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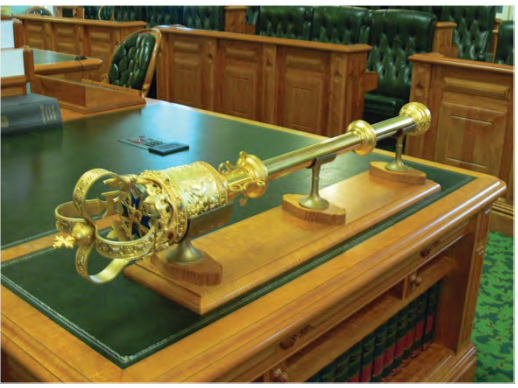
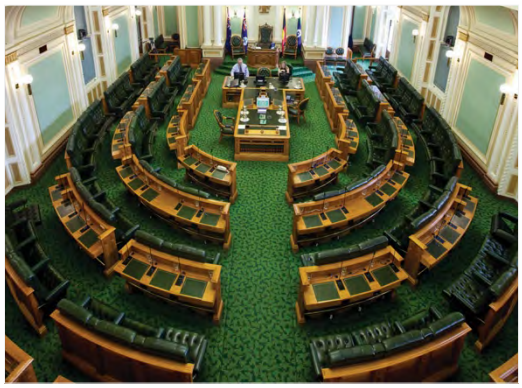
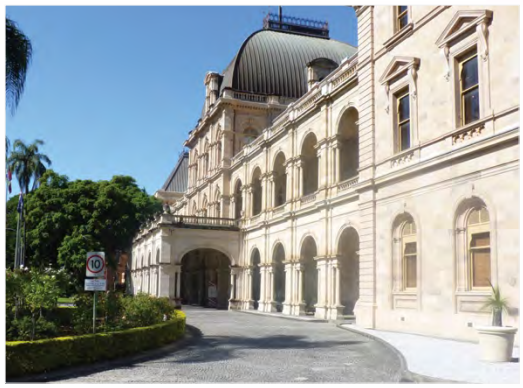

Housing Legislation (Building Better Futures) Amendment Bill 2017

Report No. 48, 55th Parliament
Public Works and Utilities Committee
September 2017

Public Works and Utilities Committee

Chair	Mr Shane King MP, Member for Kallangur
Deputy Chair	Mr Rob Molhoek MP, Member for Southport
Members	Mr Jason Costigan MP, Member for Whitsunday
	Mr Matt McEachan MP, Member for Redlands
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Acknowledgements

The committee acknowledges the assistance provided by the Department of Housing and Public Works.

Contents

Abbreviations

Action Plan	*Queensland Housing Strategy 2017-2020 Action Plan*
ARPQ	Associated Residential Parks Queensland
ARQRV	Association of Residents of Queensland Retirement Villages
bill	Housing Legislation (Building Better Futures) Amendment Bill 2017
CIAA	Caravan Industry Association of Australia
committee	Public Works and Utilities Committee
CPAQ	Caravan Parks Association of Queensland
DHPW/department	Department of Housing and Public Works
FLPs	fundamental legislative principles
Housing Act	*Housing Act 2003*
Housing Strategy	*Queensland Housing Strategy 2017-2027*
LSA	*Legislative Standards Act 1992*
MHC	Ministerial Housing Council
MHRP Act	*Manufactured Homes (Residential Parks) Act 2003*
Minister	Honourable Michael de Brenni MP, Minister for Housing and Public Works and Minister for Sport
NRSCH	National Regulatory System for Community Housing
PCA	Property Council of Australia
Pradella	Pradella Property Ventures Pty Ltd
QCAT	Queensland Civil and Administrative Tribunal
RIS	Regulatory Impact Statement
RSA Act	*Residential Services (Accreditation) Act 2002*
RTA	Residential Tenancies Authority
RTRA Act	*Residential Tenancies and Rooming Accommodation Act 2008*
RTRA Regulation	Residential Tenancies and Rooming Accommodation Regulation 2009
RV Act	*Retirement Villages Act 1999*
TQ	Tenants Queensland Inc.
UDIA	Urban Development Institute of Australia

Chair's foreword

This report presents a summary of the Public Works and Utilities Committee's examination of the Housing Legislation (Building Better Futures) Amendment Bill 2017.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

I have listened to the many concerns of residents in my community and during the course of its inquiry the committee has heard from residents in both retirement villages and relocatable home parks. We have tried to address as many of these concerns as we can within the scope of the bill.

On behalf of the committee, I thank those individuals and organisations who lodged written submissions on the bill. I also thank the committee's secretariat, and the Department of Housing and Public Works.

I commend this Report to the House.

Shane King MP

Chair

Recommendations

1 Introduction

1.1 Role of the committee

The Public Works and Utilities Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility are:

- Main Roads, Road Safety, Ports, Energy and Water Supply, and
- Housing, Public Works and Sport.

Section 93(1) of the *Parliament of Queensland Act 2001* provided that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles (FLPs), and
- for subordinate legislation – its lawfulness.

The Housing Legislation (Building Better Futures) Amendment Bill 2017 (bill) was introduced by the Honourable Michael de Brenni MP, Minister for Housing and Public Works and Minister for Sport (Minister) into the House and referred to the committee on 10 August 2017. In accordance with the Standing Orders, the Committee of the Legislative Assembly required the committee to report to the Legislative Assembly by 28 September 2017.

1.2 Inquiry process

On 11 August 2017, the committee wrote to the Department of Housing and Public Works (DHPW/department) seeking advice on the bill, and invited stakeholders and subscribers to lodge written submissions.

The committee received written advice from the department and received 97 submissions (see Appendix A). On 8 September 2017, the committee received written advice from the department including responses to matters raised in submissions.

The committee held a public briefing with the department on 23 August 2017 (see Appendix B for a list of witnesses). Three public hearings were held on the bill as follows:

- Bethania on Monday 11 September 2017
- Kallangur on Tuesday 12 September 2017, and
- Brisbane on Wednesday 13 September 2017.

A list of witnesses at the public hearings is available at Appendix C.

1.3 Policy objectives of the Housing Legislation (Building Better Futures) Amendment Bill 2017

The objectives of the bill are to amend the following Acts:

- Housing Act 2003 (Housing Act)
- Manufactured Homes (Residential Parks) Act 2003 (MHRP Act)
- Residential Services (Accreditation) Act 2002 (RSA Act)
- Residential Tenancies and Rooming Accommodation Act 2008 (RTRA Act), and

[1] *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

- Retirement Villages Act 1999 (RV Act).

The explanatory notes provided that the overarching objective of the legislative reviews and amendments to the MHRP Act, RSA Act, RTRA Act and RV Act 'is to ensure fairness and consumer protections for people who are either living in regulated accommodation or considering moving into these types of housing while enabling the continued viability of these industries and sectors'.[2]

The objective of the amendment to the Housing Act is to provide clarity regarding the definition of a 'relevant asset' in relation to the implementation of the National Regulatory System for Community Housing (NRSCH) in Queensland.[3]

1.4 Consultation

1.4.1 Consultation on the bill

The explanatory notes stated that in July 2017, targeted stakeholder consultation on the draft bill occurred with the Ministerial Housing Council (MHC) members and other key stakeholders. Stakeholders participating in this process included:

- resident/consumer groups, including: Association of Residents of Queensland Retirement Villages (ARQRV), Associated Residential Parks Queensland (ARPQ), Caxton Legal Centre (Park and Village Information Link), Manufactured Home Owners Association, the Services Union and Tenants Queensland Inc. (TQ)
- peak and community groups, including: Black Community Housing Services Ltd, Council on the Ageing, Domestic and Family Violence Implementation Council, National Seniors Australia, Queenslanders with Disability Network, Queensland Law Society, Queensland Council of Social Services, Queensland Shelter and Umpi Korumba, and
- industry representatives, including: Caravanning Queensland, Housing Industry Association Queensland, Leading Age Services Australia, Property Council of Australia (PCA), Property Owners Association of Queensland, Real Estate Institute of Queensland, Strata Community Australia, Urban Development Institute of Australia (UDIA) and Supported Accommodation Providers Association.[4]

1.4.1.1 Results of consultation

With regard to the MHRP Act and the RV Act, the explanatory notes advised that manufactured home owner groups and seniors' groups generally supported the amendments as important steps to improve consumer confidence in these industries, however there was a general view that more needs to be done, much of it at the national level, to ensure that consumers fully understand the housing and support choices they can make as they age and that developers and operators have some long-term investment certainty about the products they offer.[5]

The explanatory notes also advised:

- some groups such as the Manufactured Home Owners Association, ARPQ and TQ also sought additional reforms to address other issues, for example, how to better address the circumstances where a manufactured home owner leaves a park but is not able to sell their home and therefore must continue to pay site rent; and that these concerns will be carefully examined following the implementation of the current set of amendments

[2] Explanatory notes, p 2.

[3] Explanatory notes, p 2.

[4] Explanatory notes, p 14.

[5] Explanatory notes, p 14.

- other suggestions made by stakeholders (including requiring residential park and retirement village staff to be trained, or developing more timely and responsive dispute resolution options) would be progressed with funding provided under the Housing Strategy to support peak groups and resident and home owner associations representing retirement village residents, manufactured home owners and residents living in residential services
- Industry groups, such as the PCA and the UDIA sought clarification and modification of a number of amendments given that some changes could potentially impact on revenue earned by operators and these suggestions have been carefully considered and changes and clarifications made where appropriate
- with regard to the RTRA Act, there was general support for the capacity to describe and clarify minimum housing standards in rental properties, and strong interest in participating in and developing the specific matters that would be covered by regulation, particularly to make sure that these matters can be described in a practical way; and that while there was some disappointment that other measures described in earlier consultation rounds had not appeared in this bill these matters would be addressed through the forthcoming discussion led process.[6]

1.4.2 Review of the MHRP Act, RSA Act, RTRA Act and RV Acts

The explanatory notes also advised that the MHRP Act, RSA Act, RTRA Act and RV Act had been reviewed to ensure an appropriate balance between consumer protection for people entering, living in and leaving these forms of accommodation and maintaining a viable industry:

> *As well as examining earlier review work, these reforms are the outcome of consultation conducted as part of the* Working together for better housing and sustainable communities' *discussion paper which sought input into the Housing Strategy. Consultation was conducted throughout the State in 2016 to explore issues relevant to these Acts, including homelessness, affordable rental, tenancy laws and seniors' accommodation.*[7]

Details of the specific consultation undertaken on each Act are detailed under the relevant sections of this Report.

1.5 Should the bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bill be passed.

After examination of the bill, including the policy objectives which it will achieve and consideration of the information provided by the department and from submitters, the committee recommends that the bill be passed.

Recommendation 1

The committee recommends the Housing Legislation (Building Better Futures) Amendment Bill 2017 be passed.

[6] Explanatory notes, pp 14-15.

[7] Explanatory notes, p 15.

2 Examination of the Housing Legislation (Building Better Futures) Amendment Bill 2017

This section discusses issues raised during the committee's examination of the bill. These issues are set out in the order appearing in the bill.

2.1 *Housing Act 2003* amendments

2.1.1 Background

In 2014, the Housing Act was amended by the *Housing and Other Legislation Amendment Act 2013* to implement the NRSCH in Queensland. The explanatory notes advised:

- implementation of NRSCH was a significant reform, providing tenants and the wider community with greater confidence in the social housing system by establishing a consistent regulatory environment with clear performance measures for housing providers
- the 2014 amendments to the Housing Act made registration a condition of funding for community housing services, and to transition to the new requirements for registration, the Act includes a transitional period for providers registered under existing provisions, to apply for and obtain, national registration under NRSCH and continue to be funded (if these providers do not apply for registration or are refused registration, then they must transfer or otherwise dispose of their 'relevant asset' in the way prescribed before the end of the transitional period), and
- an amendment to the Housing Regulation 2015 was approved by Governor in Council on 8 June 2017 to extend the end of the transitional period from 30 June 2017 to 31 December 2018.[8]

The objective of the bill is to amend the Housing Act to provide clarity regarding the definition of a 'relevant asset' and the explanatory notes advised that:

> *This is necessary to protect the State's interests of an estimated $40 million in social housing dwellings, particularly where funded community housing providers are required to transfer or otherwise dispose of the 'relevant asset' should they choose not to apply for registration or are refused registration under the NRSCH before the end of the transitional period on 31 December 2018.*[9]

2.1.2 Amendments proposed in the bill

Clause 6 of the bill seeks to clarify the definition of 'relevant asset' by amending the definition of 'relevant property' under section 156 of the Housing Act to insert a new section (c) to include any property, in which the provider has an interest, if work of any nature has been carried out in relation to the property using funds entirely or partly provided by the Queensland Housing Commission for the purpose of providing a relevant housing service.

Clause 7 provides that the amended definition of 'relevant property' is taken to have effect from the commencement of the definition in the *Housing and Other Legislation Amendment Act 2013*.

The explanatory notes advised that these changes will give increased clarity to the original intention of the legislation to fully protect the State's interests in relation to assets and the obligations about transferring or otherwise disposing of relevant assets under section 159 of the Housing Act.[10] Section

[8] Explanatory notes, p 17.

[9] Explanatory notes, p 2.

[10] Explanatory notes, p 4.

159 of the Act provides for transitional arrangements for those accommodation providers capable of registration under Part 4A of the Act (Community housing providers).

2.1.3 Stakeholder views and department response

CHPs for Qld supported the proposed amendment to the Housing Act on the basis that it ensures that community housing providers not registered with the NRSCH within the required timeframes, will not be able to provide community housing by utilising relevant assets owned by another entity. CHPs for Qld also supported suitable guidelines being developed for disposal of their interest, noting that disposal of their interest is all that the community housing providers can undertake in this circumstance.[11]

Churches of Christ in Queensland also welcomed the proposed amendment, however they requested further clarification of the definition of a relevant asset and what constitutes a state interest and recommended the department conduct further consultation with industry on the definitions of relevant assets and the understanding of state interest. Further, the submission advised:

> *Churches of Christ Housing Services has addressed these issues in the constitution for the Company as a part the registration under the National Regulatory System for Community Housing. We would therefore welcome the opportunity to provide constructive feedback on these definitions once they are made publically available.*[12]

In response, the department advised that the amended definition covers a broad range of situations, and includes for example, property or work on a property where funds entirely or partly were provided by way of grant, loan or other financial assistance, or other relevant receipts or assistance given by the chief executive or Queensland Housing Commission.[13]

The department stated:

> *The policy intent is to protect the State's interest, regardless of whether the State's contribution was by way of a direct financial contribution or an in-kind contribution in the event that a housing provider chooses or is required to transfer or dispose of their asset. DHPW will continue to work closely with community housing providers on the application of these definitions.* [14]

The department also advised that it will write to all affected community housing providers if the bill is passed, confirming that the amendment reflects the intent of the original agreements.[15]

2.1.4 Committee consideration

At the public briefing on the bill, the committee asked for more background on the proposed amendment and the department advised the circumstances being addressed came about as a result of the registration process for the NRSCH and that there are a number of providers who have elected not to continue within the sector simply because they do not feel they are able to meet the regulatory requirements:

> *The regulatory system captures these providers by virtue of a previous government investment, and these go back quite a number of years in some instances. What may have occurred is that either there was a contribution of land from government to a community housing provider or direct funding. They range from a whole raft of people including St Vincent de Paul, UnitingCare—some of those bigger one tier providers who can have in excess of 1,000 properties. Some of them might decide that they want to exit out of having*

[11] Submission 91, p 2.

[12] Submission 71, p 2.

[13] Correspondence dated 8 September 2017, p 6.

[14] Correspondence dated 8 September 2017, p 6.

[15] Correspondence dated 8 September 2017, Appendix, p 1.

> *a state funded asset, so they are going to continue on in the business but not be a state funded asset and therefore are not captured by the regulatory system. Or they can be the small ones, the tier 3s, which are regional, perhaps volunteer based boards who have decided that they want the assets to go back to a bigger provider, an alternative provider.*
>
> *The provision here in terms of 'relevant asset' is simply about clarifying that it can include those assets in which the state has basically invested and to make sure that they are captured, which reflects the original intent. If there have been taxpayers' funds invested in an asset, whether there be a certain number of houses or land, then it is clarifying that that is captured and it comes back into the state, so it is a clarification provision.*[16]

The committee also sought clarification about the process that exiting housing providers are required to undertake and the department advised that where someone writes to the director-general to say that they want to exit the system or they want to transfer it to another provider:

> *… the conversation then is about what are the assets that they hold and quantifying that for the transfer, which is why this becomes important in the context of the new regulatory system.*

And

> *There was a bit of confusion where the contribution from the department was not paying for the land; we were paying as a contribution to the construction. This gives better clarity about what is captured as a 'relevant asset'*.[17]

The department also advised the committee that the retrospective application of the proposed amendment 'is particularly relevant in circumstances where a funded housing provider is required to transfer or dispose of 'property' should they choose not to apply, or are refused registration under the NRSCH by the end of the transition period to the NRSCH on 31 December 2018'.[18]

2.2 *Manufactured Homes (Residential Parks) Act 2003* amendments

2.2.1 Background

The explanatory notes advised that in residential parks, a home owner buys their manufactured home (from a manufactured home supplier, the park owner or a departing home owner) and rents the land their home is sited on from the park owner; and the MHRP Act aims to regulate, and promote fair trading practices in, the operation of residential parks, including by managing the relationship between park owners and home owners.[19]

The bill proposes to amend the MHRP Act to:

> *…increase transparency in the relationships between park owners and home owners, and strengthen consumer protections to provide more security and confidence to home owners. Reforms include a new, staged pre-contractual disclosure process; limitations on rent increases; prescribed behavioural standards for park owners, staff and home owners; and other related measures.*[20]

The explanatory notes advised that the consultation processes on the MHRP Act have included:

- a home owners' survey in 2013 and survey report in May 2014

[16] Public briefing transcript, Brisbane, 23 August 2017, p 5.

[17] Public briefing transcript, Brisbane, 23 August 2017, p 6.

[18] Correspondence dated 8 September 2017, p 4.

[19] Explanatory notes, p 2.

[20] Explanatory notes, p 2.

- examination of issues by a working party comprising representatives from industry, home owner groups, consumer advocates and the legal profession, which met between 2014 and 2016, to discuss issues relating to residential parks, and
- a home owners' forum held in Bethania in February 2016
- State-wide community engagement as part of the Housing Strategy development process with targeted consultation undertaken in September 2016 on the proposed amendments to the MHRP Act, including:
  - a community workshop of manufactured home owners, and
  - round table meetings to discuss the proposed amendments with industry representatives and with home owner and seniors' advocacy groups.[21]

2.2.2 Amendments proposed in the bill

The explanatory notes advised that the bill proposes to achieve measures to increase transparency in the relationships between park owners, staff and home owners, through:

- improved pre-contractual disclosure processes, by introducing a two stage process, commencing 21 days prior to final execution of the site agreement that will enable prospective home owners to 'shop around', seek expert legal and financial advice, and carefully consider their decision (there will be capacity to shorten this process if the prospective home owner obtains legal advice, so they can move in more quickly while still preserving vital protection provided by obtaining legal advice)
- prescribing clear, enforceable behaviour and management standards for park owners and home owners, and
- providing a process for in-park dispute resolution before matters are escalated to the Queensland Civil and Administrative Tribunal (QCAT).[22]

Measures in the bill to strengthen consumer protections and provide more security and confidence to home owners are proposed to be achieved through:

- limiting rent increases under the site agreement to one per year, and increase the transparency of market rent review calculations
- limiting rent increases outside the yearly review to situations where there is a threat to park viability and, for new facilities, where 75 per cent of homeowners support the proposed facility
- prohibiting administrative fees for provision of utilities, including meter reading, and
- ensuring emergency services and health workers have access to residential parks and emergency management plans are in place.[23]

2.2.2.1 Clause 19 - staged pre-contractual disclosure

Clause 19 provides for requirements which must be met before a park owner for a residential park can enter into a site agreement for a site in the park with a prospective home owner. The clause proposes to replace the existing section 29 of the MHRP Act with a new section 29 (Disclosure documents to be given to prospective home owner) and section 29A (Waiver of disclosure of initial disclosure documents in default notice period).

[21] Explanatory notes, pp 15-16.

[22] Explanatory notes, p 4.

[23] Explanatory notes, p 4.

