

## Special Bulletin

### **Order in the house**

We have always been inundated with complaints about QCAT and what appears to be preferential treatment for park operators and it is noteworthy that such comments have been made to the Tribunal and the Government of the day to no avail. In other words no return comment or explanation has ever been offered about home owner complaints.

Looked at logically, where questions of unfair treatment is met with silence by those that offend, it is not unreasonable for the victims of the unfair treatment to assume deliberate intention by the offenders. Unfortunately, the offenders in the circumstances thus described is the Government who is responsible for the activities of the Tribunal system and paid for by Queensland taxpayers and therefor remain accountable to the taxpayer. This is fact regardless of claims of total independence by the Tribunal because it is not in the true sense a part of the justice system, it is merely a disputation medium which cannot enforce its own decisions. For verification of this the reader should access the QCAT website and look for **enforcing a QCAT decision** which goes on to say:

*“At the end of a proceeding the Tribunal makes a final decision. These decisions usually require one or all parties to do something to comply with the decision, or to stop acting in a particular way.*

*Decisions made by the Tribunal must be followed and are enforceable as if they were made by a court. The Tribunal's role does not however extend to enforcing the decision. The party whose favour the decision has been made in, is responsible for enforcing it. You can contact your local Magistrates Court”.*

This is all very interesting because most pensioner home owners think that the Tribunal is a court and this piece of fiction is generated by the legal terminology within the QCAT Act. This of course is deliberate. Justice Alan Wilson the previous President of QCAT emphasised this in his grandiose report to the Queensland Bar Association dated 6 March 2010 when he claimed vigilance that QCAT does not become a court. In theory, this is correct because if one logs onto the QCAT website through Google, it clearly shows QCAT as part of the Queensland Government and not part of the Justice system.

The irony of all this is that the now invisible Attorney General can under section 41 of the QCAT Act intervene at any time in any preceding. This right is vigorously denied by the honourable gentleman apart from what the Act says. The interesting scenario to all this is “he will not say why he cannot intervene” and one does not have to be an Einstein to work out from the evidence before us that it is because the Queensland Government controls the Tribunal. Add to this the emphasis by the Government for the “viability of residential parks” and users of the Tribunal have the answer.

**Think on this if you will.** What if the home owners living in a residential park, faced with a notice of increase to be paid in the regulatory 28 days refused to pay the increase? The

answer would possibly be that the park operator would have to apply the much favoured internal dispute resolution with the home owners through the home owners committee which is not an industry strong point. The other option would be to lodge an application to the much favoured Tribunal because the home owners would have breached the site agreement, however, the home owners have also breached the Act. Now according to the latest "Home Owners Information Document" (HOID) a dispute involving a breach of the site agreement is to be dealt with by QCAT but a breach of the Act should be referred to the "Department of Housing and Public Works" (DHPW). So where to now?

It is an accepted principle that the majority of park operators and or their staff are not skilled in the negotiation process, in fact most have a very unfortunate attitude to home owners which has been proven by the governments own 2013 survey so there seems little hope with the negotiation process.

The most favoured route for park operators is the Tribunal because much favour will be afforded such an application so what path would the DHPW take after all, this department is responsible for breaches of the Act. Well, consider what has been written here on the first page, that is, QCAT is really just another government department although this will be denied but the facts speak for themselves.

So let us assume that the matter is heard in the Tribunal and an order for the home owners to pay the increase is issued, the home owners can refuse to abide by the Tribunal order because the Tribunal cannot enforce its own murky decisions.

There is no suggestion here that home owners in a particular park should take such action, what is being emphasised is that the *Manufactured Homes Residential Parks Act 2003* is basically just a silly piece of nonsense that has brought the industry into disrepute and ruined the lives of many home owners(*refer Churchill-Menzies below*).

That said, the concept of residential parks is great and has much potential provided that the legislation is updated to the twenty first century and the balance of interest between the parties is reflected and maintained. After all, in truth, a true partnership exists between land owner and home owner.

*Winston Churchill is credited with having said to Robert Menzies "my, you Australians do conduct your politics with a fine 18<sup>th</sup> century robustness".*

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