

Case Study - QCAT Market Rent Review Dispute

A. Background

This Case Study documents the experiences gained from a rent dispute pursued by home owners following a market rent review under the Manufactured Homes (Residential Parks) Act 2003. One of the applicants was an ARPQ committee member acting in a personal capacity.

The sequence of events outlined here applies specifically to this case. Other cases may take longer or less time and may be more convoluted or more straight-forward. From the experience of others who have been involved in the tribunal, it is assumed the process of this case is normal and the time taken is also not unusual.

At the time of publishing this Newsletter, the time span has been:

- ✓ 85 weeks from the start of the dispute to the QCAT hearing;
- ✓ Another 27 weeks have passed since the hearing with no decision to date;
- ✓ This means that from the start of the dispute till now 21 months have passed with a decision yet to be handed down.

B. Basis of Dispute.

The dispute was generated by the Park Owner increasing the rent after a market review. The manufactured home park is RV Homebase in Maryborough. The basis of the dispute was twofold:

1. The homeowners considered the increase to be excessive as it was:
 - An increase of 15.6% which is 9.2 times CPI
 - An increase over 4 years of 35.5% which is 5.1 times CPI.
2. The comparison of RV Homebase located in Maryborough with manufactured home parks located in the beachside city of Hervey Bay was inappropriate. The applicants were aware that no case on similar grounds of differing locality has been successful.

The dispute can be considered as a simple, straight forward one where the rent increase determined by a market review is challenged.

C. Conclusions

Considering that the parties to a dispute are generally elderly and often unsophisticated home owners, the process can only be described to them as daunting, overwhelming, and overly bureaucratic. ARPQ has stated on a number of occasions that the system is broken.

This type of dispute (and virtually all QCAT disputes based on the Manufactured Homes Act) is essentially between, on one hand:

(a) the elderly home owner in most cases with little resources or assistance;

and on the other hand:

(b) the park owner who has the resources available to engage lawyers to respond to the application and;

(c) the valuer who goes to great lengths to justify the comparisons and the recommended rent increase.

The process has in this case required:

(a) 41 different steps or actions;

(b) a total of 58 weeks to finalise, and that is before there is any indication of when the decision will be handed down;

(c) preparation of five (5) formal submissions

which could be beyond the capability of many inexperienced elderly home owners who most likely do not want over a year of stress at their stage in life.

Increasingly, homeowners going through the dispute system are requesting and receiving advice and guidance from ARPQ as they proceed through the overly complex process.

An analysis in hindsight concluded that there are very specific strategies, different to those normally adopted, which would benefit the homeowner to take away some of the advantages park owners enjoy during the process. Consequently, ARPQ can advise members how to reduce those complexities.

D. Notable Aspects of the Dispute Resolution Process

Schedule A follows the sequence of all the steps through the QCAT process in this case. There were a total of 41 steps which explains why home owners who know the process may be unwilling or afraid to take the dispute all the way to a tribunal hearing.

As per the QCAT process, the home owners are referred to as the “applicant” and the park owner as the “respondent” in the attached Schedule.

Some of the notable aspects of the dispute were:

1. During the meeting as a result of Form 11, the park owner did not wish to negotiate. From the ARPQ survey results⁽¹⁾ conducted among members, this is quite normal;
2. There are two fees involved for the home owner:
 - (a) The first is a payment of \$345.80 when initially applying to QCAT which takes the home owner only as far as a mediation hearing.
 - (b) The second payment also of \$345.80 to apply for a hearing after the mediation fails. As shown in the ARPQ survey⁽¹⁾ this means that 82% of the applicants would need to pay both fees when mediation fails;

Further fees are required if the decision is appealed or if a review is requested.

3. Throughout the process there were the tasks of preparing for, and submitting to QCAT:
 - (a) five (5) formal submissions:
 - (i) initial application to QCAT
 - (ii) application for tribunal hearing
 - (iii) statement of evidence for tribunal hearing
 - (iv) final submission post hearing
 - (v) response to park owner's submission post hearing

 - (b) Six (6) sets of notes in preparation for:
 - (i) mediation,
 - (ii) compulsory conference,
 - (iii) direction hearing,then for the hearing itself,
 - (iv) the opening statement,
 - (v) cross examining the park owner or manager
 - (vi) cross examining the valuer.
4. The park owner submitted nearly 700 pages of evidence which can overwhelm and confuse. At least 600 pages were irrelevant and were never referred to;
5. Amongst this evidence were additional statements from the valuer and the park owner's lawyer;
6. The park owner's material and evidence submitted to the tribunal were prepared by lawyers, quoting many precedents;
7. During the process the applicants had five different case managers who were of variable assistance. The applicants found it necessary to contact the office of the Attorney General to force one of the case managers to respond to requests;
8. The quality of the Directions received from the tribunal was not acceptable in some cases. Prior to and during the directions hearing, the home owners discovered that some directions had not been sent and some others were dated incorrectly resulting in confusion at the Directions hearing;
9. The process involves the initial negotiation, the mediation and then a compulsory conference, all of which failed in this case. If either the mediation step or the compulsory conference or both were dispensed with by agreement, the time of the total process would be reduced by up to 20 weeks;
10. The home owners were at a distinct disadvantage throughout the process:
 - (a) The sequence is such that:
 - (i) The home owner made application to QCAT giving reasons for the dispute;
 - (ii) The park owner responded to the application, with parts, if not all, written by a lawyer, a point made by the QCAT member at the hearing;