The new, staged, pre-contractual disclosure process introduces the obligation to provide a prospective home owner with:

- the 'initial disclosure documents' (which are listed in new schedule 1, part 1), at least 21 days before entering into the site agreement, and
- other documents (which are listed in new schedule 1, part 2 and effectively constitute the proposed site agreement), at least 14 days before entering into the site agreement.[24]

Proposed new section 29A enables the prospective home owner to reduce the 21 day timeframe for the initial disclosure documents to 14 days, if the prospective home owner waives their 21 day right. In order to waive the right, the prospective home owner must provide a notice to the park owner that the home owner understands their right to be given the initial disclosure documents and waives this right, and has obtained independent legal advice from a lawyer about the effect of that waiver.[25]

2.2.2.2 Clause 32 - termination of assignment agreement within cooling-off period

Clause 32 proposes to insert new Division 3 (Termination of assignment agreement within cooling-off period) and Division 4 (Provisions about sale agreement for manufactured home) into Part 7 of the MHRP Act.

Proposed new Division 3 includes section 51A, which provides a new cooling-off period for the assignment of site agreements. The section applies where the seller and buyer have entered into an assignment agreement and the park owner consents to the assignment of the seller's interest to the buyer. The buyer may, within the cooling off period, give the park owner and seller a signed notice terminating the assignment agreement.

Under the section, the cooling-off period means 7 days after the park owner consents to the assignment. However the period is 28 days after consent, if the park owner has not given the buyer the necessary disclosure documents under new section 48A.[26]

The termination notice must state the day, within 28 days after the notice is given, that the termination takes effect, that is, the 'termination day'.[27]

The section provides that:

- the buyer is not liable to pay any amount otherwise payable under the agreement by the buyer to the seller, and
- the seller must, within 14 days after the termination day, refund any amount received under the agreement from the buyer.[28]

According to the explanatory notes:

> *New Division 4, pursuant to section 51B, applies if the seller and buyer have entered an agreement for the sale of a manufactured home. New section 51C requires that the seller must not complete the sale of a manufactured home unless the park owner has consented to the assignment of the site agreement and the buyer has been given the disclosure documents. New section 51D outlines what happens when a buyer terminates the assignment agreement under the cooling-off provisions in 51A. New section 51E makes void that part of a term in the sale agreement that seeks to exclude, change or restrict the operation of section 51C or 51D*.[29]

[24] Proposed s 29(2).

[25] Explanatory notes, p 19.

[26] Proposed s 51A(8).

[27] Proposed s 51A(3).

[28] Proposed s 51A(5) & (6).

[29] Explanatory notes, p 21.

If the buyer terminates the assignment agreement, the sale agreement is taken to be at an end on the day the termination of the assignment takes effect, and:

- ownership of the home reverts to the seller upon the ending of the sale agreement, and
- the seller must, within 14 days after the ending of the sale agreement, pay the 'refundable amount'.[30]

The bill defines 'refundable amount' to mean the total of:

- the amount paid to the seller, or at the seller's direction, under the sale agreement, and
- the amount of any expenses reasonably incurred by the buyer arising out of, or incidental to, the sale agreement.[31]

2.2.2.3 Clause 33 - site rent increase

Proposed new clause 33 replaces the current section 69 dealing with increases in site rent provided for in a site agreement and inserts new sections 69 to 69E.

Proposed new section 69 specifies that Division 2 of Part 11 applies to increases in site rent under the site agreement, but not to increases for a special cost in Division 3 of Part 11. It also provides that the site rent is unable to be increased, unless the park owner complies with section 69A to 69E:

- section 69A requires that the park owner must ensure the site agreement states the basis for working out the amount of an increase in site rent
- section 69B prohibits a park owner from working out an increase in site rent using more than one basis at a time (for example, the site rent cannot increase by CPI and market review at the same time)
- section 69B also prohibits more than one increase per year
- section 69C requires that a park owner must nominate a general increase day when site rents for all eligible sites in the park will be increased on the same basis
- section 69D requires that if site rent is to be increased by market review, the valuer engaged by the park owner must consult with the home owners committee or, if there is no committee, with certain specified numbers of home owners, and
- section 69E requires that home owners for eligible sites must, 35 days before an increase, be provided with a 'general increase notice', providing information about –
    - the proposed increase and other details, including (in the case of a market review) the market valuation by a registered valuer for that review, and
    - how the home owner can dispute the increase.[32]

Proposed new section 69E(2) requires that the registered valuer must state in the market valuation '… any connection to, or agreement with, the park owner that may call into question the independence of the valuation'.

2.2.2.4 Clause 36 - site rent increases – special costs

Clause 36 proposes to replace existing Division 3 in Part 11 (containing section 71), which dealt with other ways of increasing site rent, with a new Division 3 which addresses increases in site rent to cover 'special costs'.

[30] Proposed section 51D(2) & 51D(5).

[31] Proposed section 51D(6).

[32] Explanatory notes, pp 21-22.

In summary, the clause requires a park owner who proposes to increase rent to cover a special cost (that is, operational, repair and/or upgrade costs) to issue a notice to home owners. The bill outlines a process where, if a home owner doesn't agree to the increase, the park owner may apply to QCAT. More detail is set out below.

Proposed new section 71 specifies that this division applies to site rent increases that are necessary to cover 'special costs' the park owner has incurred or expects to incur, which include:

- significant increased operational costs
- the cost of significant repairs in relation to common areas or communal facilities that the park owner could not reasonably have foreseen, and
- the cost of significant upgrades to common areas or communal facilities.

According to the explanatory notes:

- section 71A provides that a notice must be given by the park owner to the home owner about the proposed increase and details about the type of special cost, the amount of the cost incurred, the amount of the proposed increase in the site rent and other details including about how to agree to or dispute the proposed increase
- section 71B provides that for a proposed upgrade to common areas or communal facilities, if 75 per cent of home owners agree to the increase, all home owners are taken to have agreed to the increase
- section 71C provides that if the home owner disputes the proposed increase, the park owner must attempt to mediate the dispute before the park owner applies to the tribunal for an order about the proposed increase, and
- section 71D establishes criteria for the tribunal to consider when making a decision about whether to confirm or reduce the proposed increase.[33]

2.2.2.5 Clause 49 - charges for utilities

Proposed new clause 49 amends section 99A to prohibit a park owner from charging a home owner administrative or meter reading fees for the supply of utilities to a site, regardless of whether the amount is charged by or for the entity supplying the utility or another entity.[34]

2.2.3 Stakeholder views and department response

Stakeholders expressed varying views on the proposed amendments to the MHRP Act.

2.2.3.1 Clause 19 - staged pre-contractual disclosure

Various submitters commented that there appears little incentive to utilise the proposed waiver process. For example, both Bush Oasis Caravan Park and Palmwoods Tropical Village submitted:

> *Under the new disclosure requirements, I do not believe any potential home owners will waive the initial disclosure period as it is cost prohibitive and once they have seen a lawyer will likely only save them one or two days meaning the cost will outweigh the benefit. I believe this change will mainly impact my existing home owners who are looking to sell as it extends their sale period*.[35]

[33] Explanatory notes, p 22.

[34] Explanatory notes, p 24.

[35] Submissions 34 and 58.

Some submitters suggested there be no minimum period if legal advice is received[36] or that the 14 days disclosure period for initial disclosure documents (when the right to a 21 days period has been waived) be reduced to 7 days.[37]

Caravan Parks Association of Queensland (CPAQ) considered that having two separate disclosure periods for different documents will:

> *…create confusion for potential home owners, increase the burden for park owners and negatively impact potential sellers.*
>
> *As many sales are between the current home owner and the potential new home owner, as opposed to between a park owner and a new home owner (as would be the case in a new park), we often find sellers wish to exit their agreement as soon as possible and/or the potential buyers is also looking to take ownership as soon as possible*.[38]

As such, CPAQ recommended that the bill be amended to simplify the process and make the minimum disclosure requirement 14 days for both Part 1 and Part 2 of Schedule 1: 'This change would be in line with the current NSW legislation'.[39]

Pradella Property Ventures Pty Ltd (Pradella) considered that the wording of the clause causes confusion, noting it:

> *…would be difficult to manage as it is only a waiver of a part of the default disclosure period only. I believe that most modern park operators actively encourage buyers to seek legal advice and I do not see how the proposed waiver process would improve this position*.[40]

In response to issues raised, the department stated that, given the complexity and long-term implications of site agreements:

> *…it is essential prospective home owners are fully aware of their legal and financial obligations before they sign.*
>
> *The intent of the provision is to ensure prospective home owners have adequate time to shop around, understand their future rights and obligations and seek independent legal and financial advice, before entering into a contract*.[41]

The department advised that better outcomes from the pre-contractual disclosure process requires more than just obtaining the disclosure documents, for example:

> *…the department will work with stakeholders to make it as easy as possible to access pre-contractual advice from practitioners with the necessary expertise, and to make consumers aware of what their rights and obligations* [sic] *after moving into a park*. [42]

To address issues raised, the department advised it will develop community education resources, which '…will be developed in consultation with home owner peak groups and committees as well as community, professional and industry associations'.[43]

[36] Submission 89.

[37] Submission 41.

[38] Submission 68.

[39] Submission 68.

[40] Submission 77.

[41] Correspondence dated 8 September 2017, Appendix, p 1.

[42] Correspondence dated 8 September 2017, Appendix, p 1.

[43] Correspondence dated 8 September 2017, Appendix, p 1.

Further, the department observed that the Housing Strategy provides funding to support peak groups in preparing for these legislative changes: 'This will provide clarity on how the process operates and how park owners can meet their pre-contractual disclosure requirements'.[44]

2.2.3.2 Clause 32 - termination of assignment agreement within cooling-off period

Some submitters argued that the seller (that is, the existing home owner) will be liable for costs incurred by the buyer, although it is the buyer who has terminated, at no fault of the seller. For example, Halcyon Landing Home Owners Committee considered that the proposed second limb of the bill's definition of 'refundable amount' should be deleted, stating that:

> *The sale procedure of a manufactured home is no different from that of a suburban home. The seller and buyer should each be responsible for their own expenses. The proposal is not commercial practice, to provide otherwise is unfair and inequitable. The seller has no control over what expenses the buyer may incur in arriving at their decisions. The word "reasonable" is not defined nor what is intended to be included in that category*.[45]

Ms Anita Lazzarin also queried the scope of what would be considered as a buyer's reasonable costs, asking whether '…the reimbursement to the buyer by the seller include those for legal and financial advice, building and pest?'[46]

In its response to submissions, the department noted that the proposed wording of the bill has been inserted to reflect existing section 34 of the MHRP Act, which is applicable when a buyer (the prospective home owner) terminates a site agreement, during the cooling-off period. The section provides for the automatic ending of the sale agreement between the buyer and the seller (the park owner) for the sale of the manufactured home located on the site. Section 34 sets out the amount of money to be paid by the park owner to the home owner.

Clause 32 of the bill seeks to provide similar provisions for the sale of a home from an existing owner to a prospective owner, as currently apply for the sale of a home from the park owner to a prospective owner.

In order to address the issues raised by stakeholders, the department will:

> *…provide factsheets and guidance about how the new section is to be interpreted. The communications material to be developed will also include information for manufactured home owners to guide them through the process of selling their manufactured home and what consumers should be aware of in purchasing a manufactured home*.[47]

The department also noted that development of this material is supported under the commitment in the Housing Strategy to provide support to peak groups in preparing for legislative changes.[48]

2.2.3.3 Clause 33 - site rent increase

Industry submitters have expressed concern that the bill will prohibit existing formulaic increases, which may include several bases for rent review. Consumer advocates have supported such a prohibition. Both industry submitters and consumer advocates have sought clarification on how the proposed changes in the bill will work.[49]

[44] Correspondence dated 8 September 2017, Appendix, p 1.

[45] Submission 51.

[46] Submission 81.

[47] Correspondence dated 8 September 2017, Appendix, p 6.

[48] Correspondence dated 8 September 2017, Appendix, p 6.

[49] For example, see submissions 58, 66, 68, 75, 81, 89 and 95.

For example, the UDIA sought clarification about the requirement that the park owner must not work out an increase in the site rent using more than one basis at one time, particularly as it will apply to formulaic increases:

> *The example that is cited indicates that a market review increase cannot also include an increase in the CPI. However, the most common form of site agreements in operation in practice usually provide for an annual formula made up of a number of separate and/or alternative components (whether in one clause or separate but related clauses), and not just the CPI. Other site agreements contain such a formula as well as a "minimum increase" provision - which both operate together as one formula albeit sometimes in separate parts. There are also many other variations or combinations of these in operation in practice. 'CPI only' agreements appear to be less common than such formulaic structures. Section 69B(1) should be clarified to confirm that this formula approach to annual increases and such site rent review mechanisms is "1 basis"*.[50]

Pradella contended that certain bases of calculating a rent review might consist of various facets, but still constitute one basis.[51]

On the proposal to align rent review dates, Pradella stated:

> *This is difficult to manage in practice where a park with 400 homes has developed over ten years with multiple site rent review dates that have been bought about by the assignment or creation of new site agreements on sale or resale*.[52]

Several submitters suggested the need for a transitional provision to assist with the implementation of the proposed alignment.[53]

On the bill's requirement that a park owner consult with interested entities for preparing a market valuation, ARPQ observed that the existing provisions of the MHRP Act[54] require only that home owners 'may' establish a home owners committee and gives little guidance on how it should be established or operate:

> *Consequently, not all residential Parks have a home owners committee and where they exist they are often inadequate or ineffective (some operate purely as social groups), do not necessarily represent the interests of all homeowners (some home owners choose not to participate), nor truly independent of the Park Owner. If the role of home owners committees is to be formalised as part the consultation process on site rent increases as proposed, mechanisms need to be put in place to correct these deficiencies, whilst at the same time protecting the rights of individual home owners to speak on their own behalf*.[55]

Some submitters considered that the proposed market review and valuation provisions would lead to increased reliance on dispute resolution mechanisms, including QCAT.[56]

In response to issues raised in relation to proposed section 69, the department stated that the policy intent behind limiting rent increases to a single basis is '…to improve financial transparency and certainty for site rent increases and prevent increases which factor in increases such as rates which are factored into CPI'.[57]

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[50] Submission 76.

[51] Submission 77.

[52] Submission 77.

[53] Submissions 66 and 68.

[54] Section 100 of the MHRP Act.

[55] Submission 3.

[56] Submissions 34, 41, 55.

[57] Correspondence dated 8 September 2017, Appendix, p 2.

In the department's view the clause provides '…a clear example about how this section is to be implemented'.[58]

To address concerns, the department:

- will provide further guidance to operators as to how this section is intended to operate
- will provide factsheets and guidance about how it believes the new section is to be interpreted, and
- noted that the Housing Strategy provides funding to support peak groups in preparing for legislative changes.[59]

2.2.3.4 Clause 36 - site rent increases – special costs

Some consumer advocates considered that rent should not be increased to cover special costs. Alternatively, industry advocates considered the proposed changes too onerous, citing the QCAT requirement in particular.

Submitters who argued against the inclusion of special costs in rent, generally considered the proposed provisions too broad and advocated their restriction or removal from the bill.[60] For example, ARPQ stated that:

- site fees should only be increased where necessary to cover costs actually incurred and should not be expanded to capture costs the operator 'expects to incur'[61]
- repair costs should not include costs the park owner 'could not reasonably have foreseen', as park owners invest in residential parks at their own risk and the investment risk should not be passed on to home owners.[62]

These submitters tended to argue that special costs increases are unfair to residents who have fixed incomes and undermine residents' stability, security and ability to budget.

On the other hand, operators and industry argued that changes in the bill restricted increases for special costs and that the requirement that a park owner satisfy QCAT that viability of a park is threatened, will be difficult to meet in practice.[63]

Bush Oasis Caravan Park considered it important that existing section 71 remain intact, in order to allow park operators to recoup costs associated with making improvements to their park for the benefit of the residents:

> *The new requirements, especially section 71D (b) will mean that a business needs to be in significant financial strife before they am able to recoup any of the costs associated with making improvements for the benefits of the residents. One of the criteria for the tribunal in deciding if a site increase for special costs is reasonable is whether insurance could have covered all or part of this cost. This subsection does not allow for those circumstances where I have insurance and either it does not cover the cost or the excess is so large that part or all this cost needs to be covered.*[64]

[58] Correspondence dated 8 September 2017, Appendix, p 2.

[59] Correspondence dated 8 September 2017, Appendix, p 2.

[60] Submissions 2, 3, 22, 42 and 55.

[61] Submission 3.

[62] Submission 3.

[63] Submissions 34, 41, 58, 66 and 68.

[64] Submission 58.

In relation to increases for upgrades requiring 75 per cent approval, some submitters supported the change in principle, but raised concerns about the process of determining the approval.

Both the UDIA and Pradella recommended that the bill ought to implement decision rules specifying a minimum of 25 per cent of home owners being required to dispute any site rent increase that is notified by the park owner:

> *Relevant decision making rules are necessary to achieve fair practices in managing the relationship between park owners and home owners and avoiding litigation and disputes that are not in the best interests of the residential park community as a whole…*[65]

Additionally, the UDIA argued:

> *…as a minimum, all special increases should be allowed where the amount of the increase is no greater than the CPI plus increases above CPI for charges beyond the park owner's control (e.g. electricity, award wages, rates and other government charges).*[66]

Concerns raised by submitters included the possibility of non-responses frustrating an otherwise popular upgrade and situations where multiple home owners occupying a single site could receive an unequitable number of votes in relation to rent increases for upgrades.[67]

Addressing decision making processes generally, Dr Sandra Woodbridge recommended that the percentage of homeowners required to agree to a rent rise or other major decisions posed by the park owners could be further clarified and bought in line with other Acts such as the *Body Corporate and Community Management Act 1997*:

> *My research conducted with many Homeowners indicates that they are often frustrated that decisions such as the introduction of new services/facilities can often be stopped by a small turnout or response from homeowners. This can lead to conflict and dissension amongst the community and can negatively impact on the overall culture of the park*.[68]

Replying to arguments that is not fair or reasonable that seniors living on limited, fixed incomes should pay for site rent increases for unforeseen business costs, the department advised:

> *Consultation has indicated that business expenses that should have been factored in to operating costs have been passed on as increases in site rent under section 71 in some circumstances. The impact of section 71 increases is a high priority matter raised by home owners during consultation.*
>
> *Parks should be increasing prices under section 69, with section 71 operating only in exceptional circumstances*.[69]

In relation to the bill's proposed changes to section 71 rent increases, the department considered that the changes strike a fair balance between:

> *…ensuring home owners are protected from price increases and that park owner's factor in an allowance for such expenses while ensuring that parks can continue to operate in the face of unexpected costs that would otherwise impact on the park's viability.*
>
> *With regards to the approval process for upgrades under section 71B, voting rights under the section attach to eligible sites, rather than home owners, so the issue of inequitable voting*

[65] Submissions 76 and 77.

[66] Submission 76.

[67] Submissions 75, 76, 77 and 94.

[68] Submission 75.

[69] Correspondence dated 8 September 2017, Appendix, p 3.

> *should not arise. However, the department will continue to monitor how the section operates in determining whether further refinement is necessary in the future*.[70]

In response to the issues raised, the department committed to developing:

> …*communication materials to ensure industry is aware of the changes and of the need to ensure that residential park budgets are set and maintained at a level that factors in unanticipated costs*.[71]

2.2.3.5 Clause 49 - charges for utilities

Various submitters provided support for the prohibition of meter reading and administration fees for the supply of utilities.[72]

For example, Mr Paul Taggert stated that park owners have ample provision for claiming utility service charges as business expenses in their taxation returns: 'Renters and leaseholders in suburbia do not pay water service charges for example, and neither should Site owners who rent the ground and infrastructure of a Residential Park'.[73]

Some of those supporting the prohibition suggested the inclusion of pensioner rebates as an amount that must be passed on to the home owner. Mr Ian Hopkins submitted that all State Government rebates and council rates and water rebates should be paid directly to the pensioner: …a good percentage of Pensioners who live in over 50's villages do not receive these in full'.[74]

However, several industry groups and park owners objected to being unable to pass the costs incurred on to residents.[75]

Caravan Industry Association of Australia (CIAA) observed that the on-supply of electricity is an activity that park owners undertake for the benefit of their residents, as opposed to a money making activity for the park:

> *In most states the Government releases a rate at which park operators can on-charge their residents, as Queensland used to do under the Ready Reckoner.*
>
> *At a minimum we believe that the park owner should be able to on charge the amount that they are being charged by their electricity supplier (i.e. Ergon or AGL), this includes any administration fees or meter reading fees that are charged by this supplier.*
>
> *It is important to note that park owners incur expenses relating to the on-supply of electricity and that while they have been advised that they need to pass these costs on via site rent the park owner is unable to increase the site rent to absorb this cost which previously was passed on to home owners through the difference between the tariff they have been able to negotiate with their supplier and the tariff supplied by the Government on the Ready Reckoner*. [76]

In conclusion, CIAA recommended that proposed s 99A(2)(a) be reworded to:

> …*allow for the Government's current "averaging calculation", allowing park owners to on charge all of the costs charged to them by their electricity supplier (to the gate) but no additional charges (from the gate to the home)*.[77]

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[70] Correspondence dated 8 September 2017, Appendix, p 3.

