

**Submission
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INQUIRY INTO SOCIAL, PUBLIC AND AFFORDABLE HOUSING

Organisation: Caravan, Camping & Touring Industry and Manufactured
Housing Industry Association of NSW Ltd

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THE ROLE OF RESIDENTIAL PARKS IN THE PROVISION IN THE DELIVERY OF AFFORDABLE HOUSING IN NEW SOUTH WALES

THE CARAVAN PARKS AND MANUFACTURED HOME ESTATES INDUSTRY AND AFFORDABLE HOUSING

The Caravan Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd is NSW's peak industry body representing holiday and residential parks, manufactured home estates (MHEs) and manufacturers of relocatable homes, retailers of caravans, RVs, motorhomes and camping equipment and the service industries. We have over 400 member parks and MHEs throughout NSW and over 680 members in total.

Through industry research, promotion, education, advocacy and building government relations the Association strives to improve the operating environment for our members. We are also committed to ensuring that the interests of our members and their customers are aligned for the purpose of customer satisfaction, mutual wellbeing and fostering sustainable growth of the industry.

Research indicates that there are over 100,000 permanent residents living in parks and MHEs across Australia and over one third of these permanent residents are in NSW. Many of these residents are from rural and regional communities and the majority of them are retired persons on fixed incomes, pensioners or people from low socioeconomic backgrounds.

To this end, the Caravan Park and Manufactured Housing Industry is in a position to make an immediate and significant contribution to improving the stock of housing within New South Wales, particularly for the benefit of those people who need affordable housing the most.

Unfortunately, this industry has been severely limited in its growth as a result of inappropriate regulation and land use restrictions. The reasons for this situation are canvassed in this paper in detail, but simply are the result of successive restrictive, rather than enabling, Government legislation.

THE PLANNING ISSUES

It is our view that a whole of government approach, will support and encourage private sector investment and market participation in the provision of affordable housing through manufactured homes in caravan parks and manufactured home estates in New South Wales, known collectively as residential parks and to be known as residential (land lease) communities when the Residential (Land Lease) Communities Act 2013 starts.¹

¹ See p2 below for the issues and discussion and p6 for Options for Action

The relevant planning issues revolve around the availability of land for the development of residential parks.

Councils are reluctant to approve the development of residential parks (caravan parks and manufactured home estates) unless they are to be located close to community services. It is argued that more scope be allowed for the provision of services within or provided by the caravan park or manufactured home estate development.

PRESENT POSITION IN RELATION TO RESIDENTIAL PARKS

The overall legislative environment for residential parks needs to better serve the people of New South Wales. Since the introduction of tenancy related laws about permanent living in residential parks in 1989 there have been significant economic and planning barriers to the development of new residential parks as affordable housing options.

It is hoped that the introduction of the Residential (Land Lease) Communities Act 2013 will lead to a more responsive and effective regulatory environment.

Without an improvement through the introduction of the new legislation the industry cannot see that there will be continued viable operation of existing residential parks and the desire to attract investment into the development of new residential parks.

The Association has argued from the outset that unbalanced and ill-considered Government intervention would mean that no new residential parks would be established in New South Wales. The fact that there are fewer residential parks in New South Wales today than there were in 1989 is evidence that this predicted effect has been realised. This is at a time when 10% of all housing stock in the USA comprises manufactured housing (65% of which is on land-leased communities); the equivalent figure in NSW is less than 1%. Going together with this is the decline in the use of long-term sites in residential parks for permanent living. There has been a constant change in the use of these sites to tourist activities.

Since 1989, the Association has put to Government that with a balanced approach this industry could provide affordable housing options for the people of New South Wales.

The Residential Parks Act 1998 (the Act) failed to serve the needs of residents and park owners and taken together with other legislative instruments, has also failed to serve the needs of the people of New South Wales.

- Residents are racked with concerns about tenure, changes in the level of site fees and issues relating to the sale of homes.
- Park Owners are concerned that their earnings do not match the underlying value of their investment, and as a consequence the number of sites available for long term residency declined.
- Both residents and park owners are concerned at the raft of 'incomprehensible' Tribunal decisions. Park owners are overwhelmed by the interference in both commercial and management decisions by the Tribunal. This decision-making goes beyond the intention of the Parliament when it enacted the legislation.
- The residents of NSW are being denied the opportunity to access a housing option that is far more affordable than traditional housing (costing 50% - 60% of alternative

options).

