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15 June 2020

Ministerial Housing Council
1 William Street
BRISBANE QLD 4000

Dear Minister and Council Members

CHANGES TO THE MANUFACTURED HOMES (RESIDENTIAL PARKS) ACT – DISPUTE RESOLUTION

Reference A: Department of Housing & Public Works letter Ref HS 00764-2020 dated 13 May 2020

INTRODUCTION

Reference A asked for our input to a project arising from a commitment in the *Queensland Housing Strategy 2017-2020 Action Plan* which is to 'explore improvements to dispute resolution arrangements to ensure housing consumer complaints are resolved as quickly and cost effectively as possible, including the possibility of a new dispute resolution body'. We thank you for the opportunity to provide that input by the required date of 15 June 20120.

BACKGROUND

Whilst the intent of that commitment and the current project are admirable, we believe any investigation into dispute resolution would be incomplete if it did not consider how disputes originate and how issues can be resolved before they escalate into disputes. If the underlying root causes of many disputes can be rectified, then the number of disputes should decline significantly which at the end of the day is the best possible outcome for both Home Owners and Park Owners.

We believe that the root causes of most disputes are as follows:

1. **Lack of understanding by Home Owners and prospective Home Owners of their contractual obligations under the Manufactured Homes (Residential Parks) Act (the *Act*).** These largely arise from:

   - The unfamiliar and complex nature of the Act itself – the Act is a unique and complex piece of legislation which most Home Owners are unaware of until they are considering moving into a Residential Park. Even long established Home Owners have difficulty understanding the contents and ramifications of the ***Act*** and it is totally unreasonable to expect prospective Home Owners to do so. This situation cannot be totally overcome, but needs to be mitigated wherever possible by simplifying the Act and bringing it into line with other legislation that people may be more familiar with such as that covering general consumer protection, real estate, retirement villages, commercial land lease arrangement, etc;
   - The voluminous and complex nature of the contractual documentation Home Owners are required to enter into – unlike real estate, there is currently no standard form of contract for house purchase and the numerous forms associated with the Site Agreement are difficult to understand. They need simplifying.

2. **Loopholes in the Act that Park Owners can potentially exploit to their commercial advantage** – this is especially (but not exclusively) true in the provisions covering Site Rent increases which need fundamentally rethinking.

   Due to the lack of any constraints in the ***Act*** and its associated Regulation, and in the absence of any real market forces, the whole Site Rent increase situation is escalating out of control with a number of Home Owners being forced to try to sell their homes because they can no longer afford the Site Rent. However, because of the high Site Rent, selling is not easy and they are trapped in a 'Catch 22' situation effectively becoming 'prisoners in their own home' struggling to cope with the increasing financial pressure caused by ever increasing Site Rent. This situation is not new, having been raised with the Public Works and Utilities Committee in 2017 during the public consultation process associated with the last round of amendments to the ***Act***.

   At the same time and regardless of the prevailing economic conditions, Park Owners are guaranteed an ever-increasing profit on a year to year basis with zero exposure to normal business risk. We can think of no other commercial business sector that enjoys this level of protection (this is covered further under Issues 2 to 5 in our attached 'Issues Paper').

3. **Compliance with the *Act* requirements** – many provisions in the Act do not carry penalties and where penalties exist, they are inadequate and extremely difficult to enact. There is also an apparent reluctance to impose those penalties even when the provisions of the Act are being flaunted. Any legislation is considered meaningless if compliance with its requirements is not ensured through the full weight of the law.

   Also, the ***Act*** needs to be given the same status as other legislation covering the operation of commercial corporations (eg Corporate Governance, Health and Safety, Environmental Impact, etc), with Company Directors held personally accountable for any breaches.

With the above in mind, and as with many other situations, it is considered better to fix the underlying causes of problems rather than merely amend procedures for dealing with their consequences through the disputes resolution process. For example, in recent times over 95% of Residential Park Disputes involving our members have resulted from Site Rent increases, clearly indicating that there is currently something fundamentally wrong with the ***Act*** provisions covering this area (see point 2 above).

There are also a number of other issues in the Act that need addressing and we have previously recommended that a baseline review of the Act be carried out 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'. With this in mind, we have produced the attached 'Issues Paper' to promote discussions towards achieving that recommendation.

MATTERS RAISED IN REFERANCE A

Dedicated Dispute Resolution Body

As covered in Recommended Action No 6 of our attached 'Issues Paper', bearing in mind the problems currently being encountered with QCAT, we support any proposal to establish an alternative independent body to exclusively arbitrate on/resolve disputes arising in Residential Parks and Retirement Villages.

Pre-contractual Advice

As mentioned above, the first time potential Home Owners come into contact with the ***Act*** is when they have gone through a Park Owners sales process and they are on the point of signing contract documentation (in fact if buying a new home, many have already signed a building contract prior to being seriously exposed to the process and requirement of signing an associated Site Agreement).

The problem therefore is that most prospective Home Owners are not aware of their entitlement to be given pre-contractual advice and even when given that advice do not have it fully explained nor understand its

importance. For example, few prospective Home Owners understand their entitlement when buying an existing home for assignment of the current Site Agreement at the current Site Rent, which is why many Park Owners continue to get away with the practice of insisting on a new Site Agreement be signed at an increased Site Rent.