[71] Correspondence dated 8 September 2017, Appendix, p 3.

[72] Submissions 10, 25, 27, 44, 73 and 94.

[73] Submission 10.

[74] Submission 4.

[75] Submissions 34, 41, 54, 58, 66, 68, 76, 79, 81, 89 and 95.

[76] Submission 66.

[77] Submission 66.

Esk Caravan Park, a park with manufactured home sites, stated that it used the Government approved 'averaging calculation' to determine the correct rate to on charge residents for the electricity they use:

> *This means that we are on charging a percentage of the charges we receive from our electricity supplier to the resident based on their usage. This calculation is determined by taking the total bill and dividing it by the total kWh's used then multiplying it by the number of kWh's used by a home owner and then if applicable deducting their concession rebate from the total.*
>
> *Using this averaging calculation we do not pass on any of the costs that we incur to run an embedded network which include the cost to read meters, calculate bills, claim and pass on concessional rebates, follow up outstanding accounts or to maintain the infrastructure used to distribute electricity to the sites.*[78]

The park noted that, at present, it spent (on average) 10 hours a month on administrative tasks related to on-charging electricity:

> *At a minimum we should be able to recover the costs charged to us by our electricity company including any meter reading or administrative fees that appear on the bill from them. The revised wording proposed for the Act will mean that the averaging calculation previously agreed to will no longer be valid and we will be required to deduct any meter reading fees and administrative fees from the total on the bill before calculating the cost per kWh for residents.*
>
> *While previous decisions relating to s 99A have suggested that park operators should include the administrative and infrastructure costs for the supply of electricity in site rents there is no provision for these to be increased to cover these costs. By changing the Act so that the administrative and meter reading fees from the electricity company cannot be on-charged as a park operator we will also not be able to include them in the site rent unless an exemption or transitional arrangement is made*.[79]

In summary, industry groups and park owners tended to cite the time spent on administrative tasks as a reason why these charges should be passed on to home owners and that the 'averaging calculation' is the fairest way to ensure costs for their time is taken into account.

Referring to its introduction in 2010, the department clarified the intent of section 99A as being so:

> …*park owners would not be able to charge the home owner more than the amount charged by the relevant supply authority. Such increases to these fees are not regulated like site rent increases*'.[80]

Despite this intention, the department advised that some park owners have continued to charge these fees, therefore:

> …*the Bill seeks to clarify the wording of the section to provide certainty for the industry and for home owners in ensuring that home owners are not to be charged administration fees beyond what is charged by the utility provider*.[81]

The department advised that further consideration will be given to concerns about the passing on of rebates.[82] Additionally, the department will develop communication materials to ensure industry is aware of the changes and how to comply with these.[83]

[78] Submission 54.

[79] Submission 54.

[80] Correspondence dated 8 September 2017, Appendix, p 4.

[81] Correspondence dated 8 September 2017, Appendix, p 4.

[82] Correspondence dated 8 September 2017, Appendix, p 4.

[83] Correspondence dated 8 September 2017, Appendix, p 4.

2.2.3.6 Other issues raised

Throughout the course of the committee's inquiry into the bill, stakeholders raised certain issues that are outside the scope of the bill.

For example, some submitters have petitioned for the prohibition of market reviews as a rent review mechanism. Others have suggested that park owners should be required to meet certain accreditation, certification and training requirements, before they can operate or manage a residential park. The bill does not seek to address such issues.

Certain issues have been raised about mixed use parks. Such parks may contain a mixture of manufactured homes, caravan sites, tents and holiday cabins, which offer short and long-term accommodation. Concerns have been raised about caravans, initially mobile, which have become static over time, and older mobile homes which are not of a standard suitable for habitation or compliant with existing building standards.[84] The bill does not seek to address these issues.

Further, the committee heard from representatives of Brisbane Holiday Village, who expressed the following concerns about land tax implications for mixed use parks:

> *…if you are a mixed use caravan park and you have under 50 per cent permanent residents, you pay land tax. None of these manufactured home parks pay land tax because they are all permanent. That stuff has to be reflected in the act because our valuation can go from $5 million to $10 million in two years and our land tax is massive. Mixed use parks cop that. They might only have 20 relocatables in the area, but this is all throughout Queensland. Lots of regional areas have old caravan parks with these homes. We just have to remember there is a big difference between the new $500,000 and $600,000 ones and those ones—if they are saleable, if someone comes in and gives a price on these homes, they are often worth $5,000 or $10,000. That is all they are worth*.[85]

The bill does not seek to address this issue.

Additionally, some submitters indicated a lack of appropriately skilled legal practitioners available to advise parties on issues relevant to the bill, including regarding contractual arrangements. The committee was advised that interested persons can contact the Queensland Law Society to identify specialised practitioners.

2.2.4 Committee consideration

2.2.4.1 Clause 19 - staged pre-contractual disclosure

As discussed earlier, if the prospective home owner waives their right, the bill enables them to reduce the 21 day timeframe for the initial disclosure documents to 14 days. The committee noted concerns raised by some submitters that there appears little incentive to utilise the proposed waiver process, because doing so reduces the disclosure period by 7 days only. In acknowledgement of these concerns, the committee supported further consideration of this aspect of the proposed disclosure process.

[84] Submissions 69 and 96.

[85] Public hearing transcript, Bethania, 11 September 2017, pp 17-18.

Recommendation 2

The committee recommends that the Minister review the proposed disclosure provisions included in clause 19 of the Housing Legislation (Building Better Futures) Amendment Bill 2017, with a view to considering whether it would be appropriate to amend the waived initial disclosure document period of at least 14 days before entering into the site agreement, to the period of at least 7 days before entering into the site agreement.

2.2.4.2 Clause 32 - termination of assignment agreement within cooling-off period

The committee noted concerns raised by some submitters relating to the potential passing on of costs from the buyer to the seller when an assignment agreement is terminated by the buyer, leading to the automatic ending of the sale agreement.

The committee considered it inappropriate for the seller to be liable for certain costs of the buyer in circumstances where the buyer has elected to terminate the assignment agreement during the cooling off period.

Recommendation 3

The committee recommends that the Minister consider amending clause 32 of the Housing Legislation (Building Better Futures) Amendment Bill 2017 to reword proposed section 51D(6) of the *Manufactured Homes (Residential Parks) Act 2003* to clarify the intent of which costs the seller would be liable to pay.

2.2.4.3 Clause 33 - site rent increase

The committee noted concerns raised by some submitters as to whether the site rent increase provisions in the bill were transparent enough. The committee noted the intention of the clause is to increase the transparency of rent review calculations.

Recommendation 4

The committee recommends that the processes applicable to increasing site rent ensure the transparency of the relevant rent review calculations.

As noted earlier, proposed section 69E requires that home owners for eligible sites must, 35 days before a general increase in site rent, be provided with a 'general increase notice', providing certain information, including (in the case of a market review) the market valuation by a registered valuer for that review.

The committee noted that section 69E(2) requires that the registered valuer must state in the market valuation '…any connection to, or agreement with, the park owner that may call into question the independence of the valuation'.

The committee queried the proposed wording of section 69E(2) and considered that it may be able to be expressed in an alternate fashion that may better reflect the intent of the relevant policy, that is, to ensure the independence of the valuer.

Recommendation 5

The committee recommends that the Minister consider amending clause 33 of the Housing Legislation (Building Better Futures) Amendment Bill 2017 to reword proposed section 69E(2) of the *Manufactured Homes (Residential Parks) Act 2003*, so that it better reflects the intent of the relevant policy, that is, to ensure the independence of the valuer who conducts the market review of the site rent.

2.2.4.4 Clause 36 - site rent increases – special costs

The committee noted that differing views exist as to whether rent should be increased to cover special costs.

The committee considered that the proposed changes strike a fair balance between ensuring home owners are protected from price increases and that park owners' factor in an allowance for such expenses while ensuring that parks can continue to operate in the face of unexpected costs that would otherwise impact on the park's viability.

2.2.4.5 Clause 49 - charges for utilities

The committee noted that differing views exist as to whether the bill should prohibit the passing on of meter reading and administration fees for the supply of utilities from a park owner to a home owner in circumstances where the home owner is charged an amount greater than that charged by the supplying authority.

The committee also noted the changing environment relevant to the supply of utilities, including the potential impact of embedded networks on utility arrangements in residential parks.

Further, the committee noted evidence received from stakeholders indicating that pensioner rebates received by park owners are not always passed on, in full, to home owners. The committee acknowledged the department's commitment that further consideration will be given to concerns about the passing on of rebates.

Recommendation 6

The committee recommends that the Minister report to the House, within 12 months of commencement of the amended utility charge provisions included in clause 49 of the Housing Legislation (Building Better Futures) Amendment Bill 2017, about the results of the department's consideration of concerns raised by stakeholders about the passing on of pensioner rebates from park owners to home owners in residential parks.

2.2.4.6 Other issues raised by stakeholders

The committee noted evidence submitted which details the evolution of mixed use parks, including the legislative treatment and practical use of caravans and mobile homes over time.

Although outside the scope of the bill, the committee noted the concerns raised by representatives of Brisbane Holiday Village about potential land tax implications for the owners of mixed use parks. The committee acknowledged the complicated nature of mixed use parks and considered that potential land tax implications unique to such parks require consideration.

Recommendation 7

The committee recommends that the Minister ask the Treasurer to consider whether the owners of land upon which mixed use parks are located, as opposed to the owners of land upon which other types of residential accommodation is located, might attract significant and, potentially, inequitable land tax liability, particularly in circumstances where park owners seek to redevelop the park.

Recommendation 8

The committee recommends that the Minister ask the Treasurer to consider whether the laws determining the land tax liability of owners of land upon which mixed use parks are located should be reviewed.

2.2.4.7 Other matters considered by the committee

The committee noted that the actions identified in the *Queensland Housing Strategy 2017-2020 Action Plan* (Action Plan) include reform of the Housing Act and RTRA Act to create a more contemporary legislative framework. The committee saw merit in the expansion of this work to include reform of land rent arrangements, such as the arrangements that apply in residential parks that include manufactured homes.

Recommendation 9

The committee recommends that the Minister expand the actions identified in the *Queensland Housing Strategy 2017-2020 Action Plan* to include reform of land rent arrangements, such as the arrangements that apply in residential parks that include manufactured homes, as part of the planned reform of the *Housing Act 2003* and the *Residential Tenancies and Rooming Accommodation Act 2008* to create a more contemporary legislative framework.

2.3 *Residential Services (Accreditation) Act 2002* amendments

2.3.1 Background

The RSA Act regulates the conduct of residential services, such as boarding houses, to protect the health, safety and freedom of residents, encourage service providers to continually improve the way they conduct residential services and to support fair trading in the residential services industry.[86] The explanatory notes advised that proposed amendments were identified by the department in the course of administering and enforcing the Act.

The explanatory notes advised that the objective of the bill is to:

> *…amend the RSA Act to address ambiguity and uncertainty in the Act, including giving effect to certain recommendations following a three-month investigation into unregistered boarding houses. This includes ensuring that residential services accommodating women and children fleeing domestic and family violence will not have the service's address included on the publicly searchable register of residential services.*[87]

The Minister, in the explanatory speech, advised the amendments will:

> *…ensure the regulatory framework protects residents, promotes fair trading practice and encourages the growth and viability of Queensland's residential services industry, which includes boarding houses, some aged rental accommodation and services that provide personal care*.[88]

The explanatory notes advised that the consultation processes on the RSA Act included:

- a private contractor being engaged to conduct consultation with residential service operators and residents across the State, between March and June 2016, with the resulting report of the outcomes of this consultation contributing to the review of this Act over 2017

[86] Explanatory notes, p 2.

[87] Explanatory notes, p 3.

[88] Queensland Parliament, Record of proceedings, 10 August 2017, p. 2198.

- following the investigation into unregulated residential services, targeted consultation on resolving ambiguities in the RSA Act, with required amendments being undertaken on 25 May 2017, and
- consultation with the MHC and residential service and community stakeholders on the draft amendments to the RSA Act in the bill in July 2017.[89]

2.3.2 Amendments proposed in the bill

The explanatory notes advised the bill aims to achieve its objective to address ambiguity and uncertainty in the RSA Act by:

- improving the clarity of several provisions to assist residential service providers' and residents' understanding of their rights and obligations; including provisions relating to the meaning of 'resident', cancellation of registration, providing for who is an associate, renewal of accreditation, death of a service provider, notice of change in associate's criminal history, and requirement for a fire safety management plan, and
- improving compliance processes to ensure the health and safety of residents; including provisions for reducing the time between initial registration and accreditation, changes to notification of the death of a resident in level 3 services, information on registration certificates and the state register, making of guidelines, clarifying that programs exempted under the former Supported Accommodation Assistance Program are exempted under their new program names, and ensuring that residential services accommodating women and children fleeing domestic and family violence will not have the service's address included on the publicly searchable register of residential services.[90]

Part 5 of the bill (clauses 59 to 80) proposes amendments to the RSA Act. Stakeholders raised issues with clauses 60 and 69. Details of these two clauses are provided below.

2.3.2.1 Clause 60 – meaning of a residential service

Clause 60 of the bill proposes to amend section 4 of the RSA Act (Meaning of a *residential service)* by:

- replacing section 4(5)(1) with a new section updating the description of services that are not a residential service and therefore not regulated under the Act
- removing reference to the former Supported Accommodation Assistance Program
- clarifying that a service that receives State funding and uses this funding to provide supported accommodation to people who are, or at risk of becoming homeless, is not a residential service under the Act, and
- inserting a new section 4(6) which defines the term 'supported accommodation'.

2.3.2.2 Clause 76 – register of residential services

Clause 76 of the bill proposes to amend section 179 of the RSA Act (Register of residential services) to:

- require the chief executive to include the telephone number or email address of the service provider on the register of residential services (proposed section 179(2)(ia))
- insert a new section 179(2A) to set out the circumstances when *sensitive information'* about a service must not be shown on the register, that is, because the service is conducted to provide accommodation to persons who are, or are at risk of becoming, homeless because of domestic violence directed at the person, or where it is in the interests of the wellbeing and safety of residents in the service, and

[89] Explanatory notes, p.16.

[90] Explanatory notes, p 5.

- insert a new section 179(2B) to enable the chief executive to include other relevant information on the register, that is not sensitive information, in place of sensitive information (for example, the business address of the service provider instead of the address of the registered premises).

The explanatory notes advised that the exemptions from including information on the register are intended to protect the release of sensitive information to the public as under 179(4) a person, for a fee, may inspect the register or obtain a certificate from the chief executive stating information on the register.[91]

2.3.3 Stakeholder views and department response

2.3.3.1 Clause 60 – meaning of a residential service

Churches of Christ in Queensland advised that it had received legal advice that the accommodation component of its Youth Connect Program is not currently exempted under section 4(5)(m) of the RTA Act as a funded program under the Housing Act, even though the Program is being administered by the department:

> *This is partly due to the fact this new and innovative funding model is derived from Queensland Treasury rather than the chief executive of DHPW. This may mean that the Program cannot be defined as a funded service under the Housing Act 2003.*
>
> *There are currently no exemptions for accommodation services receiving funding from Queensland Treasury or for those being administered by the DHPW. While the Youth CONNET Program will provide a similar level of case management and support for people as a Supported Accommodation Program, the drafted amendment does not readily apply.*
>
> *As a community housing provider, our organisation is already registered under the National Regulatory System for Community Housing and applying the Residential Services Act as we implement the bond adds a further layer of regulation. This is a significant barrier to other organisations wishing to implement innovative housing and financing models. This is also a broader issue for registered community housing providers seeking to increase affordable housing options where there is limited supply and availability of accommodation for single people.*[92]

Churches of Christ in Queensland recommended options to remove regulatory barriers for delivering future housing related social benefit bonds and other innovative financing and housing models.[93]

The department responded:

- the amendment provides an exemption for a service that is conducted with the assistance of funding given by the State and uses the funding to provide supported accommodation to persons who are, or are at risk of becoming homeless, and
- exempting services funded under Social Benefit Bonds, (or providers under the National Regulatory System for Community Housing) is to be considered during further work on legislative frameworks, including review of the Housing Act, under the Action Plan.[94]

[91] Explanatory notes, p 28.

[92] Submission 71.

[93] Submission 71 for the options submitted.

[94] Correspondence dated 8 September 2017, Appendix, p 7.

2.3.3.2 Clause 76 – register of residential services

The TQ submission did not support the proposed amendments to section 179 on the basis that the changes may inadvertently encourage more women and children leaving domestic violence to choose a service that is not funded as a specialist family and domestic violence support service:

> *These services must comply with the Human Service Quality Framework which regulates good practice in dealing with vulnerable clients.*
>
> *By contrast accommodation services under the Residential Services (Accreditation) Act 2002 are not supported or funded by the state government and do not have to comply with the Human Services Quality Framework or any quality framework relating to providing services to very vulnerable groups.*
>
> *For this reason, TQ believes the application of exemptions by the Chief Executive should be applied very stringently and recommends that proposed addition to section 179 at (2A)(a) be removed.*[95]

While Community Legal Centres Queensland Inc. welcomed the proposed amendments to the RTA Act, it echoed TQ's concerns that the proposed changes to section 179:

> *…might result in these services becoming de facto, and inferior, responses to domestic and family violence, which comply with more stringent – and appropriate – human services quality framework, that supports service delivery to vulnerable service users, including people escaping family violence*.[96]

The department responded to this concern by advising:

- this issue and recommendation was identified through a recent government investigation into unregistered boarding houses and rooming accommodation
- residential services are required to meet accreditation standards under the RSA, and
- the amendment is not intended to encourage alternative domestic violence accommodation and support models.[97]

The department further advised:

> *The amendment is intended to protect the safety of residents in residential services under certain circumstances, with the safety of women and children escaping domestic violence a priority. The application of this limited exemption to publish information will be carefully considered on a service by service basis, and the residential services concerned will be subject to the registration, accreditation and auditing and compliance processes implemented by the department.*[98]

2.3.4 Committee consideration

The committee noted the concerns raised by TQ and Community Legal Centres Queensland Incorporated regarding clause 76 of the bill, which proposes amendments to section 179 of the RSA Act. The committee is of the view that removing proposed section 179(2A)(a) to alleviate these concerns would not affect the intended application of the section, as the provisions in proposed section 179(2A)(b) would remain - requiring that 'sensitive information' not be shown in the register if the chief executive decides that it is in the interests of the wellbeing and safety of residents in the service not to do so.

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[95] Submission 78.

[96] Submission 79.

[97] Correspondence dated 8 September 2017, p 8.

[98] Correspondence dated 8 September 2017, Appendix, p 7.

Recommendation 10

The committee recommends that clause 76 of the Housing Legislation (Building Better Futures) Amendment Bill 2017 be amended to remove proposed section 179(2A)(a) of the *Residential Services (Accreditation) Act 2002*.

2.4 *Residential Tenancies and Rooming Accommodation Act 2008* amendments

2.4.1 Background

The RTRA Act establishes the rules for residential and rooming accommodation in Queensland and sets out the rights and obligations of tenants, lessors and agents.[99]

The explanatory notes stated that the objective of the bill is to amend the RTRA Act to give effect to the Government's 2015 election commitment to prescribe minimum housing standards for private rental accommodation that will be extended to social housing as an equity measure:

> *Amendment of the RTRA Act is required to allow the Residential Tenancies and Rooming Accommodation Regulation 2009 (RTRA Regulation) to be amended to prescribe the minimum housing standards for rental accommodation to ensure a consistent standard of rental properties to improve the access of Queenslanders to safe, secure and appropriate housing.*[100]

The department has been conducting a review of the RTRA Act since late 2012, with the review process including:

- public consultation on a discussion paper in 2012/13
- regular meetings with rental sector stakeholders and peak organisations
- ongoing monitoring of emerging trends, and an analysis of Australian tenancy legislation to establish comparable benchmarks, and
- targeted consultation undertaken in 2016 as part of the Housing Strategy, including participation in Queensland-wide sessions, a call for submission, deep dive sessions, a survey on Get Involved, and a stakeholder consultative group, which met three times over August and September 2016, to review proposed amendments.[101]

The explanatory notes also advised that standards of rental accommodation were identified as requiring further consideration and, to assist with informing the Minister's recommendations to Parliament, the MHC and other stakeholders were consulted, in May and July 2017, on proposed amendments to the RTRA Act to enable provision for minimum housing standards.[102]

With regard to the RTRA Act, the explanatory notes advised there was general support for the capacity to describe and clarify minimum housing standards in rental properties, and strong interest in participating in and developing the specific matters that would be covered by regulation, particularly to make sure that these matters can be described in a practical way. There was some disappointment that other measures described in earlier consultation rounds had not appeared in this bill, but the explanatory notes advised that these matters will be addressed through the forthcoming discussion led process.[103]

[99] Explanatory notes, p 3.

