NEWSLETTER

ASSOCIATED RESIDENTIAL PARKS QUEENSLAND INC
**March/April 2015**

It looks as though residential parks have been placed on the back burner again with no mention of the Act review. As a matter of interest, our colleagues in the other States are experiencing the same nonchalant approach to the residential parks industry review as we in Queensland which highlights the attitude of all State governments to this industry. The RSPCA garner better legislation for our pets and wildlife than we in residential parks.

## The Ministerial Meetings

We don't know what is happening with the ministerial meetings, everything has come to a dead stop and we don't blame the Department of Housing for the delay, as always, the buck stops with the Minister and there is too much politicking going on at the moment for government to concern itself with the dubious practices that occur in residential parks and leave pensioner home owners subject to all kinds of Quasi (semi) criminal activity. That said, we are still not sure what value the ministerial meetings have had and we won't know until the eventual revue of the Act.

## Suggested changes put forward by ARPQ

As most members will know that ARPQ has been fortunate to have regular meetings with the Department of Housing two years prior to the ministerial meetings which we do appreciate and we take this opportunity to inform our members of some of the proposals we have put forward:

### Objects of the Act:

We believe the review of the Act should start at the beginning of the Act which are the "Objects" of the legislation. Most will be aware that the objects as they are at present are very loosely aligned with the Fair Trading Act although unfair trading is perhaps the real cornerstone of the Act. We argue that where the Act is silent on a particular issue, the Residential Services Unit (RSU) and QCAT should look to the Fair Trading Act for guidance to reach a fair outcome to disputation but we know that politically neither of the aforementioned entities are permitted to do so.

We have stated clearly that the objects of the Act should embrace the Fair Trading Act in its entirety, this would include the Australian Consumer Law particularly the unfair contract section, and this would enhance the Act and give real protections to home owners.

### The true status of residential parks:

First of all we take issue with the term "park owner" in relation to a residential park, to own is a possessive noun and implies complete ownership of a residential park when in fact, the only claim to ownership of a residential park would imply that the owner of the land also owns everything on it. Needless to say, this is not so. To qualify the obvious, the homes in a true residential park are owned by members of the public who have positioned a home on a site in the park as their permanent place of residence. Therefore, at best the land owner is a "park operator" so for the rest of this newsletter, the term park owner is replaced by park operator and should be the correct term for the Act.

We have asserted that once a land owner invites the public to lease portions of the land known as sites on which to position a home in perpetuity as the lessee's permanent place of residence, the land is no longer private property but is public property. Therefore, we argue that no park operator can deny any persons with lawful intent, access to a residential park home owner either for business or private reasons, further, the Act does not place any such restrictions on home owners. In fact, section (5) of the Act states very clearly that it does not remove any right or privilege a person may have, so any park operator enforcing unreasonable restrictions on home owners is in breach of the Act. It is also arguable that such unreasonable restrictions on the part of park operators could be deemed deprivation of liberty under the criminal code. Deprivation of liberty does not just mean detaining someone against their will, it also means depriving another person's personal liberty. This surely highlights just how fractured this legislation covering

residential parks really is. The jailer v inmate conditions that exist in many residential parks must cease.

## Site fee increases

This is a regime totally out of control with the full support of government via QCAT. In short, section 69 of the Act allows a park operator to give home owners 28 days' notice of intention to increase the site fees without having to prove any real justification. If home owners disagree with the increase they can make application to QCAT to have the increase reduced or set aside and home owners know well what that exercise will yield. Really, this whole process is akin to purchasing a new car for a certain price then after a month or so, going back to the dealer to negotiate the original price of the car.

What we have suggested in our meetings with the Department of Housing is that a notice of increase should consist of 90 days broken into three segments of 30 days each. Those park operators capable of preparing a budget forecast should have no trouble with such a proposal. The first 30 days must be set aside for compulsory negotiation between the parties (park operator and home owners). If no agreement as to the increase can be reached then the next 30 days must be devoted to mediation, such mediation must take place with a specifically trained negotiator from the Department of Justice with a thorough knowledge of the residential rental industry. If the mediation fails, then the mediator would have to furnish a detailed report to an authorised decision maker, not a lawyer. Our suggestion for the final 30 days is that the parties meet with a panel of three persons from the Residential Tenancies Authority (a statutory body) with genuine knowledge of the residential rental market for a decision based on the mediators report. No QCAT lawyers. The amount of an increase is not a legal issue.

## Security of tenure

In fairness to all it must be remembered that a park operator/land owner has a right to use the land for any approved legal purpose so those home owners making demands for security of tenure are not being realistic, if you want security of tenure then place you home on your own land. However, just remember all land in Queensland reportedly remains the property of the State under the Brigalow Corporation but that's another story.

To get to the heart of the matter in the short space available, we have submitted that when a park operator wishes to redevelop land occupied by homes positioned on leased sites in a residential park it remains the right of the land owner to do so. The pivotal point is the compensation payable to home owners in the park who face removal from the park to another location of comparable value to the home owners.
Our view is that because under section 70 (3) of the Act the emphasis is based on comparisons of parks which perhaps highlights a cartel situation in the way QCAT manipulates the comparison regime. This means that lower status park can freely compare themselves with the more upmarket parks which is an historical fact since 2004.

Based on this historical arrangement of comparisons, dubious as it is, we have put forward the suggestion that the historical comparison be applied when home owners are forced out of a park and compensation for resettlement is an entitlement. As an example, lesser park (a) has always used more upmarket park (b) as a comparison to increase site fees. Let's say the home owners in park (a) have been given termination notices, surely these home owners should be compensated so that they can move into the historically comparison park (b). As a back-up argument the *Lands Acquisition Act* should be used as a guide in all residential park terminations. Moreover, QCAT has very dangerous discretionary powers that leads to less than natural justice in its decision making.

You're ARPQ Committee
(We are willing to visit your park and talk with home owners)