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David J. Paton

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HOUSE OF REPRESENTATIVES  
STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

**Inquiry into Older People and the Law**

**Attention:**  
**Mr. Mark Rodrigues,**  
**Principal Research Officer.**

**Further submission by David Paton.**

In my original submission of the 10<sup>th</sup> November 2006 and my oral submission at Buderim on the 17<sup>th</sup> July 2007. I was able to outline the problems that residents of Residential Parks in Queensland experience in their daily lives.

It now seems appropriate to outline in some detail what should be expected from the review of the current legislation that should produce a new Act to cover these parks. I will list them and make notes for consideration.

**New Act to be RESIDENTIAL PARKS ACT 2007.**

The term *Manufactured Home* should be removed from the Act and should now concentrate on the future of the industry rather than the past. The old mixed parks containing caravans and relocatable homes is almost at an end, these being swallowed up by developers at an ever increasing rate and encouraged by all governments. The past must give way to the future, and the future is the purpose built Residential Park. The older parks of limited life could revert back to the Residential Tenancies Act (RTA).

**New Act to Define.**

That the homes built in the purpose built parks are not relocatable, because they are not built to be relocated perse.

Confirm whether the site agreement is a commercial agreement, as stated by investigation officers of the Office of Fair Trading (OFT) or, a residential agreement as believed by residents and implied by the current Act.

Confirm if a home in a residential park is real estate or merely a chattel. Officers from the OFT can give no definite answer to this question, some say it's real estate, others say it is a chattel.

It is of great concern to residents when the legislative body do not know themselves.

The current Act does not offer any guarantee of tenure for the home owner. Section 38 (1) (f) allows for the park operator to apply to the Tribunal for a change in land use, and in a very recent ruling by the Tribunal (MH029-05) the park owner was granted termination orders against two pensioner couples on the basis that the local council had approved a re-development plan.

Consider this scenario in a purpose built park where the homes are not built to be relocatable.

The new Act must give guarantee of tenure.

### **Bi partisan relationship between park operator and residents.**

When a park operator advertises a park, aimed at retirees, asking the retirees to join the venture and invest their money in the park, the park operator ceases unequivocal ownership of that park and is indeed, the park operator, not the park owner. The collective cost of building the homes, in a reasonable size park, can be equal, but usually more than the development costs. These homes belong to the individual residents, they are the residents major asset, and are not the property of the park operator. For a park operator to claim ownership of a residential is false, the homes, that give the development its value, are owned separately by the home owners.

Without the investment of residents, the park does not exist, and the park operator does not have a business.

The new Act must reflect this.

### **Residential Parks to be registered.**

All park operators dealing specifically with retirees and the aged, must meet the same criteria as specified in the Retirement Villages Act, section 88 (2) that lays down the requirements of the park operator to be clear of all criminal conviction or like conduct relating to the dealing of aged persons.

A further requirement must provide that all agents and servants of the park operator be proven qualified to work with the aged.

### **Park operators right to sell on homes.**

Park operators and their agents or servants wishing to act as selling agent for residents homes, must hold the appropriate licences and qualify in all ways, under the Property Agents and Motor Dealers Act 2000.

The requirement that the home owner is at the mercy of the park operator to approve the selling of the home owners main asset, the house, is outright immoral. No other section of society is subject to such third person interference. This is just draconian law.

The site that the home is built on, belongs to the park operator, the home is the property of the home owner. If it is appropriate for the park operator to control the selling of the home owners property, then it is also appropriate that the home owner be given the same control over the sale of the land their home is built on should the park operator decide to use the land for other purposes.

This is what being fair and equitable is really about!

### **Dispute Resolution.**

The Office of Fair Trading (OFT) must put in place clear dispute resolution proceedings that attract penalties for offences, and are acted upon without fear or favour. OFT investigation officers must be aptly qualified to be able to listen and give due consideration and understanding to aged residents. The residents are not always right in what they may perceive as an injustice and officers must have qualifications to deal with such instances.

There is also merit in the OFT using the services of volunteer organizations who already assist elderly residents with dispute resolution.

The Commercial and Consumer Tribunal (CCT) that currently deals with dispute resolution, and is often used by the OFT as the only arbiter, when qualified officers from the OFT or Justice Department could deal with complaints and lighten the load on the CCT. It is not an appropriate answer to an aged person when they are told by the OFT to take the matter to the CCT which in effect is a lower court of law.

Aged people are terrified of the very thought, they do not deserve to be treated in such an uncaring and callous way, and the whole industry knows that wealthy park operators can afford all the legal expertise they can muster, and do.

All politicians of all persuasions, and public servants, need to insist that this is not a fair and equitable system by any stretch of the imagination, and should never expect the aged population to be subject to such unmitigated stress.

### **End notes.**

The continued drive for economic success by all governments, important as this may be, the ever overriding consequence of this unregulated drive for economic growth at all cost is hurting too many people, the aged in particular.

We all know that the aged population is growing, and problems will need to be addressed. This is not some futuristic event that can be dealt with at the time, the foundations need to be in place now.

Retirement villages and residential parks are going to be strong economic factors in the future, and we need to be laying down real regulation now.

David Paton

July 2007.