner is taken to hinder the sale if the park owner stops potential buyers from inspecting the home.

Identified Issue 3: Div 1. s58. (1) and Part 9. Div 1. s58. (2). Section 58 does cover interfering with the sale of a manufactured home sale, and though substantial penalties can be imposed for those breaches of this section of the Act, breaches still do occur in circumstances where there is a blurring of the line between interference and acceptable practice by the Park Owner or their Agent.

AMHO has identified two main areas where interference with a sale is committed under the guises of reasonable actions". The first area of concern is where the park owner and their agents are in competition with home owners who wish to sell their homes privately. This can happen when the Park Owner or their agent:

- a. Have newly built / or can be built, manufactured homes for sale in the park and wants them sold;
- b. Have been appointed as agent to sell privately owned home within the park.
- c. Wishes to buy, at a bargain price, a home that is being offered for sale by home owner.

In such cases, various techniques have been reported, and common, among these are.

- a. Stating publicly that the home is overpriced – I can give you a better deal;
- b. The position or state of the home is not good – I can show you a better one;
- c. Why buy a second-hand home – we have new ones for a similar price;
- d. The older homes do not have warranties or able to design your own home - If you buy a new home, you have a new warranty, and can choose your style.
- e. If you buy the new home, you can have more options, such as caravan site;
- f. Obtaining information about a prospective buyer organised by the home owner or their agent, and contacting them privately to promote themselves;
- g. Approaching prospective buyers of home owner organised visits when they are leaving the park to influence them.

In all cases the Park Owner or their agent will justify their actions by claiming that they we simply stating a true fact and not seeking to interfere with the sale, or just denying that they have had any private contact with a home owners' private agent or prospective purchaser.

There have been experiences by home owners, of particularly park managers and on-site sales people, actively hindering, influencing, and interfering with agents who have booked to bring a potential buyer through to the site area for viewing or with the actual potential buyer.

Some parks are requiring home owners to obtain permission, through the park manager or sales people, for an agent or a prospective buyer to enter the grounds, and instil certain rules when, how and where this is can occur.

This can then allow the park agents, access to information about the prospective buyer, and the home owners agents, and thus the personal business of the home owner, which is an infringement of their rights and their privacy. This then opens the door for the opportunity for interference by the Park Owner or their Agent.

For a resident to be able to provide witnesses or evidence to this interfering or hindering behaviour, it is rarely able to be obtained, due to people not wanting to be involved in this action, or it being done in a manner that can be addressed as hearsay or easily denied. This then makes this point unactionable in most cases irrelevant for purpose for any seller to be able to gain actual evidence to proceed with a case of hindrance or interference. We have included some reports of this behaviour with the submission.

These practices undermine the main object of the Act, which seeks to protect home owners from unfair practices.

Recommendation 3. Part 9. Div 1. s58. (1) and Part 9. Div 1. s58. (2). AMHO's proposal would be to have an additional sub-section to s58(1). This added subsection 58 (1) (b) clearly pointing out that

negative comments and opinions by the Park Owner or their agent, are not to be used to influence a prospective buyer. This being done in any form by the Park Owner or their agent, so as to cause that person not to inspect the home offered for sale, or to influence them to reject a purchase of that home, and so therefore place the owner at an unfair advantage. This is then clearly aimed at the issue of interference and hindrance and therefore no stance can be given by the Park Owner or their Agent, for saying this is "reasonable action" or acceptable behaviour.

Recommendation 4. Part 9. Div 1. s58. (1) and Part 9. Div 1. s58. (2). AMHO also submits that the inclusion of examples, would assist in controlling these unfair practices.

Recommendations 5. Part 9. Div 1. s58. (1) and Part 9. Div 1. s58. (2). Including the wording of "the park owner, or their agents" to be made in all areas of the Act where the Park Owner/s are likely to, and able to, defer responsibility and authority another person who is to act as their agent or voice in dealing with a home owner. This then clearly defines the use of the Act to cover all persons under the banner of the Park Owner's authority, and code of behaviour.

Conclusion:

Consistency with policy objectives of authorising law.

The submission 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.

The submission 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.

Though Park Owners had lobbied in the past and been given the advantage in the area of “for sale” signage, AMHO and manufactured park home owners believe this to be an unfair inclusion that is being added in their site agreements and therefore requires more action within the Act to not disadvantage the home owner when selling.

AMHO and home owners would request that more openness in these areas be afforded under the Act to Manufactured Home Owners that they be given more knowledge of the right to negotiate any of the points in their site agreements, such as the “for sale” sign.

A proposal would be to have something inserted in the material prospective buyers receive before signing up, that advises these prospective buyers that this is a contract and terms are negotiable up to when the agreement is signed. An example could be, “There may be some terms of this agreement to which you may not wish to agree, and which might be a source of later disputes if you now agree to them. Identify these before consulting your Solicitor”.

Buyers should be made more aware that they not only need to fully read the site agreement, but that they can negotiate with the Park Owner or their agent to get what they want. Many home

owners, after signing up to all these terms, and only after time of living in their manufactured home park become aware of issues that they have signed away rights or are now a problem for them and there is no recourse, and they are stuck with these terms.

Only through submissions such as this, can matters, that become highlighted by manufactured home owners, over time, be brought to the attention of the government and appropriate authorities. This then can allow discussion, and consultation to hopefully bring about a fairer and more equitable playing field for home owners and Park Owners.

Related aspects:

While AMHO provides advice when contacted by potential MH Owner's, realistically AMHO does not usually become involved until after a manufactured home is purchased and a problem arises. AMHO would see itself as playing a valuable role by directing persons in a form that correlates with the best interests of the home owners, which can be utilised effectively to instruct and inform any relevant parties, including Solicitors who are consulted by potential MHO's and allow relevant enquires to be formulated.

AMHO is hopeful that the decision makers recognize and consider the fact that a large 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.

Compiled by Rhonda J Cooper President – for Alliance of Manufactured Home Owners Inc.

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Appendices as previously provided in June 2020 to be aligned with this new and corrected submission

1 a – 1 e. Correspondence with Dr Sandi Rogers regarding the matters addressed in this submission, and points of personal concerns, and experiences in the area of on selling of her home

2 a – 2 b Report by Graham Hunt and David Mc Gowan, regarding their concerns and personal experience in regard to the on selling matters addressed in this submission.

3. Report by Rhonda Cooper in reference to matters that have been raised in this submission, from personal experience of on selling, and concerns regarding the unfairness and inadequacy to home owners within the extent of the content or lack of, in the Manufactured Homes (Residential Parks) Act 2003 and amendments 2017.

4. Report from Dr Rita Arthur, noting her experiences when on selling of her home, and raising the concerns that are not presently being addressed with the Act.

5. Listing of manufactured home owners and other person's names, who are in support of this submission and seek change and fairness in the areas of on selling of Manufactured Homes, along with bringing the MH Act more in line with the requirements of home owners through the legislation to address some perceived inadequacies in the Act.