Specific items where feedback is requested

We have surveyed our members and can provide the following feedback on the specific matter raised:

- **The current dispute resolution system and members experiences of it:**

  There is currently a significant power imbalance in the dispute process which like many legal processes, favour the party that can muster the greater power. Consequently, a process that involves mainly seniors on limited incomes, no legal advice and often a limited understating of the ***Act***, disputing issues with mainly big commercially focussed companies with large resources and a whole team of legal advisors, is almost doomed to failure. It is estimated that over 90% of homes covered by the ***Act*** are in Parks owned by significant corporations (some with international shareholders) with market capitalisations in excess of $1 billion dollars.

  The process is long, overly complex and difficult for laymen Home Owners to follow. Some of our members have been in dispute with their Park Owner for over 12 months, with no knowledge of when the matter will be resolved. As aged residents they have found the whole process of fighting for their rights with a large well-funded corporation, whilst trying to live on a pension, obviously very stressful. To put matters into perspective, they had to resort to selling raffle tickets to fund their dispute whilst presumably their Park Owner funded his defence from cash flow as a tax-deductible business expense.

  To compound the situation some Park Owners, refuse to meaningfully follow the dispute resolution process as outlined in the ***Act***, instead relying on a process of obfuscation and misrepresentation. They do not respond to initial complaints from Home Owners before they become disputes, despite the requirement to do so within 21 days as outlined in Part 16 of the ***Act***. They also do not respond to Home Owners' Form 11s and refuse to engage in any meaningful negotiation or mediation, thereby forcing the Home Owner to take the dispute to a QCAT hearing. In numerous cases because the Home Owners are overwhelmed by the dispute process requirements, they are unwilling or unable to proceed to a QCAT hearing, which is of course what some Park Owners rely on.

  Furthermore, QCAT has in recent times been charging Home Owners fees at the mediation stage and then again at the full hearing stage if mediation is unsuccessful. This also deters many Home Owners from pursuing the dispute as the all up cost of over $700 can be unaffordable for some pensioner Home Owners. Also it is neither fair nor reasonable that the fee for handling Home Owner and 'Other Minor Disputes' is in the top bracket of fees charged, keeping in mind that it is the lower income or pensioner population applying for dispute resolution.

  Finally, some QCAT staff and tribunal members appear either unqualified to handle matters associated with provisions of the ***Act,*** or do not fully understand the ***Act***. Consequently, even when our members have gone through the whole exhausting process and presented a totally reasonable argument, it has been inexplicably dismissed by QCAT in favour of the Park Owner.

  Because of the above factors, there is currently a general dismay about the adequacy of the current dispute resolution process. Many Home Owners feel intimidated by the thought of having to enter into such a protracted and complex process, especially when they perceive the process is loaded against them and their chances of success are not great, notwithstanding the merits of their case.

  The result is that the intention of the last round of amendments to the ***Act*** for a simpler and cheaper process for Home Owners to resolve disputes with Park Owners has failed with the process effectively becoming more complicated, overly expensive, more traumatic, less effective and out of reach of many Home Owners (this is covered further under Issues 6 & 7 in our attached 'Issues Paper').

- **The quality, availability and affordability of expert precontractual advice:**

  Despite the warning on the Manufactured Home Forms relating to Site Agreements, currently very few prospective Home Owners seek legal advice before signature and when they do it is of little (if any) value. Without a dedicated legal authority specialising in the ***Act*** (preferably Government funded), most prospective Home Owners approach their family solicitor/local lawyer who usually restricts the advice provided to compliance of the contact documentation with the requirements of the ***Act***. We have not been informed of a single occurrence where the legal advisor has gone through the contract documentation to explain its consequences and ramification to the prospective Home Owner.

  Consequently, the issue here is not necessarily about affordability, it is about availability (almost non-existent) and quality (very poor). Also with respect to availability, there is the difficulty of any advisory group such as ARPQ making contact with prospective Home Owners before they sign agreements, to make sure they are aware of their right to precontractual advice.

- **What pre-contractual advice should be provided to prospective home owners to help prevent future disputes:**

  I addition to the current requirement relating to Site Rent history for the Site in question, it is important that they be an enforceable 'full disclosure' requirement relating to Site Rents paid by current long term Home Owners for other Sites, the right to assignment of the current Site Agreement at the current Site Rent for an existing home, and an estimate of future Site Rent increases out to say five years (especially important where annual percentage fixed-rate increases apply).

  There needs to be a legal 'duty of care' responsibility on sales staff (similar to the Real Estate industry) to explain each section of the Site Agreement, especially those provisions relating to Site Rent Increases going forward, as most prospective Home Owners will not know how this works. This legal 'duty of care' also needs to extend to an explanation of Home Owners' rights, including the right of buyers of an existing home to have the current Site Agreement assigned to them.

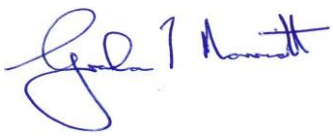
  It also needs to be explained that all information provided by sales staff during the sales process, whether verbally or in writing, is legally binding.

RECOMMENDATION

It is recommended that the matters discussed above and other issues associated with the ***Act*** be resolved by including a baseline review of the ***Act*** in the *Queensland Housing Strategy 2020-2023 Action Plan* with the objective of delivering a degree of fairness to Home Owners in achieving its main object which is 'to protect Home Owners from unfair business practices'.

We look forward to ongoing discussions on these matters with the Council and members of the Department of Housing and Public Works.

Yours sincerely



GRAHAM T MARRIOTT
President

Attachment

ARPQ Issues Paper – Further Amendments Recommended to the Manufactured Homes (Residential Parks) Act 2003