



Speech by

Andrew Powell

MEMBER FOR GLASS HOUSE

Hansard Tuesday, 26 October 2010

MANUFACTURED HOMES (RESIDENTIAL PARKS) AMENDMENT BILL

Mr POWELL (Glass House—LNP) (8.09 pm): I think it is fair to say that I and many of my constituents are in shock to find the parliament finally debating the Manufactured Homes (Residential Parks) Amendment Bill 2010.

Mr Lawlor: You'll get over it.

Mr POWELL: To say it has been a long time coming would be an extraordinary understatement. To see it materialise at No. 2 on the *Notice Paper* has left some of us shocked. But, as the minister said, we will recover.

I have three manufactured homes or residential parks in the electorate of Glass House. There is the Palmwoods Caravan Park in my home town, the Sunstone Gardens in Maleny and the rapidly developing Twin Cedars Lifestyle Villas on Steve Irwin Way at Beerburrum. Back in August last year I raised the concerns of a number of residents from these parks. They were worried about how this bill was being prepared and how it was also being delayed.

It is my understanding that the original review of this act was undertaken by mid-2007 by the office of Fair Trading. The minister will recall there was considerable unease within the residential park community—a community acknowledged by his department to be some 15,000 strong and growing—that the original consultation had been poorly advertised and poorly responded to. Indeed, the first many homeowners knew about the review was when they found reference to it almost a year later on the office of Fair Trading website. Thankfully, the minister did respond positively to the subsequent petition that I sponsored calling on the government to undertake additional consultation. He did so with a series of forums throughout the state.

I, like many of my constituents, made it along to the Maroochydore forum. It was great to see such a large turnout and a very robust discussion—I would even say it went as far as debate—with the office of Fair Trading staff around the proposed amendments. It is good to see many of the contributions by residents have been considered and are reflected in this amendment bill.

When initially approached by constituents some of the issues they felt needed attention included: key definitions including of 'manufactured homes' and of 'park owners'; clarification of rental charges and contractual or site agreements—there were expectations from both parties in that regard; the licensing of park owners who also operate as real estate agents in the marketing and selling of vacant homes; and, obviously, dispute resolution. As I said, some of these issues have been addressed in this bill.

The bill does clarify the definition specifically where it relates to converted caravans. As identified in the explanatory notes, the original definitions led to a range of court cases—namely, *Monte Carlo Caravan Park Pty Ltd v Curyer* in 2006 and *Tamahori v Roofley Pty Ltd* in 2009—that delivered conflicted outcomes. This bill addresses that conflict by excluding converted caravans from the broader definition of a manufactured home. However, it does offer flexibility by allowing converted caravan owners and park owners to agree to enter into a site agreement under the act should they so choose.

I would like to pick up on some of the comments made by my colleague the member for Nicklin. This clarification still falls short of the expectations of some when it comes to defining manufactured homes.

I am aware that some have called for the removal of 'relocatable' and even 'manufactured' from the definition; the former because, as the member for Nicklin rightly pointed out, many of these homes are increasingly becoming permanent fixtures and the later, 'manufactured', because of the many negative perceptions that go along with the title of a manufactured home park. The bill does acknowledge this in passing by referring to the preferred term of many and that is 'residential parks'. If the minister, in responding to the member for Nicklin's concerns, could address those issues it would be much appreciated.

Residents and park owners alike have raised concerns around site agreements. I note the bill addresses many of these concerns in detail. Firstly, it will improve the presentation of site agreements by including a new requirement that they be expressed in plain language. It gives authority to the tribunal to consider whether special terms in site agreements contain: excessively long sentences, clauses or paragraphs; unnecessary use of technical terms, jargon or language other than plain English; extensive cross-referencing; failure to define key terms; excessive definition of terms, particularly in relation to commonly used words; important terms buried in fine prints or schedules—I think that is important to note; a lot of the homeowners in particular do not have legal backgrounds and when those kinds of clauses are deeply buried within a site agreement it can lead to conflict and trips to the tribunal later; and terms that place the homeowner at an unfair disadvantage because he or she is not clear about their meaning, even if the meaning could be determined by a legal practitioner. I guess that takes that last comment a little bit further.

The act will also allow special terms negotiated between park owners and homeowners to be included in a site agreement. The bill also deals with the issue of fixed term site agreements. It provides homeowners with a higher level of certainty by clarifying that a site agreement may only be terminated in accordance with the act. Permissible terminations will be notice of the homeowner, by agreement between the homeowner and the park owner or by order of the tribunal upon application by the park owner on certain particular grounds.

