

14 January 2020

Honorable Michael (Mick) de Brenni, MP
Minister for Housing and Public Works
1 William Street
BRISBANE QLD 4000

Dear Minister

FURTHER CHANGES NEEDED TO THE MANUFACTURED HOMES (RESIDENTIAL PARKS) ACT

Introduction

Whilst the intent of the previous round of amendments to the Manufactured Homes (Residential Parks) Act (the **Act**) were admirable, in that they were clearly formulated to deliver a degree of fairness to Home Owners and reinforce the provisions of the Act in achieving its main object which is 'to protect Home Owners from unfair business practices', for various reasons the reality is those amendments have not fully delivered on that intent, and in a small number of cases the situation has got worse.

In addition to there being 'unintended consequences' arising from the amendments that detrimentally affect Home Owners, there are fundamental and underlying issues that were not addressed during the amendment process and some that arose during the Public Works and Utilities Committee (PWUC) review of the proposed amendments, but which were not adopted by Parliament.

Over the past few months we have been in discussion with various staff members of the Department on these matters and have been invited to write to you to bring them to your attention. The timing of this approach was considered appropriate bearing in mind the work the Department will be doing over the next few months in preparing input to the Government's 2020 – 2023 Housing Strategy document.

Many of the issues are at a detailed level, but to enable a better understanding I have grouped them under main headings and provided some indication of the root cause (ie unintended consequence, fundamental and underlying issue, or unadopted PWUC recommendation).

ISSUE 1 – LEGAL STATUS OF RESIDENTIAL PARKS (fundamental and underlying issue)

It is generally accepted by Government that Manufactured Homes in Residential Parks are a 'retirement living' option. This is demonstrated by the following:

- The Government's (reported) long held objective to combine the **Act** and the Retirement Villages Act;
- Finance being made available to ARPQ to educate Manufactured Home Owners on their rights under the 'Right where you live' initiative which was largely targeted at seniors;
- The grouping together of Residential Parks and Retirement Villages under funding provided to Caxton Legal Centre for the 'Queensland Retirement Villages and Parks Advisory Service'.

However, in law they are not considered a 'retirement living' option and as a consequence very clearly fall into no-man's land, resulting in much confusion and the following problems (among other);

- The ruling by the Anti-discrimination Commissioner that 'over 50s' resorts are unlawful in that they discriminate against the young, with negative consequences for older Home Owners; and
- Notwithstanding the original intent, the ongoing difficulty in including Residential Parks in the Property Council of Australia's 'Retirement Living Code of Conduct'.

In this context, it is worth noting that we have previously recommended that Residential Parks be subject to some form of accreditation scheme and we still believe that is necessary.

It is difficult to see how effective Legislation covering Residential Parks can ever be drafted whilst their legal status remains uncertain. In our opinion, the legal status of Residential Parks as a 'retirement living' option needs clarifying with them being formally classified as 'seniors/retirement living' to remove uncertainty and provide exemption from Anti-discrimination Legislation in the same way as Retirement Villages already are.

ISSUE 2 – SITE RENT INCREASES (mainly unintended consequences)

Despite some additional protections for Home Owners introduced by the amendments (which some Park Owners have now learned to circumnavigate), we are still faced with an ever-increasing site rents situation, with the rapidly looming prospect of them becoming unaffordable (effectively making the house unsellable and creating a situation where a Home Owner can't afford to stay, but finds it impossible to go). Many Home Owners are pensioners who already struggle to survive, with this situation being exacerbated by:

- Notwithstanding the warning given on the relevant Forms to seek legal advice before signing, would-be Home Owners not understanding the commitments they are entering into, especially with respect to Site Rent increases, due to the non-availability of suitably qualified advice (commonly the situation) and the unfamiliar, voluminous and complex nature of the various Forms and agreements;
- The compounding annual percentage increases that many Park Owners are now preferring (removing any rights Home Owners had to dispute those increases). Even a seemingly modest 3.5% pa increase compounds to almost 18.8% over five years;
- The coercion Park Owners are increasingly utilising to get Home Owners to switch to these percentage increases (or vary the provisions of their Site Agreement in some other way);
- Despite the regulatory restrictions, Park Owners continuing to calculate increases in a complex and confusing manner (no definition of what 'complex and confusing' means);
- Despite the provisions of Section 69B of the **Act**, Park Owners continuing to use more than one basis at a time for calculating site rent increases (no definition in the **Act** of what 'one basis' actually means).

