

National Competition Policy Review of the Manufactured Homes (Residential Parks) Bill 2003

Public Benefit Test Report

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1 Review parameters

1.1 Introduction

This document represents a Public Benefit Test (PBT) undertaken on the *Manufactured Homes (Residential Parks) Bill 2003* which has been drafted by the Office of Fair Trading (OFT) within the Department of Tourism Racing and Fair Trading to replace the *Mobile Homes Act 1989* (the Mobile Homes Act).

1.2 Title of Legislation

Manufactured Homes (Residential Parks) Bill 2003 (the Bill).

1.3 Reasons for the Review

In April 1995, the Commonwealth, State and Territory Governments signed a set of agreements to implement National Competition Policy (NCP). The set of agreements include the Competition Principles Agreement (CPA) which, amongst other matters, requires each participating jurisdiction to review and, where necessary, reform all legislation that contains measures restricting competition.

The key elements of NCP include:

- extension of the competitive conduct rules of the *Trade Practices Act 1974 (Cth)* to all businesses, State and local government enterprises;
- structural reform of public monopolies;
- third party access to essential infrastructure facilities;
- competitive neutrality between the public and private sectors;
- prices oversight of government business enterprises; and
- legislation review.

The Queensland Legislation Review Timetable (the Timetable) identified potential restrictions on competition in the Mobile Homes Act necessitating review of that Act in accordance with NCP guidelines. However, as it is intended that the Bill will repeal the Mobile Homes Act, it was proposed that the Bill be reviewed in accordance with NCP guidelines.

1.4 Public Benefit Test methodology

This PBT was conducted in accordance with the Queensland Government's *Public Benefit Test Guidelines* (the PBT Guidelines). All such reviews involve a rigorous assessment of the benefits and costs of alternative options and take full account of employment, regional development, social, consumer and environmental effects.

The guiding principle for the review of legislation, as set down in the CPA, is that legislation should not restrict competition unless it can be demonstrated that the:

- benefits of the restriction to the community as a whole outweigh the costs; and
- objectives of the legislation can only be achieved by restricting competition.

In applying this principle, the Queensland Government's view is that it has a responsibility to ensure that NCP reforms are only implemented where it is demonstrated that such reforms are clearly in the public interest, that is, there is a clear demonstration that competitive reform will yield a net benefit, and no significant detriment, to the community.

In considering the restrictions contained in the Bill, the OFT considered fair trading and social justice issues together with the balance between commercial interests and the interests of consumers.

1.5 Terms of Reference

This review was conducted in accordance with sub clause 5(9) of the CPA, which states a review, without limiting itself, should:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy generally;
- assess and balance the costs and benefits of the restriction; and
- consider alternative means for achieving the same result including non-legislative approaches.

This review was also conducted in accordance with sub clause 1(3) of the CPA, which requires, where relevant, reviews take the following matters into account:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- interests of consumers generally or of a class of consumers;
- competitiveness of Australian businesses; and
- efficient allocation of resources.

When examining these matters, consideration was given to explicit identification of the likely impact of reform measures on specific industry sectors and communities, including expected costs in adjusting to change.

1.6 Government Priority Outcomes

The PBT Guidelines require that only those options that are consistent with, and support, the Government's Priority Outcomes should proceed for further consideration. The Government's Priority Outcomes for Queensland are:

- More jobs for Queensland - Skills and Innovation – The Smart State;
- Safer and More Supportive Communities;
- Community Engagement and a Better Quality of Life;
- Valuing the Environment; and
- Building Queensland's Regions

Further, the combined effects of the benefits and costs to the community as a whole must be assessed against the Government's Priority Outcomes.

2 Type of Review

A targeted public review was undertaken based on the criteria outlined in the PBT Guidelines. It was conducted by the NCP Unit of the OFT in consultation with Queensland Treasury and with the assistance of input from key stakeholders.

2.1 Stakeholder Consultation

In March 2000, a discussion paper on the Mobile Homes Act (Discussion Paper) was publicly released. It was designed to obtain comment from key stakeholders on significant issues in the mobile homes industry.

Following the release of the Discussion Paper, a working party was formed, comprising representatives of park residents and park residents' groups, park owners and park owners' groups, other industry representatives and representatives of key Government agencies (Working Party). Meetings of the Working Party resulted in a number of recommendations being made for reform of the Mobile Homes Act resulting in a draft Bill.

2.2 Conduct of the Review

On 24 April 2003 a letter advising of the availability of drafts of both this PBT Report and the Bill was sent to 535 home owners, park owners, community groups and selected local governments. These documents were released for public consultation in order to give stakeholders a further opportunity to put forward their views with regard to the regulation of the manufactured homes industry within residential parks in Queensland. In addition, an advertisement was placed in metropolitan and regional newspapers and the draft documents were made available via the Queensland Office of Fair Trading website. A total of 449 hard copies of the draft

documents were distributed to members of the Working Party, telephone inquirers and parties who had provided feedback in 2000 on the Discussion Paper. Departmental officers attended three public meetings with stakeholders.

Submissions on the draft PBT Report and Bill closed on Friday 23 May 2003. Of the 50 submissions received, only 8 made specific reference to the draft PBT Report. The primary concern expressed in several of those submissions was the description of manufactured homes as a "low cost housing" option. As a result, this description was removed. Other comments noted the pension rates quoted in calculating possible amounts of site rental assistance available to home owners were out of date. These rates and the resultant calculations were amended accordingly. Additional comments included views given on the proposed method of rent calculation (including market reviews) and observations as to current practices.

The comments made in the submissions, were further assessed and taken into consideration in finalising this PBT Report. Appendix 1 comprises a list of the stakeholders who provided input on this PBT Report and their comments.

In addition, comments on the draft Bill included concerns regarding:

- the use of a waiver notice to avoid the proposed cooling off period for prospective home owners entering into site agreements with park owners; and
- the introduction of a specific procedure for park owners to seek rent increases outside of existing site agreements.

The purpose of the waiver notice was to allow prospective home owners to elect to enter into a site agreement within the 7 day cooling off period. While home owners were encouraged to seek legal or other advice before entering into a site agreement, it was recognised that some people may have had prior knowledge of the residential park and would not want to wait for the 7 day period to expire before entering into the agreement.

Concern was expressed that park owners may abuse the waiver provision by forcing prospective home owners to waive their rights to rescind an agreement entered into within the 7 day period. As a result of these concerns the proposed provision relating to the use of a waiver notice was withdrawn from the Bill and references to the waiver were removed from this PBT Report.

Further amendment of the Bill resulted in the removal of the following ground for termination of site agreements - namely the park owner is unable to operate the residential park, or a part of the residential park comprising the site, because the residential park land or site land is resumed by a statutory authority on the basis it was judged more appropriate that this issue be dealt with under the Acquisition of Land Act 1967. References to this ground for termination have been removed from this PBT Report.

3 Legislative Framework

3.1 Background

The Mobile Homes Act was introduced in response to the increasing popularity of mobile homes as residences, particularly for retirees and seniors. These groups are attracted to mobile homes as an alternative housing option which includes the lifestyle benefits of communal-style living in a purpose-built park, or caravan park with attendant facilities. The Mobile Homes Act sought to provide a degree of security of tenure of persons who owned their own mobile home, but leased the land on which it is sited, from park owners. The Mobile Homes Act clarifies the rights of mobile home owners, and distinguishes them from the regulation of caravans and caravan parks¹.

A **'mobile home'** is not a caravan within the definitions of the Mobile Homes Act, and is defined in the *Mobile Homes Regulation 1994* (the Regulation) as:

- a home that was originally designed and constructed to allow its transportation (whether wholly or in parts) regardless of whether later changes to the home, or land in the home's immediate vicinity, have made its transportation more difficult; and
- a home that is positioned on an approved site, regardless of whether later changes to the home, or land in the home's immediate vicinity, have made its transportation more difficult².

By contrast, the Mobile Homes Act relies on the definition of **'caravan'** contained in the *Residential Tenancies Act 1994* (the Residential Tenancies Act) namely:

- a trailer designed:
 - principally as a residence; and
 - to be attached to and towed by a self-propelled vehicle; and
 - to be registered for use on public roads; and
- something to be used as a residence which is:
 - not fitted with wheels; and
 - not designed to be permanently attached to land but to be attached to a motor vehicle; and
- a self-propelled vehicle that is designed to be registered for use on a public road, and to be used as a vehicle.³

Currently, different residents in the same residential park may be subject to either the Mobile Homes Act or the Residential Tenancies Act depending on what type of arrangement they have entered into with the park owner. The definitions quoted above highlight a key issue in relation to the Mobile Homes Act, in that the very term 'mobile home' is a misnomer. Mobile homes are at best difficult to relocate, and not

¹ *Hansard*, Second Reading, Mobile Homes Bill, p2899, Hon. PJ Clauson, 17 November 1988

² *Mobile Homes Regulation 1994*, section 4

³ *Residential Tenancies Act 1994*, section 3A

without considerable expense. At worst, they are in fact immobile. In addition, the Mobile Homes Act applies to people who live in their own mobile home that is placed on a rented site. By contrast, the Residential Tenancies Act applies to people who:

- rent mobile homes from the mobile home owner;
- live in a rented caravan; or
- live in their own caravan but have placed the caravan on a rented site.

In some cases, mobile home owners are located within the same park as persons living in caravans. The latter are covered by the Residential Tenancies Act and are given, in some instances, more protection than mobile home owners residents in the same park. Confusion over these matters has resulted in the expressed concern of stakeholders that, since its introduction, the Mobile Homes Act does not adequately address a range of issues, including:

- the need for written agreements to ensure adequate information disclosure of rights and obligations for both parties;
- maintenance of sites and homes, and responsibility for, and costs of, such maintenance;
- adequate provision and upkeep of communal facilities;
- the making of park rules;
- dispute resolution between residents and park owners; and
- rights of home owners to sell or let their homes.

In response to these issues, OFT undertook a review of the Mobile Homes Act in March 2000, which review ultimately led to the Bill being drafted.

In addition to the definitions discussed in this section - for the purposes of this PBT Report - when referring to the Mobile Homes Act, the following definitions apply:

- **'occupier'** means a person who under a relevant agreement is entitled to occupy a mobile home positioned on a site;
- **'owner'** means, in relation to a site, the person who is the registered proprietor or registered mortgagee in possession of an estate in fee simple in the site;
- **'relevant agreement'** means an agreement under which a person is entitled to position a mobile home on a site and occupy the mobile home as the person's only or principal place of residence; and
- **'site'** means land made available for positioning of mobile homes under relevant agreements and includes every part of such land⁴.

3.2 *Manufactured Homes (Residential Parks) Bill 2003*

⁴ Section 3(1) of the *Mobile Homes Act 1989*

This section introduces the Bill which was prepared by the OFT in response to growing community concerns, after an extensive policy and legislative review process.

3.2.1 Objectives of the Bill

The policy objectives of the Bill are to:

- retain and protect the rights currently enjoyed by mobile home owners;
- clarify existing definitions;
- introduce standard terms and disclosure requirements together with an optional standard form contract prescribed by regulation; and
- introduce an improved dispute resolution process.

The Bill provides for a number of specific legislative objectives: The main objectives are to:

- regulate, and promote fair trading practices in, the operation of residential parks;
- encourage the continued growth and viability of the residential park industry in the State; and
- provide a clear regulatory framework to ensure certainty for the residential park industry in planning for future expansion.

These objectives will be achieved by:

- declaring particular rights and obligations of park owners and owners of manufactured homes in residential parks;
- facilitating the disclosure of information about a residential park and the legislation to prospective owners of manufactured homes in the residential park;
- regulating the making, content, assignment and ending of a site agreement, the sale of an abandoned manufactured home in a residential park and the variation of site rent payable for a site;
- facilitating participation by owners of manufactured homes in residential parks in the affairs of the residential park; and
- providing means for resolving site agreement disputes.

