

National Seniors

Australia

**Submission in Response to
*Residential Parks Discussion Paper***

January 2012

About National Seniors Australia (NSA)

With around a quarter of a million members Australia-wide, National Seniors is the consumer lobby for the over-50s. It is the fourth largest organisation of its type in the world.

We give our members a voice – we listen and represent our members' views to governments, business and the community on the issues of concern to the over 50s.

We keep our members informed – by providing news and information to our members through our Australia-wide branch network, comprehensive website, forums and meetings, bi-monthly lifestyle magazine and weekly e-newsletter.

We provide a world of opportunity – we offer members the chance to use their expertise, skills and life experience to make a difference by volunteering and making a difference to the lives of others.

We support those in need – as a not-for-profit organisation, we raise funds and redirect monies received to older Australians who are most in need.

We help our members save – we offer member rewards with discounts from over 7,000 business across Australia, we offer discount travel and tours designed for the over 50s, and we provide older Australians with affordable, quality insurance to suit their needs.

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Our Response

The following comments are offered in relation to specific questions raised in the discussion paper. Where questions directly relate to personal choices of residents, no comments are provided.

Certainty about the length of site agreements

11. How does the regulation of site agreements under the *Manufactured Homes (Residential Parks) Act 2003* impact on land owners offering sites for long-term occupation by manufactured home owners?

Long term agreements are essential to home owners in maintaining the value of their homes. Many have sold their family homes and paid substantial amounts to purchase homes in residential parks for retirement living. Without the certainty of long-term site leases, this type of retirement living would not be a viable option for residents. Park owners do face constraints in offering sites, knowing that their investment property will be tied up indefinitely, however they are still able to sell the park and the incoming park owner is required to accept the existing site agreements. Park owners are effectively provided with a regular source of income from site rentals, although it may be more financially rewarding to sell the property for redevelopment. The extent to which site agreements impact on land owners will depend on the intention of the individual park owner, whether that be securing a regular income or making capital gains on the property in the short term.

12. Would the ability to enter into a site agreement for a fixed period of time (for example, five years) impact on the provision of sites for manufactured homes? How?

If short term leases were to be introduced, it would not be viable for residents to purchase homes in the park. Short term leases would be more appropriate to the park owner offering rental agreements for the home and site. Short term agreements may become viable if options for extension of existing fixed term agreements were mandatory, providing some stability and security for home owners. If a rental model was introduced, establishment of parks would require the park owner to pay for both the land and home construction. Park owners wanting to change to a rental model could purchase homes from residents at market value, ie the amount the home would be worth if the park was to continue operating under unchanged circumstances, and offer rental agreements in place of site agreements.

13. What are the advantages and disadvantages of moving to fixed term agreements for manufactured home owners and park owners?

Fixed term agreements would need to be of long term duration, as opposed to short term, in order to be advantageous to home owners. It would not be viable for residents to purchase homes under a short term agreement because they would reduce in value if siting of the home could not be guaranteed for an extended period. Short term agreements would be advantageous to park owners as they retain full control of their property and could either negotiate new agreements at higher rentals or directly remove the home at the home owner's expense. This would leave residents highly disadvantaged as their home would be virtually worthless in value unless it could be sited elsewhere. Even if homes were able to be moved, the removal costs and new lease fees would make it totally unacceptable for elderly people needing security in their later years.

14. If fixed term agreements were considered, what sort of minimum term would be workable, to balance the interests of both park owners and home owners?

Fixed term agreements may assist both parties to the site agreement to better understand their responsibilities and obligations. However, residents need long term agreements in order to retain the value of their investment whereas park owners would be better served with short term agreements to retain control of their investment. This makes it difficult to determine a minimum term to balance the interests of both parties

If fixed term agreements of a short duration, e.g. less than 5 years, are to be introduced, consideration should be given to changing the legislation from a home ownership model to a rental model where park owners retain ownership of the home and rent the home and site to new residents. Existing site agreements should be maintained and changes to a rental model should only be made as homes become vacant or when new homes are constructed.

Park owners should be able to purchase homes from residents at market value to change the park to a rental model or to change the purpose of the land. Market value should be determined by the price the home would attract if the park was continuing to operate viably. Alternatively, the price could be calculated on the price of similar homes in similar parks and locations. Any disagreement should be determined by application to the tribunal.

Finally, as noted in the discussion paper, it is important that all existing site agreements and provisions of the current legislation are maintained. Currently, residents are not on fixed term agreements and any legislative changes should not seek to retrospectively alter the existing agreements or to force residents onto fixed term agreements. Termination of agreements should be in accordance with the *Manufactured Homes (Residential Parks) Act 2003*.

