

Varying site rent

Fact Sheet

The *Manufactured Homes (Residential Parks) Act 2003* (the Act) is the law that covers residents, owners and park managers in Queensland.

In certain situations the *Manufactured Homes (Residential Parks) Act 2003* (**MHRP Act**) allows for site rent to be either increased or decreased. In all situations the MHRP Act sets out a process which must be followed in order for site rent to be varied. This fact sheet contains the following information:

1 Site rent increases

- A. Site rent increase under the terms of a site agreement
- B. Site rent increase outside the terms of a site agreement

2 Site rent reduction

- C. Site rent reduction for loss of service or facility
- D. Site rent reduction when utility becomes metered or is unavailable

3 Illegal conduct by park owners

1. Site rent increases

There are two ways that a park owner may increase the site rent payable by home owners for the rental of their site under the MHRP Act. The first way is to increase the rent in accordance with the terms in your site agreement. Most site agreements will include a mechanism for regular site rent increases. Park owners may also apply for a rent increase *outside* the terms included in your agreement under specific circumstances set out in the MHRP Act.

A. Site rent increase under the terms of a site agreement

Section 69 of the MHRP Act allows park owners to increase site rent where the home owner's site agreement contains a rent increase clause. The

clause should state how often the rent is to be increased, how the increase is calculated, and 'any other review periods'.

Example 1:

Section 10 of Margaret's site agreement states that her rent is to increase by CPI each year. This would be stated in the agreement as 'current rent + CPI' and the frequency listed as 'annually'. The park owner has also included a three yearly 'market rent review' period and the park owner has stipulated that this will be the current rent amount adjusted to reflect 'fair market rental'. For both the annual CPI increase, and the three yearly review, the park owner must follow the same rules for notice periods and what is contained in the notice.

Notice of rent increase under site agreement

Even if the site agreement provides for an increase, the park owner must still give notice of the increase to the home owner *prior* to the increase coming into effect. An increase is not enforceable if this notice is not given. The notice of rent increase must state the following:

- ❖ the amount of the increased site rent;
- ❖ how the increase has been calculated;
- ❖ the day the increased site rent is first payable; and
- ❖ that the home owner may apply to the Queensland Civil and Administrative Tribunal (QCAT) within 28 days of receiving the notice, if they feel the increase is excessive, to obtain an order reducing or setting aside the increase.

The notice must be given at least **28 days prior** to the rent increase day, and if the home owner does



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not object to the increase, the increased amount will be payable from the increase day.

Objection to excessive site rent increase

If you disagree with the amount of the site rent increase because you think it is excessive, you can apply to QCAT within 28 days of receiving the rent increase notice. It is very important that this time period is adhered to. Therefore, it is best to lodge your application as soon as possible after receiving the notice. Depending on the facts presented to it, QCAT will then make an order either setting aside the increase, approving a reduced increase amount or approving the original increase amount.

What is an excessive rent increase?

There is no definition of an excessive rent increase, and how you are affected by an increase will depend on a range of factors. Please seek further advice if you are unsure about the amount of your rent increase. When deciding whether or not a rent increase is excessive, QCAT will take into account the following factors:

- a. The range of site rents usually charged for comparable sites in comparable residential parks in the same area;
- b. If this is not practical, the range of site rents charged for comparable sites in comparable localities;
- c. If either of these are unavailable or if it is 'just and fair to do so', general trends in rental accommodation in the locality the park is in;
- d. The increased site rent compared to the previous site rent;
- e. The frequency, and amount, of past increases under the agreement;
- f. Any increase in the CPI number in the previous period;
- g. The amenity or standard of the common areas and communal facilities;

- h. Any withdrawal or additions of facilities or services provided at the park;
- i. Any increase in the park owner's operating costs in the previous period;
- j. Whether the increase is fair and equitable in all the circumstances of the case; or
- k. Other factors the Tribunal considers relevant.

You will be in a much stronger position if you can supply evidence to QCAT to support your claim. Evidence of services which have been withdrawn, decreases in the condition of facilities at the park, evidence of previous rent increase amounts and so on should be taken into consideration by QCAT.

Refund of excess rent payment

If you have paid the increased rental amount from the rent increase day and QCAT makes an order that the increase be set aside, the park owner must refund any overpaid rent amounts to you.

B. Site rent increase outside the terms of a site agreement

Section 71 of the MHRP Act provides for park owners to apply to increase site rents outside of the terms of a site agreement in special circumstances. The park owner must show that the increase is necessary in order for them to cover:

- a. significant increased operational costs in relation to the park, including significant increases in rates, taxes or utility costs to the park;
- b. unforeseen significant repair costs in relation to the park; or
- c. significant facility upgrades in relation to the park.

In addition, the proposed increase cannot be based on a market review of site rent. If the rent increase is not for one of these reasons, or it is claimed that it is for one of these reasons but in actual fact it is a

Disclaimer: This fact sheet is provided as general information only. We encourage you to seek independent legal advice regarding your specific circumstances.



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market rent review, then the increase cannot be enforced. In addition, even if the increase fits the criteria, the home owner can still contest the increase if they feel that the increase amount is too high. The onus is on the park owner to prove that this increase is justified according to the MHRP Act.

Example 2:

Home owner Margaret is not due for another rent increase under her site agreement for approximately six months. She receives a notice from the park owner stating that they will be increasing the site rent in two months' time due to some recent significant facility upgrades, including construction of a new swimming pool and community hall. They are claiming for a significant rent increase and have calculated it based on:

- a. the cost of the construction and upgrade work
- b. the overall increase in running costs of the park; and
- c. comparison with higher site rents in other parks which have similar facilities

Under the terms of s.71, the first two reasons for the increase could be valid but calculating the increase based on comparison with other parks would be a 'market rent review' and would not be..