3.2.2 Application of and definitions contained within the Bill

The Bill applies only to specific types of agreements and types of manufactured homes and its application will not be extended beyond that contained in the Mobile Homes Act. As stated in paragraph 3.2.1, the Bill will retain many of the rights currently enjoyed by manufactured home owners, clarify existing definitions and introduce standard terms, disclosure requirements, an optional standard form contract prescribed by regulation and an improved dispute resolution process.

For the purpose of this PBT Report, only the restrictive provisions have been considered and assessed in accordance with NCP Guidelines.

Throughout this Report, when referring to the Bill, the definitions contained within the Bill have been applied. In particular, the Bill includes the following definitions:

- a **'home owner'** is a person who owns a manufactured home that, under a site agreement for a site, is positioned in a residential park and occupies that manufactured home, as the person's principal place of residence. This definition includes a home owner's assignee, under the Bill, of the home owner's interest in a site agreement, a person who obtains an interest in a site agreement as the personal representative/beneficiary in a deceased person's estate and another successor in title of the person described in the first sentence;
- a **'home owner's information document'** is an explanatory document, in the prescribed form, of a home owner's rights and obligations under the Bill and the site agreement – the purpose of which is to assist a prospective home owner to make a reasonably informed decision about entering into a site agreement for the site;
- a **'manufactured home'** is a structure with the character of a dwelling house, other than a caravan or tent, designed to be able to be moved from one position to another and is not attached permanently to land;
- a **'park owner'** is a person who owns a residential park for which there are in force site agreements and includes the personal representative/beneficiary of a deceased individual who immediately before the individual's death was a park owner, a mortgagee in possession of a residential park and another successor in title of a park owner;
- a **'residential park'** is an area of land that includes sites, common areas and facilities for the personal comfort, convenience or enjoyment of the person residing on the sites;
- a **'site'** is a part of a residential park that the park owner for the park rents, or makes available for renting, for the positioning of a manufactured home;
- a **'site agreement'**, for a site in a residential park, is an agreement evidencing between the park owner for, and a home owner for a site in, the park that includes provisions for the home owner's rental of the site and non-exclusive use of the common areas and facilities of the park; and
- the **'Tribunal'** refers to the proposed Commercial and Consumer Tribunal.

3.3 Residential Tenancies Act 1994

As referred to in sub section 3.1, persons currently living within the same residential park may be subject to either the Mobile Homes Act or the Residential Tenancies Act, depending on which type of agreement they enter into. This situation has resulted in confusion for park owners, home owners and other residents in residential parks, due to the nature and complexity of requirements contained within both Acts.

The Bill aims to provide greater consistency in the regulation of all persons who rent sites in residential parks in that, some provisions, mirror those in the Residential Tenancies Act

The areas where the Bill seeks consistency with the Residential Tenancies Act are highlighted throughout this PBT Report.

3.4 Similar legislation in other jurisdictions

The following table outlines the legislative arrangements for mobile/manufactured homes regulation in other jurisdictions:

State/Territory	Legislative Arrangements
New South Wales	<i>Residential Parks Act 1998</i> (the NSW Act): New South Wales is the only jurisdiction apart from Queensland to have separate mobile homes legislation. The NSW Act applies to both owner-occupiers of manufactured homes and persons renting manufactured homes on a site in a residential park. This contrasts with Queensland where the Mobile Homes Act and the Residential Tenancies Act cover each situation respectively.
Victoria	<i>Residential Tenancies Act 1997</i> (the Victorian Act): In Victoria, protection is provided to persons living permanently in residential parks, both in caravans and moveable dwellings. The Victorian Act applies both to persons renting a caravan or moveable dwelling and owners of caravans or moveable dwellings who rent the land on which their caravan or moveable dwelling is situated. The Victorian Act defines a 'moveable dwelling' as a dwelling designed to be moveable, but excludes dwellings that cannot be situated on, and removed from, a site within 24 hours. It is questionable whether some of the types of homes covered by the Mobile Homes Act would fall within the definition of a moveable dwelling.
Western Australia	<i>Residential Tenancies Act 1987</i> (the WA Act): This Act regulates tenancy issues relating to both renters of manufactured homes and renters of manufactured home sites, as those issues apply to caravan park sites within the meaning of the <i>Caravan Parks and Camping Grounds Act 1995</i> (the WA Caravan Parks Act). The WA Caravan Parks Act includes licensing requirements and public health and safety related provisions
South Australia	<i>Residential Tenancies Act 1995</i> (the SA Act): This Act applies to persons who rent manufactured homes. However, it does not appear to cover rental arrangements where residents own a manufactured home and rent the site on which their manufactured home is situated.
Tasmania	<i>Residential Tenancy Act 1997</i> (the Tasmanian Act): this Act covers the renting of manufactured homes, but not the renting of sites by manufactured home owners. The <i>Landlord and Tenants Act 1935 (TAS)</i> does, however, appear to cover such arrangements.
Australian Capital Territory	<i>Residential Tenancies Act 1997</i> (the ACT Act): This Act does not cover tenancy arrangements relating to manufactured homes or caravans nor tenancy issues associated with manufactured home living. Tenant and landlord legislation that may have applied to such arrangements has been repealed

Northern Territory	<i>Residential Tenancies Act 1999</i> (the NT Act): This Act appears to cover situations where persons rent a manufactured home, and where home owners rent the site on which the manufactured home is situated. The NT Act does not, however, cover situations where a mobile home is located in a caravan park.
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3.5 Review status in other jurisdictions

New South Wales is the only jurisdiction to regulate mobile/manufactured homes via specific legislation. With respect to the other jurisdictions, the Northern Territory's *Caravan Parks Act 1996*, which regulated mainly health and safety matters in caravan parks, was repealed as a result of NCP review.

A number of other broader reviews have been, or are currently being, conducted in relation to other jurisdictions' residential tenancies legislation. This legislation, in some cases, covers manufactured home tenancies.

New South Wales has recently released a draft *Residential Parks (Long-term Casual Occupation) Bill 2002*, dealing with arrangements where people who permanently reside elsewhere, leave a moveable dwelling in a residential park on a long-term basis for regular recreational use. These arrangements are not covered by the laws applying to permanent residential park tenancies comprising residents' principal places of residence.

This draft legislation is currently in consultation phase and deals with the main concerns arising from casual park occupation which concerns include written contracts, minimum notice periods for fee increases, termination of occupancies, park rules and dispute resolution processes.

Section 11 of the WA Act, currently under review (not under NCP guidelines), deals with mobile and manufactured homes. A discussion paper has been released.

A review of the Tasmanian Act resulted in the release of the *Residential Tenancy Amendment Bill 2001* together with a consultation paper canvassing a number of issues including a recommendation that a separate review should be conducted on caravan parks specifically. This review has not yet taken place.

3.6 General rationale for Government intervention

In general, the main reason for governments to intervene in markets is to address the failure by these markets to operate efficiently, or to deliver outcomes that reflect community standards. The main examples of market failure addressed by the provisions of the Bill are:

- the need for written agreements and adequate information disclosure of rights and obligations for both parties;
- maintenance of sites and homes and responsibility for, and costs of, such maintenance;
- disputes over rent increases;
- adequate provision and upkeep of communal facilities;
- making of park rules;
- dispute resolution between residents and park owners; and
- rights of home owners to sell or let their homes.

The market failures in the manufactured homes industry are typically in the form of information problems, usually referred to as information asymmetries.

Under the Mobile Homes Act, information asymmetry problems arise because the circumstances under which agreements are entered into can mean that consumers (owners or renters of manufactured homes) are often at a severe information disadvantage compared with those persons providing the services (park owners or manufactured home vendors). The scope of the information problem is increased when consumers are first-time purchasers or renters, or the goods or services (such as agreements and contracts) are complex in nature. The problem is further increased in circumstances where elderly persons and/or persons with a low or fixed income are not easily privy to information to assist in the decision-making process.

The nature of the problem is such that, under the circumstances covered by the Act, it is too costly for individual consumers to overcome the information problems without some form of government intervention. Without some form of assistance, many consumers are likely to have difficulty in assessing, in advance, whether agreements and contracts are fairly constructed, appropriate for their needs or provide adequate access to means of resolution of problems and disputes.

It is often argued that, as long as consumers are aware of potential risks and their implications, they should be free to choose whether to assume the risk or take action to reduce the risks accordingly. However, relying on consumers to assess the risks and taking individual action, also ignores the often substantial transaction costs associated with overcoming the information problem relative to the efficiency of some form of government intervention. That is, the transaction costs of identifying quality goods and service providers and rectifying problems can reduce the effectiveness of market mechanisms and provide an important argument for some form of regulation to improve efficiency.

Regular consumers of a particular good or service will usually be in a better position to assess the quality, suitability and value of a potential purchase and lessen the information problem. However, even these 'educated' consumers sometimes find it impossible to remove the information problem. In addition, the industry covered by the Mobile Homes Act comprises a relatively captive market, where residents are unable to relocate without significant cost and/or practical difficulties. This does not provide great incentive for a high standard of trading performance on the part of

industry. As a result, the penalty for poor performance may be weak in an unregulated market.

Although a strong economic argument can be made for some form of regulation of particular activities, determining the most appropriate form is more difficult. Consequently, intervention should ideally focus on addressing the market failure while minimising administrative and regulatory costs consistent with meeting the objectives of the regulation.

4 Industry snapshot

This section describes the market and its stakeholders including industry (park owners), consumer groups (home owners) and government, who rely on, utilise and administer the Mobile Homes Act and the Bill.

While the specific legislative definitions of a manufactured home are generally defined throughout this paper, in short a manufactured home is a relocatable home which does not have the ease of mobility of most caravans. The homes are lightweight, prefabricated and designed for transport to residential parks, although some are now actually built on site but designed so that they may be removed if necessary.

As discussed in sub section 3.1 of this report, a manufactured home is not a caravan for the purpose of the Mobile Homes Act and the Bill.

In November 1993, after some manufactured home owners claimed to fall within the Retirement Village legislation, amendments were made to the Retirement Village legislation which specifically exclude from its application, a site within the meaning of the Mobile Homes Act.⁵

4.1 Residential Parks

No registration system exists for residential parks and there is no reliable data available on the number of residential parks or manufactured homes in Queensland or the number of people who live in them. The Australian Bureau of Statistics does not break down residents into manufactured homes, the available data being limited to the broader group of caravan park residents. However, it appears that due to climate, this is a more attractive style of living in Queensland than in some other jurisdictions.

From data available from directories, manufacturers, residents groups and Royal Automobile Club of Queensland park lists, the OFT estimates that between 7,000 and 10,000 mobile home residents live in approximately 160 residential parks in Queensland, the majority of which are located in southern Queensland.

⁵ *Retirement Villages Act 1999*, Section 5

The numbers of manufactured homes in each residential park varies - some residential parks may have only one manufactured home while others have over 200 manufactured homes. Approximately 40% of residential parks have less than five manufactured homes each. This figure does not include manufactured homes owned by park owners. Some residential parks are exclusively residential parks marketed for retirement living. Others comprise mainly caravans with only a few owner-occupied manufactured homes. Often, residential parks include a mixture of permanent accommodation and holiday accommodation on their sites.

4.2 Home owners

Typically home owners rent a site in a residential park. The Bill is concerned with home owners for whom these homes are their permanent place of residence, but who do not own the land on which the manufactured home is located.

A variety of people are attracted to manufactured homes either as an alternative housing option or by the communal style of living and facilities including pools or other sporting facilities and common areas that may be provided. Increasingly, older people are turning to manufactured homes as an accommodation option for their retirement.

