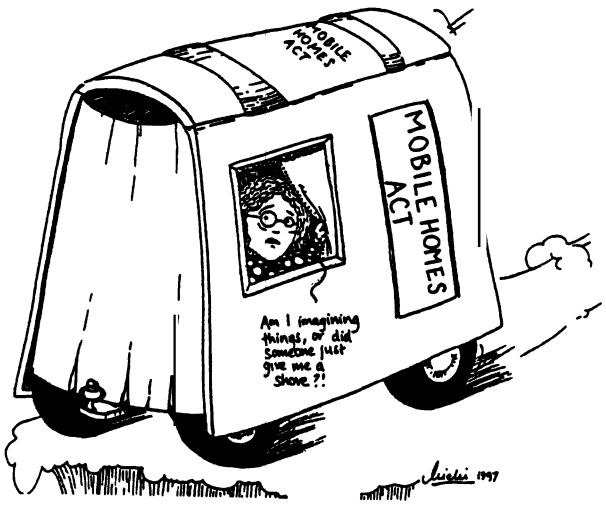
# Legislative Injustice

*Merran Lawler*

***The Mobile Homes Act fails many tenants of Queensland's mobile home parks.***

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As the great Australian dream of owning one's home has, in the last 15 years been threatened by declining economic conditions, an increasing number of people have turned to 'alternative' home ownership methods. One such method is the initially attractive prospect of mobile home living which, at least in Queensland has had wide ranging appeal, particularly amongst the elderly. It is estimated that in south east Queensland alone there are more than 40,000 people now living in mobile homes[1] and, since the early 1980s the mobile home park industry has enjoyed an unprecedented boom. Indeed, south eastern Queensland has the largest population of mobile home park residents in Australia, largely due to the popularity of the area as a retirement haven.

The term 'mobile home' is, in reality a misnomer. A mobile home is less 'mobile' than it is 'relocatable' and often, the costs and difficulties associated with relocation are such that there is indeed nothing 'mobile' about the structure. In simplistic terms a mobile home is a dwelling originally designed and intended for some limited form of transportation (whether in whole or in parts), usually for the purposes of positioning it on some permanent site. While it may be fitted with wheels and even a towbar, the size of the structure is such that, unlike a caravan, it cannot be towed for any great distance, cannot be registered for travel on roads and is ordinarily moved and positioned by a low loader truck. Unlike a residential tenancy, the resident usually owns the structure although not the land on which it is situated for which a weekly or monthly site fee is payable.

Mobile home park living is particularly attractive to the elderly. It affords a style of accommodation which is financially accessible and allows the owner to maintain an asset base. Homes range in value from $15,000 to $80,000 and weekly site rentals are significantly cheaper than house rentals. Mobile homes are generally large enough to accommodate two or three people comfortably without being so large as to be unmanageable. Mobile home park living allows elderly people to locate in parks close to family, friends and needed facilities, to enjoy and participate in park activities, to share common interests with other residents and to maintain a style of living which does not compromise their independence. Finally, and perhaps most importantly, in Queensland mobile home living is thought to provide a significant degree of security of tenure although, as this article will suggest this tenure is largely illusory.

## The *Mobile Homes Act 1989* (Qld): a response to injustice

In 1989, the Queensland Government enacted the *Mobile Homes Act 1989* (Qld) (the Act), the first legislation of its kind in Australia. It was Parliament's intention in enacting the legislation to ensure that mobile home owners and home park dwellers had a greater security of tenure than that commonly enjoyed by caravan park residents and

other tenants under residential tenancy legislation.[2] Parliament reasoned that the attractions of mobile home living were and would continue to be overshadowed by the prospects of eviction and unfair rent increases unless legislative regulation was imposed.

