NSW Legislative Assembly Hansard

Residential Parks Amendment (Statutory Review) Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 8 November 2005.

Second Reading

Ms DIANE BEAMER (Mulgoa—Minister for Western Sydney, Minister for Fair Trading, and Minister Assisting the Minister for Commerce) [9.16 p.m.]: I move:

That this bill be now read a second time.

I have great pleasure today in introducing the Residential Parks Amendment (Statutory Review) Bill. This bill demonstrates that New South Wales continues to lead the rest of Australia in the laws applying to this unusual but significant form of housing in our community. Recent figures suggest that there may be up to 30,000 people residing in 900 or so parks around the State. Most who live in residential parks—which used to be known as caravan parks, mobile home villages and relocatable home estates—have unique housing arrangements in that they live in their own homes on rented parcels of land. Park residents live in what are effectively small self-contained communities, where the actions and attitudes of their fellow residents and the park manager can have a profound effect on their quality of life.

The special nature of these living arrangements calls for well-targeted laws, and that is what the Residential Parks Act, which began on 1 March 1999, provides. The amendments contained in the bill will further improve what are already the country's most extensive and responsive laws for people who make their homes in residential parks and for the operators of such establishments. The bill arises as a result of the Government's broad consultation with stakeholders and a statutory five-year review of the Act's operation in practice. The Office of Fair Trading prepared and released a discussion paper for consultation purposes and over 260 submissions were received in response. A report on the review was tabled in Parliament by my colleague the Hon. Reba Meagher on 7 December 2004.

A number of issues have emerged in the residential park landscape that make some refinement to the legislation necessary. We have seen, for example, an escalation of the value of the land on which many parks, particularly those in desirable coastal locations, are situated. This has led to some park owners seriously considering their redevelopment opportunities. The uncertainty over the future of some parks has flowed on to many residents, who have understandably raised concerns over their housing arrangements should their park close. Another issue is that uncertainty over the safety of travel abroad has encouraged many Australians to travel and holiday within our own country, and this has led to some park operators wanting to focus more on short-stay tourist accommodation in place of long-stay arrangements. The residential park way of life is an attractive one to many in our community, who appreciate the relative affordability, the sense of community, the support of their neighbours and the relaxed informal lifestyle.

To others, the reality of living in a park is that it is the only housing choice they have due to their financial and personal situation. The Government wants to encourage the continuation of residential parks as an accommodation option and part of the housing mix for the people of New South Wales. But it is no easy task to balance the perfectly reasonable expectation by residents that they will have an appropriate level of security and consumer protection, with the equally acceptable aspirations of park owners to operate a profitable business.

At the outset, I want to stress that by introducing this bill the Government does not intend to take away or unreasonably restrict the rights of park owners to make commercial decisions about remaining in the industry. That is their choice, as it is of any other provider of accommodation services. Park owners will continue to be able to use their own land for other lawfully permissible purposes. However, it is the Government's clear intention to ensure that residents are properly and adequately afforded with consumer rights that are tailored to their unique living arrangements, as well as being protected against unfair and unjust treatment. I know that my predecessors the Hon. Reba Meagher and the Hon. John Hatzistergos met with a number of park resident and park industry interest groups before and after the tabling of the review report.

I have also met with some of these groups and have visited parks to see first-hand the circumstances under which park residents and park managers co-exist. Indeed, in my former capacity as the Assistant Minister for Infrastructure and Planning (Planning Administration), the planning and land use challenges affecting residential parks around New South Wales were prominent in my responsibilities, and I understand the various angles that each of the respective interest groups are coming from. The Government is committed to ensuring that legislation relating to residential parks results in fair and equitable outcomes for park residents and owners, and the measures contained in this bill achieve that.

