FROM CARAVANS TO MOBILE HOMES

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"A PERSON'S HOME IS NOT A TEMPORARY CONCERN"[1]

PART ONE: INTRODUCTION

Traditionally, housing concepts admit of two forms of relationship between an occupier of residential premises and the land on which those premises are situated: ownership and tenancy. Ownership is seen as the most secure form of housing: the owner controls both the land and the buildings thereon. The tenant, on the other hand, technically owns an estate in the land, but that estate endures only whilst the agreement between him as occupier and the landlord as owner, continues. He has no indefeasible right to the land.

The use of a mobile dwelling unit, whether it be termed a family holiday caravan or a mobile home in the North American sense,[2] offers a third alternative as far as the occupier's relation to the land is concerned. When such a unit is placed on someone else's land, usually in a park, the resident is in the peculiar position of owning the unit, or at least having an interest exclusive of the owner of the land,[3] while renting the land on which it is situated.[4] Thus a caravan or a mobile home is of no use to its owner unless he has a place to put it.[5]

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1 United Kingdom, *Parliamentary Debates,* House of Commons 28th February 1975, p. 959, Mr Crouch.

2 See *Some Definitional Problems,* infra.

3 Many residents of caravans and mobile homes tend to buy their units on hire purchase, on terms similar to the purchase of motor vehicles. For Australia, see Granger, *Mobile Domestic Architecture* (University of Sydney 1970) pp. 20-1; Holthouse, *The Mobile Home in Australia* (Royal Australian Institute of Architects 1975) pp. 19-22. See also Beale, *Mobile Homes: A Housing Alternative?* (Building Sciences Forum N.S.W. 1977) p. 7. For the United States, see Davidson, *Housing Demand: Mobile, Modular or Conventional* (Van Nostrand Reinhold Company 1973) pp. 126-30.

4 This anomalous position has been commented on in a number of places, e.g., "under no other form of tenure does someone own their own home but have no interest whatsoever in the land on which it stands": "Review of Mobile Homes", Current Topics, *Journal of Planning and Environment Law,* June 1977. See also, Nyberg, "The Community and the Park Owner versus the Mobile Home Park Resident: Reforming the Landlord-Tenant Relationship" (1972) *Boston Law Review* 810, 813. These comments, of course, do not refer to mobile homes on private lots, used either in conjunction with private dwellings, or as self contained units.

5 United Kingdom, *Parliamentary Debates,* op. cit. p. 906; Mr Buchan.

In Australia, there is as yet no real distinction between a family caravan used as a second (or holiday) home,[6] and a "permanent" mobile home; consistent with this there has been no widespread realization of the necessity to distinguish between their differing needs.[7] That long term residents in caravan parks are becoming a significant part of the Australian population has until recently gone largely unrecognized.

> "There are more than 2000 caravan parks in Australia, with an average of over 100 sites each. Park operators agree that they must maintain about 50 per cent occupancy to run a profitable business. In any but the most select tourist sites this means fostering permanent residents. Each van used as permanent accommodation has an average of 2.7 persons as occupants, which gives a total of 270,000 people not including those living in caravans on private land. We may confidently postulate then, that at least two per cent of the Australian population live permanently in caravans or mobile homes."[8]

Compilation of accurate Australian statistics on permanent living in caravan parks is difficult because it is illegal in most jurisdictions to stay in a park beyond a stipulated time, usually ten weeks.

The reasons for the increase in the use of caravans and mobile homes are said to be, *inter alia,* rising cost of land[9] for conventional housing,[10]

6 Holthouse, op. cit. p. 33.

7 See Granger, *Mobile Domestic Architecture,* op. cit. p. v; this failure to distinguish has also been noted in the United States by Bair, "Mobile Homes—A New Challenge" (1967) 32 *Law and Contemporary Problems* 286, 293 and Davidson, op. cit. pp. 18-9.

8 Granger, in *Mobile Homes; A Housing Alternative?,* op. cit. p. 13. Akehurst, *Occupancy Characteristics of Melbourne Caravan Parks* (unpublished Town Planning Thesis, University of Melbourne 1977) estimated that in the Melbourne metropolitan area alone, some 3,545 persons reside on a permanent basis in 31 caravan parks. By way of contrast, in England the figure in 1975 was approximately 147,000 persons living on 9,000 sites; see *Review of Mobile Homes Journal of Planning and Environment Law,* op. cit. p. 345; in the United States the number has been put in the vicinity of six million; see Nyberg, op. cit. p. 810. It is further to be noted that the *percentage* of caravan sites used for permanent accommodation is very high. Preliminary figures in the latest survey of 35 caravan parks, all within a 50 kilometre radius of Melbourne indicate that occupancy rate during July-September 1977 was 80 per cent; of these, a further 80 per cent were long termers(long termers being those who stay at one caravan site for more than 10 weeks, the official maximum period according to Melbourne and Metropolitan Board of Works standard conditions); survey conducted for Centre for Urban Research and Action, Melbourne, by Salmon, unpublished to date. Further: "The use of caravans for semi-permanent accommodation is reflected in the fact that over 25 per cent of caravans sold in 1974 (80 per cent in Queensland) were not registered for road travel, but used for residential purposes": "Caravan Parks: Resorts of the Future", *A.N.Z. Bank Quarterly Survey,* January 1977, p. 13.

