***Submissions on access to dispute resolution services for exempt customers***

***Prepared by Scott Cunliffe***

***on behalf of***

***The Manufactured Home Owners Association Qld Inc***

***for***

***Australian Competition and Consumer Commission (ACCC), and***

***Australian Energy Regulator (AER)***

The Management Committee

Manufactured Home Owners Association (Qld) Inc

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**Issues Paper**

***Access to dispute resolution services for exempt customers***

Australian Energy Regulator

June 2017

NOTE: Reference is made to the National Energy Retail Law and the two relevant Exempt Selling Guidelines[[1]](#footnote-1).

These submissions were prepared on behalf of the Management Committee - Manufactured Home Owners Association (Queensland) by Scott Cunliffe

***Submission from the Manufactured Home Owners Association (MHOA)***

(See the attached Annex for a description of the MHOA organization and the constituency it represents).

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***NOTE: Language and Accessibility to the Issues Paper***  *(June 2017)*

*Please note the excessive use of jargon and unfamiliar terminology that effectively precludes broad and meaningful response from ordinary consumers unfamiliar with such formal and specialist technical legalese language. Assuming the intention of the Issues Paper is to seek meaningful responses from consumers, it is therefore recommended that such materials are provided more palatable and appropriate to consumers in both language and presentation. Assume you are explaining this to your grandmother; always a good litmus test.*

1. **Introduction**
   1. The purpose of this submission is to provide feedback to ACCC through the AER call for consumer views on the eleven consultation questions enclosed in the Appendix of the Issues Paper (AER, June 2017). The submission has been prepared for and on behalf of members and Management Committee of the Manufactured Home Owners Association (MHOA) of Queensland. Only those questions of direct relevance to tenants of seniors’ communities (as a specific consumer group) have been addressed.
   2. Reference (and subsequent recommendations) is therefore made to the 2003 Manufactured Homes (Residential Parks) Act.
   3. The main object of the 2003 Manufactured Homes (Residential Parks) Act in Queensland (as amended[[2]](#footnote-2)) (the Act) is to regulate, and promote fair trading practices in the operation of residential parks. It came into existence largely to protect consumers from uncontrolled billing and potentially unfair conditions of contract that fell outside acceptable commercial conduct.   
        
      Those consumers were (and continue to be) largely the demographic group commonly referred to as “seniors” (over 55s, retirees etc.). Subsequent Guidelines and QCAT directives have continued to focus largely on conflict resolution of disputes arising from companies and individuals essentially taking advantage of this growing, ageing and increasingly vulnerable demographic group.  
        
      This inquiry falls into a similar vein; should Ombudsman-type dispute resolution services be available to consumers to resolve energy disputes; does this need exist and what is the scale of that need? As the Manufactured Homes Act clearly illustrates, the relationship between customer (consumer) and provider (exempt entities) is complex, clouded by multiple roles such as landlord, body corporate, and service providers of all sorts.  
        
      *RECOMMENDATION: With specific reference to the Manufactured Homes Act, there may be an opportunity within the existing “Site Agreement” (the agreement between manufactured home owner and park owner) to clarify the rights and responsibilities of exempt consumers and exempt entities[[3]](#footnote-3). Further development of this important contractual documentation could lead to fewer disputes if AER and ACCC were to assist in drafting the relevant parts of a revised Site Agreement to accommodate a range of potential service provision mechanisms.*
   4. The initial obvious premise for this submission is that the scale (number and severity or cost) of the occurrence of disputes between providers (exempt entities are either an exempt seller or exempt NSPs using embedded networks or alternative selling models[[4]](#footnote-4)) and consumers (exempt customers) is such that it warrants the support of MHOA and other seniors’ organizations to ensure adequate, independent and affordable dispute resolution assistance is available to senior tenants as a consumer group.  
        
      While there have been few cases in number that have come before the QCAT specifically on the issue of energy pricing or energy delivery, there exists a clear and present opportunity to pre-emptively ensure that Site Agreements for manufactured home owners contain adequate provision to protect consumers (in this case elderly), from any instance of unfair trading practices. The 2003 Manufactured Homes (Residential Parks) Act would appear to be the appropriate instrument in this situation (see attached Annex One).
2. **Two key concerns**
   1. We consider that there are two main issues of relevance to the members of MHOA and older Australians in general.

***Issue 1.   
Protecting vulnerable persons*** *Are the number of disputes with the providers of energy to seniors’ communities sufficient to warrant the need for access to ombudsman-type dispute resolution services? This could be for example, disputes regarding energy consumption or independent metering, unit charges, profit margins, service charges etc.*  
  
The answer here is yes. With NSW averaging about one hundred NCAT cases annually, in our view one such case is enough to warrant dispute resolution assistance. We do however, note the following:

* + 1. The pre-hearing arbitration process of most Ombudsman offices (Civil and Administrative Tribunals) can often resolve smaller claims quickly and easily, this is positive.
    2. The Civil and Administrative Tribunals can appear daunting to anyone, especially the elderly or infirm. These are both; i) the least likely to go through the CAT process, and ii) amongst the most vulnerable sectors of the community, often in most need of such protection from unscrupulous providers (exempt entities). Case workers (from CAT or Ombudsman officers) may be needed to guide come people, particularly elderly and vulnerable, to work through the process.

