

ASSOCIATED RESIDENTIAL PARKS QUEENSLAND INC

WITNESS STATEMENT TO PUBLIC HEARING ON AMENDMENTS TO THE MANUFACTURED HOMES (RESIDENTIAL PARKS) ACT (THE ACT)

Main Object of the Act

To regulate, and promote fair trading practices in, the operation of Residential Parks to protect home owners from *unfair business practices*.

Overarching objective of the ongoing review and amendment of the Act as published by PWUC on 11 August 2017

To ensure *fairness and consumer protections* for people who are either living in regulated accommodation or considering moving into these types of housing while enabling the continued viability of these industries and sectors.

Statements made by the Premier in a press release on 9 July 2017

New laws will be introduced to protect Queenslanders living in Retirement Villages and Residential Parks across the state in a *major shake-up of the industry* (including limitations on rent increase and the simplification of contracts).

We must ensure our Queensland seniors can enjoy peace of mind in their retirement years by giving them the stringent consumer protection they need and deserve.

People have invested significant amounts of money to live in manufactured homes (in residential parks). *They have a right to be heard*.

Background

We have been talking with government representatives and ministers for at least four years towards achieving a fair balance of interest between Park owner and Home Owner and have been consistently assured that that this balance of interest would be the main outcome of the review. This is reflected in the objectives contained in the written statements I have referred to and which of course we fully support. However, it appears we have been overlooked and let down.

Viability of the Residential Parks Sector

As often reported on in the financial press, the rate of return on investment in the Residential Parks sector is among the highest of any industry sector. Most of the main players in the industry have multiple new projects in the pipeline with the development of new parks being announced almost on a weekly basis. The industry is not just viable, it's literally booming. Protection of Park Owners under law, especially at the expense of home owners, is unnecessary, unfair and contrary to the objects of the Act.

Our Review of the Bill

Although we have provided an extensive and detailed submission on the proposed amendments to the Act as contained in the Bill (which I do not have time to go through in this statement) at the end of the day we must conclude that the admirable objectives previously referred to simply cannot be met by the Bill in its current form. This is because it is far too limited in its approach and fails to address some of the fundamental flaws and inequities (in favour of Park Owners) that are embedded in the current Act and which seriously undermine the very protections and rights that the statements made previously refer to.

In our opinion it is not a question of what the Bill does, but what it doesn't do. By way of illustration *some* of the flaws and inequities in the current legislation which negatively impact of Home Owners rights, and which the Bill fails to address include (there are others):

Objects of the Act – Rather than just referring to protection from unfair business practice, the Act should include a requirement for complete adherence to the provisions of the Fair Trading Act, including those covering 'unfair contracts'.

What is a Manufactured Home – Although we realise that under Commonwealth Government guidelines for payment of rent assistance to seniors a Manufactured Home is required to be 'relocatable' and would not want to do anything to jeopardise anyone receiving this payment, the definition of a Manufactured Home is anachronistic and negatively impacts of the rights of Home Owners in a number of respects. Although the definition may apply to older houses, many 'manufactured homes' built more recently may be re-locatable in theory, but not readily in practice (few homes are). Logically, if one is a senior and paying rent, either for a house or for land, one should receive rent assistance regardless of whether a house is relocatable or not.

Further, even if a house is fully 'relocatable', there is often nowhere to relocate it too and this needs recognising (at Commonwealth Government level if necessary).

Termination of Site Agreements - Contrary to the safeguards contained in Contract/Property Law, the right of Park Owners to walk away contract obligations by applying for a termination of a Site Agreement if they wish to use the park in which the site is located for another purpose (ie they simply change their mind). This needs rectifying to give Home Owners improved security of tenure over the land which they are leasing, similar to the safeguards already enjoyed by other long term land lessees.

Park Owners Consent required for House Sales - Contrary to the basic right of everyone to legally dispose of their own property without interference from a third party, the right of Park Owners to withhold consent to 'assignment' of a Home Owners 'interest' in a Site Agreement to a potential buyer. Further, the proposed Bill does not ease the process for Home Owners to object to withholding of this consent (use of any dispute resolution process inevitably means the sale is lost);

Varying of Site Rent - The right of Park Owners to use multiple (and sometimes complicated/unfair/unclear) mechanisms for calculating increases in site rent (as long as they are specified in the Site Agreement), including the fundamentally flawed and often abused Market Review process. In reality there is no 'true market' governing Residential Parks site rent, only a cartel of a limited number of suppliers (Park Owners). Market Reviews are intrinsically '*unfair business practice*' and as such contrary to the objectives of the Act. They should therefore not be allowed under the Act with the only fair basis for increases in site rent being CPI consistent with generally accepted practice in other industry sectors.

Further, as shown in the spreadsheet given in our submission, even moderate annual increases compound over time resulting in site rents eventually becoming unaffordable, and as site rent rents become unaffordable, homes become unsellable. The result is a double whammy for Home Owners. Site rent increases need to be limited by some form of regulation;

Repositioning of Manufactured Home - The right of Park Owners to require Home Owners to reposition their home to another site. As outlined earlier, many 'manufactured homes' built in recent years are not practically re-locatable and this needs recognising through an amendment to the Act (and at Commonwealth Government level);

Ruling by Anti discrimination Commissioner - The ruling by the Anti-discrimination Commissioner that Residential Parks cannot be legally classed as 'over 50's lifestyle resorts' on the basis such a classification is discriminatory and the lack of any legislative protection in this area similar to that that already exists for retirement villages. The recognition by Government that Residential Parks are intended as affordable housing for older citizens needs ratifying through legislation.

Summary

Having pressed for a review of the Act for many years so that some of the inequities embedded within it may be corrected, we are reluctant to suggest further delays. However, for reasons outlined we consider that the Bill in its current form does not introduce the essential reforms to ensure seniors' rights are adequately protected.

We believe that the major change promised cannot be achieved through the minimalist approach adopted and therefore request that the Bill be withdrawn to facilitate a further and fundamental review so that the matters referred to can be fully addressed and the *“major shake-up of the industry”* (including limitations on rent increase and the simplification of contracts) as promised by the Premier are actually achieved.

Conclusion

In conclusion, we would like to emphasise that the main investors in Residential Parks are the Home Owners (mainly seniors), not the Park Owners. All we are asking for is that they be given the same rights as investors in any other industry and the protections repeatedly promised over the last few years. This Bill in its current form cannot achieve that.

In hindsight to our submission, perhaps the title of the Act needs to follow the NSW precedent and be changed to Residential Parks (Land Lease Communities) Act to reflect that the real issues relate to the land lease arrangements and providing security of tenure for the Home Owner, not the construction arrangements (Manufactured, relocatable or otherwise) for that Home.

Better to delay and get it right, rather than just do it quick and get it wrong merely because there is an election looming.

Thank you for your time and consideration.

GRAHAM T MARRIOTT

Chair

Associated Residential Parks Queensland Inc

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t 07 5546 3208 | m 0424 616 232 | e marriottgt@iinet.net.au