The cost of purchasing a manufactured home represents a significant investment for the home owner. However, there is not always a ready market for resale and the value of a manufactured home is more likely to depreciate rather than keep pace with values in the general housing market (which are linked with increases in land values).

A large percentage of home owners are retirees on fixed incomes, many of them aged pensioners who seek an alternative housing option. The pension rates referred to in this section are based on the assumption that the individual or couple has no dependent children.

The fortnightly rate for individuals receiving the aged pension is \$440.30 and is \$735.00 (combined) for couples. Men qualify for the aged pension when 65 years of age and women qualify between 60 and 65 years of age. People wishing to receive an aged pension are not eligible if they have assets (including a home), valued at over \$145,250 for individuals or \$206,500 for couples. Individuals cannot earn more than \$116 per fortnight and couples more than \$204 per fortnight, without receiving a reduction in the aged pension.

Some pensioners can seek rent assistance. Rent assistance does not apply to individuals who pay less than \$82.80 and couples \$134.80 rent per fortnight. If the rent paid is over these amounts, rent assistance entitlements to a maximum of \$93.20 for a single and \$88.00 for a couple per fortnight are available.

Anecdotal evidence suggests that fortnightly rental of sites in residential parks can range from \$166 to \$280 per fortnight, depending on the suburb and the position of the site within the residential park. Based on these figures, it is possible people on

the aged pension could obtain rent assistance of between \$62.40/\$93.20 (individual) and \$21.20/\$134.80 (couple) per fortnight toward site rental.

The purchase price of manufactured homes can range from \$35,000 to \$122,000. In most cases, the owning of a manufactured home should not reduce a person's eligibility for or the payments received in relation to the age pension.

Given that, in most cases, the value of a manufactured home will not affect payments under the aged pension and therefore allowing rent assistance to be obtained - ownership of a manufactured home within a residential park may be an attractive and viable option for many pensioners who do not require mental or physical assistance. Many residential parks are situated on the Gold Coast, Sunshine Coast, Hervey Bay and other coastal holiday areas providing an appealing and viable retirement option for people who cannot afford more expensive types of accommodation.

While the Department of Housing owns one residential park and a number of parks are owned and run by local governments - manufactured homes are not, in general, a form of accommodation funded by or provided as part of the State's public housing programs. The residential parks are run by owners on a commercial basis. The tension between the competing needs of home owners and park owners is at the core of many issues that have arisen since the Mobile Homes Act was introduced in 1989.

4.3 Park owners

Park owners are responsible for the management of residential parks and generally own the real property on which the residential park is situated. The park owner therefore has interests both in the land and in renting sites on that land to home owners.

Park owners can own manufactured homes within the residential park and rent them to other residents. In these cases the Residential Tenancies Act will apply. Only a home owner occupying a manufactured home as his or her principal place of residence is captured by the Mobile Homes Act. Park owners are therefore faced with varying responsibilities under both the Mobile Homes Act and the Residential Tenancies Act.

The Mobile Homes Act requires park owners to give permanent tenancy to home owners of the site on which their manufactured home is positioned together with the right to assign or transfer the site agreement to a purchaser of their manufactured home. Park owners cannot unreasonably refuse to assign the site agreement to the new owner.

Park owners often have tenants who are covered by the Residential Tenancies Act with different but sometimes greater legal rights than those of a manufactured home owner. For instance, under the Residential Tenancies Act park owners must give caravan tenants a written tenancy agreement before entering into the agreement and receipts for cash payments. Park owners must also keep the residential park clean

and in good repair, ensure that the caravan site remains fit for its purpose and can only make park rules about set topics. The caravan tenants have the right to challenge these rules.

Currently, the Mobile Homes Act states that certain terms are implied in a relevant agreement⁶, but leaves many other rights⁷ to be determined, on request of either party to the agreement, by the Small Claims Tribunal⁸ or, where possible, negotiated between the park owner and home owner. This situation creates inconsistencies in approach between residential parks and in some cases, between individual home owners in the same residential park.

5 Restrictions on competition

The following provisions of the draft Bill were identified as potential business conduct restrictions on competition and have been individually assessed in accordance with NCP Guidelines:

1. **pre-contractual disclosure, assignment and termination in relation to site agreements:** a park owner must provide potential home owners with a pre-contractual disclosure statement, cannot unreasonably refuse a home owner's request to assign a site agreement and can only terminate a site agreement on certain grounds;
2. **termination of sale or site agreements:** site agreements cannot be entered into earlier than seven days after the park owner gives pre-contractual disclosure documentation;
3. **making of park rules:** a park owner may only make rules on certain prescribed issues;
4. **sale of homes by park owner:** home owners can give park owners selling authority to sell, or negotiate for sale, the home owner's manufactured home; and
5. **methods for determining rent increases:** if not provided for in the site agreement, park owners may seek the home owner's agreement to increase the site rent but if agreement cannot be reached, the park owner must apply to the Tribunal to increase rent. The Tribunal has the jurisdiction to order rent reductions, set aside excessive rent increases or decrease rent payable where facilities deteriorate.

6 Assessment of restrictions

This section discusses and analyses each restriction contained in the Bill in terms of costs and benefits for each stakeholder group including an assessment as to whether

⁶ Schedule 1, Part 1 – Terms implied in relevant agreements: Duration; Termination; Recovery of overpayments; sale of mobile homes; gift of mobile home; and reposition of mobile home

⁷ Schedule 1, Part 2 – Matters concerning which terms may be implied by the Small Claims Tribunal: Quiet enjoyment; sums payable; review of sums payable; improvement of services; preservation of the amenity of the site maintenance and repair of the site and the home; and park owner's access to land where home is occupied.

⁸ Section 5(2) of the *Mobile Homes Act 1989*

the legislative and policy objectives, set out in sub section 3.2, will be met via the introduction of provisions in the Bill.

6.1 Disclosure and assignment of site agreements

What is a site agreement under the Bill?

‘Site agreement’ is defined in paragraph 3.2.2 of this Report. The Bill will introduce requirements for standard site agreements similar to the standard residential tenancies agreements used under the Residential Tenancies Act.

Park owners must ensure there is a written site agreement setting out all rights and obligations of the parties in relation to the rental and use of the site and the use of any park facilities and services.

The site agreement must include standard terms and conditions together with any special terms to be agreed upon between the parties.

The Bill requires site agreements to be:

- in writing to the extent required by the Bill;
- written in a clear and precise way;
- state both the park owner’s and the home owner’s names, addresses and any telephone numbers;
- the amount and method of payment of rent and the method of variation of rent payable;
- executed by both parties;
- compliant with any other prescribed requirements by regulation.

The Bill provides that the following are taken to be included as terms in a site agreement:

- home owner’s obligation to pay site rent;
- to the extent within its control, park owner’s obligation to ensure continuity of supply of a utility to the park and the home owner’s site;
- home owner’s right to quiet enjoyment and obligation not to interfere with that of other park residents;
- use of premises by home owner only as a residence and not for an illegal purpose;
- park owner’s responsibility for cleanliness of and repairs to the common areas and communal facilities;
- home owner’s maintenance of the manufactured home;
- home owner’s access to the site and the common areas;
- availability of park owner/park manager to home owner;
- home owner’s compliance with residential park rules;
- home owner’s and park owner’s compliance with the site agreement;
- any terms of a tribunal order relevant to the site agreement; and

- any other duties or entitlements relating to the park owner or the home owner.

Pre-contractual disclosure

The Bill requires park owners, before entering any site agreement, to provide prospective home owners with 'disclosure documents' which comprise a pre-contractual disclosure statement in the approved form ('home owner's information document') and a copy of the park rules. The park owner must also provide two copies of the proposed site agreement for the site. The purpose of the home owner's information document is to help a prospective home owner make a reasonably informed decision about entering into a site agreement for the site. The home owner's information document must contain certain information about the rights and responsibilities of park owners and home owners under the legislation.

Park owners must not restrict the person's right to obtain independent legal advice before or after entering into a site agreement.

These provisions will not apply where a home owner for a site proposes to sell the seller's manufactured home on the site to another person (buyer) and also to assign the seller's interest in the site agreement to the buyer. For these cases, separate provisions are made under the assignment of home owner's interests in site agreements in Part 7 of the Bill for the provision of pre-contractual disclosure documentation.

Varying site agreements

Under the Bill, special terms of a site agreement can be varied at any time provided the variation is in writing and signed by the park owner and the home owner. If the parties cannot agree on a variation, either party may apply to the Tribunal to make any order it considers appropriate about the proposed variation.

Assignment of site agreements

The Bill proposes that a home owner can assign his or her site agreement to any person who enters into and completes an agreement to purchase the manufactured home (a buyer) from the home owner (the seller).

The home owner is entitled to sell his or her manufactured home and assign his or her site agreement provided the home owner seeks in writing the park owner's consent to the assignment (which consent must not be unreasonably withheld). An assignment of the interest in the site agreement has no effect until the park owner has consented to the assignment.

Notification of assignment

A seller must give notice in the approved form of the proposed sale and assignment, to the park owner. Within seven (7) days of receiving the notice, the park owner must give the buyer a copy of the site agreement for the site to which the seller and the park owner are parties and a current home owners' information document for the

residential park. Park owners cannot restrict the buyer's right to seek independent legal advice about the assignment of the interest.

An assignment of the interest in the site agreement must be in the approved form signed in duplicate by the seller and the buyer. The seller must give 2 signed copies of the form of the assignment to the park owner. The park owner must within 14 days of receipt either sign both copies and return 1 copy to the seller or, if the park owner decides not to consent to the assignment, return one copy to the seller with written notice of the decision, including reasons for the refusal. The seller has the right to apply to the Tribunal for a review of the decision. The Tribunal may confirm the park owner's decision or set it aside and require the park owner to consent to the assignment of the interest.

If the park owner consents to the assignment of the interest, the seller must give the seller's copy of the site agreement to the buyer.

Terminating site agreements

Apart from the right of the home owner to terminate the agreement within 28 days of entering into the agreement in certain circumstances, under the Bill, a site agreement can only be terminated in the following manner:

- the park owner and the home owner enter into an agreement in the approved form to the termination. The home owner must give the park owner vacant possession of the site on or before the agreed termination day and the park owner must not coerce or attempt to coerce a home owner to agree to the termination; or
- the home owner gives written notice in the approved form to the park owner at least 30 days before the stated date on which termination is to take effect. The home owner must give the park owner vacant possession of the site on or before the stated day; or
- the park owner applies to the Tribunal for an order terminating a site agreement on the following grounds:
 - the home owner contravenes a term of the site agreement and, after service by the park owner of a notice, in the approved form, to remedy the contravention, does not comply with the notice within 30 days;
 - the home owner assaults anyone who is lawfully in the residential park;
 - the home owner wilfully destroys property, other than the home owner's property, in the residential park or on the site;
 - the manufactured home on the site is no longer occupied as a principal place of residence by either the home owner or the home owner's tenant (if the site agreement allows rental of the home);
 - the home owner, or a person residing or associated with the home owner, repeatedly interferes with the quiet enjoyment of the residential park by other home owners or residents, and continues the behaviour after service by the park owner of a notice in the approved form, to stop the behaviour, on the home owner; or

- the park owner wishes to use the residential park land, or part of the residential park land comprising the site, for another purpose.

If the Tribunal makes an order terminating a site agreement, the Tribunal must state the day the termination is effective and require the home owner to give the park owner vacant possession of the site on or before the termination day.

In foreseen circumstances the home owner may apply for an order extending the time in which the home owner must give the park owner vacant possession. If an extension is granted, the termination day is taken to be the last day of the extension period.

