

# Queensland Retirement Village and Park Advice Service

## Site Rent Increase — Market Review

Information for home owners in a manufactured home park who have been given a notice of site rent increase by way of 'market review'.

This factsheet reflects changes to the *Manufactured Homes (Residential Parks) Act 2003* (Qld) (Act), which commenced in October 2018 and have altered the way that site rent can be increased under all site agreements.

### MARKET REVIEW

#### What is a market review of site rent?

The Act defines 'market review of site rent' as '... a review of site rent, the outcome of which is decided by comparing the site rent with one or both of the following:

- the site rent payable for a site in one or more residential parks
- the rent payable for other residential accommodation.

A market rent review considers an assessment of many different things and should not apply a strict mathematical formula.

#### When can a site rent increase occur?

Site rent must not increase more than once per year. The park owner has to nominate a general increase day when the increased rent is payable each year.

The park owner must ensure your site agreement states how the amount of an increase in site rent may be worked out.

In addition to a market rent review, your site agreement might also say that the park owner can increase the rent on another basis for example with reference to the Consumer Price Index (CPI) or by a set percentage. If so, the park owner can only work out a site rent increase on one basis at

a time. This means that a site rent increase based on a market rent review should not include an increase based on the CPI.

Different rules apply where the park owner wants to increase site rent to cover significant operational, repair and upgrade costs for the park. This factsheet does not deal with special cost increases.

#### When is a market rent review allowed?

The Act limits the ways that site rent can be increased in a manufactured home park. A market review of site rent can only happen if your site agreement has a clause in it that allows the park owner to do market rent reviews.

### A PARK OWNER'S OBLIGATIONS WHEN UNDERTAKING A MARKET RENT REVIEW

The Act states that if a park owner wants to increase site rent in accordance with your site agreement, they need to take the following steps.

#### 1. Market valuation and consultation

The park owner must first obtain a market valuation from an independent, registered valuer.

The registered valuer or the park owner must consult with the home owners committee, or a proportion of the home owners committee, about the market valuation. This consultation should occur at least 63 days before the general increase day.

#### 2. Notice of general increase in site rent

Next, the park owner must give you a written notice that says:

- how much the increased site rent will be
- the basis for increasing the site rent (it is

- enough to say ‘market rent review’ or similar words]
- how the increased site rent has been calculated
  - the general increase day
  - that, if a home owner thinks the increase is excessive, they can issue a dispute negotiation notice within 28 days of the notice.

The market valuation must be attached to the notice.

The park owner must give you notice at least 35 days before the general increase day.

## OBJECTING TO A SITE RENT INCREASE BASED ON A MARKET RENT REVIEW

If you have been given a notice that your site rent will be increased and you think the increase is excessive, you can issue a Manufactured Homes Form 11 Dispute Negotiation Notice to commence dispute negotiation about the proposed site rent increase. A dispute negotiation is the first step in the dispute resolution process under the Act. See our *Dispute Resolution* factsheet for more information about this process.

You only have 28 days from when you receive the notice to issue the Dispute Negotiation Notice.

The park owner must respond in writing within 7 days of receiving the notice. You must meet to attempt to resolve the dispute on the date you have proposed on the Dispute Negotiation Notice, or on another date within 7 days of the date proposed by the park owner.

## CHALLENGING A RENT INCREASE IN QCAT

If you are unable to resolve the dispute through negotiation, you can make an application to the Queensland Civil and Administrative Tribunal (QCAT) for a review of the increase.

If you cannot resolve the dispute through negotiation, you will need to ask the Principal Registrar of QCAT to refer the dispute to mediation. The Act says you need to try mediation before you can ask for a QCAT hearing.

If the dispute is not resolved in mediation, you can ask QCAT to refer the dispute for a tribunal hearing.

See our *Dispute Resolution* factsheet for more information about this process.

### What does QCAT consider when they make their decision?

If your dispute goes to a hearing, the Act states that QCAT can consider the following things when making a decision about a site rent increase:

- the range of site rent usually charged for comparable sites in comparable parks in the locality of the park
- if it is impractical to obtain the above data, consideration is given to the range of site rent usually charged for comparable sites in comparable parks in comparable localities
- if it is impractical to obtain both of the above types of data, consideration is given to general trends in rent for residential accommodation in the locality the park is in
- the increase in site rent when compared to the previous site rent
- the frequency and amount of past increases in site rent
- any increase in the CPI during the previous site rent period
- the amenity or standard of common areas and communal facilities
- withdrawal of a communal facility or service at the park
- addition of communal facility or service at the park
- increase in the park owner’s operating costs during the previous site rent period
- whether the increase is fair and equitable in all the circumstances
- anything else QCAT considers relevant.

QCAT may also appoint an independent valuer to undertake another market review of the site rent in some circumstances, including where consultation with home owners was not adequate or the increase notice was not accompanied by a market valuation. The park owner will generally be required to pay the costs of the QCAT-appointed independent valuer.

### What orders can QCAT make?

When QCAT receives an application from a home owner about a site rent increase, they can make any of the following orders:

- an order reducing the increase by an amount
- an order that sets aside the increase

- an order that confirms the increase. QCAT may impose conditions on the increase if it is appropriate
- any other order that QCAT considers appropriate.