I will now give an overview of the provisions contained in the bill, which fall into three main areas. First, there are

changes strengthening the provisions dealing with the events that take place before a resident enters a park; secondly, there are modifications to the day-to-day relationship between the park owner and the resident during the tenancy; and, finally, there are changes to the mechanisms that apply when the time comes for the tenancy to be brought to an end. Turning to the first of these areas, the review of the legislation confirmed that many residents have not been given adequate information about their occupation arrangements before they moved in. Of great concern is that some of the information, or lack of information, may have been deliberately misleading in some cases. Many residents stated that they believed they were tricked into thinking they could stay in their park for as long as they liked in a retirement style of living, only to find that the park owner later sought to terminate their agreement so that the park could be emptied for another type of use. Residents were able to produce advertisements that did not show some park owners in a good light in terms of the accuracy of the information they provided.

Some advertisements created the illusion that the resident would be buying a home and land, with no attempt made to clarify the fact that the land is actually occupied under a tenancy which could come to an end at any time in the future. The bill takes a number of steps to minimise these practices and to improve the relevance and accuracy of information required to be given to prospective residents up front. Among the changes are those that will require any advertising to spell out the fact that the land is subject to a tenancy and will not be owned by the resident. Failure to put this information in the advertisement will attract a penalty of up to $2,200 The maximum penalty for failing to give incoming residents all the necessary information will be increased to a maximum of $2,200.

Any additional clauses to those contained in the standard tenancy agreement will have to be provided on a separate sheet of paper so that additional clauses cannot be hidden amongst the detail of the tenancy agreement. Additional information will have to be given to incoming residents on the following: whether there have been any development applications over the previous five years, whether termination notices have been given to any residents on the grounds of a redevelopment, whether the park is on Crown land, what the electricity and gas arrangements are and whether homes can be sold while located in the park. Significantly, it will also now be an offence for park owners not to give residents a written tenancy agreement. These improvements will apply from the beginning of park tenancies and will reap benefits in the future by providing residents with a much clearer understanding of the basis of the occupancy arrangements they are about to enter into.

The next group of changes that I shall summarise covers the relationship between the park owner and the resident once a tenancy agreement begins. These are the provisions that govern the day-to-day relationships between park owners and residents. Several provisions contained within the bill seek to iron out or clarify operational issues in parks, and to streamline the manner in which they are dealt with. Some of the more significant changes include: park liaison committees will no longer be a mandatory obligation upon a park owner where there are 20 or more residents. However, if a majority of residents want to retain a committee this will still be possible. Internal residents committees are to be formally recognised, as is the case under the Retirement Villages Act, and they are to be entitled to meet without hindrance in suitable facilities within the park.

Park disputes committees, which were originally designed to deal with park rule matters, will also be dispensed with. Instead, residents will now be able to take any park rule disputes directly to the Consumer, Trader and Tenancy Tribunal. In addition, individual residents will be able to pursue park rule matters in the tribunal, rather than a minimum of five residents from five different sites as currently applies. Residents will be prevented from selling their homes within the park only if both the disclosure material and the tenancy agreement so specify.

To ensure that public land policies are not unduly affected, these changes will not apply to Crown or National Parks and Wildlife lands. When residents are permitted to sell their homes, park owners will not be entitled to restrict the use of "for sale" signs that are affixed to the homes. The penalties for illegally interfering with residents trying to sell their homes to make a new life for themselves will be increased from $220 to $2,200. When residents find that their only option is to sell their home to the park owner but agreement cannot be reached on a fair price, the tribunal will have the jurisdiction to break the deadlock and provide an independent valuation with the assistance of qualified valuers.

To give park owners some relief from small rent increases being challenged through the tribunal as being excessive, rent increases that do not exceed the consumer price index for the period involved will be subject to review only when it can be established that a service or facility has been withdrawn or reduced. This will give park owners and residents more certainty and will discourage ambit or overinflated rent increases, and will save the cost of the tribunal dealing with mass rent increase applications over relatively minor amounts. Billing and charging arrangements for electricity, water and gas supply will be made more consistent and more closely aligned to utility services provided to members of the community living in conventional housing in the same locality.