Compensation for home owner on termination

When the park owner wishes to use the residential park land, or part of the residential park land for another purpose the Tribunal may make an order requiring the park owner to pay the home owner's reasonable costs of removing, transporting and relocating the manufactured home and the home owner's furniture and personal effects, to a place nominated by the home owner. The park owner is only responsible for paying relocation expenses up to a distance of 300 kilometres from the residential park and the total amount of costs must not exceed the value of the manufactured home.

Park owners cannot claim any rent payments under the agreement for any period after the termination day and must refund the home owner any payment received from the home owner before the termination day that covers a period after the termination day.

6.1.1 Costs and benefits to stakeholders

Impact on mobile home owners

Pre-contractual disclosure documents and prescribed agreements

Submissions received in response to the 2000 Discussion Paper indicate overwhelming support from home owners and residents in relation to the proposed agreement provisions. These provisions include:

- specification of home owners and park owners' duties and rights as terms of the site agreement;
- a requirement for the provision of pre-contractual disclosure documentation;
- a prescribed form of standard site agreement;
- inclusion of special terms and conditions agreed upon by the home owner and park owner in the site agreement;
- provision of a specified time or "cooling off" period within which a prospective home owner can withdraw from the site agreement without incurring liability for any payments;
- a requirement for park owners to retain copies of site agreements for 12 months after termination of the site agreement;

- provision for home owners and park owners to apply to a Tribunal to remedy any breach of the site agreement; and
- application of the new legislation to both existing and agreements entered into after commencement of the legislation.

General comments by home owners and residents refer to instances of misleading information being provided by park owners before entering into site agreements and that often no written agreements are entered into.

Replacement of the Mobile Homes Act with the Bill will result in a number of benefits to residents and home owners. Under the Bill, home owners will be given disclosure documents which will allow them to make an accurate comparison of services available to them in various residential parks thereby enabling them to undertake an informed decision-making process. Park owners will not be able to mislead potential home owners before entry into a site agreement as all rights and obligations of both parties will be laid out within the disclosure documents – and in particular in the home owners information document. This approach is consistent with the general rationale for Government intervention discussed in sub clause 3.6 of this Report and addresses market failures in the area of information asymmetries.

The giving of the home owners' information document will benefit both potential and existing home owners in that they will know prior to entry into a site agreement what rights and obligations they have under the site agreement. This will alleviate confusion and misleading statements by park owners, allegedly occurring under the Mobile Homes Act.

The prescribed site agreement requirements under the Bill will be consistent with those required under the Residential Tenancies Act. This should result in a reduction in inconsistencies and the attendant confusion currently experienced by home owners and residents occupying different types of accommodation in the same residential park.

Survey data suggests that some park owners use threats, intimidation and false statements to coerce home owners into entering new site agreements or into agreeing to a higher rent than that provided for in the existing agreement. As a result, home owners have lost their original agreements and without those agreements, have been allegedly unable to obtain relief through the Small Claims Tribunal.

Within the same residential park, site fees charged to home owners may range, for example from \$173.70 to \$221.20 per fortnight⁹. Factors which may contribute to the variation in site fees include different site sizes or different types or standards of sites (ie river or ocean views). A further contributing factor is the fact that residents of residential parks will have entered site agreements at different times and therefore be subject to different rates of rent.

⁹ Gold Coast Caravan and Mobile Home Parks Survey, Phoenix Social and Welfare Club Inc., March 1999

With the introduction of disclosure documents, potential home owners will be aware of the site fee before entering into a site agreement and will be in a better position to research the market and negotiate site fee terms of their agreements. The introduction of such documents will also contribute to the uniformity of rent rates.

Termination of site agreements

The Bill provides that site agreements can only be terminated with the mutual agreement of both parties, by the home owner in the prescribed manner or by an order from the Tribunal. This requirement will result in a negligible change in process for home owners, as they will still be able to effectively terminate a site agreement on giving adequate notice, as specified in the site agreement, to the park owner. However, the retention of a limited right to terminate by a park owner should be noted. This ability to terminate is limited to termination by mutual agreement of both parties or the making of an application to the Tribunal seeking an order to terminate a site agreement on specified grounds.

Assignment of site agreements

The ability to assign site agreements currently available under the Mobile Homes Act is not changed by the Bill to the extent the park owner cannot unreasonably refuse consent to the assignment of a site agreement by a home owner to a buyer.

However, the Bill introduces an onus on the home owner to give notice to the park owner of his or her intention to sell the manufactured home and assign the interest in the site agreement. The impact on home owners of this provision will be negligible. Given the inherent difficulty with relocation of manufactured homes, it would be unusual for home owners to market and sell a manufactured home, which could not remain on the site within the residential park. The Bill also provides that the park owner cannot unreasonably withhold consent to the assignment of the existing site agreement to a buyer of the manufactured home and provides for an appeal to the Tribunal if the park owner does not give its consent.

Overall, the new provisions of the Bill relating to the entry into, and assignment of, site agreements will be a benefit to consumers.

Impact on industry/park owners

The cost to industry of replacing the provisions of the Mobile Homes Act with those contained in the Bill, in terms of the entry into, and assignment of, site agreements will be negligible.

Pre-contractual disclosure documents and site agreements

The Bill states that the park owner for a residential park must give pre-contractual disclosure documents to prospective home owners.

The Bill will require park owners to include a home owner's information document and standard terms in the site agreement. This will be of benefit to park owners as they will be assured that the agreements they use meet all legislative requirements and clearly set out the terms of the site agreement for the benefit of both parties. If park owners use the optional form of site agreement as prescribed by regulation, they will not incur the added expense of drafting their own site agreements. Standard terms and conditions will be contained within the site agreements and park owners will benefit from a consistent approach toward all manufactured home owners and tenants. In addition, the information document will be in a prescribed form.

In response to the 2000 Discussion Paper, the Residential Parks Association suggested certain specific information be included in a pre-contractual disclosure statement such as the duties of the park owner or manager and a break down of site fees. The method of payment of site fees and the ways of varying site rent together with the responsibilities of the park owner are provided for in the Bill.

Assignment of site agreements

The Mobile Homes Act currently requires park owners to allow the assignment of site agreements without unreasonable refusal. The Bill is consistent with the Mobile Homes Act in this regard in that it ensures that park owners cannot unreasonably refuse to allow a home owner to assign the site agreement to another person. The new procedures introduced by the Bill ensure that the park owner's right to know what is going on in their residential park is retained.

Variation and termination of site agreements

While the Mobile Homes Act prohibits amendment of site agreements without first obtaining an order through the Small Claims Tribunal, the Bill provides that site agreements can only be terminated by mutual agreement of both parties, by the home owner in the prescribed manner, or by the park owner obtaining an order from the Tribunal. This will benefit park owners as there is an option for mutual agreement to terminate between both parties, rather than constantly having to make application to the Small Claims Tribunal to terminate a site agreement.

There will be a cost to park owners who change terms or components of site agreements on an ad hoc basis, often without giving adequate notice to home owners. Under the provisions of the Bill, park owners will not be able to vary site agreements without mutual agreement of both parties or by an order of the Tribunal.

Overall, the benefit of introducing the provisions of the Bill relating to the entry into, and assignment of, site agreements will outweigh any cost to industry.

Impact on Government

The provisions of the Bill that relate to the entry into, and assignment of, site agreements are consistent with the general rationale for Government intervention outlined in sub clause 3.6. The ability to assign site agreements meets Government

objectives to better meet community expectations of a safer and more supportive community via removal of inconsistencies and provision of greater information disclosure for consumers making life-changing decisions.

The Queensland Government should experience a reduction in manufactured home-related complaints after introduction of the Bill resulting in a small benefit to Government.

The Queensland Government should not incur any further compliance costs in addition to those already incurred in ensuring compliance under the Mobile Homes Act after the Bill commences.

Overall, there will be a benefit to Government in introducing the Bill.

6.1.2 Other considerations

Relevance to Objectives of the Bill

The information disclosure provisions in the Bill relating to the assignment of site agreements are consistent with the policy objectives of retaining and protecting the existing rights currently enjoyed by home owners and introducing standard site agreement terms and disclosure requirements.

The assignment provisions of the Bill are also consistent with the specific legislative objectives to:

- regulate the making, content, assignment and ending of agreements;
- promote fair trading practices;
- assist with disclosure of information to prospective home owners; and declare rights and obligations of park owners and home owners.

Stakeholder and Working Party comments

Submissions received to the Discussion Paper released in 2000 show overwhelming support from home owners for the proposed introduction of standard site agreements. General comments made suggest misleading information was being provided by park owners before entry into site agreements and highlight the fact that often, no written agreements are entered into between the park owner and home owner. The Residential Parks Association suggested some specific information to be contained within a pre-contractual disclosure statement such as the duties of the park owner or manager and a break down of site fees.

Some stakeholders expressed support to the concept of a universal agreement for use in all parks throughout Queensland. The Department of Housing also suggested that any agreement should apply equally to all residents with a sunset clause bringing all agreements into line with the new legislation. This suggestion was reiterated in a response to the draft PBT.

Some residents were critical of the Small Claims Tribunal and its power to enforce any breach of an agreement and others suggested an independent tribunal be established to adjudicate on all issues. This view was confirmed in responses to the draft PBT Report.

The Caravan Industry Association Australia (Queensland Parks Division) agreed that all parties should execute a written contract containing all terms of the agreement and that pre-contractual disclosure information should be given to residents.

6.1.3 Other jurisdictions

The NSW Act provides for the form and content to the residential tenancy agreements to be used in relation to residential parks. The Act also provides that a park owner who proposes to enter into a residential tenancy agreement must prepare an information document detailing certain information including restrictions on the use of premises and facilities, fixtures, sale and any charges payable (excluding rent). The park owner is prohibited from entering a residential tenancy agreement unless it has first given the prospective resident a copy of the information document. The Act also provides that the park owner may not unreasonably withhold or refuse consent to an assignment. In addition it details instances when termination may occur together with a procedure for termination of the residential tenancy agreements by both parties.

While it is unclear whether the Victorian Act covers all types of home governed by the Mobile Homes Act it does provide that tenancy agreements governed by the Act may be entered into between the caravan park owner and a resident for movable dwellings. The Act also provides that when a resident occupying a site in a movable dwelling owned by the resident, sells the movable dwelling, the resident, with the park owner's consent may transfer his or her residency right to the purchaser of the movable dwelling. A caravan park owner must not unreasonably withhold consent to such a transfer.

The WA Act provides that an agreement may provide that the tenant may/may not assign his interest under the agreement or may assign only with the written consent of the owner and the owner shall not unreasonably withhold/charge for such consent. The Act also details procedures for termination of tenancy agreements.

The other States and Territories do not refer to disclosure documents and contain the usual provisions for assignment and termination.

6.1.4 Summary of costs and benefits to stakeholders of the restriction

The provision of disclosure documents, in particular the home owners' information document, will benefit home owners by enabling them to undertake an informed decision-making process before entry into a site agreement. This will alleviate the potential for confusion or the making of misleading statements by park owners.

This also translates into a benefit for reputable park owners by ensuring that all parties to the site agreement are clear as to their rights and obligations including those relating to site fees. This should result in less time loss involving disputes. It will also provide park owners with the comfort of knowing they comply with all legislative requirements. Introduction of standard terms will result in a time saving benefit to park owners. Compliance costs incurred by park owners should be minimal and are outweighed by the benefit of clarity of the relationship.

By aligning site agreement requirements under the Bill with similar requirements under the Residential Tenancies Act a further benefit will be experienced by home owners and residents occupying different types of accommodation in the same residential park in the form of a reduction in inconsistencies and attendant confusion. This will also result in a benefit to park owners in that they will be able to streamline procedures dealing with different types of residents.

The requirement for variation of site agreements by mutual consent amounts to a benefit for both home owners and park owners and a cost for park owners currently increasing rents or varying agreements on an ad hoc basis

The provision relating to termination of site agreements is of benefit to home owners allowing them to terminate by written notice to the park owner. The option of termination by mutual agreement will also benefit park owners by removing the current requirement for Tribunal approval to terminations.