### How do I make an application to QCAT?

If you want to dispute a site rent increase because you think it is excessive, you will need to follow the steps in our *Dispute Resolution* factsheet.

The tribunal does not presently have a specific form for manufactured home park disputes, so you will have to make your application in writing to the QCAT Registry.

You will need to draft your written application, make three copies, pay the filing fee (or request a fee waiver) and file the written application in QCAT.

There is currently a filing fee of \$338.20 to lodge a manufactured homes application in QCAT. If you are experiencing financial hardship, you can apply for a fee waiver using a Form 49 Application for Waiver of Fees by Reason of Financial Hardship and lodge this along with each of your written applications.

All applications need to include details of the orders that are being sought and the reasons that you are asking for these orders.

### Can I make an application to QCAT as part of a group of home owners?

The Act allows a group of home owners in a park to make a joint application to QCAT if their application arises out of the same or similar facts or circumstances.

### Can a lawyer represent me in QCAT?

The tribunal generally requires people to represent themselves. If you think that you need to be represented, you can make an application to QCAT asking that they allow you to be represented. This could be by a lawyer or by someone else who has agreed to help you.

### What happens after I make the application?

The tribunal will tell you what happens after you make your application.

Common steps in a QCAT matter may include a directions hearing (to set out the steps the parties need to follow and to set out key dates), a compulsory conference (where the parties meet to try and work out a way to resolve the dispute) and a hearing.

As part of the QCAT process, you may need to write a statement to tell your story about why you think the increase is excessive. You might need to lodge written arguments (called submissions) that aim to show QCAT why the increase is excessive, and why you should be successful. If the matter goes to a hearing, you may need to give evidence or ask the park owner questions about their evidence.

### Is there a risk that I will have to pay the park owner's costs in QCAT?

In QCAT, the parties to a matter generally have to pay their own costs, however, in some cases, QCAT can order that one party pay costs of the application.

## WHAT HAPPENS IF MY APPLICATION IS UNSUCCESSFUL?

You will need to continue to pay the increased site rent. If you think that QCAT has made the wrong decision, you can consider lodging an appeal. There are strict time limits for making an appeal. You will usually need to get permission from QCAT to appeal a decision about a site rent increase. You should get further advice about appeals before taking any action.

## DO I NEED TO PAY THE INCREASED RENT IF I DISPUTE IT?

Yes. The Act says that a site rent increase carried out in accordance with the terms of a site agreement is payable from the day stated in the notice (as long as that day is at least 35 days after you received the notice).

If you dispute the increase and QCAT makes a decision reducing the amount of the increase, then the park owner will need to refund any overpayment of site rent that has been paid since the increase day.

## USEFUL CONTACTS AND LINKS

### QUEENSLAND RETIREMENT VILLAGE AND PARK ADVICE SERVICE

This service, situated at Caxton Legal Centre, provides information, advice and assistance about the law relating to manufactured home parks.

Caxton Legal Centre  
1 Manning Street  
South Brisbane Qld 4101  
Tel.: (07) 3214 6333  
[www.caxton.org.au](http://www.caxton.org.au)

### ASSOCIATED RESIDENTIAL PARKS QUEENSLAND

Associated Residential Parks Queensland provides advocacy services for current and prospective manufactured home owners in Queensland.

PO Box 1124  
Park Ridge Qld 4125  
Tel.: (07) 3040 2344  
email: [membership@arpq.org.au](mailto:membership@arpq.org.au)  
[www.arpq.org.au](http://www.arpq.org.au)

### MANUFACTURED HOME OWNERS ASSOCIATION INC.

This association provides advocacy services for current and prospective manufactured home owners in Queensland.

Tel.: 0492 588 149  
[www.mhoa.com.au](http://www.mhoa.com.au)

*Manufactured Homes (Residential Parks) Act 2003 (Qld)*  
[www.legislation.qld.gov.au/view/html/inforce/current/act-2003-074](http://www.legislation.qld.gov.au/view/html/inforce/current/act-2003-074)

### QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

The tribunal operates outside of the Brisbane CBD through the Magistrates Court. These courts (except Brisbane Magistrates Court) can receive all QCAT applications and deal with minor civil dispute matters.

Level 9  
259 Queen Street  
Brisbane Qld 4000

Tel.: 1300 753 228 between 8.30 am and 3 pm  
Monday to Friday

Email: [enquiries@qcat.qld.gov.au](mailto:enquiries@qcat.qld.gov.au)  
[www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)

Caxton Legal Centre Inc.  
© Copyright Caxton Legal Centre Inc.  
1 Manning Street  
South Brisbane Qld 4101  
Tel.: (07) 3214 6333  
Fax: (07) 3846 7483  
Internet: [www.caxton.org.au](http://www.caxton.org.au)  
Know Your Rights! [www.queenslandlawhandbook.org.au](http://www.queenslandlawhandbook.org.au)

This information is current at May 2019.

### Disclaimer

This information is intended only as a guide. It is not a substitute for legal advice.

No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in or omitted from this publication.