In our opinion, the whole Site Rent increase situation is out of control and urgent action needs to be taken to protect Home Owners, many of whom are in a vulnerable situation. We have previously recommended that the magnitude of Site Rent increases be limited by regulation, but in addition we feel the time has come for an independent review of Site Rents across the State to determine their fairness and ongoing affordability, as well as the establishment of some independent tribunal to which Home Owners can appeal to when faced with an increase, even if that increase is fully in accordance with their Site Agreement.

ISSUE 3 – DISPUTE RESOLUTION (unintended consequences)

On the face of it, the new Dispute Resolution process contained in Part 17 of the **Act** involving negotiation and mediation before having to resort to a request for a QCAT hearing, together with the introduction of a new easy to use Form 11 – Dispute Negotiation Notice, seemed a huge improvement for Home Owners. However, the reality in some cases the situation is very different for the following reasons:

- Park Owners continuing to not respond to complaints from Home Owners and thereby avoid them becoming disputes, despite the requirement to do so within 28 days as outlined in the new Part 16 of the **Act**;
- Park Owners not responding to the Form 11 and refusing to engage in any meaningful negotiation or mediation process, thereby forcing the dispute to a QCAT hearing;
- QCAT charging Home Owners fees at the mediation stage and then again at the full hearing stage;
- QCAT staff and tribunal members seemingly unqualified to handle matters in front of them associated with provisions of the **Act**.

Consequently, what was intended as a simpler and cheaper process for Home Owners to resolve disputes with Park Owners, has effectively become potentially three times as complicated and twice as expensive.

Perhaps the solution here starts with introducing penalties on Park Owners for non-compliance with the Dispute Resolution process as outlined in the **Act**, and the establishment of an alternative independent tribunal with a special focus on the **Act** (see recommendation under Issue 3 above).

The role of Home Owner Committees (HOCs) during the Dispute Resolution process also needs clarifying.

ISSUE 4 – HOUSE SALES (fundamental and underlying issue/unintended consequences)

Although the recent amendments to the **Act** contained some welcome provisions relating to disclosure of information prior to entering into a Site Agreement, these are really only of benefit to buyers and generally, the sales process for pre-loved homes in Residential Parks remains highly unsatisfactory for a number of reasons, including (but not necessarily restricted to):

- In danger of stating the obvious, the sale of a Manufactured Home in a Residential Park entails the execution of two contracts; one being the Site Agreement and the other relating to sale of the home as a physical asset. The **Act** concentrates almost exclusively on the former and as such is deficient with respect to the latter, there being no defined process or requirements for house sales (except appointment of the Park Owner as sales agent via a Form 9) and no specified form of contract;
- Some Park Owners forcing sellers to sign exclusive agreements (over and above the Form 9) contrary to provisions in Section 62 of the **Act**;
- Lack of effort/interest by some Park Owners in selling ‘pre-loved homes’ especially when new ones are available for purchase and the unethical practices associated with this (up to 100% profit on a new home, around 2.5-3.0% commission on a pre-loved home, depending on sale price);
- Various obstacles put in place by many Park Owners when Home Owners appoint an outside agent to sell their home;
- The unwillingness of many outside agents to take on the sale of homes in Residential Parks because of perceived complexities and difficulties in the process (eg the new provisions relating to disclosure of information prior to entering into a Site Agreement, which only a Park Owner can comply with);
- No requirement for Park Owners sales staff to be licensed real estate agents accountable under REIQ’s code of conduct (or any other code of conduct);
- The refusal by many Park Owners to assign an existing Site Agreement (at an existing Site Rent) to the buyer of a pre-loved home, instead insisting that they sign a new agreement often at an increased Site Rent, contrary to the provisions of Part 7 of the **Act** ;
- The practice by some Parks Owners charging additional fees over and above those specified in the Manufactured Homes (Residential Parks) Regulation to cover such things as ‘marketing costs’ or ‘administration costs’ when re-assigning a Site Agreement;
- The lack of any compulsory ‘buy back’ provisions if a house remains unsold after an extended period, resulting in an open-ended commitment to pay site rent even after a Home Owner has vacated, or even died (Park Owner is sitting on a ‘cash cow’ so little incentive to sell).