***Issue 2.   
Strengthening contractual agreements to minimise the need for dispute resolution****Should exempt customers (those who purchase electricity from owners and managers of manufactured homes, retirement communities and caravan parks for example) have dispute resolution assistance such as ombudsman schemes, readily available to the provider and their customers (the final consumers)?*

As above; yes. The need exists; the delivery mechanism will require some specific tailoring for seniors and those less physically and mentally able.

Fair and reasonable access to affordable owner and electrical services is critical to most households, particularly the elderly. Apart from the opportunity for Government support to the elderly in need (less financially secure for example), clearly a fair and equitable system should be to resolve any disputes should they arise. The same goes for water supply as a similar utility provision example that was before the Queensland Civil and Administrative Tribunal (QCAT) recently (June 2016) arising from a billing dispute. This case highlights the importance of providing timely water use charges to tenants.

Without clear guidance on acceptable procedures for exempt providers of both water and electricity, their clients will continue to be vulnerable and in need of dispute resolution. As indicated earlier in this paper, the occurrence of disputes would be best dealt with pro-actively, not ex-ante or after the fact.

*RECOMMENDATION: The recommendation would then be to ensure clarity within Site Agreements and other contracts between exempt providers and exempt consumers of utilities, including power regarding costs, billing, and prescribed requirements for invoice timeframes. This suggestion is very similar to the QCAT case on water billing in 2016.*

*Therefore yes indeed, exempt customers should have adequate access to dispute resolution services, should the need arise.*

**3. Other Issues of interest to this Inquiry**

1. **Quantitative analysis**  
   At this time, there has been no comprehensive quantitative analysis of trends of actual occurrences of disputes related to the delivery of power supply to Manufactured Hones, caravan parks or other community-based organizations of accommodation providers in Queensland, to the best of our knowledge. We cannot comment therefore on the scale of the issue/occurrence.

We do concede however that disputes can and do occur related to billing methods primarily (timeliness, receipted, properly detailed and provided at least in quarterly cycles), for the provision of utilities where a third party is acting for the primary energy provider.  
  
Generally speaking, it would appear the existing external dispute resolution mechanisms that exist through QCAT processes are effectively utilized to resolve energy and other utilities disputes. While the knowledge of the existence of these mechanisms is growing, greater effort could be placed on assisting those most vulnerable, particularly elderly and infirmed, to make best use of this resource that may appear daunting to some persons.

1. **Bundling of Complaints**  
   Given the experiences from 2014-2015 where a number of disputes were heard by QCAT relating to Manufactured Home Owners (and assisted at that time by the MHOA), where complaints and disputes have been raised, it has been a common pattern that more than one issue is/was occurring simultaneously. For example, where disputes regarding contract conditions, or lack of conditions, it has not been uncommon for there to be multiple breaches of contract or unfair treatment in lieu of adequately specific conditions being in place before contracts were signed (most commonly referred to as Site Agreements).  
     
   This adds further credence to the recommendation under Section 1.3 Above.

It should be noted that recently, young people, older people, families and people with a disability from across the state were given the opportunity to share their housing experiences (*“Working together for better housing and sustainable communities”)* during the extensive consultation process to formulate a ten year strategy for housing in Queensland. The State is now moving forward with the implementation of the Queensland Housing Strategy 2017-2027. ACCC and AER have no doubt taken that opportunity to bring forward the concerns of those most vulnerable regarding utilities provision and third party interventions

We would like to thank the organisers at ACCC and AER for the opportunity to provide feedback on this important issue for older Australians in Queensland.

***Annex One***

***Manufactured Homes (Residential Parks) Act 2003 – Queensland***

**Object or purpose of this legislative instrument**

The main object of this Act is to regulate, and promote fair trading practices in, the operation of residential parks:

* to protect home owners from unfair business practices
* to enable home owners, and prospective home owners, to make informed choices by being fully aware of their rights and responsibilities in their relationship with park owners.

The main object is achieved by

* declaring particular rights and obligations of the park owner, and home owners, for a residential park
* facilitation the disclosure of information about a residential park, and this Act, to a prospective home owner for a site
* regulating
  1. the making, content, assignment and ending of a site agreement
  2. the sale of an abandoned manufactured home positioned on a site in a residential park
  3. the variation of site rent
* facilitating participation by home owners for a residential park in the affairs of the park
* providing ways of resolving a site agreement dispute.