[100] Explanatory notes, p 3.

[101] Explanatory notes, p 16.

[102] Explanatory notes, p 16.

[103] Explanatory Notes, p 15.

2.4.2 Amendments proposed in the bill

The explanatory notes advised that the bill aims to achieve its objective of providing for the prescribing of minimum housing standards for rental accommodation by:

- amending the RTRA Act to enable new provisions to be made within the Residential Tenancies and Rooming Accommodation Regulation 2009 (RTRA Regulation) that specify the minimum housing standards in relation to building and health matters that is the lessor and/or agent responsibility, and
- enabling the development of prescribed minimum housing standards in the RTRA Regulation to supplement the existing legislation for minimum building standards under Building Codes enforced through local councils and that of tenancy legislation and regulation with a focus on health and safety matters which are or will be the responsibility of the lessor and/or agent.[104]

Part 6 of the bill (clauses 81 to 86) proposes amendments to the RTRA Act. Stakeholders raised issues with clauses 82 and 83. Details of these two clauses are provided below.

2.4.2.1 Clause 82 – prescribed minimum housing standards

Clause 82 proposes to insert a new Division 4, 'Prescribed minimum housing standards', into Chapter 1 Part 3 of the RTRA Act (Interpretation) to allow a regulation to prescribe minimum housing standards.

Proposed new subsection 17A(2) establishes that the regulation may prescribe minimum housing standards for all residential premises and/or inclusions that are covered by the RTRA Act under a residential tenancy agreement, moveable dwelling agreement or a rooming accommodation agreement. The regulation may also prescribe minimum standards for facilitates in a moveable dwelling park. The explanatory notes advised that the minimum housing standards aim to ensure residential premises, inclusion and/or moveable dwelling park facilities meet identified standards to ensure they are fit for human rehabilitation.[105]

Proposed new subsection 17A(3) provides examples of matters about which a standard may be made, including:

- sanitation, drainage, cleanliness and repair
- ventilation and insulation
- protection from damp and its effects
- construction, condition, structures, safety and situation of the premises
- the dimensions of rooms in the premises
- privacy and security
- provision of water supply, storage and sanitary facilities
- laundry and cooking facilities
- lighting
- freedom from vermin infestation, and
- energy efficiency.

[104] Explanatory notes, p 5.

[105] Explanatory notes, p 29.

The explanatory notes advised that the individual matters listed in the bill may or may not have standards prescribed in the regulation, and the list does not preclude a regulation from establishing standard about another matter not listed.[106]

Proposed new subsection 17A(4) clarifies that any minimum standards prescribed in the regulation will be in addition to existing obligations and:

> *If an inconsistency arises between the minimum housing standards prescribed in the regulation and any Act, regulation or statutory instrument including other provisions of the Residential Tenancies and Rooming Accommodation Act 2008 then, to the extent of any such inconsistency, the Act, regulation or statutory instrument would prevail over the prescribed minimum housing standards. An example is given to clarify this by stating that lessors and/or providers may be responsible for meeting standards around cleanliness of the premises or inclusions before the tenancy commences, but not after the tenancy has commenced where the tenant has obligations about cleanliness of the premises or inclusions throughout the tenancy under section 188(2) of the Residential Tenancies and Rooming Accommodation Act 2008.*[107]

Proposed new subsections 17A(5) and (6) prescribe how minimum housing standards may be monitored and enforced to encourage compliance and clarify the definition of premises to include residential premises which are or can be let under a residential tenancy agreement.

2.4.2.2 Clause 83 – lessor's obligations generally

Clause 83 proposes to insert into sections 185(2) and (3) of the RTRA Act (lessor's obligations generally) a requirement to ensure the premises and its inclusions comply with any prescribed minimum housing standards at the start of, and during, a tenancy.

2.4.3 Stakeholder views and department response

2.4.3.1 Clause 82 – prescribed minimum housing standards and Clause 83 – lessor's obligations generally

A number of stakeholders indicated support for the proposed amendments relating to minimum housing standards.[108] For example, Heart Legal submitted that more than a third of the Queensland population rent their home and, as home ownership becomes increasingly out of reach, many people will be long-term renters. Heart Legal made the following comments in support for the proposed amendment:

> *The quality of the homes renters live in can have important impacts on health and wellbeing. It can also have a financial impact for renters. For example homes that are drafty, poorly insulated, or have faulty hot water systems or leaky pipes can result in higher bills.*
>
> *Current provisions in tenancy law do not clearly define the standards required, making it difficult for renters and lessors to know when it is reasonable to ask for something to be repaired or replaced. Clear standards will give substance to the current requirements that the premises are "fit to live in" and "in good repair".*
>
> *It will also help tenants to enforce their rights. Many renters are unwilling to ask for repairs or maintenance to their rental property because they want to be on good terms with the lessor and they may be worried that the lessor will decide not to renew their tenancy agreement. This is a particular problem when people have short-term leases and because lessors are able to evict people without grounds. Fear of retaliatory eviction particularly*

[106] Explanatory notes, p 29.

[107] Explanatory notes, pp 29-30.

[108] Submissions 13, 18, 20, 30, 37, 56, 71, 78, 79, 80, 92.

> *affects low income and other vulnerable households who have limited housing choices and limited financial resources to move.*
>
> *Setting minimum standards (and supporting the standards with a process for inspections by independent qualified third parties) would take the pressure off tenants to raise problems and pursue their rectification. It would also reduce the number of disputes between tenants and lessors. Importantly it will support improvements in the quality of housing, cost of living, health and wellbeing of an ever growing portion of the Queensland community.*[109]

TQ strongly supported the amendments, noting that the amendments will substantially contribute to protecting renters from dangerous conditions, especially the many vulnerable households at the lower end of the market, and impact positively both on tenants and tenant-landlord relations. TQ strongly supported proposed section 17A(5), that will allow for the development of a compliance regime to monitor and enforce the standards.[110] At the public hearing, TQ added:

> *TQ is aware of the already dire circumstances of many vulnerable tenants in the private rental market and it would not support the introduction of minimum standards or a compliance regime that imposes unnecessary costs on the sector. TQ would expect that potential costs would be carefully considered as part of the government's consultation and regulatory impact analysis on any minimum standards before they are introduced.*[111]

A number of stakeholders raised concerns with the proposed amendments, with the following issues being raised:

- additional lessor costs associated with compliance may result in increased rents and impact on housing affordability[112]
- tenants should not be able to demand an upgrade of the property during a tenancy[113]
- when prospective tenants view a dwelling they take into account the amount they can afford to pay and the standard of the property[114] and there should be no need to set an artificial benchmark that could well be higher than reasonable user expectations[115]
- tenancies may not be renewed and possible reduction in properties available for rent, putting more pressure on public housing and community housing[116]
- the point at which a 'premises' is 'to be let' is not clearly defined and could lead to confusion as to which residential premises the amendment would refer to[117]
- most of the issues the regulation intends to address are already covered to some extent by existing building legislation and if there are deficiencies the building legislation should be amended so as to retain consistency in standards regardless of who is the occupant[118]
- the minimum housing standards should only refer to items that are not currently covered by existing building codes and regulations[119]

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[109] Submission 15.

[110] Submission 78.

[111] Public hearing transcript, Brisbane, 13 September 2017, p 4.

[112] Submissions 57, 72, and 91.

[113] Submission 38 and public hearing transcript, Brisbane, 13 September 2017, p 14.

[114] Submission 38 and public hearing transcript, Brisbane, 13 September 2017, pp 15-16.

[115] Submission 57.

[116] Submissions 38, 72, and 91.

[117] Submission 72 and public hearing transcript, Brisbane, 13 September 2017, p 15.

[118] Submission 57.

[119] Submission 91.

- minimum housing standards should be consistent with the objectives of the Housing Strategy and not extend to matters beyond this scope, such as energy efficiency[120]
- the inclusion of dimensions of rooms in the premises, along with privacy and security, are of concern – many existing properties may not be able to meet these standards and some, such as character houses and heritage properties may not be able to be modified[121]
- more detail is required; and consultation should be undertaken on the draft regulation[122]
- the regulation should reflect the current diversity and *status quo* of *premises* and not impose unachievable obligations on lessors[123]
- the proposed regulation will lead to an increase in disputes between lessors and tenants resulting in an 'explosion of costs' for the Residential Tenancies Authority (RTA), QCAT and magistrates courts[124]
- transitional provisions must ensure smooth implementation and fact sheets should be developed that clearly state when and how the minimum standards apply[125], and
- monitoring and enforcement issues[126], including recommendations that:
    - independent oversight is required[127]
    - the existing framework, processes and staffing bodies be used to reduce the cost of regulating, monitoring and evaluating[128]
    - a log or register of repairs be available to current and prospective tenants[129], and
    - making it an offence to offer housing that does not meet the minimum standards.[130]

The department responded by reiterating the policy intent of the proposed amendments and advising:

- stakeholder consultation will be undertaken in defining the prescribed minimum housing standards and how they will be monitored and enforced during the regulatory development process
- consultation will be undertaken in development of the regulation to ensure stakeholder concerns are considered and addressed, and
- the department will work with the RTA to develop and publish factsheets and other communication to ensure transparency and clarity of obligations for tenants, lessors and body corporate management.[131]

The department also advised:

[120] Submission 72 and public hearing transcript, Brisbane, 13 September 2017, p 15.

[121] Submission 89 and public hearing transcript, Brisbane, 13 September 2017, p 17.

[122] Submissions 7, 35, 38, 71, 72, 89, and 91.

[123] Submissions 35, 57, 72 and public hearing transcript, Brisbane, 13 September 2017, p 15.

[124] Submission 38.

[125] Submission 35.

[126] Submissions 38, 40, 57, 72, 78 and 91.

[127] Submissions 6, 13 and 78.

[128] Submission 91 and public hearing transcript, Brisbane, 13 September 2017, p 9.

[129] Public hearing transcript, Brisbane, 13 September 2017, p 3.

[130] Public hearing transcript, Brisbane, 13 September 2017, p 4.

[131] Correspondence dated 8 September 2017, Appendix, pp 8-9.

> *It is the policy intention that all residential rental premises including those under community titles scheme arrangements will be covered by the prescribed minimum housing standards to ensure consistency.*
>
> *It is not the intention to duplicate or create conflicting obligations for lessors, but to address deficiencies and complement existing legislation, such as the Body Corporate and Community Management (Standard Module) Regulation 2008.*
>
> *The amendment requires all lessors to comply with the requirement that premises and inclusions meet the prescribed minimum housing standards at the start of, and during the tenancy. This would include where an existing tenancy may roll-over from a fixed term to a periodic tenancy, to ensure a lessor has an ongoing obligation to continue to meet the minimum standards regardless if the tenancy agreement is changed.* [132]

2.4.4 Committee consideration

At the public briefing on the bill, the committee asked for further information on how the minimum housing standards would be monitored and enforced. The department responded by advising that 'the primary reason for the standards is around being clear about obligations both from the tenant's perspective but also from the property owner's perspective about what it means to meet a particular standard versus creating an onerous regime around it'.[133]

The department further advised that it envisages the standards almost becoming implied in the REIQ standard contract - the landlord-tenant relationship:

> *Essentially what it does is it gives the tenant a specific right of recourse—for example, if the hotplate is not being maintained—to have that fixed as part of their tenancy arrangement and that then flows through. It is not a new regulatory system, if you like. It is simply incorporating standards into the existing relationship.*
>
> *In consultation with peak groups people saw this as having a benefit on both sides, not only from a tenant's perspective in terms of having minimum standards for the house they live in but also from a landlord's perspective in terms of managing tenancy expectations about what the landlord's obligations are—what you are required to provide in terms of a house that you have rented out to a person and what you are required to do in terms of maintenance. I think that there was fairly uniform support for bringing in these standards in terms of managing that landlord-tenant relationship.*[134]

The committee also asked the department about whether the minimum standards would be likely to impact on affordability and, therefore, access to lower cost housing. The department responded that there is no clarity about what basic standards are required:

> *There are a lot of assumptions in terms of what forms a minimum standard. The emphasis here is that we are talking about minimum standards, which go to basic conditions around safety. If you look at the types of examples that are listed in the bill, they talk about vermin infestation or structural integrity or protection from damp. Those are basic health issues in terms of certain things that would need to be covered. All of that … will be worked through during the consultation to get the right balance in terms of not compromising access to affordable housing and what are the basic standards that we feel every person should have access to in terms of housing if a house was going to be put on the market.*[135]

[132] Correspondence dated 8 September 2017, Appendix, p 9.

[133] Public briefing transcript, Brisbane, 23 August 2017, p 8.

[134] Public briefing transcript, Brisbane, 23 August 2017, p 9.

[135] Public briefing transcript, Brisbane, 23 August 2017, p 10.

At the Brisbane public hearing on the bill, the committee asked about the appropriateness of the bill providing a head of power to make a regulation before consultation has been undertaken on what the standards should include. The department responded that this was an issue that had been discussed with peak stakeholders at length:

> *This is one in particular on which we had almost unanimous support from both landholder and tenant advocacy groups. The issue with this was certainly there was an agreement that there needs to be clarity as to what are certain basic minimum standards. What those minimum standards might be, though, is something that—again, this was agreed with the stakeholders—needed to be worked through in quite a lot of detail to ensure it gets the right balance in terms of not being overly onerous but protecting those standards. There is a list of examples provided in the legislation about the types of things, but they are examples. The government had given a commitment to the stakeholder groups such as REIQ, Tenants Queensland and whatever else that we would work through those matters in regulation. We would say that that would be a good way to proceed because those are also matters which potentially will change over time and you would need that flexibility as to those minimum standards. A regulation would be the appropriate vehicle to address those types of standards as opposed to in a head of power within an act.*[136]

Committee comment

The committee noted the comments made by stakeholders about the proposed regulation which would prescribe minimum housing standards for rental accommodation. The committee also noted the department's commitment to undertake stakeholder consultation during the process of defining the proposed standards and during development of the regulation.

The committee supported wide-ranging consultation with stakeholders to ensure the minimum standards achieve the desired outcome, without being overly onerous.

2.5 *Retirement Villages Act 1999* amendments

2.5.1 Background

The RV Act establishes the regulatory framework for the operation of retirement village schemes in Queensland, and regulates the relationship between retirement village scheme operators and residents. The Act aims to promote consumer protection and fair trading practices and encourage the continued growth and viability of the retirement village industry in Queensland.[137]

The explanatory notes advised:

> *The objective of the Bill is to amend the RV Act to increase transparency in the relationships between operators and residents, and provide greater security and confidence to residents, balanced with industry viability. The amendments will give effect to the Government's 2015 election commitment to "examine the results of the consultation thus far to determine if a more extensive solution is required before a response to Report No. 13 – Review of the Retirement Villages Act 1999" (election commitment 522).*
>
> *Since 2012, the Queensland Government has undertaken extensive consultation with a range of key stakeholders (industry, resident advocacy groups and residents) and the public regarding issues with the RV Act.*
>
> *A review of the RV Act was referred by the former Parliament to the then Transport, Housing and Local Government Committee. On 29 November 2012, the committee tabled its report containing 37 recommendations (Report No 13) and the former Government's response to the report was tabled on 26 February 2013. Subsequent review activities included a Ministerial working party*

[136] Public hearing transcript, Brisbane, 13 August 2017, p 34.

[137] Explanatory notes, p 3.

examination of the report and release of a Consultation Regulatory Impact Statement (Consultation RIS) in August 2014. Further research and targeted consultation with industry, consumer advocates and resident representatives was conducted in 2016 and 2017 to develop the preferred options and amendments as part of the reforms for the Housing Strategy.

Several of the amendments also address residents and consumer advocate concerns raised recently in the media and with governments across Australia about issues in the retirement village industry around fees, contracts and residents' safety.[138]

In the explanatory speech the Minister advised that proposed amendments to the RV Act:

…will increase transparency in the relationships between operators and residents to provide greater security to residents, balanced against ongoing industry viability. Greater financial transparency will be required about retirement village funds, budgets and financial statements, and will address resident and consumer advocate concerns about fees and contracts. Residents will also have greater protections around resales and exit entitlements or when there is a change in village operations. A regulation may also impose a requirement about the provision of equipment in a retirement village for public safety.[139]

2.5.2 Amendments proposed in the bill

The explanatory notes advised that the bill proposes to amend the RV Act to achieve its policy objective to increase transparency in the relationships between retirement village operators and residents through:

- improving pre-contractual disclosure processes, by introducing a two stage, 21 day process prior to final execution of the residence contract
- prescribing clear and enforceable behaviour standards for operators, staff of operators and residents, and
- prescribing greater financial transparency regarding retirement village funds, budgets and financial statements.[140]

The bill also includes measures to provide security and confidence to residents through:

- introducing a simpler, more predictable reinstatement process which distinguishes between reinstatement and renovation
- protecting residents by introducing a new process when there is a change in village operations (closure, wind down, redevelopment or change in operator), and
- in cases of delayed resale, requiring operators to pay residents their exit entitlement 18 months after the resident leaves, unless doing so would cause the operator undue hardship.[141]

2.5.2.1 Clause 101 - change of scheme operator

The bill provides the procedure for a village takeover. The RV Act currently contains no such provision, however the bill provides that the existing scheme operator is required to give the chief executive a transition plan, which must be in the approved form and state the matters prescribed by regulation.

[138] Explanatory notes, pp 3-4.

[139] Queensland Parliament, Record of proceedings, 10 August 2017, p 2198.

[140] Explanatory notes, p 5.

[141] Explanatory notes, pp 5-6.

Specifically, clause 101 inserts a new Division 5 in Part 2 to provide for the change of a scheme operator. This clause also inserts new sections 41B to 41J, which introduce new provisions for transferring control of a retirement village:

- section 41C requires the scheme operator to give notice to the chief executive about a proposal to transfer control of a retirement village to the 'new scheme operator'
- section 41D requires the scheme operator to give the chief executive a transition plan relating to the change of scheme operator
- section 41E describes what is meant by a 'transition plan', including that it be in the approved form and state matters prescribed by regulation
- section 41F provides that the chief executive may only approve a transition plan if the chief executive is satisfied that the plan provides a clear, orderly and fair process for transitioning control of the retirement village
- section 41F also provides that the chief executive can give the scheme operator a written direction to take action to revise a transition plan, after giving the operator the opportunity to make written submissions, before it is approved
- section 41G provides that the chief executive may provide a written direction for the revision of a transition plan that has been approved by the chief executive, on the chief executive's own volition or through application to the chief executive by the scheme operator, and provides for the relevant procedure
- section 41H requires the existing and new scheme operators to comply with the transition plan and to respond to a request from the chief executive about how the transition plan is being implemented
- section 41I provides for when a proposed transfer is discontinued, and
- section 41J provides for the effect of a transfer, including requiring the new scheme operator to give each resident a notice with specified details.[142]

2.5.2.2 Clause 103 - content of a residence contract

Clause 103 proposes to amend section 45 of the RV Act, which describes the contents of a residence contract, to require the inclusion of specified additional information.[143]

The clause also proposes to allow a regulation to:

- prescribe a term that must be included in a residence contract, or
- prohibit a term that must not be included in a residence contract.

Additionally, the clause amends the RV Act to require that a scheme operator must not enter a residence contact that is not in the approved form.

2.5.2.3 Clause 109 - when former resident's exit entitlement payable

Clause 109 proposes to amend section 63 of the RV Act to provide that the scheme operator must pay the former resident their exit entitlement on or before the earliest of:

- the day stated in the residence contract
- 14 days after the settlement day

[142] Explanatory notes, pp 32-33.

[143] The additional information is specified in new subsections 45(1)(p) to (t).

- 18 months after the termination date or any later day fixed by the tribunal by an order under section 171A, and
- 14 days after the right to reside is terminated under a closure plan.[144]

The amended provisions provide that the scheme operator may pay the exit entitlement at any time on or after the termination date and before the time payment is required under section 63(1), if the operator and the former resident agree on the resale value of the right to reside.

2.5.2.4 Clause 128 - general services charge budget

Clause 128 proposes to amend section 102A of the RV Act to:

- change references to the general services charges fund
- require the scheme operator to adopt a general services charge budget for each financial year for the general services charge fund, and
- require the budget to be in the approved form.