The introduction of an onus to give notice of intent to sell a manufactured home and assign the interest in the relevant site agreement results in a minor cost to home owners.

The Queensland Government will benefit from the achieving of the objectives of greater information disclosure and removal of inconsistencies for the community together with an anticipated reduction in manufactured home related complaints.

The entry into and assignment of site agreements provisions introduced by the Bill amount to an overall benefit to home owners and park owners outweighing any costs to the latter. There will also be a benefit to Government.

6.2 Termination of site agreements within 28 days of entering into an agreement

The Bill provides for termination of a site agreement in certain circumstances within 28 days of entering into the agreement.

While there is no time period after receipt of the disclosure documents within which a prospective homeowner must decide whether or not to enter into a site agreement - if the park owner gives a prospective home owner disclosure documents and, within 7 days after the giving of those documents, a site agreement is entered into - the home owner has the right, within 28 days after the day the site agreement was entered into,

to rescind that agreement by signed notice to the park owner. There is nothing in the Bill to prevent the home owner from taking possession of the site immediately on execution of the site agreement by both parties.

The termination takes effect on the day stated in the termination notice - being a day not later than 28 days from the date of giving the notice. This right of termination may be exercised despite affirmation of the site agreement by the home owner and even if the agreement has been fully executed.

If the site agreement is terminated, the park owner must, within 14 days after the termination day, refund to the home owner any rent paid under the site agreement.

This provision of the Bill is currently drafted to provide that in the limited circumstances where a site agreement is entered into within 7 days of a park owner giving disclosure documents to a home owner – the home owner has the right to terminate the site agreement within 28 days of the date of the site agreement.

Termination or cooling-off periods aim to neutralise the effect of aggressive marketing techniques and, especially in the case of manufactured home-related agreements, seek to protect vulnerable consumers. In particular, termination periods can assist to redress consumer detriment suffered as a result of unfair trading practices, such as deceptive conduct engaged in by traders to induce consumers to enter contracts for the supply of goods or services they did not want or need or to mislead consumers about the quality or nature of the product or service being offered. In general, termination periods enable consumers to give further consideration to the terms of agreements entered into and to terminate or 'walk-away' from contracts without incurring further liability.

6.2.1 Costs and benefits to stakeholders

Impact on mobile home owners

The introduction of termination periods when pre-contractual disclosure documents are given to potential home owners will be of a benefit to home owners as they provide opportunities for perusal of the disclosure documents, understanding the rights and obligations under the site agreement and seeking legal advice before executing a site agreement.

Information relevant to the site agreement will be laid out in the disclosure documents, ensuring potential home owners are aware of exactly what the terms of the site agreement are. With the specification of these rights and obligations, the incidence of disagreements and disputes throughout the life of the site agreement will be minimised. Both parties will have copies of the site agreement containing the terms and conditions of tenure, which should assist in reducing unnecessary confusion and help clarify matters when they do arise, without the need to lodge complaints with the Tribunal.

Potential home owners will have an opportunity to terminate a site agreement if the site agreement is signed within 7 days of the pre-contractual disclosure documentation being given. The home owner must then give notice of intent to terminate within 28 days of the date of execution of the agreement.

There should be no cost to the home owner who elects to take up the right to terminate the agreement in these circumstances. It is a matter of choice for the potential homeowner whether they wish to forfeit a right to terminate in the circumstances outlined in the provision. This provision applies to both site agreements and sale agreements for manufactured homes positioned on the relevant site.

A home owner will be entitled to a refund of any rent paid under the site agreement, from the park owner if they exercise the right of termination. This constitutes a benefit to the potential home owner, as they will be placed by the reimbursement in the same financial position they would have been in, had they not entered into the site agreement.

The Bill also introduces a right of termination if a park owner does not give disclosure documents to a prospective home owner for a site in the park and a site agreement for the site is entered into between the park owner and prospective home owner. The right of termination is exercised in the same manner ie: the home owner under the agreement may terminate the agreement, by signed notice given to the park owner within 28 days after the day the agreement was entered into.

Again there should be minimal cost to the home owner if they terminate an agreement in these circumstances. Benefits arise in the form of protection of the homeowner from loss occasioned by lack of information due to the failure to provide disclosure documents together with the refunding of any rent paid under the site agreement before the termination. An additional benefit resides in the requirement that any term in a sale agreement is void to the extent that it purports to exclude, change or restrict the operation the right to terminate under the Agreement.

This restriction comprises an overall benefit to consumers as a whole.

Impact on industry/park owners

The effect of the introduction of termination periods in instances when pre-contractual disclosure documents are given, or alternatively, not given, to potential home owners will be a cost to park owners. The cost will comprise loss of time, loss of other potential home owners and financial loss in the form of reimbursement of any rent paid prior to the termination and any other administrative costs. In the instance where the park owner fails to provide disclosure documents as required under the Bill the attendant costs are to be regarded as a necessary result of that failure.

In the instance where the potential home owner chooses to exercise the right of termination the costs incurred by the park owner will comprise an actual expense.

Provided park owners comply with the Bill, only minor costs in the form of time and administration should be incurred. If the park owner does not comply with the provisions of the Bill, then the termination and reimbursement costs incurred may be substantial.

The existence of the right to terminate also provides a benefit to park owners in that people attracted to manufactured home living will be more prepared to investigate and possibly enter into such arrangements secure in the knowledge they are protected under the legislation. This should translate in a greater demand for available sites, contributing to park owners' income.

On balance the provision may incur a small cost to park owners.

Impact on Government

The termination of site agreements provisions of the Bill are again, consistent with the general rationale for Government intervention outlined in sub clause 3.6.

Provision for the ability of potential/current home owners to terminate site agreements in certain circumstances provides a benefit to Government in that the Bill better meets community expectations of a safer and more supportive community by assisting in the regulation and promotion of fair trading practices in the operation of residential parks and in supplying services to owners of manufactured homes in residential parks.

Via the termination provisions, the Queensland Government should experience a reduction in manufactured home-related complaints after introduction of the Bill resulting in a small benefit to Government.

The Queensland Government should not incur any further compliance costs in addition to those already incurred in ensuring compliance under the Mobile Homes Act after the Bill commences.

Overall, there will be a benefit to Government in introducing the Bill.

6.2.2 Other considerations

Relevance to objectives of the Bill

The provisions in the Bill relating to the termination of site agreements in certain circumstances are consistent with the policy objectives of introduction of standard disclosure requirements and an improved dispute resolution process.

The termination provisions of the Bill are also consistent with the specific legislative objectives to:

- regulate agreements;
- promote fair trading practices;

- assist with disclosure of information to prospective home owners;
- detail rights and obligations of park owners and home owners;
- protect the rights of home owners; and
- provide mechanisms for dispute resolution between park owners and home owners.

Stakeholder and Working Party comments

While no specific comment was made in respect of termination of agreements within 28 days, the Working Party acknowledged the importance of ensuring that all parties to an agreement are fully informed of their prospective rights and obligations before entering into an agreement.

Among the recommendations made were that a standard disclosure or information package and the proposed agreement should be available to purchasers before purchase and - given that there would be full disclosure and the opportunity to obtain independent advice on the agreement before the purchase of the mobile home - after signing the agreement there should not be a cooling off period.

One community organisation member and two residents' association members strongly opposed the recommendation not to include a mandatory cooling-off period and suggested a 5 day cooling off period after signing the agreement was suggested.

The introduction of provisions for termination in certain circumstances is a satisfactory compromise addressing both points of view expressed.

6.2.3 Other jurisdictions

The NSW Act provides for rescission or termination of agreements in the instance where a contract for the sale of a manufactured home not installed on a residential site, includes a provision referring to the installation of that home on a residential site under a separate residential site agreement. It provides that a purchaser under such a contract is entitled, within 5 days after entering into the contract, may rescind or terminate by written notice. There is no mention of rescission or termination of site agreements.

6.2.4 Summary of costs and benefits to stakeholders of the restriction

The Bill provides home owners with a right of termination in 2 circumstances:

- when pre-contractual disclosure documents are given to potential home owners and a site agreement is entered into within 7 days of the giving of the documents; and
- a prospective home owner for a site in the park is not given disclosure documents and a site agreement for the site is entered into between the park owner and prospective home owner.

The right to terminate when pre-contractual disclosure documents are given to potential home owners and a site agreement is entered into within 7 days comprises a benefit to home owners by providing opportunities for perusal of the disclosure documents, understanding the rights and obligations of both parties under the site agreement and the obtaining of legal advice before executing a site agreement.

The right of termination where disclosure documents are not given to a prospective home owner and a site agreement is entered into, also comprises a benefit to the home owner in the form of protection from loss due lack of information via the failure to provide disclosure documents.

Further benefits to home owners in these situations are the requirement to refund any rent paid under the site agreement before the termination.

The introduction of the right to terminate in certain circumstances will be a cost to park owners failing to comply with the Bill. However, this cost must be viewed in light of the benefit to the community via the protection of vulnerable consumers together with the enabling of consumers to consider contract terms and to 'walk-away' from contracts without incurring further liability.

The allowing of a remedy in the circumstances outlined will ensure that home owners do not find themselves in situations where the rights and obligations under the site agreement are not understood. This in turn will lead to a reduction in the incidence of disagreements and disputes throughout the life of the site agreement - comprising a benefit to both home and park owners as well as the Queensland Government.

6.3 Making of Park rules

The Bill provides that a park owner may make park rules. However, these are limited to the following prescribed issues:

- use and operation of the residential park's communal facilities;
- making and abatement of noise;
- carrying on of sporting and other recreational activities;
- speed limits for, and parking of, motor vehicles;
- disposal of refuse;
- keeping of pets; and
- other things, as prescribed under regulation.

By restricting the issues about which park rules can be made, this provision constitutes a minor restriction on the business conduct of a park owner. The Mobile Homes Act does not provide for the making of park rules. It was found by the Working Party that the Mobile Homes Act did not address the concerns of residents about the making and alteration of park rules, and the fact that rules could be made arbitrarily without any framework requiring their disclosure and/or review.

The Working Party recommended, as a guide, that park rules should cover issues similar to those provided for under the Residential Tenancies Act, namely domestic and maintenance issues, and park procedures.

Currently, the Small Claims Tribunal has jurisdiction to hear disputes relating to park rules in relation to agreements governed by the Residential Tenancies Act. The Bill provides that, for residential parks, the new Tribunal will have jurisdiction to hear disputes over changes to park rules.

6.3.1 Costs and benefits to stakeholders

Impact on home owners

The provisions of the Bill prescribing the manner in which a park owner may make park rules is a benefit to home owners residing in residential parks. This addresses the concerns expressed by stakeholders that the Mobile Homes Act did not address issues relating to the making and alteration of park rules.

The relevant provisions in the Bill set out the issues about which park rules can be made, the method by which a park rule can be changed including the creation of a park liaison committee comprising a person chosen by home owner objectors to the proposed change, the park owner or the park owner's nominee and another person agreed on by the other members of the committee.

Introduction of these provisions gives certainty to home owners as to what park rules govern the residential park in which they reside and therefore home owners are able free of concern that unexpected changes to park rules will be made.

Impact on industry/park owners

Introduction of the provisions relating to the making of park rules, while constituting a minor restriction on the business conduct of a park owner, comprise a corresponding benefit to park owners by the removal of uncertainty in transactions with home owners.

The creation of a procedure to alter park rules and the introduction of an appeal procedure for both park and objecting home owners amount to both a benefit and a cost to park owners in terms of both time and money. While individual park owners will be required to invest an initial period of time in the establishment and production of authorised park rules this cost will be offset by time and money saved in future dealings with home owner residents. The requisite components of the objection procedure will also benefit park owners as protection from "petty" or vexatious complaints by some residents.