15. If manufactured home owners and residential park owners were able to enter into site agreements for a fixed term, how should the costs of relocating the manufactured home at the end of the fixed term be met? For example, statutory trust accounts or a bond? Why?

It would only be in the interest of the home owner to enter into a long-term agreement, in order to maintain the value of their home. If a park does close for redevelopment or sale, the park owner, who has entered into an agreement to permit the home to be sited indefinitely, should be responsible for relocation costs as it is the park owner who wants to breach the siting agreement. If short-term agreements were entered into, the home owner would have no protection and would be subject to any direction of the park owner. In such case, the home owner would be responsible for relocation costs which most elderly, low income residents could not afford.

16. Should the period be able to be extended and on what conditions?

If short term fixed agreements were introduced, there should be a mandatory option to extend the agreement for a similar period and preferably for a further similar length period. That is, if the fixed term was 5 years then there should be mandatory 2 optional periods of 5 years each making a total of 15 years.

17. How would such an approach impact on purpose built parks with large homes unlikely to be moved?

The industry will only be able to continue in its present form by giving home owners long term certainty. Short term agreements would be better suited to situations where homes remained owned by the park owner and rented to residents. Purpose built parks are more likely to continue as such whereas mixed parks, particularly in tourist areas, are more likely to be targeted for redevelopment. Purpose built parks may still become development targets in the future as urban sprawl continues.

18. Would this help home owners forced to relocate from an existing park, including if they received limited tenure in a new park?

Home owners are generally seeking retirement accommodation and as such are more likely to want to remain at the location of their choice. Most would consider relocation as a last resort. Elderly low income residents would not be financially able to move and would need access to both compensation and to other suitable locations.

19. Would there be any other benefits? (Such as providing existing home owners with more places to relocate of their own free will if their circumstances require it?)

Additional parks could be advantageous if existing home owners had to relocate for changed personal circumstances. Many couples on pensions or fixed incomes find rent charges excessive where one partner dies or is hospitalised. They may need to sell their home and relocate to lower priced accommodation. The right of residents to assign existing agreements under the current legislation becomes an essential component in the selling process, without which the value of the home would be dramatically reduced.

20. Would this encourage the provision of sites in caravan parks to supplement income made during peak tourist seasons?

While mixed parks do have a place and park owners should be able to supplement their income if they choose to do so, problems can arise between home owners who have pride in their homes and tourists or renters who may not take the same care. Older residents may find renters or tourists, particularly those with children, noisy and disruptive to their need for quiet enjoyment. The different types of occupiers need to be kept in separate areas to avoid such problems.

21. Should additional weight be given to the personal circumstances of a manufactured home owner before a site agreement may be terminated? If so, how should the interests of park owners, home owners and the community as a whole be prioritised?

Section 38 of the *Manufactured Homes (Residential Parks) Act 2003* provides the various grounds for termination of site agreements including where the park owner wishes to use the land for another purpose. Section 40(5)(c) provides that, where the Queensland Civil and Administrative Tribunal (QCAT) is making a compensation order, it may have regard to anything else considered relevant. The tribunal is in the best position to determine the merit of the application for termination and the level of the compensation order. Compensation orders should consider the personal circumstances of the home owner including the impact the move will have on the resident. In some circumstances, the financial

position of the park owner may be relevant and once again the weight given to this should be a matter for the tribunal. It may be appropriate for the legislation to provide guidance to the tribunal on this issue.

22. Do you think the existing policies in relation to the termination of site agreements appropriately consider the interests of park owners, home owners and the community as a whole? Why or why not?

The existing policies appear to provide a balanced approach recognising the concerns of park owners, residents and the purpose of the legislation. The right of the park owner to use the land for another purpose or to sell the park is protected but establishes compensation provisions to assist residents to relocate. The present policy also provides protection for home owners living in residential parks.

23. Should residential park owners who wish to change the use of their land be prevented from applying to QCAT for a termination order within a prescribed period of time after entering the site agreement? Why?

There are a number of grounds for termination in the Act and this question would depend on the reason for the application. If the home owner is in breach of the site agreement and will not remedy the contravention in the prescribed time, the park owner should not be prevented from making an application to the tribunal. Where a park owner enters into an agreement knowing that a change of the use of the land is imminent, they may be using unfair tactics against a prospective home owner and be in breach of s.96 *Harassment or Unconscionable Conduct*. The situation may be clarified by introducing a period of time before the park owner may apply for a termination order due to change of land use. The tribunal may also take into consideration the events before the termination application in determining a compensation order.