2.5.2.5 Clause 131 – general services charges for unsold right to reside in accommodation units

Section 105 of the RV Act currently provides that a scheme operator must pay the proportion of the general services charges relating to the right to reside in an accommodation unit in the village:

- that has not been occupied under a resident contract, or
- for which there is no residence contract in force.

According to the explanatory notes:

> *Clause 131 of the bill amends section 105 to change the reference from maintenance reserve fund to general services charges fund. This clause also specifies that 'accommodation unit' used in this section means a part of a retirement village where a resident has an exclusive right to reside or a part of a retirement village that is under construction or being renovated in which a resident will have an exclusive right to reside when the construction or renovation is completed.*[145]

2.5.2.6 Clause 132 - increasing the general services charge

Clause 132 proposes to:

- replace section 106 with a new section which limits how the total general services charge can be increased, including by providing that the total general services charge for a financial year cannot exceed the charge of the previous financial year by more than the CPI percentage increase (except to the extent such increase has been agreed to by a special resolution of residents or is allowed under section 107), and
- replace section 107 to clarify that the increase in the general services charge is allowed to the extent it is attributable to an increase as specified in that section.

2.5.2.7 Clause 138 - redevelopment, including approval of redevelopment plan

Clause 138 inserts a new Division 10 in Part 5 of the RV Act which provides for the redevelopment of retirement villages.

The division inserts new sections 113B - 113J:

[144] Explanatory notes, p 34.

[145] Explanatory notes, p 36.

- section 113C states that the division does not apply in relation to the redevelopment if every resident of the village was given written notice of the redevelopment before they became a resident
- section 113D provides that a scheme operator must give the residents notice in the approved form if the scheme operator proposes to redevelop the village, without winding-down or stopping the retirement village scheme from operating
- section 113E defines a 'redevelopment plan' as a written plan about the running redevelopment of the retirement village, which must be in the approved form and state the matters prescribed by regulation
- section 113F states how a redevelopment plan can be approved by the residents (by special resolution) or the chief executive, and in what circumstances -
    - the chief executive can give a direction to the scheme operator to revise the plan before it is approved and the section provides the process the chief executive must follow
    - the chief executive can only approve the redevelopment plan if satisfied it provides for a clear, orderly and fair process for running the redevelopment
- section 113G provides that the plan can be revised by application from the scheme operator or on the initiative of the chief executive –
    - the chief executive may give a direction to the scheme operator that the redevelopment plan be revised and the process that must be followed in that situation
    - the revised plan may only be approved by the chief executive if it provides for a clear, orderly and fair process for redevelopment
- section 113H requires the scheme operator to comply with the redevelopment plan and tell the chief executive how an approved redevelopment plan is being implemented, if requested
- section 113I provides that a scheme operator must give the residents and the chief executive a notice if the scheme operator decides not to proceed with the redevelopment
- section 113J allows that a person who has been given an information notice may apply as provided under the QCAT Act to the tribunal for a review of the decision.

2.5.3 Stakeholder views and department response

Stakeholders expressed varying views on the proposed amendments to the RV Act.

2.5.3.1 Clause 101 - change of scheme operator

Submitters have argued that the proposed process for a change of control of a village is complicated, bureaucratic and unnecessary. Some consider it will restrict investment in the industry and impede private market transactions. It has also been suggested that time limits should be imposed on the chief executive to approve a plan to reduce delays.

For example, Renaissance Retirement Living noted that there are no guidelines as to what is required in the transition plan and that the bill's proposals will delay and complicate the process:

> *If there is a need for this type of process then it should impose time limits on the Chief Executive's responses so that it does not become a drawn out process. One wonders how this process would work where a takeover occurs for a large publicly listed company on the stock market owning up to 40 or 50 villages*.[146]

[146] Submission 65.

The PCA expressed similar concerns, arguing that the proposed requirements will impede private market transactions because of the significant uncertainty and delay that will result from the provisions:

> *It will necessitate a condition precedent about the approval process to be included in every transaction contract, resulting in an inability for buyers and sellers of villages in Queensland to enter into unconditional sale contracts with fixed and certain settlement dates.*
>
> *This is likely to have substantial impacts on the investment market for retirement villages in Queensland, noting that no other state or territory has provisions of this type.*[147]

Accordingly, PCA recommended that the requirement to have a transition plan approved by the department be removed from the bill, but that the bill retain the requirement to prepare a transition plan and lodge it with the department.[148]

In response to issues raised, the department observed that the RV Act does not currently provide for a village takeover:

> *When a village is taken over by a new operator, it can substantially change the nature of the village. For example, a retirement village that originally focused on offering seniors an active retirement lifestyle may shift its focus to provision of aged care services, resulting in a village significantly different in nature to the one a resident bought into. Residents have reported that village takeover can be an extremely stressful and uncertain time, particularly as many residents have their capital tied up in the village and are unable to easily leave*.[149]

In that context, the department advised that the proposed process aims to protect residents by requiring operators to prepare a plan to be approved by the chief executive:

> *The chief executive will approve the plan if it provides for a clear, orderly and fair process. To streamline the process and support the confidentiality of private market transactions, the transition plan will be submitted directly to the chief executive, rather than to residents for approval. Both operators and residents have right of appeal to QCAT if dissatisfied with the chief executive's decision.*
>
> *It is not proposed to establish time limits for the chief executive, to ensure the process is sufficiently flexible to suit each situation*.[150]

In relation to addressing issues raised, the department stated that consultation will be undertaken in relation to the regulation and approved forms:

> *This consultation will take place with operator peak groups, retirement village residents and seniors groups to ensure the workability of the provisions in the commercial environment while recognising the significant investment residents have made in the village*.[151]

2.5.3.2 Clause 103 - content of a residence contract

Leading Age Services Australia conveyed serious concerns that the clause provides that a regulation may prescribe a term that must be, or must not be, included in a residence contract:

[147] Submission 89.

[148] Submission 89.

[149] Correspondence dated 8 September 2017, Appendix, pp 9-10.

[150] Correspondence dated 8 September 2017, Appendix, p 10.

[151] Correspondence dated 8 September 2017, Appendix, pp 9-10.

> *This provides the executive arm of Government (as opposed to Parliament) very broad power to impose new obligations and restrictions on retirement village operators in the future, which may have far reaching impacts on the industry*.[152]

However, Palm Lake Resort described the changes to residence contract provisions as welcomed and seemingly reasonable.[153]

The department has advised the amendments are necessary to enable standard form contacts to be developed:

> *It is appropriate that a standard form contract is prescribed under the Regulation because of the detail that will be required to be expressed in that document'.*
>
> *Any regulation prescribing the contents of a residence contract will be subject to potential disallowance by the Legislative Assembly under section 50 of the* Statutory Instruments Act 1992.*[154]*

Further, the department confirmed that consultation will be undertaken in relation to the regulation and approved forms to ensure that these address stakeholder concerns:

> *The process of specifying the content of a residence contract by regulation will be conducted in accordance with the rigorous analysis, as well as community and industry consultation requirements of the* Statutory Instruments Act 1992.[155]

2.5.3.3 Clause 109 - when former resident's exit entitlement payable

Some residents have raised concerns about delays in payment of exit entitlements, with some suggesting that the 18 month period is too long and should be reduced to 30 days.

Ms June Cotterell submitted that when a resident wishes to exit and is waiting to receive the exit entitlement in order to purchase accommodation elsewhere, they are required to vacate their unit by a stated date:

> *They then have to rent other accommodation, while still contributing the full general service fees for 3 months while the unit remains unsold...*
>
> *In such circumstances, why can't the exiting resident be allowed to continue to reside in their unit until a contract is signed? The prospective new resident usually has a time frame to sell their existing home within 60/90 days which should allow ample time for any necessary repairs/renovations to be undertaken…*
>
> *The current legislation entraps residents residing in a Licence to Reside retirement village as two moves are required. Firstly, vacating their unit and renting elsewhere (plus the costs involved while still paying fees on their unsold unit); secondly, moving to other permanent accommodation when they receive their exit entitlement.*

In response to issues raised, the department considered that the 18 month period is a fair and balanced approach:

> *It gives certainty to residents by providing a maximum period before their entitlement is paid. It also applies to residents who have left their village but whose unit has not yet been sold. These significant reforms must balance the need for fair outcomes for former residents with industry viability*.[156]

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[152] Submission 70.

[153] Submission 95.

[154] Correspondence dated 8 September 2017, Appendix, p 10.

[155] Correspondence dated 8 September 2017, Appendix, p 10.

[156] Correspondence dated 8 September 2017, Appendix, p 11.

The department committed to monitoring the impact of the proposed amendment to ensure it is achieving its consumer protection goals.[157]

Other stakeholders queried whether the 18 month period will increase costs and the financial burden on operators and residents, including threatening the solvency of villages in outer urban and regional areas. Some submitters objected to the application of the proposed section to current retirement village residents, instead suggesting a range of alternatives that could be offered instead of a mandatory buy-back.

For example, TriCare considered it highly probable that unintended consequences of a guaranteed exit entitlement repayment would include:

- *retirement village operators developing manufactured homes/residential parks rather than retirement village accommodation*
- *significantly higher costs for all future residents; and*
- *a narrowing of competition because the legislation favours only operators with deep pockets*.[158]

Palm Lake Resort also identified potential unintended consequences, including residents 'gaming' the 18 months period where they are simply looking for a guaranteed buy back and operators encountering difficulties when seeking to sell the retirement village, such as in relation to appointing a receiver and achieving a sale.[159]

PCA supported the introduction of a buy-back provision for new contracts, on the proviso there are appropriate supporting provisions, however it noted that '…the financial Impact of this amendment will vary between operators depending on their operating model and scale'.[160]

Additionally, the PCA did not consider it reasonable for the provision to apply retrospectively to residence contracts entered into prior to the commencement of the bill.[161] It also made certain recommendations about when the buy back period should commence.[162]

The department observed that most retirement village units are sold within 12 months, and operators can apply to QCAT where financial hardship can be demonstrated:

> *The proposal to apply these provisions to existing residents is retrospective, but with a prospective focus. Where a former resident has left a village at the time the new provisions commence, the 18-month period will commence from the date of assent, not the date of departure.*
>
> *These significant reforms must balance the need for fair outcomes for former residents with industry viability.*[163]

The department reiterated its commitment to monitor the impact of the amendments and advised that: 'Communications material will be developed to make retirement village residents aware of what they should do to ensure a smooth transition of their estate'.[164]

[157] Correspondence dated 8 September 2017, Appendix, p 11.

[158] Submission 82.

[159] Submission 95.

[160] Submission 89.

[161] Submission 89.

[162] Submission 89.

[163] Correspondence dated 8 September 2017, Appendix, pp 11-12.

[164] Correspondence dated 8 September 2017, Appendix, p 11.

2.5.3.4 Clause 128 - general services charge budget

Several submitters commented on budgets, observing that residents are often advised on them, but that their views or approval is not sought, and expressing concern that budgets do not provide sufficient detail to enable them to be properly considered by residents.[165]

Mr Hilton Conroy submitted on budget presentation and format:

> *Budgets provided by operators vary widely in standard and detail provided. Some are not much more than a few lines with no explanatory notes or detail provided. There is a need for examples of how a budget should be presented... these examples should show typical budgets which include often omitted items such as; GST paid and input tax credits received, surplus or deficits carried forward, payments and credits for MRF* [maintenance reserve fund] *and CRF, a list of typical cost headings in a village and also the actual calculation of GSC fees to be paid by residents… I see the "approved forms" as a possible way to improve the level of readability, information and detail provided in budgets*.[166]

The department commented on the operation of the general services charge and the current provisions in the RV Act:

> *The general services charge is an ongoing cost for residents and is used to pay for services and facilities supplied or made available to all residents of the village. It operates on a cost recovery basis. Substantial increases can place a financial strain on residents who in many cases rely on government pensions and have often used much of their capital to buy into the retirement village.*
>
> *The Act is largely silent about the information that should be included in a general services charge budget.*[167]

In relation to the proposed provisions included in the bill, the department advised that they include:

> *…provisions to improve financial transparency around the budgets and reporting of the general services charge, including separating the general services charge fund from the maintenance reserve fund. It provides for the introduction of standard form budgets and financial reports through amendment to the regulation.*
>
> *It also prohibits operators from passing on (through the general services charge) legal costs awarded by QCAT against the operator or legal costs incurred by the operator (Clause 129).*
>
> *In addition, clause 136 provides additional requirements in relation to quarterly financial statements and requires the operator to explain an increase in the general services charge to help improve financial transparency*.[168]

The department considered that the measures in the bill will address the issues raised and stated that:

> *Further consultation will be undertaken with residents, industry and seniors groups in development of the regulation and approved forms.*
>
> *Under the Housing Strategy 2017-2020 Action Plan, additional advocacy and support will be provided to residents through peak groups and residents' committees.*[169]

[165] Submissions 43, 50 and 52.

[166] Submission 43.

[167] Correspondence dated 8 September 2017, Appendix, p 13.

[168] Correspondence dated 8 September 2017, Appendix, p 13-14.

[169] Correspondence dated 8 September 2017, Appendix, p 13.

2.5.3.5 Clause 131 – general services charges for unsold right to reside in accommodation units

At the committee's Brisbane public hearing, the representative of Leading Age Service Australia, Mr Stuart Lowe of Mullins Lawyers, stated:

> *In relation to general services charges for unoccupied units, it is currently the case that for unoccupied units the operator is required to pay the general services charges. The bill proposes to introduce a definition of an accommodation unit for that purpose whereby a unit under construction is deemed to be a unit that the operator needs to pay the general services charges for. That is a fairly vague concept in the bill. What is a unit under construction? If you can imagine you have a campus style village, which is becoming popular, you might have a five-storey block of units, say 70 in a block, you have five or six blocks on the one village, you have one block completed and occupied and residents are paying general services charges for their units. Then you turn your first sod of soil or you lay your first foundation on your second block of 70 units. Does this now mean that the operator has to pay the general services charges on that entire block of units because they have started construction on it, even though the units on the fifth floor are currently airspace? That effectively subsidises 50 per cent of the existing residents' general services charges to the operator's detriment. Surely that is not intended. Our view is that a unit is a unit when it becomes a unit—that is, when a certificate of classification is issued and the unit may be lawfully occupied.*[170]

2.5.3.6 Clause 132 - increasing the general services charge

Some submitters criticised the operation of the existing legislation, observing significant variations in how operators interpret and apply existing sections 106 and 107 of the RV Act and that many operators don't justify general services charge increases.[171]

Mr Hilton Conroy questioned the effectiveness of the existing limit on annual budget increases under section 106 of the RV Act, suggesting that:

> *Perhaps it's time to have all budgets approved by a 75% vote of residents. There is currently no mandated entitlement for residents to vote on a budget except when section 106 is breached. Some operators and/or resident committees voluntarily put the budget before a residents meeting. However, residents do not have the right to reject any budget items unless the budget is non-compliant with s106.*[172]

In response to stakeholder comments, the department stated that the bill proposes amendments to clarify the requirements for increasing the general services charge:

> *In conjunction with the other financial transparency measures, the department considers that the measures in the Bill will address the issues raised and provide significant new levels of financial transparency.*
>
> *Details of standard form budgeting and financial reports will be addressed through the development of the regulation*.[173]

To address issues raised, the department advised that:

> *Consultation will be undertaken with residents, industry and seniors groups in development of the regulation and approved forms.*

[170] Public hearing transcript, Brisbane, 13 September 2017, p 3.

[171] Submissions 43 and 50.

[172] Correspondence dated 8 September 2017, Appendix, p 13.

[173] Correspondence dated 8 September 2017, Appendix, p 14.

> *Under the Housing Strategy 2017-2020 Action Plan, additional advocacy and support will be provided to residents through peak groups and residents' committees*.[174]

2.5.3.7 Clause 138 - redevelopment, including approval of redevelopment plan

Some submitters were concerned that, if residents reject a redevelopment plan, the operator could override the residents by applying to the chief executive.

For example, Mr Arch Morrison and Ms Joanne Wheeler submitted that:

> *No criteria are given which the Chief Executive can use in making this decision nor is there any provision for the Chief executive to form a balanced view. The only information relating to the Scheme Operator's request comes from the Scheme Operator. There is no provision for the Residents to present their rationale for their rejection of the proposal…*
>
> *The only requirement on the Chief Executive under Section 113F (6) is to give a QCAT information notice for the decision to each Resident…*
>
> *Only after receipt of that notice can Residents apply to QCAT in accordance with Section 113J for a review of the Chief Executive's decision. This is an expensive course of action which may be outside the resources or capabilities of many Resident groups. In addition, QCAT is generally focused on the legal interpretations of the relevant Acts and may not arrive at conclusions which take full account of the moral obligations implied by sales brochures and the retirement-lifestyle expectations on which the Residents' rejection of the proposal has been based. These are aspects which caused Residents to enter into their Residence Agreements in the first place.*[175]

The department noted that the RV Act is currently silent about the management of a redevelopment of a retirement village, advising that the bill outlines a new process for development and approval of a redevelopment plan to ensure residents are protected:

> *The Bill proposes a requirement that the chief executive may only approve a redevelopment plan that provides for a clear, orderly and fair process for the redevelopment.*
>
> *This provides for significant oversight by the chief executive, including the right to instruct the operator to amend the plan. For the chief executive to meet the statutory obligation to ensure the process is fair, the views and rights of all parties would need to be considered. The chief executive has the power to further consult with residents as part of the process.*
>
> *The issue raised will be addressed through development of appropriate processes to guide the chief executive and through specification of the redevelopment plan (approved form).*[176]

The department provided further detail on how stakeholder issues are to be addressed:

> *Consultation will be undertaken with residents, industry and seniors groups in in development of the approved forms.*
>
> *Under the Housing Strategy 2017-2020 Action Plan, additional advocacy and support will be provided to residents through peak groups and residents' committees.*
>
> *This support will help resident stakeholders present their views about what the chief executive should consider to ensure a fair outcome is achieved.*[177]

Some operators criticised the proposed redevelopment provisions:

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[174] Correspondence dated 8 September 2017, Appendix, p 14.

[175] Submission 14.

[176] Correspondence dated 8 September 2017, Appendix, pp 14-15.

[177] Correspondence dated 8 September 2017, Appendix, pp 14-15.

> *Some operators argue that the proposed process for managing village redevelopment is an over-reach, unnecessary, and will slow down redevelopment. Operators already go through Council development approvals and many villages are outdated. Where redevelopment doesn't infringe on contractual rights of residents, the residents should not be involved in decision making. However, another operator supports the redevelopment process overall but suggests that the operator should have a requirement to consult residents, rather than seek their approval of the plan. There should be timeframes on the chief executive to approve the redevelopment plan.*[178]

For example, in relation to obtaining the approval of residents by special resolution, Stockland submitted that such a requirement confuses the rights and responsibilities of the operator and residents in the context of a redevelopment and has the potential to create an unrealistic expectation in the minds of some residents:

> *Based on our experience of developing villages across Australia, we believe if a redevelopment plan is presented to residents for voting, it may be perceived by some residents as their say in whether a redevelopment ought to proceed, rather than their opportunity to obtain comfort that an appropriate process has been planned for when the redevelopment occurs. It also invariably creates winners and losers within a village. This could give rise to angst and potential dispute, particularly if a development plan is subsequently approved by the Department.*[179]

Additionally, Stockland noted the lack of statutory timeframe within which the department must assess a redevelopment plan:

> *…we believe this section should include a statutory timeframe within which the Department must respond after receiving a redevelopment plan for approval from an operator. Without such a timeframe, there is no certainty for operators and residents in relation to devising a timeline when planning a redevelopment project. We support the PCA's suggested timeframe of 60 days in this regard*.[180]

In response to concerns raised, the department acknowledged that redevelopment can occur unexpectedly for residents, causing them personal and financial detriment:

> *For example, residents can suffer significant distress and consequently adverse health effects from construction work or being relocated. A resident wishing to leave the village may find their unit more difficult to sell when construction work is underway. Or, because of the redevelopment, new units may be available for sale, which buyers may prefer. A redevelopment which adds many new units may also affect the value of a resident's unit, therefore affecting the resident's exit entitlement.*
>
> *Other than the chief executive's powers in section 38 to appoint a manager for the village to protect the interest of the residents, the Act contains no provision in relation to village redevelopment.*[181]

Given the significant impact that a redevelopment may have on residents, the department considered that the proposed new process provides a balanced approach to managing village redevelopment:

> *It encourages the operator to engage constructively with residents about the redevelopment.*

[178] Submissions 82, 89, 90, 95 and correspondence dated 8 September 2017, Appendix, p 15.