- (b) When the matter proceeded to an application for a hearing;
- (i) The home owners submitted their statement of evidence;
 - (ii) The park owner responded and submitted challenges to that evidence including confusing (to the applicants in this case) legal precedents prepared by a lawyer;
 - (iii) The home owner cannot directly challenge that evidence from the park owner;
 - (iv) The home owner can only question the park owner at the hearing. Consequently, as the applicants were not experienced in cross examination, there was extreme difficulty in challenging the park owner's statements.

E. ENDNOTE

As background, Associated Residential Parks Q'ld (ARPQ) conducted a survey⁽¹⁾ of members during 2020 regarding rent increases and subsequent disputes which found that:

47% of respondents had disputed rent increases.

- 76% of the negotiations with the park owner as required under the Form 11 Dispute Negotiation Notice, failed;
- 54.2% of the respondents who disputed the increase, and where the negotiations failed, took the dispute to QCAT;
- Those who did not take the dispute to QCAT did not proceed because:
 - ✓ Expense of proceeding 18.7%
 - ✓ Process is too difficult 20.0%
 - ✓ Process is too stressful 13.3%
 - ✓ Unlikely to succeed 28.0%
 - ✓ Not confident of a good hearing 20.0%
- The compulsory mediations (including compulsory conference) by QCAT failed for 82% of respondents.

Schedule A

Sequence of Events and Timing.

<u>Week</u>	<u>Step No.</u>	<u>Dispute Process Item</u>
0	1	Form 11 Dispute Negotiation Notice served on park owner by the applicants (3 homeowners)
3	2	Negotiation between park owner (the respondent) and applicants failed. The park owner openly said he was not prepared to enter into a negotiation process and wants the full 15.6% increase (35.5% over 4 years)
7	3	Dispute is taken to QCAT- Application fee \$345.80
16	4	Receive mediation and attendance advice form from QCAT
	5	Return the completed mediation and attendance advice form.
15	6	Receive Notice of Mediation from QCAT
	7	Prepare material for mediation
17	8	Applicants contact their case manager with some questions regarding procedure. This is their second case manager.
17	9	Mediation takes place and fails as the park owner makes it obvious there will be no concession
	10	Certificate of mediation outcome received from QCAT
19	11	Application lodged for Tribunal hearing with another \$345.80 fee
22	12	Receive Directions Notice from QCAT
.	13	Applicants attempt to contact their Case Manager with some questions regarding procedural matters. There is no response from Case Manager who does not return calls (this is their third case manager).
	14	Applicants again attempt to contact case manager with no success.
	15	Applicants contact the office of Attorney-General and Minister for Justice complaining about inability to gain response from case manager
	16	Different case manager returns call and asked whether the Directions can be appealed. Offers no advice on procedure and suggests Applicant seek legal advice.
	17	Directions Paper received - matters listed for compulsory conference 10 December
	18	Directions Paper received - matters listed for a Directions Hearing 29 January 2021
29	19	Park owner's solicitor applies for directions to not provide expenses
	20	Park owner files response to the home owners' application
31	21	Applicants lodge objection to park owner's application as the operating expenses will be required to properly hear our dispute under section 70 of the Act
32	22	Directions Paper received regarding Park Owner's request not to provide expenses and decision to be made later
	23	Applicants lodge Statement of Evidence to QCAT
	24	Applicant provides a copy of Statement of Evidence to park owner as per QCAT direction.

<u>Week</u>	<u>Step No.</u>	<u>Dispute Process Item</u>
32	25	Directions Paper received vacating part of Directions Paper of 22 September. Applicants don't know what that means and do not bother calling the new case manager
	26	Directions Paper received that application for Miscellaneous matters will be determined on the papers.
35	27	Notice of Compulsory Conference received
	28	Attendance form for Compulsory Conference returned to QCAT
	29	QCAT advises two different times for the compulsory conference further confusing the Applicants.
	30	Park Owner files Statement of Evidence consisting of 600 pages Applicants contact (yet another) case manager who responds 2 days later.
	31	Ask about procedural matters on the process how to object to some of the possible misleading statements. Case manager says to seek legal advice.
37	32	Applicants contact Caxton Lawyers. Subsequent call received from junior solicitor who is not familiar with QCAT procedures and advises we will be contacted by one of their senior lawyers.
	33	Compulsory Conference fails to reach a satisfactory conclusion
	34	Receive email for Caxton with extensive information fully clearly answering the questions and offering appropriate advice
45	35	Directions Hearing scheduled for 29 January
47	36	QCAT send Directions previously not sent
52	37	Hearing held 17 and 18 March in Hervey Bay
53	38	Directions received 23 March
54	39	Final written submission to QCAT 1 April
56	40	Respondent submits written response to applicants' final submission 15 April
58	41	Applicant submits written response to respondent's submission 29 April