Notice of rent increase outside of site agreement

If the park owner intends to increase the rent under this section, they must give the home owner a notice stating the following:

- a. the amount of the proposed increase in site rent;
- b. the basis for the proposed rent increase;
- c. the day the proposed increase is to come into effect;
- d. that the home owner must give the park owner a written response within 28 days indicating whether or not they accept the increase.

The park owner must give at least **two months' notice** of any proposed rent increase under this section.

Responding to the notice of increase

As the home owner, the MHRP Act provides that you must give the park owner a response in writing within 28 days of receiving the notice, stating whether you accept or reject the increase. If you do not respond within 28 days, it is taken to mean that you reject the increase, and the increase will not come into effect automatically. If you accept the increase, the new amount becomes effective on the increase day.

If the parties cannot agree on the increase amount

If you as the home owner do not agree to the rent increase, then the increased rent amount will not come into effect on the 'rent increase day'. Instead, the park owner may apply to the Tribunal to obtain an order about the rent increase. When making the order, QCAT will take into consideration:

- a. the increased site rent compared to the previous site rent;
- b. the frequency, and amount, of past increases in the site rent payable under the agreement;
- c. any increase in the CPI number during the previous site rent period;
- d. the amenity or standard of the common areas and communal facilities;
- e. any withdrawal of a communal facility or service previously provided at the park;
- f. Any addition of a communal facility or service not previously provided at the park;
- g. Any increase in the park owner's operating costs for the park during the previous site rent period;



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- h. Whether the increase is fair and equitable in all the circumstances of the case;
- i. Anything else the tribunal considers relevant.

QCAT may reduce, set aside, or confirm the rent increase. If QCAT makes an order confirming the increase or applying a reduced increase, they will also set a date for the increase to take effect.

2. Site rent reduction

Site rent may also be reduced in two specific situations. The first is when there has been a reduction in the standard of services in the park, and the second is when a utility becomes separately metered at the site.

C. Site rent reduction for loss or absence of services and facilities

The home owner may apply to QCAT for a rent reduction if one or more of the following criteria apply:

- a. the 'amenity' or 'standard' of the communal areas and facilities has fallen substantially since the site agreement was entered into;
- b. a communal facility or service provided at the park when the agreement was entered into was withdrawn; or
- c. a communal facility or service as follows has not been provided at the park:
 - a. A communal facility or service described in advertising, by or for the park owner, and of which the home owner was aware, before the site agreement was entered into
 - b. A communal facility or service described in a document made available to the home owner by the park owner before the site agreement was entered into

Supporting your claim with evidence

You must have evidence to support your claim for a rent reduction which evidence may include the following:

- a. your site agreement;
- b. the home owner's information document you received before entering into the site agreement;
- c. any relevant advertising made available to you before you signed the site agreement
- d. any other document the Tribunal deems relevant (this can include photos, affidavits, correspondence with the park owner, etc.)

D. Site rent reduction when utility becomes metered or is unavailable

Under the MHRP Act, water, electricity, gas and sewerage are defined as utilities. The cost for the supply of utilities can be either incorporated into your site rent, or metered separately.

The Act provides for remedies for home owners for whom the cost of utility supply is part of their site rent. You may be eligible for a site rent reduction if a utility that was previously provided becomes unavailable, or if the park owner installs a utility meter and begins charging the home owner separately. Both of these are called 'change events' under the MHRP Act.

In both cases, the park owner must provide you with a 'utility cost notice' within 14 days of the change event happening. The notice must state:

- a. The amount of the site rent that was for the supply of the utility and how that amount has been calculated
- b. The date the change happened
- c. The site rent payable from that date
- d. That the home owner has the right to apply to the Tribunal within 28 days of receiving



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the notice if they do not agree with the utility cost

From the change event day onwards the site rent should be reduced by the amount of the utility cost. The park owner must refund any overpaid site rent which has been paid since the change event day, within 14 days of giving the utility cost notice to the home owner.

Penalties for non-compliance

If a park owner fails to issue a utility cost notice, or it does not contain the correct information, they may be prosecuted and a penalty imposed for non-compliance. In addition, park owners who do not refund any overpaid rental amounts may be prosecuted and fined and can also be subject to a civil claim for debt by the home owner. Both issues can be investigated by the Department of Housing and Public Works Residential Services Unit. For more information on investigations, please see our investigations fact sheet.

Disputing the utility cost at QCAT

If you disagree with the amount given for the utility cost then you can apply to QCAT, within 28 days of receiving the utility cost notice, for a ruling to reduce the site rent payable under the agreement. QCAT will take into account:

- a. Relevant information about the costs of supplying utilities in the local government area where the park is located (for example water rates, electricity prices, etc).
- b. Any terms of the site agreement about utility costs
- c. The number of people occupying the home on the site
- d. Any other information the Tribunal considers relevant.

3. Illegal conduct by park owners

The MHRP Act prohibits certain conduct by park owners in relation to varying site rent. The park owner must not 'threaten, intimidate, or coerce' the home owner to either agree to a site rent increase, or to refrain from applying to the tribunal for a review of the site rent. Park owners who are found to have breached the act can be fined up to \$22,000 for individuals and \$110,000 for companies.

For free advice on Caravan & Manufactured Homes call:

**Tenants' Union of Queensland (TUCAM)
07 3852 2064 – Tues & Wed**

For free tenancy advice call:

1300 744 263 –Statewide advice line
9am – 12.30pm Mon Wed Thurs &
3.30pm – 7pm Tues Wed
www.tuq.org.au