[179] Submission 90.

[180] Submission 90.

[181] Correspondence dated 8 September 2017, Appendix, p 15.

> *The operator will need to prepare a redevelopment plan (using the approved form) for consideration and approval by residents, or failing that, by the chief executive. If the operator is dissatisfied with a decision by the chief executive, they have appeal rights to QCAT.*[182]

The department reiterated that consultation will be undertaken with residents, industry and seniors groups in development of the regulation and approved forms.[183]

2.5.4 Committee consideration

2.5.4.1 Clause 101 - change of scheme operator

The committee noted the comments made by stakeholders about the proposed provisions to apply to the change of a scheme operator.

The committee noted the department's commitment to undertake stakeholder consultation in relation to the approved forms and regulation.

Recommendation 11

The committee recommends that clause 101 of the Housing Legislation (Building Better Futures) Amendment Bill 2017 be amended to include appropriate timeframes to apply to the transition plan approval process, including a maximum 90 day timeframe within which the chief executive must make a decision under proposed section 41F(1) of the *Retirement Villages Act 1999*, to ensure that a decision is made in a timely manner.

Recommendation 12

The committee recommends that the Minister report to the House, within 12 months of commencement of the change of scheme operator provisions included in clause 101 of the Housing Legislation (Building Better Futures) Amendment Bill 2017, about the results of the department's consultation in relation to the development of the regulation and approved forms.

2.5.4.2 Clause 103 - content of a residence contract

The committee noted the comments made by stakeholders.

Additionally, the committee noted that the department will undertake consultation in relation to the regulation and approved forms to ensure that these address stakeholder concerns.

Recommendation 13

The committee recommends that the Minister report to the House, within 12 months of commencement of the amended content of residence contract provisions included in clause 103 of the Housing Legislation (Building Better Futures) Amendment Bill 2017, about the results of the department's consultation in relation to the development of the regulation and approved forms.

2.5.4.3 Clause 128 - general services charge budget

The committee noted the comments made by stakeholders.

Additionally, the committee noted that the department will undertake consultation with residents, industry and seniors groups in relation to the development of the regulation and approved forms.

[182] Correspondence dated 8 September 2017, Appendix, pp 15-16.

[183] Correspondence dated 8 September 2017, Appendix, p 15.

Recommendation 14

The committee recommends that the Minister report to the House, within 12 months of commencement of the amended general services charge budget provisions in clause 128 of the Housing Legislation (Building Better Futures) Amendment Bill 2017, about the results of the department's consultation in relation to the development of the regulation and approved forms.

2.5.4.4 Clause 131 – general services charges for unsold right to reside in accommodation units

The committee noted the comments made by stakeholders.

Recommendation 15

The committee recommends that the Minister review clause 131 of the Housing Legislation (Building Better Futures) Amendment Bill 2017 to ensure that an operator is only liable for the payment of general services charges for new accommodation units under construction, when those units have been appropriately certified for occupancy.

2.5.4.5 Clause 132 - increasing the general services charge

The committee noted the comments made by stakeholders.

Additionally, the committee noted that the department will undertake consultation with residents, industry and seniors groups in relation to the development of the regulation and approved forms.

Recommendation 16

The committee recommends that the Minister report to the House, within 12 months of commencement of the total general services charge increase and allowable increase provisions included in clause 132 of the Housing Legislation (Building Better Futures) Amendment Bill 2017, about the results of the department's consultation in relation to the development of the regulation and approved forms.

2.5.4.6 Clause 138 - redevelopment, including approval of redevelopment plan

The committee noted the comments made by stakeholders.

Additionally, the committee noted the department's commitment to:

- develop appropriate processes to guide the chief executive in relation to the approval procedures for redevelopment plans
- specify the redevelopment plan through the development of an approved form, and
- undertake consultation with residents, industry and seniors groups in development of the regulation and approved forms relevant to the provisions in clause 138 of the bill.

Recommendation 17

The committee recommends that clause 138 of the Housing Legislation (Building Better Futures) Amendment Bill 2017 be amended to include appropriate timeframes to apply to the redevelopment plan approval process, including a maximum 90 day timeframe within which the chief executive must make a decision under proposed section 113F(4) of the *Retirement Villages Act 1999.*

Recommendation 18

The committee recommends that the Minister report to the House, within 12 months of commencement of the redevelopment of retirement village provisions included in clause 138 of the Housing Legislation (Building Better Futures) Amendment Bill 2017, about the results of the department's consultation in relation to the development of the regulation and approved forms.

2.6 Other matters

2.6.1 Committee consideration

The committee noted that the Action Plan commits to exploring improvements to dispute resolution arrangements to ensure that housing consumer complaints are resolved as quickly and cost effectively as possible, including the possibility of a dispute resolution body. The committee saw merit in exploring such improvements and urges the government to accelerate this action.

2.7 Implementation costs

2.7.1 *Housing Act 2003* amendments

The explanatory notes also advised that the proposed amendments to the Housing Act 'will have a positive impact on Government finances, and any costs arising from implementation will be met from existing agency resources'.[184]

2.7.2 *Manufactured Homes (Residential Parks) Act 2003, Residential Services (Accreditation) Act 2002 and Retirement Villages Act 1999* amendments

In relation to implementation costs of the proposed amendments to the MHRP Act, RSA Act and RV Act, the explanatory notes advised:

> *The amendments of the MHRP Act, RSA Act and RV Act are not expected to have a significant ongoing impact on the operations, capacity and funding of Government institutions.*
>
> *The implementation costs of the legislative amendments will be met through existing department budget allocations. This includes the allocation of $1 million over two years under the Housing Strategy 2017-2020 Action Plan to help peak groups representing manufactured home owners, residential service residents, and retirement village residents to prepare for legislative changes through community advocacy and access to information.*
>
> *The amendments are expected to have a positive impact on the Residential Services Unit within the Department of Housing and Public Works, which is responsible for ensuring compliance with these Acts, by making compliance requirements and processes clearer and more streamlined. The amendments in the Bill will impact on matters before the QCAT, however it is anticipated that the overall number, and number of protracted matters going to QCAT will be reduced. New provisions in the MHRP Act and the RV Act for behavioural standards, and the new dispute resolution process for residential parks, will clarify the standards expected of park owners, staff and residents and provide opportunities to resolve disputes within parks and retirement villages, or through mediation, before application to QCAT.*
>
> *While other RV Act amendments will allow reinstatement disputes to immediately proceed to QCAT (instead of going through formal negotiation and mediation processes), the impact is not expected to be significant as these amendments should reduce disputes by providing a simpler reinstatement process. Residents and operators will be able to apply to QCAT if they disagree with the Chief Executive's decision regarding an operator's plan when there is a change in*

[184] Explanatory notes, p 7.

village operations (such as redevelopment), however these are anticipated to be relatively rare events.

The proposal to require operators to pay residents their exit entitlement 18 months after departure may also impact on QCAT. The proposal allows the operator to seek an order to defer or reduce the repayment if paying this would cause the operator undue hardship. Given most units are sold within 18 months, the proposal will only apply to a minority of resale cases.[185]

2.7.3 *Residential Tenancies and Rooming Accommodation Act 2008* amendments

In relation to implementation costs of the proposed amendments to the RTRA Act, the explanatory notes advised:

- any costs incurred by the department will be met through the existing departmental budget and resources
- financial implications for the RTA in relation to public information on changes and further amendment to the RTRA Regulation will be met from the existing operating budget of the RTA, and
- the additional costs associated with the future amendment of RTRA Regulation will be addressed and advised as part of the development of those amendments.[186]

[185] Explanatory notes, pp 7-8.

[186] Explanatory notes, p 8.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the FLPs to the bill. The committee brings the following to the attention of the House.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 Rights and liberties of individuals

Summary of provisions

Clause 36 amends section 71 of the MHRP Act.

Section 71(1) allows a park owner for a residential park to increase the site rent payable for certain types of costs. These costs can include significant operational costs including rate increases, taxes or utility costs and the cost of repairs and upgrades to common areas and communal facilities. Current section 17(b) of the Act provides that a park owner for a residential park has the responsibility to maintain the common areas and communal facilities in a reasonable state of cleanliness and repair, and fit for use by the home owner.

Pursuant to section 71A, the park owner must provide the home owner with notification of the increase in site rent (special increase notice) which states the type and purpose of the special cost as well as the total amount that the special cost will incur.

Section 71B(1)(b) provides that at least 75 per cent of home owners must agree in writing to the proposed increase. Section 71C provides that should a home owner dispute a proposed increase, the park owner may apply to the QCAT for an order in relation to the intended increase.

Potential FLP issues

An increase in site rent may adversely affect the financial position of current home owners in circumstances where there is no specific provision to object to the increase. This may potentially breach section 4(2)(a) of the LSA which provides that sufficient regard be had to the rights and liberties of individuals.

The explanatory notes acknowledged the potential FLPs issue and provided the following justification for the clause:

> *The amendment to section 71 of the MHRP Act permits site rent to be increased to cover significant upgrades to common areas or communal facilities where at least 75 per cent of home owners agree to such an increase. This provision may raise a fundamental legislative principle concern in that it deprives a home owner who disagrees with the proposed increase with a right to object to a site rent increase under this section.*
>
> *While this section does not provide a home owner with the right to object to the increase in these circumstances, this is justifiable on the basis that at least three quarters of the home owners are supportive of the increase. While there is a loss of rights to home owners not supportive of the increase, this is balanced with the greater certainty provided to all home owners in the park in*

circumstances where home owners have been given the opportunity to have their say in deciding whether the upgrade should go ahead. This situation is analogous to those provisions in the RV Act that permit a capital improvement to be requested by residents who vote for this by special resolution at a residents meeting.

The proposed s71C allows QCAT to make an order to increase site rent to cover significantly increased operational costs and repair costs, as well as upgrade costs. One of the matters QCAT must be satisfied of before allowing a rent increase for operational and repair costs is that if the site rent is not increased the residential park will not be commercially viable without significantly reducing the park owner's capacity to carry out the park owner's responsibilities under section 17 of the Act. Section 17 includes such matters as maintenance and compliance with the site agreement. This could be seen as a significant imposition on park owners in that they have will have to establish that financial viability of the entire park is threatened before they can obtain a rent increase under the section. However, this is considered justified because most manufactured home owners are retirees living on a limited, fixed income. Site rent increases are an issue of significant concern for home owners. As noted above they have problems in selling or relocating manufactured homes.[187]

Committee consideration

The committee noted the justification provided and, in particular, that 75 per cent of home owners need to agree to a proposed site rent increase and that the park owner may also refer the matter to QCAT, in order to confirm the proposed increase. As advised in the explanatory notes, a park owner will also have to establish that an increase is justified in order to meet their responsibilities under section 17 of the MHRP Act.

Summary of provisions

Clause 6 amends the definition of 'relevant property' in section 156 of the Housing Act. A relevant property is deemed to be property in which the provider has an interest if work of any nature has been carried out in relation to the property using funds entirely or partly provided by a grant, loan or other financial assistance given by the chief executive or the Queensland Housing Commission, for the purpose of providing a relevant housing service.

Clause 7 inserts new section 171 and provides that the commencement of the amendment of the definition of 'relevant property' is taken to have had effect from the commencement of the *Housing and Other Legislation Amendment Act 2013*, which inserted section 156.

Potential FLP issues

In allowing the definition of relevant property to apply retrospectively, clause 7 potentially breaches section 4(3)(g) of the LSA which provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

The explanatory notes acknowledged the potential FLP issue and provided the following justification:

This amendment is consistent with the policy intent that the obligations about transferring or otherwise disposing of relevant assets (which include relevant property) under section 159 will apply to these properties.

The proposed amendment will have retrospective application, with effect from the commencement of the Housing and Other Legislation Amendment Act 2013 which implemented the National Regulatory System for Community Housing Providers (NRSCH) and made registration a condition of funding for community housing services.

[187] Explanatory notes, p 11.

The retrospective application of this amendment is justified on the basis that it removes doubt about the application of section 159 and confirms the original intention of the provisions of the Housing Act.[188]

The explanatory notes stated that section 159 of the Act provides for transitional arrangements for particular accommodation providers.

Committee consideration

The committee noted the justification provided for the retrospective nature of the clause.

Summary of provisions

Clause 33 inserts new section 69 (Notice of increase in site rent) into the MHRP Act. New sections 69A-E insert the following requirements:

- A park owner must ensure the site agreement states the basis for working out the amount of an increase in site rent;
- A park owner is prohibited from working out an increase in site rent using more than one basis at a time. Example - the site rent cannot increase by the CPI and market review at the same time. There cannot be more than one increase per year;
- A park owner must nominate a general increase day when site rents for all eligible sites in the park will be increased on the same basis and state that the next general increase day must be at least 1 year after a general increase day that was stated in a general increase notice given under section 69E;
- If site rent is to be increased by market review, the valuer engaged by the park owner must consult in the way specified in the section with the home owners committee if there is one, and if there is not, with a certain number of home owners as specified by the section; and
- Home owners for eligible sites must, 35 days before an increase, be provided with a notice (called a general increase notice) providing information about the proposed increase and other details. These details include, in the case of a market review, the market valuation by a registered valuer for that review. The notice must also provide information to the home owner about how the home owner can dispute the increase.

Clause 34 inserts new section 70. Section 70(1A) provides that if a home owner disputes the amount of a proposed general site rent increase then the home owner must, within 28 days after receiving the general increase notice, provide the park owner with a dispute negotiation notice. Clause 35 inserts new section 70A and provides that QCAT can appoint an independent valuer in the circumstances set out at section 70A(3).

Potential FLP issues

New section 69 will apply to existing site agreements entered into by home owners with their operator and specifically impose restrictions with respect to rent increases. The effect of section 69 on the terms of site agreements entered into before the Bill's commencement potentially breaches section section 4(3)(g) of the LSA which provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively.

The explanatory notes acknowledged the potential FLPs issue and provided the following justification:

Most manufactured home owners are retirees living on a limited, fixed income. Site rent increases, and, in particular, site rent increases based on a market review of site rents (given their unpredictable outcomes), are an issue of significant concern for home owners.

[188] Explanatory notes, p 9.

Manufactured home owners are in a different situation to renters who can move to other accommodation offering the same or lower rent, relatively quickly and affordably, if their rent is increased beyond what they are able to afford. This contrasts with the situation of manufactured home owners facing site rent increases they cannot afford, who have the choice of attempting to relocate their manufactured home to another residential park, or selling their home on-site to an incoming home owner. Relocating a manufactured home is not a realistic proposition for most manufactured home owners because of the difficulty in finding another site that will accept a relocating home and the difficulty, inconvenience and significant expense involved in removing the home from its site and relocating it. Selling the manufactured home on-site to another home owner can also be problematic because of the time that can be taken to resell the home and the fact that in leaving the residential park, the home owner will face losing a supportive network of home owners. Also, depending on where they relocate to, it may impact on access to service providers, such as health professionals, that the home owner may have established in the locality of the residential park.

The amendments provide that site rent increases can only be worked out on one basis at a time and that site rent can only be increased once, per year. Further, the amendments will provide the QCAT with the capacity to appoint an independent valuer in certain circumstances where the home owner disputes the market review increase, including where the park owner has not consulted with home owners during the market review, or the park owner did not calculate the market review increase in a clear and transparent way or is otherwise unreasonable.

These amendments are arguably retrospective in that they apply to existing site agreements. These amendments are justified on the basis that they provide greater fairness and transparency to home owners while still allowing park owners to make reasonable increases to the site rent that they charge. They are also justified because these provisions should apply in a uniform way to current and new home owners, otherwise these changes would result in different site rents payable, at different times and at different intervals, depending on whether a home owner was in a park before or after the changes were made.[189]

Committee consideration

The committee noted the effect that clause 69 will have on current site agreements:

- in allowing for only one site rent increase in a year, the provisions will likely benefit owners of manufactured homes, and
- by providing a protection, being that should the matter be referred to QCAT, an independent valuer may be appointed to determine whether the increase is fair and reasonable.

Summary of provisions

Clause 109 amends section 63 of the RV Act.

Section 63(1) provides that a scheme operator must pay the exit entitlement of the former resident to the person entitled to receive it on or before the earliest of the following days:

(a) the day it must be paid under the former residents residence contract;

(b) the day that is 14 days after the settlement day;

(c) the day that is 18 months after the termination date or any later day fixed by the tribunal by an order under section 171A.

The explanatory notes advised that the clause will operate retrospectively, as it will apply to contracts entered into before commencement:

[189] Explanatory notes, pp 9-10.

This amendment will apply to existing residence contracts, but with a prospective focus. Where a resident has already left a village, the 18 month period for payment of the exit entitlement will commence from the date of assent of the amendment, not the date of the resident's departure. The retrospective operation of this clause raises a potential breach of fundamental legislative principles, because it applies to residence contracts entered by scheme operators and retirement village residents prior to commencement of the amendments.[190]

Potential FLP Issue

The application of clause 109 to existing contracts potentially breaches section 4(3)(g) of the LSA, which provides that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively.

The explanatory notes provided the following justification for the clause:

It is considered that retrospectivity is justified in this instance because the issue of residents being unable to access their exit entitlement when units remain unsold after a long period of time, was one of the most common complaints expressed by retirement village residents during the review of the RV Act. If the proposal was implemented only prospectively, it would create different protections for residents, depending on whether they entered the village before or after the amendment was made. This would create significant inequity. If the provision only applied to new retirement village residents, scheme operators would have an incentive to focus on the resale of units to which the 18 month exit entitlement payment obligation applied, which would further disadvantage those departed residents whose units remained unsold for a significant period of time.

The impact on operators is mitigated by the right provided to them to avoid repayment if this causes the operator hardship. This may be the case where there are small villages located in regional areas where the number of seniors looking to move into a retirement village is low. Further, for residents who have already left their village, the 18-month period will commence from the date of assent, not the date they left.

These amendments will be an important way to provide existing and prospective retirement village residents with greater confidence in their choice of accommodation, and operators will likely benefit when this problem is addressed, given the issue of residents not receiving their exit entitlement for prolonged periods has a negative impact on the reputation of the retirement village industry.[191]

Committee consideration

The committee noted the justification provided in the explanatory notes, being that the clause is designed to provide consistency for all residents. The committee also noted that should the clause not operate retrospectively it will create different protections for residents, depending on whether they entered a retirement village before or after the amendment. The committee further noted that a protection is provided for operators in that they can avoid payment to an owner should it cause them undue hardship.

3.1.2 Institution of Parliament

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

Summary of provisions

Clauses 43, 57 and 82 allow for certain matters to be prescribed by regulation.

[190] Explanatory notes, p 10.

[191] Explanatory notes, p 10-11.

Clause 43 inserts new section 86A into the MHRP Act and provides that a park owner for a residential park must ensure an emergency plan is prepared for the park. Section 86A(1)(a)-(c) sets out the emergency procedures that an emergency plan must contain. Section 86A(1)(d) provides that an emergency plan can include any other relevant matter prescribed by regulation.

Clause 57 inserts new schedule 1 into the MHRP Act, which sets out the disclosure documents which must be given to a prospective home owner. Section 1(d) of the schedule allows for other information (if any) to be prescribed by regulation that is relevant for a prospective home owner entering into a site agreement or a seller assigning the seller's interest in a site agreement to a buyer.

Clause 82 inserts section 17A (Prescribed minimum housing standards) into the RTRA Act. Section 17A(2) provides that a regulation may prescribe minimum housing standards for:

(a) a residential premises let, or to be let, under a residential tenancy agreement; or

(b) a rental premises; or

(c) inclusions for premises; or

(d) facilities in a moveable dwelling park (park facilities).

Section 17A(5) provides that a regulation may prescribe how compliance with minimum housing standards is to be monitored and enforced.

Potential FLP issues

Clauses 43, 57 and 82 allow for potentially significant matters to be prescribed by regulation. It may be argued that, given the importance of these matters, they should be set out in the primary Act and not a regulation. As such, these clauses potentially breach:

- section 4(4)(a) of the LSA, which requires that a Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons, and
- section 4(5)(c) of the LSA, which provides that subordinate legislation should contain only matters appropriate to that level of legislation.

