



Manufactured Homes Residential Parks Act 2003 (the Act) and amendments

HOME OWNERS COMMITTEES

It is somewhat disturbing that a very large percent of complaints we receive from our members relate to irresponsible home owners committees. The main theme of complaint seems to be the lack of understanding by self-promoted dominant home owners seeking some kind of pseudo power but lacking the knowledge to actually perform the required duties as per (the Act). The other disturbing information we receive is that these same home owners committees make secret deals with park management without keeping home owners informed until after the event. Plus other complaints where it is claimed that the park manager will not allow home owners to form a home owners committee, that the manager insists on selecting the committee members and then invite themselves to meetings which is a breach of section 100 (5). A manager can only attend a meeting at the invitation of the home owners committee

Where the truth lay in all this is speculative because many home owners do not understand the home owner's committee role and are basically frightened of park management which highlights the regimes which exist in these parks. While it is accepted that the Act seeks to subdue home owners generally for political reasons it is a glowing indictment of the attitude towards the aged generally.

What the Act says

Part 15 Home owners committees

Section 100

(1) The home owners for a residential park may establish, by election conducted among themselves, a home owners committee.

The emphasis here is on the words may and must which is central to this whole section of the Act and requires further comment because what the Act is really saying is that home owners may form a home owners committee but the committee must comply with any rules or regulations applying thereto. Taken further, we can look to the Acts Interpretation Act 1954 as follows:

Part 8 Terms and references in Acts

32 Defines terms—other parts of speech and grammatical forms

Section 32CA Meaning of *may* and *must* etc.

*(1) In an Act, the word **may**, or a similar word or expression, used in relation to a power indicates that the power may be exercised, at discretion.*

(2) *In an Act, the word **must**, or similar word or expression, used in relation to a power indicates that the power is required to be exercised.*

It is relevant to point out that the word **may** appears constantly in the whole of section 100 and in section 101 (1) whereas in 101 (2) and (3) the word **must** is prevalent on the duties of the committee. Section (3) relative to park operator's uses the word **must** although park operators generally ignore this section as though it is a gifted privilege to disregard. In hindsight then, if a home owners committee does not comply with the constitution or the rules of a home owners association, the committee is in breach of the Act and can be reported to the Residential Services Unit (RSU) for deliberate breach of the Act.

The very essence of this whole section of the Act is that home owners generally are not bound to actually be a part of a home owners association because the use of the words "home owners committee" implies that some kind of association exists that has members. This is further implied when the Act states in section 101 (1) "*the majority of the home owners may adopt a constitution governing the performance by the committee*" as though they are bound by membership of a home owners association and yet no such requirement exists.

Further, many home owners choose not to be members of such an association based on their right to "freedom of association" plus most home owners committees do not understand the role of the committee as explained in this paper. Therefore, a home owners committee cannot speak for all home owners in a park and are not bound by any agreement reached between a park operator and a so called home owners committee, this whole section of the Act lacks any real foundation. This is proven in parks that have no actual so called home owners committee, it's a farce, but on reflection, there is possibly much merit in not having a home owners committee.

The only real binding issue between home owners and a park operator is the site agreement and no one can remove the right of either party to the agreement to meet and discuss any terms of the agreement and the Act does not remove that right. The problem is that park managers basically do not understand their obligations which relates back to the actual park operators who also do not exercise their obligations based on their total lack of knowledge of the Act or just exercising their belligerence.

The real flaw in this whole analysis is section 27 of the Act which allows a successor in title to a park to assume responsibility for a park and accept all the conditions of the site agreements without actually having to sign the agreement. There are examples of parks in the greater Brisbane area three times removed from the original owner and signatory to the agreement but the agreement is still binding with only one active signature, the poor old home owner.

This takes us one step further and we refer to the Legislative Practices Act 1992 as follows:

Part 2 Legislative standards

4 Meaning of fundamental legislative principles

- (1) *For the purpose of this Act, **fundamental legislative principles** are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.*
- (2) *The principles include requiring that legislation has sufficient regard to—*
 - (a) *rights and liberties of individual; and*
 - (b) *the institute of parliament.*
- (3) *Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation—*
 - (a) *makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and*
 - (b) *is consistent with principles of natural justice.*

There is more to this section of the said Act but home owners will surely get the gist of what it is all about but to be concise we offer this explanation:

The *Manufactured Homes Residential Parks Act* (the Act) lays down quite clearly that a Home Owners Committee (HOC) must abide by the Act and home owners may choose to elect a HOC. Home owners are free to choose whether to be a member of a HOC or not and in fact, home owners may choose not to have a HOC. The mention and use of the *Acts Interpretation Act* is merely to show the true meaning of may and must to eliminate any argument on the meanings. The reference to the *Legislative Practices Act* is only mentioned to show that government has a responsibility to act in the interest of all and not just the chosen few.

The ARPQ Committee
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