24. If so, how long should the prescribed period be?

For a home owner who has invested possibly life savings in purchasing a home for retirement living, any prescribed period would be too short. Residents need long term agreements to retain the value of the home. Anything less than 5 years would be unacceptable.

25. What effect would this option have on the sale price of manufactured homes?

A long period makes purchasing the home viable for a resident. If the lease or termination period was for only a few years, the value of the home could be made virtually worthless without that guarantee of continued occupancy in the park.

26. What effect would minimum prescribed terms for site agreements have on the supply of sites for manufactured homes?

Short term agreements may encourage park owners to increase the supply of homes but for home owners it would be unwise to enter into a short term agreement after having paid a substantial amount for the home. Short term leasing would be more suitable to the park owner retaining ownership of the home and renting it to residents.

Compensation for manufactured home owners

27. Do compensation requirements discourage land owners from offering sites for manufactured homes?

While park owners may be discouraged by the payment of compensation, it is essential for residents who have entered into site agreements in good faith and expect park owners to honour their agreement. If homeowners are not adequately compensated for termination due to a change in the purpose of the land, it could be considered that the park owner deliberately misled the resident into buying a home at a significant price and then terminated the agreement. In this situation, the park owner would have the money paid for the home as well as the capital gains on the property when sold.

28. What other costs, apart from the costs associated with relocating the home and the home owners' personal effects, may be incurred (by a manufactured home owner or residential park owner) when relocating a manufactured home?

Other costs could include insurance to cover the relocation of the home. Alternative accommodation during dismantling and reconstruction should also be considered. Reinstatement of the site in the park may be necessary after the removal of a home.

29. Who should be responsible for covering these costs? Why?

If the issue is changing the purpose of the land usage, then the park owner should be responsible for the costs. The park owner has entered into an agreement to permit the home owner to reside in the park and has an obligation to comply with that agreement. If the park owner wants to terminate the agreement, and it should remain a right of the park owner to do so, then compensation should be payable by the park owner.

30. Should there be a provision inserted into the Act to clarify what is to happen once a manufactured home deteriorates to the extent that it is no longer habitable?

Deterioration of a home can have an effect on the amenity of the park, not only causing concern for park owners but also other home owners. A provision should be inserted into the Act based on abandonment provisions in order to address this situation.

31. Who should make the determination that a manufactured home has deteriorated to the extent that it is no longer habitable?

The current Act deals with situations where a home has been abandoned and requires that an application be made to the tribunal. Deterioration should be dealt with in the same manner. The park owner could get support from other home owners in the application. Photographs could also be used to support the application.

Legal advice, support and advocacy for manufactured home owners

33. What types of support and advocacy services are of most assistance to manufactured home owners at risk of termination of their site agreements?

Resident support groups such as the Caravan and Mobile Homes Residents' Association (CMHA) and Manufactured Home Owners Association (MHOA) should be encouraged and, if appropriate, financially assisted by government to provide home owner assistance. Home owner committees should be available to assist their fellow residents with tribunal applications. Education courses could be conducted by government to assist home owners to deal with issues including termination.

34. What types of support services are of most assistance to manufactured home owners who have site agreement terminated and need to make alternative housing arrangements?

Government support, particularly in housing, should be provided where parks are closing to assist residents in relocating to suitable alternative accommodation. Park owners intending to close or redevelop the park could also provide assistance in relocating residents. This could include locating suitable alternative parks and assistance with the actual removal process. Such support by the park owner could be considered by the tribunal in determining compensation orders.

Alternative models of residential park ownership — manufactured home owner cooperatives

35. Are there alternative ownership models which may provide greater benefit to manufactured home owners? What are these?

Development of a residents' cooperative model could be an alternative although it is uncertain if many elderly people would want to become involved in such an enterprise. The cost of acquiring suitable land for a new park or purchasing an existing park would be outside the financial capacity of this age group who are generally on low or fixed incomes. The government would need to purchase the land, perhaps through a low or no interest loan, and establish a committee of residents to oversee the park operations. A proportion of the site rental not required for park maintenance and operations could be returned to the government to service the loan.

36. What are the main advantages and disadvantages in manufactured home owners owning and operating a residential park?

Cost of establishment and expertise in operating such an enterprise would be the main disadvantages for home owners. The main advantage would be effectively guaranteeing permanent, secure accommodation.