In relation to clause 82, the explanatory notes provided the following justification:

> *Establishing a clear head of power in the primary legislation to prescribe particular minimum housing standards is justified due to the detailed and technical nature of describing the relevant standards. The potential breach of the fundamental legislative principle is mitigated by:*
>
> - *the new provisions setting out in considerable detail examples of the minimum housing standards able to be prescribed;*
> - *the process of specifying the particular minimum standards to be imposed by regulation will be conducted in accordance with the rigorous analysis, as well as community and industry consultation requirements of the Statutory Instruments Act 1992; and*
> - *any regulation prescribing minimum housing standards will be subject to potential disallowance by the Legislative Assembly under section 50 of the Statutory Instruments Act 1992.*[192]

Committee consideration

In relation to clause 82, the committee noted the justification provided, being that the matters to be prescribed are detailed and of a technical nature, best suited for implementation by regulation. The committee also noted that all proposed regulations will come before the committee for consideration and be subject to disallowance.

[192] Explanatory notes, p 12.

Summary of provisions

Clause 56 inserts new section 186 into the MHRP Act, providing a transitional regulation making power. Similarly, **clause 150** inserts a transitional regulation making power at section 237P of the RV Act.

Section 186(1) provides that a regulation may make provision of a saving or transitional nature about a matter for which:

(a) it is necessary to make provision to allow or facilitate the transition from the operation of the pre-amended Act to the operation of the amended Act; and
(b) this Act does not make provision or sufficient provision.

Pursuant to section 186(2), a transitional regulation may have retrospective operation to a day not earlier than the day section 186 commences and also must declare that it is a transitional regulation, by way of section 186(3). Section 186(4) provides that the section, and any transitional regulation, expire 1 year after the day the section commences.

New section 237P of the RV Act mirrors the provisions of section 186.

Potential FLP issues

The former Scrutiny of Legislation Committee had stated the view that it is an inappropriate delegation to provide that a regulation may be made about any matter of a savings, transitional or validating nature 'for which this part does not make provision or enough provision' because this anticipates that a bill may be inadequate and that a matter, which otherwise would have been of sufficient importance to be dealt with in the Act, will now be dealt with by regulation.[193]

The explanatory notes provided the following justification for the clauses:

> *While a provision of this kind implies a regulation may be made about a matter that otherwise would have been dealt with in the Act, the concern is mitigated by the inclusion of a one year sunset clause on both the empowering provision and any regulation made under it. Further, any regulation prescribing a transitional regulation will be subject to potential disallowance by the Legislative Assembly under section 50 of the Statutory Instruments Act 1992.*
>
> *Such a measure is required to manage the risk of issues that may emerge after the amendments commence, as manufactured home owners and park owners (in the case of the amendments to the MHRP Act) and retirement village residents and retirement village scheme operators (in the case of the amendments to the RV Act) transition into the new schemes, given the complexity of the legislation and the role it plays in ensuring the residential park and retirement village models operate fairly and in a way that causes minimal disruption.*[194]

Committee consideration

The committee noted the justification provided in the explanatory notes, being that the regulation power for both sections contains a one year sunset clause and will also be subject to disallowance.

193 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook,* p.161.

194 Explanatory notes, p 13.

3.2 Proposed new and amended offence provisions

Clause	Offence	Proposed maximum penalty
19	**Amendment of *Manufactured Homes (Residential Parks) Act 2003*** **Replacement of section 29 Disclosure documents to be given to prospective home owner** (1) The park owner for a residential park must not enter into a site agreement for a site in the park with a prospective home owner unless the park owner has complied with subsections (2) and (3). *Note—* For another possible consequence of not complying with this section, see section 33.	200 penalty units
27	**Insertion of new section 45A Disclosure documents to be given to buyer** (1) The park owner for a residential park must, within 7 days after receiving the notice mentioned in section 45, give the documents mentioned in schedule 1 for the site to the buyer. *Note—* See also section 48A under which the park owner is required to give the disclosure documents for the site to the buyer within a stated period before consenting to the assignment of the seller's interest.	20 penalty units
29	**Insertion of new section 48A Buyer to be given disclosure documents before park owner consents** The park owner must not consent to the assignment of the seller's interest to the buyer unless the park owner has given the buyer the disclosure documents for the site— (a) at least 21 days before giving the consent (the ***default notice period***); or (b) if under section 48B the buyer waives the right to be given the disclosure documents in the default notice period—at least 7 days before giving the consent. *Note—* For another possible consequence of not complying with this section, see section 51A.	200 penalty units
32	**Insertion of new section 51A Cooling-off period for assignment agreement** (1) This section applies if— (a) the seller and buyer have entered into an assignment agreement; and (b) the park owner consents to the assignment of the seller's interest to the buyer. (2) The buyer may, within the cooling-off period, give the park owner and seller a signed notice stating the assignment agreement is terminated. (3) The notice must state the day, within 28 days after the notice is given, the termination takes effect (the ***termination day***). (4) The buyer may terminate the assignment agreement under subsection (2) even though—	100 penalty units

	(a) the buyer has affirmed the agreement; and (b) the agreement and the form of assignment of the seller's interest have been fully executed. (5) If the assignment agreement is terminated under subsection (2)— (a) the form of assignment of the seller's interest is taken to be revoked; and (b) the buyer is not liable to pay any amount otherwise payable under the agreement by the buyer to the seller. (6) If the assignment agreement is terminated under subsection (2), the seller must, within 14 days after the termination day, refund any amount received under the agreement from the buyer.	
32	**Insertion of new section 51C Restriction on sale agreement** The seller must not complete the sale agreement unless— (a) the park owner— (i) has consented to the assignment of the seller's interest in the site agreement to the buyer under section 48(2) or 50(5); or (ii) is taken to have consented to the assignment under section 50(6); and (b) the buyer has been given the disclosure documents for the site as required under— (i) section 48A(a) or (b); or (ii) an order made under section 50(4).	5 penalty units
32	**Insertion of new section 51D Automatic ending of sale agreement** (1) This section applies if the buyer terminates the assignment agreement under section 51A. (2) The sale agreement is taken to be at an end on the day the termination of the assignment agreement takes effect. (3) Also, on the ending of the sale agreement under subsection (2), ownership of the home reverts to the seller. (4) Subsections (2) and (3) apply even though— (a) the buyer has affirmed the sale agreement; and (b) the sale agreement has been fully executed. (5) The seller must, within 14 days after the ending of the sale agreement under subsection (2), pay the refundable amount as follows— (a) first, if all or part of the refundable amount is owing to a person under a security interest registered for the home under the *Personal Property Securities Act 2009* (Cwlth)—in payment of the amount owing under the security interest; (b) second, in payment of any balance to the buyer.	100 penalty units
33	**Insertion of new section 69E Notice of general increase in site rent** (3) The park owner must ensure the general increase notice also states that if the home owner disputes the amount of the proposed increase:	100 penalty units

	(a) the home owner must, within 28 days after receiving the notice, give the park owner a dispute negotiation notice for the dispute; and (b) the home owner must use the dispute resolution procedures under part 17, division 1 to try to resolve the dispute with the park owner; and **(c)** the home owner may, subject to section 116, apply to the tribunal for an order reducing the amount of, or setting aside, the increase if the dispute cannot be resolved using the dispute resolution procedures.	
43	**Insertion of new section 86A Preparing, maintaining and implementing emergency plan** (1) The park owner for a residential park must ensure an emergency plan is prepared for the park, providing for the following— (a) emergency procedures, including— (i) an effective response to an emergency; and (ii) procedures for evacuating home owners and other residents from the park; and (iii) notifying emergency service organisations at the earliest opportunity; and (iv) arranging for medical treatment and assistance; and (v) effective communication between the person authorised by the park owner to coordinate the emergency response and the home owners and other residents of the park; (b) testing of the emergency procedures, including the frequency of testing; (c) information, training and instruction to the home owners and other residents of the park about implementing the emergency procedures; (d) another relevant matter prescribed by regulation.	20 penalty units
43	(2) The park owner must— (a) maintain the emergency plan for the residential park so that the plan remains effective; and (b) implement the emergency plan in the event of an emergency.	20 penalty units
45	**Insertion of new section 87A Park owner not to restrict a visitor of a home owner or other resident** (1) The park owner for a residential park must not restrict a visitor in visiting a home owner or other resident at the site or in a common area in the park, if the visitor— (a) is providing, or intending to provide, a health or community service to the home owner or other resident; and (b) is suitably qualified to provide the service.	20 penalty units
	(2) The park owner for a residential park must not restrict a visitor, other than a visitor mentioned in subsection (1), in visiting a home owner	

	or other resident at the site or in a common area in the park, unless the park owner has a reasonable excuse. *Example of a reasonable excuse—* A park owner may have a reasonable excuse to restrict a visitor in visiting a home owner or other resident if the visitor was interfering with the reasonable peace, comfort or privacy of another home owner or resident of the park.	20 penalty units
46	**Amendment of section 89 (Notice board)** (4) The park owner must make all reasonable attempts to display on the notice board— (a) either— (i) the park rules as currently in force; or (ii) information about how and where a home owner may obtain a copy of the park rules as currently in force, free of charge; and (b) information of the type prescribed under subsection (3) during the prescribed period for displaying information of that type.	5 penalty units
50	**Amendment of section 100(2A) Establishment of committee** (2A) The park owner for a residential park must not restrict the home owners for the park from establishing a home owners committee.	20 penalty units
51	**Insertion of section 102(2) Committee's function** (2) The park owner must not restrict— (a) a home owners committee from performing the committee's function under subsection (1); or (b) a home owner who is a member of a home owners committee from performing the member's functions as a member of the committee.	20 penalty units
53	**Insertion of new section 113 No official record of mediation conference** (1) A person must not make a record of anything said at a mediation conference. (2) However, the mediator does not contravene subsection (1) if the mediator— (a) makes notes during the mediation conference the mediator considers appropriate and destroys them at the end of the mediation; or (b) records an agreement under section 112(2).	40 penalty units
71	**Amendment of *Residential Services (Accreditation) Act 2002*** **Insertion of section 69(1A) Notice of other changes** (1A) An associate of a service provider for a registered service must give the chief executive a notice, in the approved form, within 30 days after becoming aware there is a change in the associate's criminal history, unless the associate has a reasonable excuse.	100 penalty units

75	**Insertion of new section 81A Notification of death of resident** (1) This section applies to a service provider for a residential service that is accredited at level 3 if a resident in the service dies. (2) The service provider must give the chief executive a notice, in the approved form, within 7 days after becoming aware of the death, unless the service provider has a reasonable excuse.	50 penalty units
96	**Amendment of *Retirement Villages Act 1999*** **Replacement of section 38 Chief executive may apply for order appointing a manager of a retirement village** (1) The chief executive may apply to the District Court for a management order if the chief executive reasonably believes— (a) the scheme operator has not complied with section 40A(2), 40B(1), 40F(1) or (2), 41C(2), 41D(1), 41H(1) or (2), 113D or 113H(1) or (2); or (b) the order is otherwise necessary to protect the interests of residents of a particular retirement village. (2) In urgent circumstances— (a) the application may be made ex parte; and (b) the management order may be made on an interim basis. (3) If the court makes a management order, it may, at any time, make any ancillary order it considers necessary to support the management order. (4) A manager appointed under a management order must, at the request of the chief executive, report to the chief executive about how the manager has exercised, or will exercise, functions of the scheme operator under the order.	100 penalty units
99	**Insertion of new section 40A Notice about cancelling registration** (1) This section applies if a scheme operator proposes to close a retirement village scheme. (2) The operator must give the chief executive notice about the proposal in the approved form.	100 penalty units
	Insertion of new section 40B Requirement to prepare closure plan (1) The scheme operator must, within 28 days of giving a notice under section 40A(2) (the ***notice period***) or any extension of the notice period granted under subsection (3), give each resident of the retirement village— (a) a proposed closure plan for the retirement village scheme; and (b) a notice (a ***residents meeting notice***), in the approved form, that states— (i) if the proposed closure plan is not approved under section 40D(1)(a), within a stated reasonable period that is not less than 21 days after the giving of the residents meeting notice, the scheme operator may apply to the chief executive for approval of the proposed closure plan under section 40D(1)(b); and	100 penalty units

	(ii) if the chief executive approves the proposed closure plan under section 40D(1)(b), a resident may apply to the tribunal for a review of the decision under section 41A.	
99	**Insertion of new section 40F Requirement to implement approved closure plan** (1) A scheme operator must, when closing a retirement village scheme, comply with an approved closure plan for the retirement village scheme.	100 penalty units
99	(2) The scheme operator must, at the request of the chief executive, notify the chief executive about how the approved closure plan is being implemented by the scheme operator.	100 penalty units
99	**Insertion of new section 40G Discontinuing closure of retirement village scheme** (1) This section applies if— (a) a scheme operator has given a notice to the chief executive under section 40A(2); and (b) the scheme operator decides not to proceed with the closure of the retirement village scheme. (2) The operator must give the chief executive, and each resident of the retirement village, notice (a ***notice of discontinuation***) of the decision in the approved form.	100 penalty units
101	**Insertion of section 41C Notice about change of scheme operator** (1) This section applies if a scheme operator (the ***existing scheme operator***) proposes to transfer control of a retirement village scheme's operation to another person (the ***new scheme operator***). (2) The existing scheme operator must give the chief executive notice about the proposal in the approved form.	100 penalty units
101	**Insertion of section 41D Requirement to prepare transition plan** (1) The existing scheme operator must, within 28 days of giving a notice under section 41C(2) (the ***notice period)*** or any extension of the notice period granted under subsection (3), give the chief executive a proposed transition plan for the change of scheme operator.	100 penalty units
101	**Insertion of section 41H Requirement to implement approved transition plan** (1) The existing scheme operator and new scheme operator must, when transitioning control of the scheme's operation from the existing scheme operator to the new scheme operator, comply with an approved transition plan for the retirement village scheme.	100 penalty units
101	(2) The existing scheme operator and new scheme operator must, at the request of the chief executive, notify the chief executive about how the approved transition plan is being implemented.	100 penalty units
101	**Insertion of section 41I Discontinuing change of scheme operator** (1) This section applies if—	

	(a) an existing scheme operator has given a notice to the chief executive under section 41C(2); and (b) the existing scheme operator and the new scheme operator decide not to proceed with the transfer of the control of the retirement village scheme's operation. (2) The existing scheme operator must give the chief executive notice (a ***notice of discontinuation***) of the decision in the approved form.	100 penalty units
101	**Insertion of section 41J Effect of change of scheme operator** (1) This section applies if control of a retirement village scheme's operation is transferred (the ***transfer***) from an existing scheme operator to a new scheme operator. (2) Within 14 days after the transfer takes effect, the new scheme operator must give, to each resident of the retirement village, a notice stating— (a) the scheme operator for the retirement village scheme has changed; and (b) the name, address and telephone number of the new scheme operator; and (c) the date the transfer took effect.	10 penalty units
103	**Amendment of section 45 Content of residence contract** (2) A regulation may prescribe a term that must be included in a residence contract (a ***required term***) or that must not be included in a residence contract (a ***prohibited term***). (3) A scheme operator must not enter into a residence contract that— (a) is not in the approved form; or *Note—* See section 227AA(2). (b) does not include details required under subsection (1); or (c) does not include a required term; or (d) includes a prohibited term.	100 penalty units
109	**Amendment of section 63 When former resident's exit entitlement payable** (1) The scheme operator must pay the exit entitlement of the former resident to the person entitled to receive it on or before the earliest of the following days— (a) the day it must be paid under the former residents residence contract; (b) the day that is 14 days after the settlement day; (c) the day that is 18 months after the termination date or any later day fixed by the tribunal by an order under section 171A.	540 penalty units
118	**Replacement of section 74 Village comparison documents** (1) The purpose of a village comparison document is to give general information about a retirement village scheme to potential residents of the retirement village, including information about—	50 penalty units

	(a) available types of accommodation, facilities and services; and (b) amounts payable by or to residents, the scheme operator and other persons. (2) A village comparison document must— (a) be in the approved form; and *Note—* See section 227AA(2). (b) contain the information prescribed by regulation. (3) On registration of a retirement village scheme, the document lodged with the application for registration under section 27(2)(b) becomes the village comparison document for the scheme. (4) Immediately after becoming aware of a material change to any of the information in the village comparison document for a scheme, the scheme operator must amend the document so it contains the correct information.	
118	(5) Within 28 days after amending a village comparison document because of a material change to any of the information in the document, the scheme operator must give the chief executive written notice of the amendment.	540 penalty units
118	(6) The scheme operator for a retirement village scheme must— (a) publish the village comparison document on the scheme's website so the document, or a link to the document, appears prominently on each page of the website that contains, or has a link to, marketing material for the scheme; and (b) ensure any promotional material for the scheme that is given to a person, other than as part of a general distribution of the material in a mail-out or other way, is accompanied by a copy of the village comparison document for the scheme; and (c) give a copy of the village comparison document for the scheme to a prospective resident within 7 days of receiving a request from the prospective resident. (7) Subsection (6)(b) and (c) does not apply to a person to whom a copy of the village comparison document for the scheme has previously been given if there have been no material changes to the document since the copy was given to the person. (8) In this section— ***give*** includes send by email, facsimile or other electronic means.	(a) for paragraphs (a) and (b)—50 penalty units; or (b) for paragraph (c)—120 penalty units.
118	**Replacement of section 75 Prospective costs documents** (1) The purpose of a prospective costs document is to give to a prospective resident of a retirement village a summary of the estimated costs of moving into, living in and leaving the retirement village. (2) A prospective costs document must— (a) be in the approved form; and Note— See section 227AA(2).	120 penalty units

	(b) contain the information prescribed by regulation. (3) If a prospective resident asks a scheme operator for a prospective costs document, the operator must prepare and give to the prospective resident a prospective costs document within 7 days after receiving from the prospective resident any information that the operator needs to complete the document. (4) Subsection (3) does not apply to a person to whom a prospective costs document has previously been given if there have been no material changes to the information required to be included in the document since it was last given to the person. (5) In this section— ***give*** includes send by email, facsimile or other electronic means.	
118	**Replacement of section 76 Condition reports at start of residency** (1) The scheme operator for a retirement village scheme must not permit a prospective resident to start occupying an accommodation unit under a residence contract unless the operator has— (a) under subsection (2), inspected the unit and completed a report in the approved form describing its condition; and *Note—* See section 227AA(2). (b) signed the report; and (c) given a copy of the signed report to the prospective resident.	20 penalty units
118	(6) If the resident returns the copy of the report to the operator under subsection (4), the operator must make a copy of the report and return it to the resident within 14 days.	20 penalty units
118	(7) The operator must keep, at least until 2 years after the resident's termination date under section 56— (a) the signed copy of the report returned to the operator by the resident; or (b) if the resident does not return a signed copy—another copy of the report.	20 penalty units
118	**Replacement of section 77 Condition reports at end of residency** (1) Within 14 days after a resident's termination date under section 56, the scheme operator must— (a) inspect the former resident's accommodation unit and complete a report in the approved form describing its condition; and *Note—* See section 227AA(2). (b) sign the report; and (c) give a copy of the signed report to the former resident.	20 penalty units
118	(2) The former resident must— (a) sign the report; and	20 penalty units

	(b) if the former resident does not agree with the report—show the parts of the report the former resident disagrees with by marking the copy in an appropriate way; and (c) return the copy to the operator. (3) If the former resident returns the copy of the report to the operator under subsection (2), the operator must make a copy of the report and return it to the former resident within 14 days.	
118	(4) The scheme operator must keep, at least until 2 years after the resident's termination date under section 56— (a) the signed copy of the report returned to the operator by the former resident; or (b) if the former resident does not return a signed copy—another copy of the report.	20 penalty units
119	**Replacement of section 84 Relevant information documents to be given to prospective residents** (1) A scheme operator must not enter into a residence contract for the village with a person unless, at or before the prescribed time under subsection (5), the scheme operator has given the person a copy of each of the following documents— (a) the residence contract; (b) the village comparison document for the scheme; (c) a prospective costs document for the residence contract; (d) any by-laws for the village in force under section 130; (e) any other document prescribed by regulation.	200 penalty units
119	(2) If there is a change, other than a minor change, in any of the information given to a person in a document under subsection (1) before the operator and the person enter into the contract, the scheme operator must give the details of the change to the person at or before the prescribed time under subsection (5).	200 penalty units
119	**Replacement of section 85 Access to operational documents by residents and prospective residents** (1) A regulation may prescribe the documents (***operational documents***), relating to the operation of a retirement village scheme, that may be accessed under this section. (2) A resident or prospective resident may ask the scheme operator to allow the person to inspect, or take a copy of, an operational document. (3) The request must— (a) be written; and (b) state— (i) the person's name; and (ii) whether the person is a resident or a prospective resident; and	120 penalty units

