NEWSLETTER

ARPQ

ASSOCIATED RESIDENTIAL PARKS QUEENSLAND INC
MARCH 2016

WARNING-ALLERT – News to hand:

As members will be aware, your committee has worked very hard to achieve what we refer to as a "Fair Balance if Interest" between the parties for the Act review which means the park operators and home owners. We now have good reason to believe that we home owners are being conned regardless of what Government Ministers publicly state.

The Site Rent Manipulation

What has been happening while the so called Ministerial Meetings have been taking place is that behind the scenes, certain changes have been made to the Act and or its meaning in regard to site rent increases.
We speak of the latest edition of the *Manufactured Homes Residential Parks Act 2003* current as at the December 2014. Section 69 (2) of the Act remains the same which in effect states that if the park operator wishes to increase the site rent under the site agreement conditions, the park operator must show how the increase has been calculated. This of course has always been ignored and denied by what passes for a Tribunal in Queensland because it (the tribunal) under the QCAT Act is not governed by the rules of evidence and can inform itself as it so wishes, which contradicts a fundamental object of the QCAT Act which is "Natural Justice". In essence, park operators do not have to abide by the Act.

In the December 2014 issue of the Act, in the **Schedule – Dictionary** page 97 towards the bottom of the page it reads as:

Market review of site rent means a review of site rent the outcome of which is decided by comparing the site rent with 1 or both of the following----

(a) The site rent payable in 1 or more residential parks; or
(b) The rent payable for other residential accommodation.

This is wrong, the wording seeks to circumvent the Act or change its true meaning thus changing the legislation, so much for consultation with key stake holders.

What this government is now doing is advocating "price fixing" which is a breach of section 45 of the *Competition and Consumer Act 2010.* The government will argue on behalf of the park operators that this methodology is to assess the market and establish a site rent increase according to the market. **This is market regulation**. It is against the very principles of the open market economy which is supposed to create competition by letting the market operate based on supply and demand and without interference from government.

This Government through its open protection of park operators as a reward for making land available to establish residential parks has put aside the very principle of open competition in the market place. It also breaches section 4 of the *Legislative Standards Act 1992* where legislation is passed to favour or discriminate a certain section of society.

We home owners have been well and truly screwed but if you want some kind of revenge, just remember we vote.

Looked at logically, the two operative words in this dirty little game are "*calculate"* and *"compare".*

The word *"calculation"* in any dictionary will explain the word as derived from the word *"calculus"* meaning "*the procedure of calculating—determining by mathematical methods and problem solving that includes numbers or quantities".*

The word "*comparison"* is the act of *"examining resemblances--- examine similarities or differences".*

Section 69 does not allow for comparisons and is very clear in the words must and calculated and both words are prescribed in the Act relative to site rent increases as per the site agreement. For further confirmation of the above one can refer to the *Acts Interpretation Act 1954* sections 32A and 32AA:

32A Definitions to be read in context:
Definitions in or applicable to an Act apply except so far the context matter otherwise indicates.

32AA Definitions generally apply to entire Act:
A definition in or applying to an Act applies to the entire Act.

This raises the question of where QCAT fits into the whole scheme of things. The so called Westminster System of Government embraces the *Separation of Powers* which are the *Executive, the Legislative and the Judiciary* are independent bodies of authority.

In one respect the separation of powers does not apply because the *Executive* and the *Legislative* are one of the same. This leaves the *Judiciary* which is our court system and the rule of law. QCAT as explained by Justice Alan Wilson, one time President of QCAT in a speech to the Bar Association of Queensland on 6 March 2010 stated that QCAT is a Tribunal, not a Court. The Hon. Justice Wilson had other things to say about the Tribunal but this will be dealt with at another time if required.

The main point is that QCAT, because as Justice Wilson said, is not a court, it therefore is not part of the Justice system per-se. it is a brainchild of the Executive Government under the Department of Justice and Attorney General, a sort of bloated QANGO (Quasi Autonomous Non-Government Organisation). This means it, QCAT, is an independent entity not bound by any court rules and can inform itself as it chooses. Hence, because it is basically a government department in truth, it will make its determinations to suite government policy, that's why the word *"administrative"* exists in the QCAT title.

Many may ask what we can do to protect ourselves better from these very questionable practices. The answer is your vote. The greatest government fear is losing power or rejection by the populace. At the moment, we Queenslanders are being asked via a referendum to give government a four year term, well just imagine what damage they could do to us with an extra year. Also, look at all the other States and the Federal Government that have four year terms and ask yourself if those with the four year term are better off than us? Or, do they share the same political mess as us?

You're ARPQ Committee