The following are also important objects of this Act:

* encouraging the continued growth and viability of the residential park industry in the state
* providing a clear regulatory framework to ensure certainty for the residential park industry in planning for future expansion.

**Scope of this legislative Instrument**

The Act sets out the basic responsibilities of home owners and park owners. It also contains information in relation to:

1. The content of site agreements, including that site agreements
2. be written
3. state each parties name, and any telephone numbers
4. state the site rent and other charges payable under the site agreements
5. state when and how site rent and other charges are payable
6. state how and when the site rent may be varied
7. precisely identify the site and
8. be written in a clear and precise way
9. Disclosure requirements, including through the provision of
10. a Home Owners Information Document
11. the park rules and
12. two copies of the site agreement
13. Termination of site agreements
14. Assignment of home owners interest in a site agreement
15. Abandonment of manufactured homes
16. Sale of a manufactured home positioned on site
17. Site rent and varying site rent
18. Park managers
19. Park rules
20. Residential park operations
21. Home owners committee
22. Resolution of the site agreement disputes by the Queensland Civil and Administrative Tribunal.

**Useful websites**

Queensland Civil and Administrative Tribunal: http:/[www.qcat.qld.gov.au](http://www.qcat.qld.gov.au/)

The following Subordinate Legislation should also be examined:

* Manufactured Homes (Residential Parks) Regulation 2003

A range of approved forms is available by calling 13 74 68 (13 QGOV):

* Manufactured Homes Form 1 - Home owners' information document
* Manufactured Homes Form 2 - Site agreement
* Manufactured Homes Form 3 - Termination notice by home owner within 28 days of entering site agreement
* Manufactured Homes Form 4 - Termination notice - by mutual agreement
* Manufactured Homes Form 5 - Termination notice - by home owner
* Manufactured Homes Form 6 - Notice to remedy breach
* Manufactured Homes Form 7 - Notice of proposed sale and assignment
* Manufactured Homes Form 8 - Form of assignment
* Manufactured Homes Form 8a - Notice of variation of site agreement
* Manufactured Homes Form 9 - Selling authority
* Manufactured Homes Form 10 - Information for record of residential parks.

**Service type**

**Regulatory Obligation**

An obligation defined in law. A business must comply with relevant services.

**Definition of terms**

**Homeowner**

1. Each of the following is a home owner
   1. a person who owns a manufactured home that is positioned on a site in a residential park under a site agreement
   2. a person who intends to position a manufactured home on a site in a residential park under a site agreement for use by the person as the person's principal place of residence
   3. a person who obtains an interest in a site agreement as the personal representative, or a beneficiary of the estate, of a deceased individual who immediately before the individual's death was a person mentioned in paragraph (a) or (b);
   4. another successor in title of a person mentioned in paragraph (a) or (b).
2. A person mentioned in subsection (1)(a) above is a home owner whether
3. the person occupies the home as the person's principal place of residence; or
4. a tenant of the person occupies the home.

**Manufactured home**

A manufactured home is a structure, other than a caravan or tent, that:

* has the character of a dwelling house
* is designed to be able to be moved from one position to another; and
* is not permanently attached to land.

A manufactured home does not include a converted caravan.

However, if a park owner and the owner of a converted caravan enter into an agreement, that would be a site agreement if it related to a manufactured home, for a site on which the converted caravan is positioned or intended to be positioned:

* the converted caravan is taken to be a manufactured home; and
* the agreement is taken to be a site agreement.

To remove any doubt, it is declared that an agreement entered into under another Act or a former Act, other than the repealed *Mobile Homes Act 1989*, is not a site agreement under subsection (3).

**Example**

A residential tenancy agreement entered into under the *Residential Tenancies and Rooming Accommodation Act 2008*is not a site agreement under subsection (3).

**Park owner**

1. a person who owns a residential park is a park owner
2. each of the following is also a park owner
   1. the personal representative, or a beneficiary of the estate, of a deceased individual who immediately before the individuals death was a person mentioned in subsection (1)
   2. a mortgagee in possession of a residential park for which site agreements are in force
   3. another successor in title of a person mentioned in subsection (1).

**Premises**

means the home owner's manufactured home and the site on which it is positioned.

**Residential park**

A residential park is an area of land that includes:

* sites
* common areas
* facilities for the personal comfort, convenience or enjoyment of persons residing in manufactured homes positioned on sites.

**Site agreement**

Is an agreement between a park owner and a home owner that provides for:

* the rental by the home owner of particular land in a residential park
* the positioning on the land of a manufactured home
* the home owners non exclusive use of the parks common areas and communal facilities.

It also includes provision about anything else required or permitted by this Act to be in the agreement.