The supply of electricity to park residents has particularly been a bone of contention, as residents often receive a far smaller capacity of supply than do other members of the community, yet they pay the same rate. Through a new customer services standard, park residents will pay for any supply charges—as distinct from consumption

charges—proportionate to the capacity provided by the park owner. In practice, this will mean that residents who receive less than 30 amps of power to their home will only pay 50 per cent of the normal availability charge. If they receive 30 to 59 amps they will pay 70 per cent of the availability charge. Park owners will be obligated to agree to the terms of the customer service standards, which have been developed through extensive consultation, including the Energy and Water Ombudsman's Office.

Certain clauses that would have the effect of severely disadvantaging residents will be prohibited from inclusion in tenancy agreements. The prohibited clauses include those that would allow park owners to allocate rent payments by residents to any charges that they see fit, appointment of the park owner or manager as the sole selling agent for the resident's home, indemnification of the park owner against legitimate and lawful claims by the resident, and requirements for residents to only use trades and services persons nominated by the park owner. Finally, penalties for offences will be increased across the board to assist in gaining compliance with the laws.

I would like to pay a little more attention to two major initiatives in this bill connected to the day-to-day operation of residential parks. They concern the appointment of an administrator when things have gone horribly wrong with the management of a park and access arrangements to the park by emergency services when residents need them. I hope the provisions in the bill for the appointment of an administrator to take over the running of a park would rarely have to be used. However, it is one of the more important reforms contained in this package of amendments. The need for the provision has arisen through the irresponsible and inexcusable actions of a small minority of park owners who have demonstrated they will go to any length to make the lives of residents miserable. Some park owners can make life for residents in a park virtually unbearable: through intimidation and harassment, gross neglect of residents' health and safety, and continual refusal to comply with orders of the Consumer, Trader and Tenancy Tribunal or to pay penalties that have been imposed upon them.

The Government is not prepared to stand by and allow this appalling behaviour to continue. While they may be few in number, the devastation that disreputable park owners can wreak on the lives of residents, many of whom are in the autumn of their lives, cannot be underestimated. When the management of a park has reached the abysmal level that I have just described there will be an authority given to the Commissioner for Fair Trading to apply to the Supreme Court for the appointment of an administrator. The object will be to have the offending operator replaced by a substitute park operator with the necessary skill, business acumen and appropriate regard for the welfare of residents. A similar provision currently applies under the New South Wales Retirement Villages Act.

We want residents to be afforded common decency and respect, rather than have to live in an environment threatening to their health or safety, and this provision will enable the commissioner to step in and initiate the necessary action through the Supreme Court. I assure reputable park operators that they have absolutely nothing to fear from this new provision. It will only have effect on the rogue park owners who have neglected or are grossly neglecting their responsibilities to residents, and it will only be a measure of last resort. Judicial oversight of this provision via the Supreme Court will ensure the highest level of procedural fairness and natural justice.

The other innovation in the bill that I want to refer to at this stage relates to access by emergency services to parks when needed by residents. At present there are some hurdles for residents to overcome should they need to call for help in an emergency. There have been examples of residents whose spouse has suffered a heart attack calling 000. When the ambulance has reached the gate, which is usually secure, entry has not been immediately possible. Upon entry, it is sometimes hard for ambulance officers to find the resident's home due to inadequate maps or signage. In these situations, every second is vital. The amendments aim to minimise delays for all emergency services including fire, State Emergency Service, police, ambulance and even home care type services.

The bill places an obligation on park owners to devise emergency access arrangements appropriate for their park, in consultation with the residents and local emergency services. There is obviously no single simple solution that fits every park and every situation, but park owners will not be able to ignore their responsibilities to residents in this area. They will have to take all reasonable steps to ensure that residents in their park, like the rest of us in the community, have ready access to emergency services when the time and occasion arises.