The Act was a direct response to the increasingly heavy handed tactics of mobile home park owners and developers. In one instance during 1986-87, a developer established a mobile home park, sold homes and entered into lease agreements with more than 150 people, most of them elderly, who had been enticed by the promise of cheap site rentals and assurances from the developer that legal advice was not required to buy the homes. Immediately after, the developer on-sold the park to a Victorian company for $1.79 million. The new park owner advised residents that it was not bound by existing leases and proposed to massively increase rentals and other charges. Many residents could not afford the increases nor the cost of relocating to another park and eventually sold their homes either privately or to the new park owner at greatly reduced prices.[3]

The Act was intended to provide a degree of protection for owners of mobile homes who had no recourse either under common law or residential tenancy legislation. The Act sought to establish security of tenure by the creation of indefinite site agreements which could only be varied or terminated in limited circumstances by the Small Claims Tribunal. Yet, in 1997, many of the difficulties faced by mobile home owners prior to the legislation continue to exist and worse, at times, the Act has been used and interpreted almost consistently to defeat the interests of those home owners.

Much of the reason for this lies in the uncertainty of the interest which mobile home owners have in the site on which they locate their dwelling. The home is positioned subject to a relevant agreement (s.1 of the Act) between the home owner and the land owner. A written agreement is not required although a written statement (Form 1) outlining the land details and the express terms of the agreement must be given to the home owner within three months of the making of a relevant agreement (s.4 of the Act).

The relevant agreement and the Form 1 statement, however, relate to the use of the site and continue beyond the tenancy of the home owner unless revoked by the home owner or an order of the Small Claims Tribunal. The land owner may only deal with his or her property in limited circumstances and subject to the discretion of the Small Claims Tribunal.

The home owner may give, will or sell his or her home to a third party who is entitled to the benefits of the original agreement between the home and land owners for the use of the site. The legislation avoids the use of the term 'lease' preferring instead the non-committal term 'agreement'. No provision exists for registration of the agreement and any subsequent buyer of the land is deemed to have notice of and be bound by each and every agreement. In many respects the home owner's interest falls short of a fee simple interest (which remains with the land owner but is severely restricted) yet it cannot be characterised as an interest pursuant to a lease. The original Form 1 statement forms the first document in the 'chain of title' to the undefined interest of the mobile home owner.

## The *Mobile Homes* Act: perpetrating injustice

The difficulty of categorising the nature of the home owner's interest in the site they occupy has created enormous confusion when disputes are brought before the Small Claims Tribunal, the body responsible for dealing with disputes arising under the Act. The Small Claims Tribunal, comprising a single magistrate, was chosen by Parliament as the appropriate body for this task because of its informal processes, prohibition on legal representation, minimal cost and, importantly because it also had similar responsibilities in relation to residential tenancies under the *Residential Tenancies Act 1975* (Qld).

Regrettably, in the experience of the writer, magistrates sitting in the Small Claims Tribunal either fail to understand or are loathe to apply the provisions of the *Mobile Homes Act.* It is all too common for magistrates in such cases to go beyond the legislation and the particular Form 1 agreement, preferring instead to rely on common law notions of land interests often to the detriment of home owners. Without the benefit of legal representation before the Small Claims Tribunal, home owners are not in a position to respond to complex arguments about legal land interests thus allowing land owners to construct and argue cases on established common law principles. The added 'advantage' for the land owner is that such arguments allow the magistrate to make a decision which is more palatable to his or her legal training than would be the case if the intent of the Act was observed.

Again, in the experience of the writer, magistrates have frequently decided that the home owner's interest is nothing more than the interest of a tenant under the *Residential Tenancies Act 1975* (Qld) and, despite the lack of documentary evidence to substantiate the view, have held that the agreement between land owner and home owner is governed by that Act. In short, home owners have been (and continue to be evicted) from their sites pursuant to the provisions of the *Residential Tenancies Act*, which are more generous to landowners, in circumstances where such eviction would not be permitted under the *Mobile Homes Act.*

There are at least six reasons why this situation has manifested itself and continues to occur. First, the primary proof of an agreement under the Act (and therefore the basis for invoking the jurisdiction of the Small Claims Tribunal) is a written Form 1 statement required to be given by the land owner to the home owner. In many cases, particularly where the relevant agreement was reached before 1989, no written statement is ever given. Subsequently, when there is a disagreement between the home owner and land owner, the home owner has trouble invoking the jurisdiction of the Small Claims Tribunal. The land owner on the other hand seeks to invoke the jurisdiction of the Tribunal under the more land-owner friendly *Residential Tenancies Act* by claiming the agreement is in fact a residential tenancy and points to the lack of a Form 1 written statement as proof of this.