In our opinion the situation in this area will not improve whilst Park Owners continue to have what is in effect is a monopoly on the sale of pre-loved homes and remain unaccountable to anyone, or any regulatory body, for what they do. We believe the **Act** needs significant improvement in this area, including measures to hold Park Owners accountable and others specifically aimed at facilitating the participation of conventional real estate agents to introduce competition. In fact, there are some arguments in favour of only allowing licensed real estate agents to sell pre-loved homes in Residential Parks.

ISSUE 5 – LAND LEASE ARRANGEMENTS (unadopted PWUC recommendation)

Unlike holders of Land Leases in the commercial sector, Home Owners in Residential Parks have no security of tenure over the land on which their house is located/built. This has a number of ramifications, including the requirement that it be moved at the Park Owner’s discretion and the non-availability of bank finance to Home Owners due to an inadequate level of security.

The Public Works and Utilities Committee in its final report to parliament (Report No 48 dated September 2017) recommended (No 9) that 'the Minister expand the actions in the *Queensland Housing Strategy 2017-2020 Action Plan* to include land rent arrangements, such as the arrangements that apply in Residential Parks that include Manufactured Homes, as planned reform of the *Housing Act 2003* and the *Residential Tenancies and Rooming Accommodation Act 2008* to create a more contemporary legislative framework'.

This recommendation was not adopted by Parliament in the last round of amendments to the **Act** and it is requested that this outstanding matter be now addressed. Land lease contracts in Residential Parks should ideally align with those that exist in the commercial sector, which we believe are in many cases 'bankable'.

Summary

From our perspective, many of the provisions contained in the current Act, betray their origins back to the old caravan legislation on which the original version of the Act was based in 2003. Today, the Residential Parks industry is fundamentally different to what it was in 2003 as illustrated by the following factors:

- The original Manufactured Homes in caravan/mixed parks or the earliest Residential Parks were either converted caravans, or prefabricated homes constructed off-site and 'trucked in'. However, today in many purpose-built Residential Parks the houses, although in theory still relocatable, are mainly constructed on-site to Queensland Master Builder standards and as such are more akin to conventional houses (real estate) than caravans;
- In the late 1990s/early 2000s, running a caravan park with a few Manufactured Homes was probably a marginal business and perhaps needed some protections. However, the industry today is not only financially viable, it is simply booming. There are billions of dollars being invested in the sector, with the development of new parks being announced on an almost monthly basis and international investors increasingly involved because of the highly lucrative nature of the sector. Profit is increasingly the primary objective, with in many cases little thought being given to the interests of Home Owners.

It is suggested that all the provisions of the **Act** need re-evaluating to ensure they reflect today's conditions not those that existed prior to 2003, especially the impact on Home Owners from the increasing internationalism of the Residential Parks sector. Clearly compliance in this increasingly aggressive commercial environment is an issue and needs addressing.

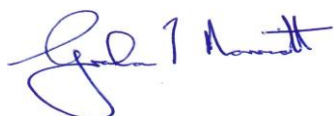
Conclusion

There is little doubt that sales of new Manufactured Homes in an increasing number of purpose-built parks will continue at a pace, with Park Owners having the financial strength and flexibility to respond to market conditions. However, the ongoing robust viability of the industry, does not help existing Home Owners in Residential Parks cope with the situation they find themselves in, locked into (in hindsight) sometimes unfair Site Agreements with no means of appeal, or escape via the sale of their home, even if they wanted to.

It is suggested that all the provisions of the **Act** need re-evaluating to ensure they do actually deliver a reasonable degree of fairness to Home Owners and consequently reinforce the provisions of the **Act** to achieve its main object which is 'to protect Home Owners from unfair business practices'. In short, the '**major shake-up of the industry**' (including 'limitations on rent increases and the simplification of contracts') as promised by the previous round of amendments to the **Act**, remains a 'work in progress'.

We look forward to ongoing discussions on these matters with you and your Departmental staff

Yours sincerely



GRAHAM T MARRIOTT

President