The third and final group of reforms contained in this bill relate to the termination mechanisms where the park owner wishes to redevelop his or her establishment, and to the compensation payable to residents as a consequence. This is the area that has changed so much since the legislation came into effect in March 1999. As I commented earlier, the redevelopment environment has altered somewhat in the intervening years and some park owners are weighing up whether to remain in the business of providing permanent residents with home sites. It is clear that pressures have built up and the process for dealing with park owners seeking to regain vacant possession of their land for redevelopment purposes, and the subsequent payment of compensation to affected residents, needs to be improved.

I make no apologies for the fact that the refinements in the provisions relating to termination of tenancy and

access to compensation will strengthen the position for park residents. This is only right and just, as they have the most to lose in a park redevelopment scenario. Not only do they face losing their home but also their community, and their longstanding neighbours and friends. They also have the challenge of making new housing arrangements, either by moving their dwelling to another park—if they can find a suitable and available site—or by trying to sell their home independently and then finding suitable alternative accommodation. The cost of moving moveable dwellings is substantial and the relocation logistics can be a tricky exercise. It can be an extremely traumatic and difficult time for people who may well have expected to see out their remaining days in the park. It is essential that if the park owner has legitimate reasons to seek closure of his or her park for redevelopment purposes residents are granted the most dignified and helpful process that is possible in such circumstances.

I will now outline the fundamental changes to the mechanism to apply to the regaining of possession where the reason is for redevelopment or change of use. To ensure a transparent and fair process, particularly for park residents, park owners will now have to obtain development approval from the appropriate authorities before such a notice of termination can be validly given. Too many times in the past, park residents have been hoodwinked into vacating their homes on the premise of a vague redevelopment proposal or rumour that has never been formally put to the local council. This will no longer be possible. Before the process of bringing the resident's agreement to an end even begins, this fundamental step of obtaining a development approval will have to be taken. In instances where development approval is not required, park owners will need to seek approval from the Consumer, Trader and Tenancy Tribunal to authorise the issuing of a change of use termination notice after being satisfied that the grounds are bona fide.

The second big change will see the minimum period of notice that has to be given to a resident when a park redevelopment is proposed increased from 180 days, or 6 months, to a minimum of 12 months. This will give residents more reasonable time to make what are, after all, quite significant changes to their lives. However, as is the case under the present law, I stress that no resident is required to vacate their home even after the 12 months has expired until an order of possession is made by the Consumer, Trader and Tenancy Tribunal. If it is found by the tribunal that no development approval has been obtained for the so-called park redevelopment an order of possession will not be granted. The notice of termination will make it clear that residents have the right to remain in possession until the tribunal orders them to leave, and to be paid compensation by the park owner in line with the requirements of the legislation.

A new obligation will be placed upon the park owner at the time of issuing the notice of termination to also notify the Department of Housing. This will help to trigger the park closure protocol, which the Department of Housing and other government agencies have developed so that eligible residents affected can be assisted with co-ordinated government services. The other major reforms to the termination provisions of the legislation in the redevelopment context relate to the payment of compensation to residents. Access to compensation is a justified right of residents who have not only lost their place of abode but have also had their lives uprooted. Park residents who live in their own homes on rented sites and have their tenancies terminated have had access to compensation for more than 10 years now. This right will continue, but with some necessary improvements.

Compensation is currently payable to assist residents in moving their homes to another location and having services reconnected. The amount of compensation payable is assessed by the Consumer, Trader and Tenancy Tribunal. A number of refinements to the compensation provisions are contained in the bill. I will quickly highlight what these amendments will achieve. Firstly, residents will be entitled to get their compensation before they leave. In fact, they will have the right to remain in the park until they get it. This is a significant improvement for residents, as the cost of moving a modern moveable dwelling is substantial and may amount to $20,000 or more. It is essential that park residents, most of whom are older members of the community and almost certainly on limited incomes, are paid upfront to lessen the financial burden on them.