The second reason lies in judicial interpretation. Even a surface reading of the *Residential Tenancies Act* reveals that mobile home tenancies are covered by some provisions of that Act. But what is often not grasped by magistrates is that those provisions are not intended to apply to the agreement between home owner and land owner but to a subsequent agreement the home owner might reach with a third party who wishes to lease the home.

Third, the lack of a clear distinction between mobile homes and caravans compounds other problems with the Act.

As previously indicated, the Act simply defines a mobile home as a structure designed and intended to be transported whether wholly or in parts. It excludes caravans which are defined as being a vehicle ordinarily fitted with wheels, designed for attachment or use with a motor vehicle and used for residential purposes. However, despite evidence to the contrary, magistrates have consistently found that a mobile home is a caravan because it has wheels and a towbar, notwithstanding that the wheels and towbar may be fitted to allow for the transportation envisaged by the definition of a mobile home, namely infrequent movement from one semi-permanent site to another.

Fourth, no rights of appeal lie from decisions of the Small Claims Tribunal. Rather, applications for judicial (statutory) review must be made to the Supreme Court. The costs associated with the review process are in themselves a disincentive to home owners to take the matter further, particularly where there is even the slightest risk of the application being dismissed. While relocating a home to another park can cost more than $10,000, home owners have tended to prefer, on balance, to bear this cost or sell their home rather than face the costs, stress and time associated with a judicial review application.

Fifth, home owners and those contemplating mobile home ownership are, on the whole, totally ignorant of their rights under existing legislation. The vast majority of mobile home owners are elderly and tend to trust the assurances of land owners that legal advice isn't necessary or no documents are required to be provided. Land owners who demand increased rent from single or widowed women home owners (an observed practice) are targeting the most vulnerable. Mobile home owners by and large avoid 'rocking the boat' even when they are aware of their rights. In truth, they constitute the largest group of captive tenants in Queensland today.

Finally, the failings of the system are rooted firmly in the Act itself. While the various parliamentary speeches made at the time the Bill was introduced to Parliament provide a comprehensive guide to Parliament's intentions, it is regrettable that clearer intentions were not expressed in the legislation itself. The pegging of rent to CPI increases, for example, was intended by Parliament but there is nothing in the legislation itself which would even remotely indicate that intention.

## Addressing the issues

Caxton Legal Centre Inc., Queensland's oldest community legal service, first became aware of mobile home park issues when approached by a group of residents who were being denied access to a park's community hall. The park owners had denied access because the home owners wanted to form a resident's association. Since then, other mobile home owners in south east Queensland have provided a startling insight into the operations of many mobile home parks. In one park, the land owner refuses to supply toilet paper in the communal hall because this cost is not covered by the rent paid by home owners. In another park rents have increased by almost 300% in a little over 10 years.

With the assistance of students from the Clinical Legal Education program of Griffith University Law School, Caxton Legal Centre has embarked on an education and reform campaign. Information forums for home owners have had staggering attendances with people travelling from central and northern Queensland. At one forum more than 70% of the 200 who attended indicated that they would move from their current park if they had the resources to do so. Almost 100% indicated that they had chosen mobile home lifestyles because of the mythical security of tenure.

Caxton Legal Centre is also undertaking a representative action on behalf of the residents of two parks. Given the enduring nature of the home owner's interest in the site, the Centre was surprised to learn that residents in those parks were being forced to renew their 'lease' every three years. Each renewal provided for massive increases in site rentals in addition to the CPI increases provided in every other year. The home owners were told by park management that failure to sign would result in their immediate eviction.

Reform of mobile home legislation is on the Queensland Government's agenda but is not expected to begin until early to mid 1998. In the meantime, the decisions of the Small Claims Tribunal simply enforce the heavy handed tactics adopted by some land and park owners. It is regrettable in the extreme that the noblest of intentions in enacting the *Mobile Homes Act* have been thwarted and that that legislation is now being utilised to perpetrate the same injustices which existed prior to its enactment.

**References**


1. Mobile Homes Residents Association (MHRA) estimates based on number and occupancy of parks in south-east Queensland region.
2. *Mobile Homes Bill Second Reading Speech,* 17 November 1988 and *Mobile Homes Bill Third Reading Speech,* 11 April, 1989.
3. *Mobile Homes Bill Second Reading Speech.*