Impact on Government

The park rule provisions of the Bill are again, consistent with the general rationale for Government intervention outlined in sub clause 3.6.

Provision for the making and alteration of park rules together with the inclusion of a dispute resolution procedure provides a benefit to Government by meeting community expectations of a safer and more supportive community in assisting the regulation and promotion of fair trading practices in the operation of residential parks and in supplying services to owners of manufactured homes in residential parks.

Via introduction of the park rules provisions, the Queensland Government should experience a reduction in manufactured home-related complaints after introduction of the Bill resulting in a small benefit to Government.

The Queensland Government should not incur any further compliance costs in addition to those already incurred in ensuring compliance under the Mobile Homes Act after the Bill commences. Overall, there will be a benefit to Government in introducing the Bill.

Relevance to objectives of the Bill

This restriction provides guidelines to park owners as to what issues park rules can be made about. In doing so, this restriction gives certainty to home owners as to what park rules they can expect. Home owners are, therefore, able to live in a residential park without concern that unexpected changes to park rules will be made. Therefore, this restriction helps to meet the following objectives of the Bill namely to:

- promote fair trading practices in the operation of residential parks and provision of services to home owners in residential parks;
- set out the rights and obligations of park owners and home owners;
- protect the rights of home owners;
- provide a clear regulatory framework to ensure certainty for the residential park industry in planning for future expansion;
- facilitate participation by home owners in residential parks who want to be involved in the affairs of the residential park; and
- provide mechanisms for dispute resolution between park owners and home owners in residential parks.

Stakeholder and Working Party comments

On review of submissions received, the Working Party found the Mobile Homes Act does not address the concerns of residents about the making and altering of park rules. It recommended park rules cover domestic issues, park procedures and maintenance issues similar issues to those listed in the Residential Tenancies Act.

In addition the Working Party recommended there be mandatory disclosure of the park rules with the other disclosure documents before the purchase of a mobile home or signing of an agreement and a prescribed process to change park rules. However, there was no consensus on what this process should be.

6.3.2 Other jurisdictions

The NSW Act also prescribes a list of issues on which park rules can be made. Of the other jurisdictions, those which regulate mobile home agreements make provisions for the making of park rules but do not list the issues on which park rules can be made.

6.3.3 Summary of costs and benefits to stakeholders of the restriction

The provisions of the Bill prescribing the manner in which a park owner may make park rules benefit both park owners and home owners residing in exclusive manufactured home residential parks.

Introduction of these provisions addresses the concerns expressed by stakeholders that the Mobile Homes Act did not address issues relating to the making and alteration of park rules and gives certainty to home owners as to what park rules will apply.

While these provisions constitute a minor restriction on the business conduct of park owners and will translate into an initial time and possibly monetary cost to those owners, they also comprise a corresponding benefit by the removal of uncertainty in transactions with home owners. They also will comprise a small benefit to Government via a reduction in manufactured home-related complaints after introduction of the Bill.

6.4 Sale of homes by park owner

The Bill provides that a home owner for a residential park may, by signed notice in the approved form (a “selling authority”), appoint the park owner for the park as the home owner’s agent to sell, or to negotiate the sale of, the home owner’s manufactured home positioned on a site in the park. This includes a provision that a park owner under a selling authority must not charge a home owner a fee greater than the prescribed amount nor may that park owner charge the home owner an agency fee unless the park owner is the effective cause of the sale.

Via a consequential amendment to the *Property Agents and Motor Dealers Act 2000* there will be an exemption for park owners from the licensing requirements for a real estate agent as required in the *Property Agents and Motor Dealers Act*¹⁰. This is because there would be considerable time and expense, both at the outset and ongoing, involved in a park owner obtaining a licence, and also because park owners’ participation in real estate activities is quite limited.

In addition, anecdotal evidence suggests that few licensed real estate agents list manufactured homes for sale. Often the park owner is a home owner’s only real option to use in selling their home. If there is a requirement that park owners be

¹⁰ Persons other than park owners who are engaged by a home owner to sell their home will still be required to be licensed under the *Property Agents and Motor Dealers Act 2000*.

licensed in order to sell manufactured homes, this may be sufficient disincentive for them to arrange the sale of homes on behalf of owners. This will leave home owners with few, if any, options to sell their homes. However, in exempting park owners from the licensing requirements of the Property Agents and Motor Dealers Act, the Bill creates an inequity between park owners and other persons who perform the functions of a real estate agent but are required to be licensed. This confers a benefit onto the park owner.

The draft Regulation will set a maximum amount of remuneration a park owner can receive for selling a home on behalf of a home owner. The current amount is 5% of the first \$18,000 of the sale price, plus 2.5% of the balance. This is also the maximum commission allowable for residential sales under the Property Agents and Motor Dealers Act. By placing a limit on the amount of remuneration a park owner can receive for selling a manufactured home on behalf of a home owner, the Bill restricts how a park owner conducts their business.

Under the Bill, any future changes to the maximum commission for residential real estate transactions under the Property Agents and Motor Dealers Act will result in consequential changes to the maximum remuneration a park owner can receive for the sale of a home. Additionally, the Bill will replicate the current provision of paragraph 8(3)(c) of the Mobile Homes Act, which provides that a park owner, in charging a fee in connection with the sale of a manufactured home on behalf of a home owner, will not be able to do so unless:

- the park owner has actually rendered some service with respect to the sale or attempted sale; and
- there is an agreement between the park and home owners for the payment of a fee.¹¹

As there is uncertainty whether a park owner needs to be licensed under the Property Agents and Motor Dealers Act these provisions should help clarify the issue.

The issue of remuneration for sale of a home by a park owner on behalf of a home owner was not addressed by the Working Party however anecdotal evidence suggests home owners object to the amounts they have been required to pay park owners as remuneration for the sale of manufactured homes.

Property Agents and Motor Dealers Act 2000

If a park owner receives remuneration for arranging the sale of a home on behalf of its owner, the park owner is performing the duties of a real estate agent as defined in the Property Agents and Motor Dealers Act. For example, under the Property Agents and Motor Dealers Act, holding a real estate agent's licence authorises a person to perform for reward and as an agent for others, certain duties including the buying, selling, exchanging or letting places of residence or land. This equates to the service a park owner performs when arranging the sale of a home on behalf of its owner.

¹¹ The *Mobile Homes Act 1989* does not provide for how, or in what form, this agreement should be made.

Applicants for a real estate agent's licence under the Property Agents and Motor Dealers Act must:

- be 18 years of age or over;
- complete an application form in the approved form;
- provide a photograph of themselves for licence purposes;
- pay a prescribed fee – the current fee is \$423 for one year or \$1169 for three years;
- comply with educational/qualification requirements; and
- renew the licence annually, if continuing to perform the duties of an agent.

Schedule 2, Part 2 of the *Property Agents and Motor Dealers Regulation 2000* provides that the qualification requirements for a licence are either completion of or competency in 23 modules from the National Real Estate Curriculum or a minimum of five years' experience as a registered real estate salesperson. In addition, a licensed real estate agent must administer a trust account and comply with a code of conduct.

6.4.1 Costs and benefits to stakeholders

Impact on home owners

Anecdotal evidence suggests that when buying a manufactured home, prospective manufactured home buyers generally start looking for a home at a residential park and seek the advice of the park owner on the prospective purchase. This occurs due to the expectation that the park owner will have specialised knowledge of the prospective home, the park and its surrounds. In addition, prospective manufactured home buyers are likely to conduct their search for a home directly in a residential park to allow them to enter into an assignment of a site agreement at the same time.

The draft provision regulating the manner in which a park owner may act as the home owner's agent to sell, or to negotiate the sale of, the home owner's manufactured home positioned on a site in the park provides protection to the home owner and comprises a benefit to home owners.

Failure to exempt park owners from the requirement to be licensed in order to sell manufactured homes will be a cost to home owners as enforcement of the requirement may dissuade park owners from arranging the sale of manufactured homes on behalf of owners

Impact on industry/park owners

Generally, park owners are unlikely to perform their duties to the same extent as a "typical" real estate agent. For example, a park owner is unlikely to spend significant amounts of money on advertising or marketing homes, relying on prospective purchasers to come to them to seek out homes for sale and to enter into site agreements. Neither is a park owner's potential market likely to be as extensive as that of a typical real estate agent.

This provision of the Bill alleviates park owners of a significant time and cost imposition, allowing them to sell homes on behalf of home owners. This enables the park owner to not only be rewarded for the sale, but provides an incentive to the park owner to sell the home with a view to having a high occupancy rate in their park.

Impact on Government

The manufactured home industry comprises a relatively captive market, where residents are unable to relocate without significant cost and/or practical difficulties. This does not provide great incentive for a high standard of trading performance on the part of industry. As a result, the penalty for poor performance may be weak in an unregulated market.

The provisions of the Bill that relate to exemption from licensing of park owners when acting as agent for home owners in relation to the sale of their manufactured homes entry are consistent with the general rationale for Government intervention outlined in sub clause 3.6.

There would be negligible cost to Government by replacing the relevant provisions of the Mobile Homes Act with the provisions of the Bill relating to fees charged by park owners, as the Mobile Homes Act also regulates the charging of such fees. There will be no loss of licensing revenue as park owners generally are not licensed. The relevant provisions of the Bill do not effect a change; rather they help to clarify the regulation of fees charged.

After introduction of the Bill, Government should experience a reduction in manufactured home-related complaints and should not incur any further compliance costs in addition to those already incurred in ensuring compliance under the Mobile Homes Act, resulting in a small benefit to Government.

Overall, there will be a benefit to Government in introducing the Bill.

6.4.2 Other considerations

Relevance to objectives of the Bill

These provisions of the Bill, in allowing park owners to charge a fee to sell homes on behalf of home owners enable the park owner not only to be rewarded for the sale, but provides an incentive to the park owner to sell the home with a view to having a high occupancy rate in their residential park. This is consistent with the objective of the Bill to encourage the continued growth and viability of the residential park industry.

In regulating the amount of remuneration a park owner can receive for arranging the sale of a manufactured home on behalf of a home owner, the Bill protects home owners from being charged exorbitant and unrealistic amounts of money. It is necessary to do so because home owners have limited choice in selling their homes, with commercial real estate agencies rarely listing manufactured homes and

prospective buyers generally conducting their enquiries through park owners. By protecting the financial interests of home owners in a market with limited options, this restriction helps to meet the objective of the Bill to:

- promote fair trading practices in operating residential parks and in supplying services to home owners;
- encourage the continued growth and viability of the residential park industry;
- provide a clear regulatory framework to ensure certainty for the residential park industry in planning for future expansion;
- detail the rights and obligations of park and home owners; and
- protect the rights of home owners.

By restricting remuneration, this restriction helps to safeguard the financial interests of home owners, and thus helps achieve the Government Priority Outcome of safer and more supportive communities.

Stakeholder and Working Party comments

The Working Party did not make a recommendation on the issue of licensing exemptions for park owners.

6.4.3 Other jurisdictions

The issue of whether or not park owners should be subject to real estate licensing for the purpose of selling manufactured homes as agent for home owners is not addressed in other jurisdictions' legislation. The NSW Act, which specifically regulates manufactured homes in residential parks, is silent on this issue by neither specifically exempting park owners from licensing requirements nor limiting the amount of remuneration a park owner can receive for arranging the sale of a manufactured home on behalf of its owner.

The Victorian Act provides that, while there is no maximum amount of remuneration a park owner can receive arranging the sale of a home on behalf of its owner, the commission rate to be charged must be specified in the agreement.

While the WA Act does not address this issue, the current review of the WA Act does raise the potential for the introduction of a maximum amount of remuneration to be provided for in the legislation. No other jurisdictions address this issue.