	(iii) a reasonable time, at least 7 days after the request is given to the scheme operator, for the person's access to the document; and (c) be accompanied by any fee prescribed by regulation. (4) Subject to subsections (5) and (6), the scheme operator must comply with the request. (5) The scheme operator must not give the person any personal information about another person. (6) The scheme operator is not required to comply with the request so far as it relates to an operational document if— (a) within 30 days before the request was made, the scheme operator complied with another request by the person to inspect, or take a copy of, the same operational document; and (b) there have been no material changes to the document since the operator complied with the other request.	
120	**Amendment of section 86 False or misleading documents** (1) A scheme operator must not give information (orally or in writing) that the scheme operator knows is false or misleading to— (a) the chief executive; or (b) a resident or prospective resident.	200 penalty units
125	**Amendment of section 99 (Maintenance reserve fund budget)** (1) The scheme operator must adopt a budget for the maintenance reserve fund (a ***maintenance reserve fund budget***) for each financial year that— (a) is in the approved form; and *Note—* See section 227AA(2). (b) subject to subsection (2), is consistent with, and implements any recommendations in, the quantity surveyor's report obtained under section 98(1). (1A) Subsection (1)(b) does not apply to the scheme operator to the extent of any part of the maintenance reserve fund budget that has been agreed to by the residents by special resolution at a residents meeting.	200 penalty units
125	(5) Scheme operator must comply with a notice from the residents committee. [previously there was no penalty for non-compliance] *insert—* Maximum penalty—200 penalty units.	200 penalty units
127	**Insertion of new section 102AA General services charges fund** (1) A scheme operator must establish and keep a fund for general services. (2) The scheme operator must not use an amount standing to the credit of the fund for a purpose other than providing general services.	540 penalty units

129	**Amendment of section 103 Working out and paying charges for general services for residents** (7) The scheme operator must not include, or provide for, in a general services charge an amount or component, however described, that is payable for or towards— (a) costs awarded by the tribunal against the scheme operator; or (b) legal costs incurred by the scheme operator in relation to a retirement village issue.	200 penalty units
132	**Replacement of section 106 Increasing the total general services charge** (1) This section limits the amount (the ***total general services charge***), fixed by the scheme operator of a retirement village under section 102A in the general services charge budget for a financial year, that is to be raised by imposing a general services charge on each resident in the village for the financial year. (2) A scheme operator must not fix a total general services charge for a financial year at an amount that is an increase on the amount of the total general services charge for the previous financial year of more than the CPI percentage increase. (3) Subsection (2) does not apply to the operator to the extent the increase in the total general services charge— (a) has been agreed to by the residents by special resolution at a residents meeting; or (b) is allowed under section 107.	200 penalty units
136	**Replacement of section 112 Quarterly financial statements** (1) A resident may ask the scheme operator for a quarterly financial statement for— (a) 1 or more completed quarters of the current financial year; or (b) 1 or more quarters of the last 2 completed financial years. (2) Within 28 days after receiving the request, the scheme operator must give the resident a quarterly financial statement for each quarter that— (a) lists, for the quarter, the income of, and expenditure from— (i) the capital replacement fund; and (ii) the maintenance reserve fund; and (iii) the general services charges fund; and (b) has been audited or is in a form that is capable of being audited; and (c) is in the approved form. *Note—* See section 227AA(2). (3) This section does not prevent the scheme operator giving a resident a quarterly financial statement for a quarter other than a quarter mentioned in subsection (1).	100 penalty units

136	**Section 112A Explanation of increase in general service charge** (1) This section applies if there is an increase in the expenditure involved in providing a general service that varies from the expected expenditure for the general service in the general services charge budget. (2) The residents committee may ask the scheme operator for an explanation for the increase. (3) As soon as practicable after receiving the request, the scheme operator must give the committee a document that explains the increase.	100 penalty units
138	**Section 113D Requirement to prepare redevelopment plan** The scheme operator must give each resident of the retirement village— (a) a proposed redevelopment plan relating to the running redevelopment; and (b) a notice (a residents ***meeting notice***), in the approved form, that states— (i) if the proposed redevelopment plan is not approved under section 113F(1)(a), within a stated reasonable period that is not less than 21 days after the giving of the residents meeting notice, the scheme operator may apply to the chief executive for approval of the proposed redevelopment plan under section 113F(1)(b); and (ii) if the chief executive approves the proposed redevelopment plan under section 113F(1)(b), a resident may apply to the tribunal for a review of the decision under section 113J.	100 penalty units
138	**Section 113H Requirement to implement approved redevelopment plan** (1) A scheme operator must, when carrying out a running redevelopment of a retirement village, comply with an approved redevelopment plan for the running redevelopment.	100 penalty units
138	(2) The scheme operator must, at the request of the chief executive, notify the chief executive about how an approved redevelopment plan is being implemented by the scheme operator.	100 penalty units
138	**Section 113I Discontinuing running redevelopment of retirement village** (1) This section applies if— (a) a scheme operator has complied with section 113D in relation to a running redevelopment; and (b) the scheme operator decides not to proceed with the running redevelopment. (2) The operator must give the chief executive, and each resident of the retirement village, notice (a ***notice of discontinuation***) of the decision in the approved form.	100 penalty units

3.3 Explanatory notes

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Committee consideration

The committee noted that the explanatory notes were tabled with the introduction of the bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the bill's aims and origins.

Appendix A – List of submissions

Sub #	Submitter	Sub #	Submitter
001	Richard Pinsent	033	Colin Cook
002	Home Owners Committee Pine Village	034	Palmwoods Tropical Village
003	Associated Residential Parks Queensland Inc.	035	Dr Lucy Cradduck and Dr Andrea Blake
004	Ian Hopkins	036	Les Ambor
005	Ann Briggs	037	Lee Matahaere
006	Angela Ballard	038	Property Owners' Association of Queensland
007	Real Estate Excellence Academy	039	BRT Village Homeowners Association
008	John Low	040	Ecolateral
009	Tom Greber	041	Hazelmere Village Home Park
010	Paul Taggert	042	Barbara and David Purcell
011	Graeme and Betty-Anne Ashworth	043	Hilton Conroy
012	David Ireland	044	Gaye Nicolson
013	Maria Milic	045	Roma Brettell
014	Joanne Wheeler and Arch Morrison	046	Christopher and Christine Burgess
015	Heart Legal	047	Ken and Rhona Collinson
016	Sheila Liley	048	Gordon Murray
017	Confidential	049	Sandra Nixon
018	Ed Nixon	050	Glen Oliver
019	Daniel Swiety	051	Halcyon Landing Home Owners Committee
020	Anne Lewis	052	June Cotterell
021	Joanne Wheeler	053	Strata Community Australia
022	Don Ehrlich	054	Paul and Jackie Lawson
023	Graham George	055	Regal Waters Residents' Association Inc.
024	John and Ngaire McGuinness	056	Craig Burgess
025	Valerie Wiltshire	057	Moreton Bay Regional Council
026	Paul Miller	058	Bush Oasis Caravan Park
027	Graham Niven	059	Colleen Arnfield
028	David Mainwaring	060	Chris and Su Agate
029	Confidential	061	Confidential
030	Monica Taylor	062	Confidential
031	Valerie Wiltshire		
032	Stan Stutz		

063	Julia Ford and Jennifer Holden
064	Kurrajong Sanctuary/Bindawalla Gardens Home Owners' Association
065	Renaissance Retirement Living
066	Caravan Industry Association of Australia
067	Brian Wood
068	Caravan Parks Association of Queensland
069	Brisbane Holiday Village
070	Leading Age Services Australia
071	Churches of Christ in Queensland
072	Real Estate Institute of Queensland
073	Caxton Legal Centre
074	Helen Underwood
075	Sandra Woodbridge
076	Urban Development Institute of Australia Queensland
077	Pradella Property Ventures
078	Tenants Queensland Inc.
079	Community Legal Centres Queensland
080	Queensland Council of Social Service
081	Anita Lazzarin
082	TriCare
083	Susan Grady
084	Lend Lease
085	Private
086	Aveo
087	Wim Boog
088	Walter Smith
089	Property Council of Australia
090	Stockland
091	CHPs for Qld
092	Alex Whitney
093	Queensland Law Society
094	Ray Toomey
095	Palm Lake Group
096	Stephen Strachan

Appendix B – List of witnesses at public briefing – 23 August 2017

Department of Housing and Public Works

- Ms Liza Carroll, Director General
- Ms Christine Castley, Deputy Director General, Housing and Homelessness Services
- Ms Trish Wooley, General Manager, Strategy and Policy Division, Housing and Homelessness Services
- Mr Damian Sammon, Director, Regulated Services Policy and Legislation, Strategy and Policy Division, Housing and Homelessness Services

Appendix C – List of witnesses at public hearings

11 September 2017 - Bethania

Associated Residential Parks Queensland

- Graham Marriott

Harbourside Home Owners Committee

- Robin Aarons – Liaison Representative

Regal Waters Residents' Association Inc.

- Roger Marshall – Secretary
- Noel Wright
- Gerry Kluyt

Regal Waters

- Paul Miller – Resident

Brisbane Holiday Village

- Ken Illich - Chief Executive Officer
- Geoff Illich – General Manager

Renaissance Retirement Living

- Ross Campbell

Palm Lake Group

- Manuel Lang, Chief Executive Officer

12 September 2017 – Kallangur

Pine Village Home Owners Committee

- Barbara Bowtell – Secretary

Halcyon Landing Home Owners Committee

- Them Themsen – Secretary
- John Tucker – President

Palm Lake Resort Deception Bay Residents Committee

- Stanley Stutz – President
- David Mainwaring – Past President

Palm Lake Resort Deception Bay

- Tom Greber – Resident
- Ray Toomey – Resident

Buderim Gardens Retirement Village

- Arch Morrison – Resident

Aveo Albany Creek

- Les Ambor - Resident

North Lakes Retirement Resort

- John and Ngaire McGuinness – Residents

13 September 2017 – Brisbane

Tenants Queensland Inc.

- Chris Freney – QSTARS Services Delivery Manager
- Evania Johns – Legal Services Officer

Leading Age Services Australia

- Stuart Lowe – Partner, Mullins Lawyers

Caxton Legal Service Inc

- Brittany Smeed – Lawyer - Park and Village Information Link service

TriCare

- Peter O'Shea - Director

Aveo

- Angela Buckley – Executive General Manager
- Mark Eagleston – Territory Operations Manager

Community Housing Providers for Queensland

- Josephine Ahern - Chair, Board of Directors

Real Estate Institute of Queensland

- Sean Roberts – Legal Counsel

Property Owners' Association of Queensland

- Margaret Price – President
- Roslyn Wallace - Secretary

Property Council of Australia

- Nathan Percy – Policy Advisor

Caravan Parks Association of Queensland

- Michelle Weston – General Manager

Lendlease

- Ann Holzer – General Manager, Village Management NSW/ACT & QLD Retirement Living
- Wai See Chung, Head of Legal and Company Secretary, Retirement Living

Urban Development Institute of Australia (Queensland)

- Martin Zaltron – Manager of Policy
- Anthony Pitt – Special Counsel, Hopgood Ganim

Pradella Property Ventures

- Philip Goodman - CEO

Stockland

- Stephen Bull – Group Executive and CEO, Retirement Living
- Aileen Stewart – Regional Manager Operations – Retirement Living QLD/NSW/ACT
- Clayton Severino – Senior Manager, Legal Group – Retirement Living

Strata Community Australia (Qld)

- James Nickless – Clarke Kann Lawyers & SCA (QLD) Board Director, Member - Legislation Committee

Department of Housing and Public Works

- Christine Castley - Deputy Director, General Housing and Homelessness Services
- Trish Wooley - General Manager, Strategy Policy and Programs
- Damian Sammon – Director, Strategy Policy and Programs

Statement of Reservation

Rob Molhoek MP

MEMBER FOR SOUTHPORT

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27 September 2017

Statement of Reservation
Housing Legislation (Building Better Futures) Amendment Bill 2017

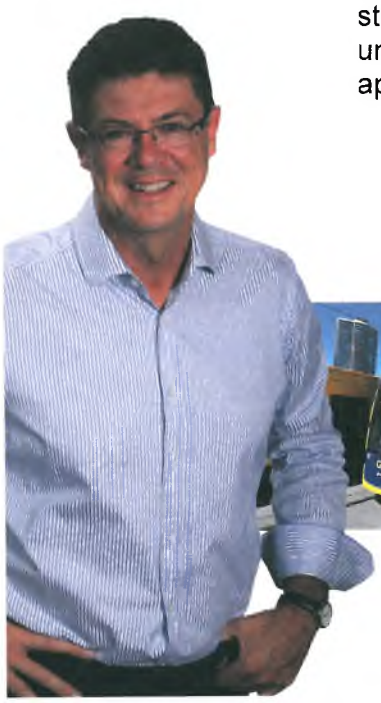
The LNP Members of the Public Works and Utilities Committee hold grave and well-founded concerns with this legislation proceeding. As it stands, the Bill is poorly thought through. It holds real potential to do way more harm than good and from the overwhelming feedback from key stakeholders it's clear our views are not just those of Members of the Opposition.

For a start, the title of the Bill itself is grossly misleading. Should it be passed, it will not be responsible for *Building Better Futures*. Anything but, with many stakeholders describing it as poorly conceived and regulatory over-reach that would do little to redress genuine concerns in residential and mobile parks. Indeed, it had all the potential to cause a flight of investment in the private rental sector and lead to a shortage of rental accommodation. No one doubts that higher costs for compliance will be passed onto tenants.

It must be noted the previous LNP Government undertook a wide-ranging review which examined many similar issues making key recommendations. This review has been sat on by the Minister for the best part of two years and now has resulted in what can only be described as a 'hoax bill' - new laws promising improvements, but in effect delivering more costly regulation and potentially higher rental costs for tenants.

Concerns were raised in many submissions. Both the Property Council of Australia and the Real Estate Institute Queensland (REIQ) do not support the proposed amendments to the *Residential Tenancies and Rooming Act 2008* which give the Minister power to regulate prescribed minimum standards for 'premises'.

> The REIQ noted no such regulation has yet been made publically available for stakeholder review and feedback, stating the REIQ is concerned standards could be applied retrospectively to any 'premises' currently let under the RTA in Queensland. Meaning potentially that regulations could be applied to private homes as well.



While the REIQ welcomed steps by the Government to provide greater certainly and equity to the rights and obligation of both landlords and tenants, it does not support measures which may instead erode landlord rights and undermine investment in the Queensland residential property market.

Australian Bureau of Statistics for Queensland in 2016 show 471,407 dwellings were owned outright; 558,439 were owned with a mortgage; and 566,478 private dwellings were rented. So under the proposed legislation, minimum standards could be imposed retrospectively to 34.2% of all private dwellings in Queensland.

The failure of the Labor Government to specify the minimum housing standards in either the Bill or any accompanying regulation was noted by many stakeholders. The key issue being that higher costs of rental property ownership would be passed onto tenants and that more regulation and uncertainty could result in investors moving to other areas of investment. This could well have the clear, unintended consequence of leading to tighter supply and hence higher rents.

Moreton Bay Regional Council noted "significant concerns with the scope of the prescribed minimum housing" outlined in the new section 17A, as well as the lack of detail on how they are to be applied under regulation. As noted by MBRC: "It is very difficult to consider the precise impact of these proposed housing standards when much of the detail is yet to be released".

In a particularly damning comment, MBRC noted "affordability of residential rental accommodation is likely to be a casualty of the new requirements, and it (Bill) will be contrary to the State interest of 'housing affordability' under the *State Planning Policy*." MBRC warns: "Introducing another layer of regulation will invariably be accompanied by additional costs."

The Property Owners' Association of Queensland was concerned about the *Residential Tenancies and Rooming Act 2008*:

> *"Whilst we agree that all rental properties have sanitation, drainage and be of suitable standards for renting, the proposed minimum standards as outlined in this Amendment Bill go beyond that. We consider that some of the standards suggested are an upgrade of the property. At the moment, there is an oversupply of properties available for rent. Lessors have dropped the rent accordingly to suit the requirements of renters in the hope of finding a tenant. Tenants should not expect to rent a property for a weekly rent suitable for them at the time of inspection, then to demand an upgrade of the property during the tenancy and not expect to have the weekly rent increased. If the proposed amendments are introduced it will lead to an increase in disputes between lessors and tenants resulting in an explosion of costs for both the Residential Tenancies Authority, Queensland Civil Administration Tribunal and the Magistrate's Courts."*

The Property Owners' Association of Queensland submitted: "This Amendment Bill with reference to the proposed changes to the Residential Tenancies and Rooming Accommodation Act has been instigated in haste and without insight as to the ramifications that these proposed changes will have on the industry."

The Bill is clearly inconsistent with the objectives of the government's own Housing Strategy which is to ensure Queenslanders have access to safe, secure and affordable housing.

We note a Queensland parliamentary committee inquiry into retirement villages was held in 2012. The then LNP Government responded in 2013 accepting 12 of the 37

recommendations with implementation to be progressed as a priority, the intent of a further 6 were supported subject to final consultation with the balance of recommendations requiring detailed investigation as the government would need to consider legislative changes and complete necessary Regulatory Impact Statement assessment. That considerable body of work – the hearings, submissions from stakeholders, reporting and recommendations have sat gathering dust under this Labor Government.

Nearly three years later, the Palaszczuk Government and the Housing and Public Works Minister Mick de Brenni have finally decided action needs to be taken. Sadly, the Minister's response to amend the *Housing Act 2003*, *Manufactured Homes (Residential Parks) Act 2003, Residential Services (Accreditation) Act 2002, Residential Tenancies and Rooming Accommodation Act 2008, and Retirement Villages Act 1999* is rushed, ill-conceived and highly likely to push up accommodation costs for our most vulnerable residents.

There are obvious issues related to retirement living and living in private rental accommodation and the need for better protection for residents and their families. However, instead of picking up the considerable volume of work done by the parliamentary committee in 2012, this government and its Minister has sat on its hands for more than two-and-a-half years and now delivered what can only be described as a legislative disaster that promises nothing but costly red tape and higher costs for all involved.

Furthermore this "one size fits all" approach to legislation in respect of Manufactured Homes does not adequately address the significant unique differences between modern newer manufactured home villages and older style accommodation found in mixed use caravan parks. Previous reviews have recommended separate sections of the act be proposed to deal with these unique differences. The LNP Opposition is concerned that the proposed legislation fails to address legitimate safety concerns raised in respect of many manufactured homes in mixed use (caravan) parks. Nor does it adequately address the rights of home owners nor park owners in respect of exit provisions.

Stephen Strachan, Senior Engineer from Engineers Queensland raised concerns about public safety;

> *It is clear many of the structures protested by the MHRP act do not meet the requirements of the Building Act 1975 and therefore should be considered illegal. People residing in these structures are at risk of injury or loss of life if a strong wind event occurs. The destruction of these properties could also result in the loss of life or damage to other properties due to pieces of debris being removed by wind and flying into other people or buildings.*

New manufactured home parks have been built for purpose and recover significant infrastructure costs up front on sale. Many older style mixed use parks have aging infrastructure and are struggling to provide the support services, call buttons, phone systems and increased energy demands of aging residents.

The "one size fits all" approach also fails to recognise the differing historic or legacy provisions of home owners and park owners in respect of exit provisions. Modern manufactured home parks have quite robust clearly defined entry agreements, while many older style legacy mixed use parks do not have established agreements, exit provisions or clarity around re-assignments of home owner properties.

I visited one mixed use caravan park where genuine concerns where highlighted in respect of the park-owners ability to address or restrict re-assignments in the best interests of other permanent residents and casual visitors. In one example an elderly resident passed on fifteen years ago leaving the home to her grandson with significant mental health problems,

the grandson has not taken adequate care of the dwelling and for the most part requires significant support and care from the park owner who is not really equipped to provide suitable care. In another example the same park owner has had to deal with a convicted paedophile who tried to keep the home after his elderly grandmother moved into a nursing home.

This Bill will certainly not build 'Better Futures' – it will deliver uncertainty for investment and unnecessary and dangerous regulatory powers to the Minister. It does not adequately address stakeholder concerns and has not gone far enough in meeting consumer and provider expectations.

It should not be supported as currently proposed and we respectfully ask the Minister to seriously consider the concerns of stakeholders and the recommendations of the committee and LNP Opposition. The Minister needs to provide the house with absolute clarity around proposed retrospective "minimum housing standards". The legislation also needs meaningful amendments to ensure it genuinely addresses the rights of tenants in rental accommodation and ensures proposed new housing standards do not impact adversely on affordability.

The Minister also needs to adequately address those concerns raised by stakeholders from manufactured home parks and ensure proposed changes recognise the significant differences between new modern home parks and mixed use caravan parks.

Sincerely

Rob Molhoek
Member for Southport
Deputy Chair – Public Works & Utilities Committee
Queensland Parliament