- The limited access to the industry that is available in NSW is overwhelmingly confined to one demographic group, that is, retirees.

Several significant deficiencies are evident in the legislative environment.

Without these fundamental legislative changes, the industry will fail to thrive, residents will continue to be stressed, park owners will re-direct their investments, and the opportunity to provide a reasonable stock of affordable housing will be lost.

Fundamentally, governments need to decide whether they want to make available another viable and attractive housing option, the affordable housing option that the industry can provide to the people of New South Wales.

THE LAND USE PLANNING REGIME

The limitations of the planning regime include the State Environmental Planning Policies (SEPP21 and SEPP36) and the Local Government Act 1993, Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 and the Environmental Planning and Assessment Act 1979.

To overcome the disincentives in the existing regulatory regime, any regulatory response must address and provide:

- Certainty for the investors, including the park owner and the resident,
- Incentives to encourage participation in the marketplace,
- Contribution by Government to recognise the significance of the provision of the affordable housing options in residential parks for the better good of the people of New South Wales.

The Association raises specific concerns about the failure of the planning regime to address the market concerns for the provision of housing options in the residential park industry.

The industry participants are willing to be involved in and provide leadership in the development and implementation of a responsive regulatory regime across all of the Government portfolios, including planning, local government, housing and fair trading.

A NEW APPROACH

What is needed is a comprehensive review of the incentives and obstacles to the continued provision of various housing options for the people of New South Wales.

If we continue to consider the disparate parts of Government regulation in isolation we will not be able to provide access to a wide demographic spectrum. This is exemplified, when we examine the population of the residential parks in New South Wales. The vast majority

of home owners in residential parks are retired because they are the only sector of the community who are 'cashed up' after selling their family home and can pay the entry costs without any supplementary financial assistance.²

There is a large untapped market of home buyers (including first home buyers) who are denied access because they are unable to get reasonable housing finance. If the regulatory regime allowed secure tenure that was acceptable to the financial institutions as security for loan facilities, it follows that housing finance would be available. This is an example of how the market can respond to appropriate enabling government regulation.

THE NEED FOR A WHOLE OF GOVERNMENT APPROACH TO INDUSTRY REGULATION

The provision of public housing has fallen behind the needs of the community. Some estimates put the waiting list at 9 years and longer. The promise that the residential park industry would contribute substantially to the stock of affordable housing and crisis accommodation has not been realized.

In the United States over 10% of all housing stock is provided by manufactured homes (65% of which are located in 'land leased communities'). In NSW the comparative figure is less than 1%.

The limited number of sites dedicated to occupancy by long-term residents is falling. The reason is simple in that a park operator can make a better return from a tourist site without the constant disruption which is inherent in managing a permanent site.

Parks, originally established on the fringe of urban and regional centres, are being overtaken by residential and commercial expansion.

Background to the development of tenancy legislation for residential parks

The legislation and the instruments that govern the lives of residents and the future of the industry have generally been developed in piecemeal and hasty fashion, usually in the shadow of forthcoming elections. While some of the provisions of the legislation were seen as appealing to the electorate, the long term implications have proven to be inappropriate for residents and for the industry.

Other legislation has been formulated without the benefit of an overall plan to develop the park industry to provide a real life-style alternative to traditional housing, or without giving consideration to the long term interests of residents.

The Act creates quasi rent control which prevents site fees paralleling costs and increasing land values. This in turn exacerbates the need for the conversion of parks to more economically viable uses.

Quasi rent control and the operation of the Tribunal, which deals with reviews invoked by rent rises of less than \$2 per week, drive park owners to allocate any site vacated by a resident to tourism. The return to the park owner from tourism is market driven.

² The ANZ Bank has raised \$100 million to provide financing for manufactured homes in the USA, but will not provide finance in Australia.

Our research has identified more than 5,000 existing long-term sites that are being used for tourism purposes that could be used for housing if the regulatory regime was supportive and enabling rather than intrusive and interventionist.

Rents and Outgoings

By introducing a market driven response to rents that is supervised by terms of the tenancy agreement and a valid market review procedure the problems necessarily introduced through quasi rent control will likely be overcome. This has been addressed in the Residential (Land Lease) Communities Act 2013.