The bill does not, as many hoped, prescribe a specific formula for calculating the site rent payable by manufactured home owners. It does however provide a number of methods by which site rent may be increased or reduced. It does contain amendments designed to improve fair trading practices with respect to variations in site rent. This will come as some comfort to park owners and homeowners alike and it will give greater direction and clarity to the tribunal. I only wish that it had come into effect sooner. At least one of the residential parks I mentioned before in the electorate of Glass House is currently before the tribunal on this specific matter. Had this legislation been in place their going to the tribunal may not have been necessary.

It is also good to see acknowledgement in the amended act of the role of homeowner committees. I will refer briefly to the explanatory notes. The act allows homeowners in a residential park to establish by election among themselves a homeowners committee. The function of the homeowners committee is to deal with the park owner on behalf of homeowners regarding the day-to-day running of the park and any complaints or proposals raised by the homeowners. The act also imposes a formal obligation on park owners to respond to complaints raised by the homeowners committee. I think all of those are very good additions to the act.

Unfortunately, we could get situations where conflicting homeowner committees are set up within the one park because of disagreements among the homeowners. That is not desirable. Hopefully, as we continue to progress this legislation, we may find ways in which we can address that as well.

The bill seeks to set up a public register or record of residential parks. That is good news. I remember putting in a question on notice last year asking the minister for a list of the parks. The office of Fair Trading was not in a position to provide that. Now that this public register will exist it will go a long way to addressing some of the concerns the shadow minister raised in his speech, particularly the inability of homeowners to join together to get a better sense of where they stand as a lobby group on matters such as this. If they have a better understanding of who else is in the same boat as them it may make them more able to have a consistent voice when talking to government and talking to park owners.

I do acknowledge that the compensation issue has been addressed in part. The member for Morayfield spoke at length on this. I did meet a constituent not of Glass House but of Maroochydore because I wanted to get my head around this. While this is not currently an issue in the parks in Glass House, it is certainly occurring on the coast. That is where a park is being closed and there is literally nowhere else for a relocatable home to go. The individual in question has literally rung every park that he could find between Tweed Heads and Gladstone. He has been told that either there is no space or that because of certain covenants that exist within those residential parks he is unable to relocate his home in any of those parks.

Whilst this bill does give that added one year extension clause and it also gives the tribunal the opportunity to order an owner to reposition a home in a park, that is not always possible. There are going to be circumstances where people, such as this gentleman, simply cannot relocate their home. He cannot

relocate his home anywhere south of Gladstone. If the minister is able to address how that might be remedied either in this bill or in subsequent amendments that would be appreciated.

I want to raise one other concern of homeowners that I do not believe is addressed in this amendment bill—that is, the licensing of park owners who also operate as real estate agents. It is not happening in all cases, but residents are saying that in some instances when they try to sell their home it is being talked down by the park owner. They are unable to sell it and the park owner eventually steps in and takes over wanting to sell it on behalf of the homeowner. It is a very grey area where a park owner is also operating as a real estate agent. I would be very keen to hear the justification for not addressing this matter in the minister's summation at the end of the debate and perhaps we might see that addressed in future amendments.

The shadow minister pointed out the comments of the Scrutiny of Legislation Committee, particularly whether the bill has sufficient regard to the rights and liberties of owners of converted caravans and of park owners. The committee has received considerable community correspondence on this matter, much of which has been forwarded on to the minister, which highlights the conflictual nature of residing in these residential parks. At the end of the day the park owners are operating a business—there is no denying that—but the homeowners are also endeavouring to live a quieter and more affordable lifestyle. When those two paradigms meet, there will obviously be disputes. This legislation will clarify the responsibilities of park owners, homeowners and the tribunal, but I cannot help but agree with the shadow minister that we may be amending this legislation again in the not-too-distant future. It is unfortunate given the length of time that has been spent on consultation with the various parties that we may have to do that again.

In conclusion, I thank the many homeowners who have taken the time to discuss this legislation with me. It has been educational for me and also frustrating because I do not think that we have successfully addressed all of their issues. Similarly, I thank the park owners whom I have spoken to for their perspective and expertise. I again feel we have reached probably what can only best be described as an unhappy compromise. I hope that the implementation of this bill will help us as legislators to further refine this challenging legislative matter.