**Additional information**

The Manufactured Homes (Residential Parks) Amendment Act 2010 received Royal Assent on 5 November 2010. The changes in this amendment Act aim to strengthen consumer protection while balancing the needs and supporting the continued growth of the residential parks industry.

The Amendment Act commenced in phases.

A number of amendments commenced on 5 November 2010 including amendments which:

* relate to converted caravans;
* allow a regulation to be developed to prohibit particular types of special terms and park rules;
* allow the Queensland Civil and Administrative Tribunal to make additional orders to assist manufactured home owners faced with the termination of their site agreement; and
* allow home owners to seek reductions in site rent where a communal facility or service described during pre-contractual negotiations has not been provided.

1. 9 November 2010 was the commencement date for a number of amendments, including those which

- significantly restrict a park owners existing ability to seek increases in site rent outside the terms of a site agreement.

* ensure park owners may only increase site rent based on a market review if this type of increase has been specifically provided for in a site agreement;
* allow a park owner to insert (by using the approved form), a clause which allows variations in site rent based on a `market review, into an existing site agreement on assignment;
* prohibit a park owner from threatening, intimidating or coercing a home owner to agree to a proposed increase in site rent or to refrain from seeking a review of site rent; and
* prohibit and make void agreements which establish a fixed termination date for a site agreement.

All remaining amendments commenced on 1 March 2011 including those which:

* allow a record of residential parks to be established
* clarify that there is to be only 1 Home Owners Committee (as defined by the Act) for a residential park
* provide that if a utility is separately measured and charged by a park owner, the park owner must not charge more than the actual cost of providing the utility service.
* require park owners to advise buyers, during the proposed assignment of the site agreement, how much site rent the seller is paying.

More detailed information about the Amendment Act and the Proclamation is available on the Office of Queensland Parliamentary Counsel website at [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au/).

**Appeal process**

**Lodgement**

Compliance Mechanisms and Penalties:

Questions regarding the compliance framework can be directed to the Department.

Review or Appeal Mechanisms:

The Queensland Civil and Administrative Tribunal delivers justice and resolves disputes in a way that is independent, efficient, expert, accessible and flexible. Most applications will be referred for mediation in the first instance. If mediation is unsuccessful, the matter will be listed for a directions hearing where the parties will be required to prepare and exchange evidence within specific time-frames to prepare for a formal hearing. For more information about Tribunal processes (including how to lodge an application) visit http:/[www.qcat.qld.gov.au](http://www.qcat.qld.gov.au/) or call the Queensland Civil and Administrative Tribunal on 1300 753 228.

**Administering agency**

Department of Housing and Public Works  
Housing and Homelessness Services  
Policy and Performance

**Contact details**

|  |  |
| --- | --- |
| **Department of Housing and Public Works Housing and Homelessness Services Policy and PerformanceOperating address:** | Qld Govt Service Centre 33 Charlotte Street Brisbane Queensland 4000 |
| **Mailing address:** | Qld. Govt. Service Centre GPO Box 3111 BRISBANE Queensland 4001 |
| **Phone:** | 13 QGOV or 137468 |
| **Phone:** | 07 3405 0970 |
| **Fax:** | 07 4039 8478 |

**Supporting information**

[Queensland Acts and Regulations [pens in a new browser window](https://www.legislation.qld.gov.au/OQPChome.htm)](https://www.legislation.qld.gov.au/OQPChome.htm)

***Annex Two***

*Brief Summary on the Manufactured Home Owners Association (Qld)*

The Manufactured Home Owners Association (MHOA) is an organization dedicated to protecting the rights and interests of manufactured home owners in Queensland.  
  
MHOA is a non-profit, volunteer, state-wide organization developed to help prevent unfair treatment of manufactured home owners.  
  
MHOA is an organization which is recognised by the Department of Housing and Public Works, and which endeavours to work cooperatively with the Department for the betterment of members living in residential parks.  
  
The MHOA monitors the Manufactured Homes Act 2003 to make sure our members receive the benefits it should provide them with, and also to identify any defects in this Act so that we can work towards amending the current legislation if that is needed.  
  
We are continually lobbying State and Federal Governments on all manners of issues concerning members’ welfare. MHOA is presently participating in the Minister’s Working Party which is reviewing the current Manufactured Homes (Residential Parks) Act 2003”

1. Guidelines: 1. AER (Retail) Exempt Selling Guideline March 2016 (Version 4.0), and 2. The Electricity NSP Registration Exemption Guideline. [↑](#footnote-ref-1)
2. The Manufactured Homes (Residential Parks) Amendment Act 2010 received Royal Assent on 5 November 2010. [↑](#footnote-ref-2)
3. Note especially the use of fairly straightforward language in the information document outlining the Manufactured Homes Act. [↑](#footnote-ref-3)
4. See front-page recommendation on the excessive use of jargon. [↑](#footnote-ref-4)