The Residential Parks Act prevents the park owner from disaggregating or 'unbundling' rents by separating the uncontrollable and statutory charges from the operating expenses. What is needed is a more transparent system that segregates 'outgoings',³ as described in sections 36 and 57(f) of the Act. The new legislation implements a system where these outgoings can be passed on to residents. In this way, the quantum of the 'discretionary' element of site fees will be reduced, and much of the angst about site fee adjustments will be removed.

Systems that allow the outgoings to be 'passed through' operate effectively in many jurisdictions in the USA and Canada. These so called pass through rent systems have ensured the continuation and further development of the park industry to its present level of more than 10% of housing in the USA.

The inability of park owners to pass through uncontrollable costs to residents, bring about delays in recovery of costs, and consequently, this exacerbates park owners' inclination to avoid providing land to residents for unlimited time with limited income.

Overview of Other Legislative Instruments That Impinge on all Industry Participants

The Local Government Act 1993

Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005

Specific regulations under the Local Government Act 1993 have highly desirable features particularly a State-wide code that establishes standards, conditions of installation, and elements of self-certification that are overseen by local government authorities.

State Environmental Planning Policies (SEPP21 – Caravan Parks and SEPP36 – Manufactured Home Estates)

- These SEPPs have been formulated in the same terms as traditional housing. This does not reflect the normal operation of properties zoned as residential parks that have traditionally started in 'fringe' locations. Nor has any consideration been given to 'affordability'. Planners argue that caravan parks and manufactured home estates should be located in close proximity to health and transport systems. No consideration has been given to alternative means of providing these services, or access to them.

³ Outgoings include rates, taxes, insurance, utility costs and other statutory charges and levies

- The restrictions prescribed by the SEPPs, in conjunction with the short term tenancy concepts enshrined in the Act, have meant that virtually no new residential parks have opened since this legislation was enacted. As a result residents do not have any opportunity to relocate as is envisaged in the Act and facilitated by the Local Government Regulations. Nor is there any ability to expand the stock of affordable housing. Further, the absence of new residential parks removed realistic 'competition' as a market force.
- What is needed is a Whole of Government approach focusing on outcomes so that the inadequacies of the existing regulatory regime can be removed by creating a legislative framework that allows the establishment of an attractive affordable housing option, which provides both residents and park owners with transparent long term certainty.

Civil and Administrative Tribunal

- Unlimited, unfettered and no or minimal cost access to the Tribunal has been a barrier to the effective management and development of residential parks.
- Too many resources, financial and human, are required to be committed by the government and residential parks to this aspect of industry management. The situation has been exacerbated by the decision to make applications by residents at little or no cost.
- If the legislative regime was developed so that the parties could contract the things that are to be included in their relationship, the Tribunal could be given the ability to determine if any action or process is outside that agreement. Allowing the Tribunal to make qualitative or morality decisions magnifies the uncertainty, and the unrest in the industry.
- Effectively, the Tribunal (in whatever form it takes) should be the forum for the review of the legality and the process as identified in the specific contractual terms of the arrangement between the resident and the park owner acting as fully informed and appropriately advised parties to an agreement. It is the existing regime cemented on the Tribunal and that creates uncertainty amongst participants and militates against an industry that is attractive to residents and park owners.

We await the results of the introduction of the new Civil and Administrative Tribunal (NCAT) and the Residential (Land Lease) Communities Act 2013 to see if the constraints imposed by the existing legislation are removed.

OPTIONS FOR ACTION

A Whole of Government reform strategy to facilitate the provision of affordable housing by:

1. Freeing up the planning processes through better availability of land for development of residential parks.
2. Disaggregating rents through the introduction of the concept of Pass Throughs.
3. Providing effective rent setting mechanisms that provide certainty as contractual

arrangements between the parties.

4. Recognising that where a contract exists and has been appropriately entered into after proper advice that its provisions supersede legislation in key elements related to rent and term.
5. Ensuring that the NCAT is a forum for the review of the legality of contractual arrangements and not a forum for controlling rents.
6. Providing effective and available remedies so that residential parks are able to be maintained at the standard for which they are designed.
7. Developing transitional provisions so that any new proposals apply to new entrants to residential parks with a mechanism to convert existing agreements on the death of the resident or on the transfer to another owner of the manufactured home.