Secondly, the criteria are to be broadened so that residents can be compensated for the relocation of a home to another park up to 500 kilometres away, which is an increase on the current 300 kilometres. This recognises that park sites are becoming scarcer and some residents may wish to look a little further for their alternative housing arrangements. This will reduce the likelihood that they will be out of pocket after their move. I want to point out that residents are eligible for compensation even if their home is not to be moved to another park but to some other parcel of land, for instance, in a country town or rural area where it may be permissible to locate such a dwelling and where the former park residents may have some connections. This gives some residents additional options to consider and other possibilities when thinking about their changed housing arrangements if they are leaving their park.

Thirdly, the bill provides for residents being able to go to the tribunal more than once over compensation should there be a dispute over the adequacy of any amount awarded to them. This will allow for compensation to be topped-up should the tribunal's original estimate be proven to be insufficient due to higher than expected costs of relocation and connection to services or, for instance, repairs to any damage to the home that occurs during transportation. The final item in this bill connected with the termination and compensation process deals with the scenario of the resident selling his or her home to the park owner in lieu of moving it somewhere else. I referred

to this situation earlier.

Sometimes residents are faced with a difficult choice—that is, they have decided not to move their home to another park due to personal reasons or because they cannot find a suitable site, but they find that they cannot sell their home on site to anyone else because their park is facing closure. Also, there is a limited market in selling a park home to a buyer who is willing to remove it for use elsewhere. Often the resident's only option is to negotiate with the park owner to take the dwelling off their hands. This situation creates its own set of problems. The park owner is obviously in a powerful position and some residents have reported to the Office of Fair Trading that they have been forced into accepting a pittance for a home that is worth much more.

What is particularly galling to residents is that some park owners then on-sell the home for the amount that the original resident should have received, thus making a tidy sum on the basis of the resident's unfortunate predicament. This type of manipulation has clearly got to stop. The bill provides a circuit breaker for residents caught in this situation. The Consumer, Trader and Tenancy Tribunal will be given the power to establish a fair price where the resident and park owner cannot agree. The tribunal will be able to use the services of valuation experts to assist it in its task. In circumstances where a park is being redeveloped, park owners cannot begrudge residents for wanting a fair price for their home. This new provision will help to bring this about.

The bill makes it clear that the value of the resident's home is to be calculated on its stand-alone value and will not include any component of the land which it stands upon. You could not have a more even-handed provision than this one. It provides for an independent referee when the parties cannot agree on a fair price. It ensures that residents are not taken advantage of. It makes it clear that park owners do not have to pay any proportion of the value of land that they already own. The tribunal's decision will not be binding on either party, but this mechanism will bring much greater transparency and parity to the process of selling a home. It will also bring these issues to the attention of the tribunal when a park owner seeks to regain possession at the end of the process. The reforms to the provisions dealing with these two prime areas of concern—termination of tenancies for redevelopment and the payment of compensation—are crucial aspects of the bill.

The bill achieves a balanced and more transparent process for park residents and owners. I want to particularly urge park owners to do what is right and fair by residents in these difficult circumstances. I will keep these provisions under review. Finally, the bill contains a number of miscellaneous amendments that increase the level of penalties for contraventions of the Act, make it clear that residents' homes cannot be regarded as improvements to the land in connection with mortgages taken out by the park owner, and ensure that residents who have to leave the park for long-term hospital or aged care service do not suddenly lose the rights they had as a permanent park resident.

This bill delivers a range of refinements and improvements to the operation of residential park laws that New South Wales has pioneered. It comes as a result of the Government's statutory review and extensive consultation with all stakeholders, and it deserves to receive strong support. I particularly wish to thank those park residents and park owners who have contributed their individual stories of life within their residential park and their views on how the operation of the Residential Parks Act could be improved. This bill is all the better for their contribution. I commend the bill to the House.