6.4.4 Summary of costs and benefits to stakeholders of the restriction

Exemption from licensing of park owners who perform real estate duties has significant benefits for park owners by removing significant costs for park owners in being licensed. Home owners are provided a benefit by the provisions relating to the

amount and circumstances in which a park owner can charge a fee for selling a manufactured home on their behalf.

6.5 Methods for determining rent increases

The Bill provides that rent payable under a site agreement may only be varied in the manner provided. This constitutes a business conduct restriction on park owners, as it restricts how, when, and if, they are able to set rent increases in the park.

The Mobile Homes Act does not prescribe any formulae for calculating rent increases. Under the Bill, not only will a site agreement be required to provide for the method of rental increase, but a park owner can only increase rent under any circumstances by providing written notice, stating:

1. where a site agreement makes provision for, and states a formula for calculating a rent increase:
 - the amount of the rent increase;
 - the method of calculating the rent increase; and
 - the day¹² from when the rent increase is payable; and
2. where a park owner wishes to increase the rent payable without reference to any formula in the site agreement:
 - the amount of the proposed rent increase;
 - the basis for the proposed rent increase; and
 - the day¹³ from when the proposed rent increase is payable.

In general, factors that affect rent and rent increases include the:

- desirability of the park location and the desirability of the location of the manufactured home and its site. For example, the location of the site relative to waterfront or highway noise;
- level of park facilities, and their maintenance costs;
- mixture of accommodation types;
- park owner's expenses, including mortgage and wages bill;
- local government charges and taxes; and
- amount of return on the capital investment.

A further factor in the consideration of rent is that the costs involved with the relocation of a manufactured home are prohibitive, meaning that residents can be held "captive" to the site agreement they have. If this is the case, then residents can be at risk of having their lack of mobility exploited by park owners through increasing rents.

Anecdotal evidence suggests that park owners use a range of methods to increase rent. Some of the more common of these methods include:

¹² The day stated must not be earlier than one month after the notice is given

¹³ The day stated must not be earlier than one month after the notice is given

- linking rent increases to the Consumer Price Index (“CPI”);
- CPI, or a 5% increase, or another specified percentage, whichever is greater;
- CPI plus local government fee increases and/or extraordinary charges, divided by the number of sites in the park; and/or
- any or all of the above, plus overall market review every 3 years.

In some cases, an agreement may not include a formula to calculate an increase in rent but simply provides there will be an annual rent increase. Agreements of this type do not take into account that there may be decreases in park owners’ costs throughout the year which should be passed on to residents in the form of modified rents or other benefits, such as improved facilities.

The Bill provides that a home owner may apply to the Tribunal for a review of a rent increase where a site agreement states a formula for calculating a rent increase and the home owner regards the increase as excessive.

In the instance where a park owner wishes to increase the rent payable without reference to any formula in the site agreement, the Bill provides that if the park owner and the home owner do not come to an agreement about the proposed increase, the park owner may apply to the Tribunal for an order about the proposed increase.

In both instances the Tribunal is empowered to reduce, set aside or confirm the proposed rent increase or make another order the Tribunal thinks appropriate.

In addition, home owners may apply to the Tribunal for a decrease in rent if:

- the amenity and standard of the park’s common areas and communal facilities has decreased substantially since the site agreement was entered into; or
- a communal facility or service being provided at the park when the site agreement was entered into has been withdrawn.

The Tribunal may make an order that the site rent be reduced by an amount the Tribunal thinks appropriate if it is satisfied either of the above events has occurred.

This is a restriction on competition as it impacts upon a park owner’s ability to conduct their business. It can be viewed as a form of price control, as the Tribunal, and not market forces, will be the deciding factor in some rent issues.

6.6.1 Costs and benefits to stakeholders

Impact on home owners

The provisions in the Bill specifying the circumstances in which a park owner can increase rent comprise a benefit to home owners by the overall reduction in uncertainty and confusion as to the method in which rent can be varied.

Available evidence suggests that a number of methods of calculation of variation of rent are applied. This view was confirmed in responses to the draft PBT Report. The

relevant provisions of the Bill will assist in clarifying both method and timing of calculation of rent variations comprising a benefit to home owners. The existence of the provisions will also serve to provide protection for more vulnerable residents from unscrupulous practices by park owners.

The provision in the Bill allowing a home owner to apply to the Tribunal for a review of a rent increase where a site agreement states a formula for calculating a rent increase and the home owner regards the increase as excessive is also a benefit for home owners.

In addition, the provision for referral to the Tribunal where a park owner wishes to increase the rent payable without reference to any formula in the site agreement and the park owner and the home owner do not come to an agreement about the proposed increase comprises a further benefit to home owners by allowing them the right of review by an independent body. As is the right conferred on home owners, who may apply to the Tribunal for a decrease in rent if the amenity and standard of the residential park's common areas and communal facilities has decreased substantially or been withdrawn.

Impact on industry/park owners

The provisions in the Bill specifying the circumstances in which a park owner can increase rent comprise both a cost and a benefit to park owners. The benefit occurs by the overall reduction in uncertainty and confusion as to the method in which rent can be varied. This will assist park owners by allowing them to establish a rent review regime and will eventuate in a saving in time spent in negotiations with individual home owners and a reduction in possible breaches of the legislation.

There will be an initial cost in time and possibly money in establishing this regime. However this cost will be offset by the time savings in the future.

Based on available evidence, it appears that a number of methods of calculation of variation of rent are applied. The relevant provisions of the Bill will assist in clarifying both method and timing of calculation of rent variations comprising a benefit to park owners. Costs will only be incurred by park owners not employing the relevant provisions of the Bill in their method of calculation of rent variations. The provision in the Bill allowing both home and park owners to apply to the Tribunal for a review of a rent increase in certain circumstances also comprises a benefit to park owners by again clarifying the circumstances in which variations can be made and also providing protection for park owners from vexatious complaints by home owners. Overall there will be a benefit to park owners.

Impact on Government

As a result of the clarification of the method and type of variations of rent allowable under the Bill, Government should experience a reduction in manufactured home-related complaints particularly in reference to rent variations. The provision allowing both home and park owners to apply to the Tribunal for a review of a rent increase in

certain circumstances may however result in a cost to the Tribunal via an increase in applications.

The provisions relating to variation of rent also provides a benefit to Government in that the Bill assists in meeting community expectations of a safer and more supportive community by assisting in the regulation and promotion of fair trading practices in the operation of residential parks and in supplying services to owners of manufactured homes in residential parks. Overall, there will be a benefit to Government in introducing the Bill.

6.6.2 Other considerations

Relevance to objectives of the Bill

This provision of the Bill seeks to protect residents in residential parks from excessive and/or frequent increases in site rents. This is considered necessary because residents are often on fixed incomes, and are practically unable to move because the nature of a manufactured home is such that it becomes almost impossible to relocate without significant cost. In such situations, residents may be vulnerable to price exploitation in the form of increasing rent. As such, this restriction on competition achieves the objectives of the Bill to:

- promote fair trading practices in operating residential parks;
- protect the rights of home owners of manufactured homes in residential parks; and
- provide mechanisms for dispute resolution between park owners and home owners of manufactured homes in residential parks.

Because it protects the rights of park residents in relation to their financial outlays and help to prevent them from being price-exploited, this restriction helps to achieve the Government Priority Outcome of safer and more supportive communities.

This restriction is essentially a response to residents' concerns about rent increases. Residential parks generally contain a large number of residents on fixed incomes. If rent increases exceed increases in that type of income, residents may find themselves in financial difficulties. In addressing this issue, this restriction meets the objectives of the Bill to:

- promote fair trading practices in operating residential parks and in supplying services to home owners;
- set out the rights and obligations of park owners and home owners;
- protect the rights of home owners; and
- provide mechanisms for dispute resolution between park owners and home owners.

Because this restriction aims to protect financially vulnerable members of the community, it can also be seen to be achieving the Government Priority Outcome of safer and more supportive communities.

Stakeholder and Working Party comments

The Working Party acknowledged that the issue of rent was a major concern for both residents and park owners resulting in many disputes relating to allegedly unreasonable rent increases, unaffordable site rental fees and methods of payment and market reviews.

It noted that the Mobile Homes Act does not regulate how or when rent should be paid nor place any restriction on rental charges or rent increases. In addition, while the Small Claims Tribunal may deal with disputes the Mobile Homes Act provides no guidelines for the Small Claims Tribunal to adjudicate on rent charges.

The Working Party recommended any new legislation should require disclosure of the weekly rental amount and method of payment, how and when rent reviews are conducted and when rent increases are to take effect. In addition, methods of payment of rent should be specified in rent agreements allowing resolution of any dispute over changing the method of payment could be resolved by the Tribunal while the various options for payment should be noted in any new legislation and should be similar to those listed in the Residential Tenancies Act.

While consensus could not be achieved on how rent increases should be calculated, the Working Party agreed that the method of rent review should be disclosed in the site agreement and should be fair and equitable to both parties.

6.6.3 Other jurisdictions

It is a consistent feature of residential tenancy/manufactured homes legislation in all jurisdictions that a tenant/resident has the ability to apply to a tribunal or similar body for reviews of rent increases and for that body to have the power to set aside an increase and/or order an overall decrease in rent when facilities/services to be supplied as part of an agreement are no longer supplied.

6.6.4 Summary of costs and benefits to stakeholders of the restriction

The draft provisions relating to the mode of calculation and circumstances in which rent can be varied comprise a benefit to both park and home owners via the clarification of variation of rent procedures and the reduction in confusion created by the variable practices currently employed in the industry. In addition it provides protection for home owners from unscrupulous or unfair practices employed by some park owners. While the implementation of a rent review regime will initially comprise a cost to some park owners, this cost will be offset by the time and money saving eventuating from the installation of the regime.

The introduction of a right of appeal to the Tribunal by both parties in certain circumstances provides protection for both home and park owners.

This will also translate into a small benefit for Government.

7 Alternatives to the Bill

This section describes other alternatives to the Bill that have been considered as part of the assessment of the restrictive provisions contained in the Bill. The section describes and assesses the costs and benefits of moving from regulation under the Mobile Homes Act to regulation under the Bill.

7.1 Status quo - Mobile Homes Act

The Office of Fair Trading (OFT) has received many complaints from home owners in relation to their treatment by, and their inability to reach mutually agreeable terms and conditions with, park owners.

The cost of retaining the Mobile Homes Act in its current form to home owners and park owners would be negligible. However, the policy and legislative objectives contained in the Bill will not be adequately met if Government were to rely wholly on the Mobile Homes Act.

The benefits of retaining the Mobile Homes Act would be limited to the need to comply with only a few statutory requirements. Confusion would still arise over inconsistent application of tenancy laws for tenants with different types of accommodation in the same residential park, that is, caravan residents are subject to the Residential Tenancies Act and manufactured home residents are subject to the Mobile Homes Act. These inconsistencies would still apply and be a constant cause of confusion for park owners and home owners with park owners being required to comply with 2 separate complex pieces of legislation, depending on the type of residency consumers take up with the park.

Pre-contractual disclosure, site agreements, assignment, termination and compensation

The definition of a relevant agreement under the Mobile Homes Act is outlined in sub section 3.1 of this Report. Terms of agreements specified in Part 1 of Schedule 1 of the Mobile Homes shall be implied in every relevant agreement, notwithstanding any express term of the agreement of any other agreement made or acknowledgement given by the occupier¹⁴.

Currently, the Mobile Homes Act requires that, within three months after making a relevant agreement, the owner of the site is required to give the occupier (without

¹⁴ Section 5(1) of the *Mobile Homes Act 1989*

charging a fee¹⁵) a written statement specifying the names and address of the parties to the relevant agreement and date of commencement of the agreement. The statement must also include:

- sufficient particulars to identify the land on which the occupier is entitled to place the home;
- the express terms of the agreement;
- any terms implied by an order¹⁶ of the agreement; and
- any other requirements as prescribed by regulation¹⁷.

Where an owner of the site fails to comply with the requirement to provide particulars of the agreement to the occupier the owner commits an offence against the Mobile Homes Act and can face a maximum penalty of \$6,750 for an individual or 6 months imprisonment or \$33,750 for a corporation.

To retain the current provisions under the Mobile Homes Act would mean that assignment of site agreements would still occur. However, site agreements would not be preceded by the pre-contractual disclosure statement and home owners would remain unsure of their rights and obligations under the agreement.

The Mobile Homes Act does not require any written agreements be given nor information be disclosed to potential occupiers before taking up residence on a site within the park.

The Mobile Homes Act as it stands is unsatisfactory to both home and park owners. In addition it does not achieve Government objectives nor does it assist in rectifying the current difficulties experienced in relation to disclosure, site agreements, assignment, termination and compensation.

Variation of site agreements

The Mobile Homes Act is silent as to whether or not a site agreement can be varied or terminated by mutual agreement of the parties. Either party to the site agreement can to apply to the Small Claims Tribunal within 6 months of the making of the site agreement, to vary or delete any express terms of the agreement¹⁸. At any time after the making of a site agreement, either party can apply to the Small Claims Tribunal to have certain terms implied into an existing site agreement. The only terms that can be implied into a site agreement by the Small Claims Tribunal relate to matters prescribed in Part 2 of Schedule 1 of the Mobile Homes Act¹⁹. The Bill will clarify this deficiency.

¹⁵ Section 4(1A) of the *Mobile Homes Act 1989*

¹⁶ An order is one that is made by the Small Claims Tribunal pursuant to Section 5(2) and relates to matters prescribed in Part 2 of Schedule 1 of the *Mobile Homes Act 1989*

¹⁷ Section 4(1) of the *Mobile Homes Act 1989*

¹⁸ Section 5(3) of the *Mobile Homes Act 1989*

¹⁹ Section 5(2) of the *Mobile Homes Act 1989*

Termination of agreements

Home owners can terminate the agreement by giving a park owner four weeks notice of their intention to terminate the site agreement. The Mobile Homes Act is silent on how the termination is to be effected in terms of removing or selling the manufactured home, given the difficulties of actually moving these homes from the site. Park owners can seek an order to terminate a site agreement only on grounds specified within Part 1 of Schedule 1 of the Mobile Homes Act by order of the Small Claims Tribunal²⁰. The Bill will clarify this deficiency.

Assignment of site agreements

The Mobile Homes Act provides that only the owner of the land upon which the site is situated can make a relevant agreement with another person who becomes the occupier²¹. Where the home owner makes a relevant agreement with another person, that is assigns the agreement to that person, who then becomes the occupier, the home owner is deemed to have made the agreement as the authorised agent of the park owner. The agreement is valid, binding and enures for the benefit of the owner²².

Under the Mobile Homes Act the owner of the site cannot limit the occupancy of the site of a manufactured home sold unless the particular site has not previously been occupied by a manufactured home. The owner cannot restrict or interfere with an occupier's efforts to sell the manufactured home positioned on the site²³. The Bill does not change this situation – it merely clarifies it.

7.2 Mandatory code of conduct

Consideration was given to the mandatory code of conduct as an alternative model to the existing legislation.

Codes of conduct are increasingly being used by Government and industry as an alternative means of promoting fair trading and ethical conduct within an industry. A code of conduct is often a more cost-effective and flexible form of regulating an industry than a regulatory regime which involves registration or licensing processes and conduct requirements.

Legislative backing is sometimes needed to make a code of conduct effective, for example to ensure sufficient coverage of an industry or to provide enforcement provisions. Mandatory codes of conduct ensure that full participation is achieved from all persons who operate within the industry. The introduction of a mandatory code of conduct would provide industry wide coverage and would provide a consistent approach in terms of requirements and obligations.

²⁰ Section 9(1) of the *Mobile Homes Act 1989*

²¹ Section 8(1) of the *Mobile Homes Act 1989*

²² Section 8(2) of the *Mobile Homes Act 1989*

²³ Section 8(3) of the *Mobile Homes Act 1989*

The development of a code of conduct would include wide consultation with industry, consumer and government groups and would outline whom the code of conduct will apply to. Implementation of a code of conduct would include a large public campaign to inform consumers and industry of its value, requirements and procedures. It will include industry standards, complaint and dispute procedures and a plan for administration of the code of conduct. The code of conduct would include requirements for reporting and for monitoring the code of conduct for compliance. It would also include procedures for making necessary amendments, which would involve consultation with stakeholders and adequate public notification. A code of conduct would have to comply with the laws of competition and fair trading²⁴.

A mandatory code of conduct would incorporate penalties for industry members who breach the code of conduct or who do not comply with any order made to remedy a consumer complaint. The code of conduct would provide for reviews at specified intervals. Reviews should consider the effectiveness of the code of conduct and its complaint handling procedures, the levels of compliance in the industry, administration of the code of conduct, visibility in the public and would involve wide consultation with industry, consumer and government groups.

The mandatory code of conduct model for the manufactured homes industry would have legislative backing and be made under the *Fair Trading Act 1989* (Fair Trading Act). Under this model everyone would be able to operate within the industry. Those persons who do choose to operate as park owner, as defined by the code of conduct, would be required to comply with the requirements of the mandatory code of conduct. This mandatory code of conduct model could include similar business conduct requirements to those currently in force.

A breach of a mandatory code of conduct prescribed by regulation under the Fair Trading Act attracts penalties that would apply to persons who breach the code of conduct. Under a mandatory code of conduct other remedies would also be available in the event that a person contravenes the code of conduct including injunctions, actions for damages and compensation or other remedial orders.

A cost which will be incurred by the adoption of a mandatory code of conduct will be the large financial and administrative burden on Government firstly to develop the code of conduct and then to ensure appropriate implementation. There would be additional financial burden on Government to ensure park owners adhere to the mandatory code of conduct. Park owners who comply with the mandatory code of conduct could be disadvantaged by unscrupulous park owners not fulfilling obligations.

Under the mandatory code of conduct model, it is likely that Government would transfer existing resources into development, implementation and monitoring of such a code. Additional costs would be needed at the initial development stage to ensure an adequate review of the industry requirements is conducted.

²⁴ Ministerial Council on Consumer Affairs, *Fair Trading Codes of Conduct: Why Have Them, How to Prepare Them*, A guide prepared by Commonwealth, State and Territory Consumer Affairs Agencies, October 1996

It is considered that there is not sufficient justification or requirements for utilising a mandatory code of conduct as the costs of developing, implementing and enforcement such a code would outweigh any benefits, especially considering that many benefits discussed exist under the Bill.

It is considered that the low penalties associated with a mandatory code of conduct model would potentially make this type of model less effective than the Bill. There is a danger that park owners and home owners may perceive a mandatory code of conduct as being a form of industry regulation with lower penalties reducing its effectiveness. In addition the diversity of the industry does not lend itself to the application of a mandatory code of conduct.

7.3 Deregulation

If the manufactured homes industry were deregulated, the Mobile Homes Act would be repealed and no legislation would exist to regulate the conduct of park owners.

Each home owner would have to negotiate their own site agreements with the park owner and they would have no statutory recourse. Both home and park owners would need to apply to a court of competent jurisdiction (normally the Small Claims Tribunal) to have the matter heard, at a cost of between \$12.50 and \$62.50 per application.

Under a deregulation model, park owners could mislead consumers and prey on disadvantaged members of the community by raising rent and allowing facilities to drop to sub-standard conditions. The home owners are unable to easily move premises and have a monetary interest in the home. There are many costs to home owners associated with relocating their homes and often this is simply not an option for them. Deregulation would reduce home owners' bargaining power and could potentially leave them with no agreements. Terms and conditions placed on the home owners would be left to the park owner to determine with home owners given little or no recourse.

There has been a large amount of complaints received in the OFT in relation to the Mobile Homes Act, particular with the making and enforcement of site agreements. Most of these complaints relate to disputes that have arisen due to unclear terms and conditions of site agreements.

Stakeholders who made submissions to the 2000 Discussion Paper strongly submit that they need solid pre-disclosure documents and agreements to ensure their rights are protected and obligations are set out for them, thereby minimising any disputes surfacing due to incomplete or unclear agreements being easily varied or terminated by park owners.

There would be a very small benefit to Government of repealing the Mobile Homes Act without the replacement Bill as there would be no legislation to administer. However, if the manufactured homes industry were deregulated completely, the cost to Government would be small to medium in that there would be an increase in

matters filed in the court system to hear manufactured home disputes, putting more pressure on the already heavily burdened court system. Government would potentially receive many more complaints by park owners and home owners which would need to be dealt with and the Government would not meet two of its key priorities of making a safer and more supportive community and better value of life. As such, deregulation would not be a viable option for all manufactured home stakeholders.

8 Conclusion

Based on the assessments of the Mobile Homes Act and the Bill undertaken in this document together with the results of the public consultations, it would appear that the introduction of the new Bill as drafted, would best respond to the community concerns in this area and the benefits of the restrictive provisions contained in the Bill outweigh the costs to the community as a whole.

Appendix A

Timmer, T	Caloundra	PBT comments: strong objection to the reference to mobile homes as a ‘low cost housing option’ – characterised comment as a myth citing comparative example of rental assistance for mobile home dwellers as opposed to ‘normal’ renting for pensioner couples. Noted also incorrect pension assistance rates applied.
Walters, Bob & Patricia	Hervey Bay	PBT comments: objection to reference to mobile homes as a ‘low cost housing option’ – report correct in identifying attraction to older age group but ‘low cost’ tag contains ‘negative implications about people living in parks and is not always correct when compared to options such as rent or strata title units. Queried the reference to “many” in the stated objective of draft Bill to ‘retain and protect <u>many</u> of the rights currently enjoyed by mobile home owners”.
Smith, F	Urangan	PBT comments: objected to reference to manufactured homes as “low cost housing”
Colless, N	Urangan	PBT comments: Noted out of date pension assistance rates applied. Noted ambiguity in statement in 6.1.4
Kelly, D	Caloundra	PBT comments: agreed policy & legislative objectives of the draft Bill will be met by expanding assignment of site agreement provisions Agreed with the suggestion by the Dept of Housing that any agreement should apply equally to all residents with a sunset clause brings all agreements in line with the new legislation. Unclear what costs to a home owner are associated with assignment of interest to a prospective buyer – but if minor & of definite benefit - agree to taking that course of action Should be obligatory to establish Park Liaison Committees in parks In favour of exemption from licensing for park owners re sale of homes by park owner Comments only increases - never decreases - are considered in park owner’s costs re: rent revisions: formula seems reasonable though residents are never given a starting point of actual monetary equivalents relating to each ‘letter of the formula at a particular date therefore impossible to check whether park owner has ‘done his sums’ correctly Any provision in new bill making park owners accountable for full explanation of rents increases of great benefit
Dorling, A	West Burleigh	PBT comments: Noted out of date pension assistance rates applied. Noted
Powerlett, A	Maroochydore	PBT comments: Rent should be reviewed annually using formula. Delete market review and 5% increase.
Haywood, K	Park Ridge	PBT comments: Methods of determining rent increases –policy and legislative objectives of the draft Bill not met – “grey area” left open to abuse ie the practice of implementing 3 yearly “market reviews” - queried method – (1) on whose report is the review based? (2) Is there a maximum percentage increase? (3) Can a 3 yearly market review be applied at the same time as an annual increase based on CPI figures? Park owners have used market review to implement increases of 15% or more + rent has been increased using both market review and CPI formulas at the same time