9 "The claim that land prices are 'too high' is most commonly supported by evidence of the increased proportion of the land component in the price of a house which has risen from 12-15 per cent to 30-35 per cent and more over the last decade. The cost of land is the first and most severe obstacle in the way of home ownership. Traditional preferences for living in fifth acre developments in large cities are two of our national characteristics that are becoming more and more incompatible." Holthouse, op. cit. p. 14.

10 "The reasons for (the) trend to buy caravans . . . for permanent living are economic and social. Ten years ago 90 per cent of first home buyers could expect

(job) mobility[11] and life style.[12] Studies have shown, however, that the cost of mobile home living is much higher than might be expected. Methods of financing the purchase of caravans and mobile homes is comparable to that of motor vehicles. Interest rates are thus higher than on mortgages for conventional housing, although finance for mobile units is of course easier to obtain.[13] The other costs, of extra transportation, high site rents, overpriced shops in the park, charges for air-conditioning, compulsory use of coin-in-slot laundries, charges for extra car parking space, bans on car maintenance work in park grounds, etc., can make the cost of hiring a site in a caravan park prohibitive for low income families.[14]

The social, economic and emotional factors involved in "mobile living" need to be taken into account in any legislation that might be enacted to cope with this phenomenon. Environmental, town planning, building, trade practices, anti-discrimination, local government, taxation, social security, health and landlord and tenant law would need to be reconsidered. An attempt is made here to deal with the more urgent problems. A fundamental difficulty is whether the accepted concepts and protections, such as they are, of the landlord-tenant relationship found between owner and occupier of a "static" home can be made to apply to the mobile home resident. This involves a discussion of whether the mobile home resident can obtain a lease or whether he has no more than a licence to remain on the land which his home occupies.

If the landlord and tenant relationship, or a statutory replacement circumventing the hazards of the lease-licence distinction, can be applied to mobile home residents and park owners, the power of the resident and the park owners to demand changes in other areas of the law would be enhanced. The result could be a realization of the potential of the mobile home in the Australian housing market.[15]

to put a deposit down. Today only 10 per cent can expect to raise it." Parker, "With Wheels Under Them" *Environs* (Canberra, Department of Environment, Housing and Community Development) September 1977.

11 See Holthouse, op. cit. p. 8 in relation to job-mobility. The National Capital Development Commission (N.C.D.C.) Survey of long stay caravan parks in Canberra revealed that only a small number listed their jobs as the reason for living in a caravan, whilst the mobility reason given by many respondents was not supported by other evidence from the survey. "Survey of Long Stay Caravan Parks", Social Planning Section, N.C.D.C., June 1975, p. 7.

12 "For many, caravan living offers not only freedom, but a mixture of informality, gregariousness, visiting back and forth and shared activities—planned and unplanned. It offers them a break from the impersonal conventional residential development": Parker, "With Wheels Under Them", op. cit.

13 See fn. 3 supra; also, N.C.D.C. Survey op. cit. p. 8.

14 These costing problems are discussed in the N.C.D.C. Survey, op. cit. p. 8.

15 I am not suggesting that *expansive* development of the mobile housing industry is necessarily desirable compared with other forms of housing in the Australian context. See also comments by Wilson, *Public Housing in Australia* (University of Queensland Press 1975) pp. 67-8.

PART TWO: SOME DEFINITIONAL PROBLEMS

Distinctions need to be drawn between the various uses made of caravan parks in Australia, in order to be able to isolate the difficulties encountered by the long term resident.[16]

The *Victorian Caravan and Camping Report*[17] recommends that parks be classified under various headings: nature caravan parks (wilderness areas, etc.) transit caravan parks, tourist caravan parks with no long termers, temporary areas, long term caravan parks, "fully self-contained van" parks, and mobile home caravan parks.[18]

Looking at the last three of these classifications, some arbitrary distinctions appear to be made, that is on the basis of the types of units being used by residents, rather than on the intended period of residence. It is submitted that the only distinction that should be made is between "long stay" parks and "tourist" parks.[19] To make subtle distinctions between a "fully self-contained van park" and a "mobile home park" is not easy, because there can be quite a deal of overlap between the two. As far as "long term caravan parks" are concerned, there seems to be no reason why "fully self-contained vans" (generally having toilet and bathing facilities) and "mobile homes" (not necessarily having toilet and bathing facilities) could not be accommodated in them. Underlying this discussion is the fact that from an economic viewpoint, park owners would generally not be able to afford to develop these separate kinds of parks, without substantial financial assistance.[20] Nor might the parks under the three suggested categories be economically viable to operate.[21]

The *Victorian Inquiry Report* defines a long term caravan park as a park where caravanners "camp" in any one park for a period exceeding 26 weeks in any one twelve month period.[22] The mobile home park is a park designed to accommodate "mobile homes" and "designed in similar fashion to housing estates".[23]

In the *Camping Regulations* 1965 made under the Victorian *Health Act* 1958, a camper is defined in Regulation 1 as follows

16 See Granger, *Mobile Domestic Architecture,* op. cit. p. 32.
17 Submitted to the Minister for Tourism, Victoria, in 1975; hereafter referred to as the *Victorian Inquiry Report.*
18 Ibid. p. 19.
19 In *Melbourne and Metropolitan Board of Works Report,* "Caravan Parks—Permanent Occupancy and the Melbourne Metropolitan Planning Scheme", November 1976, 11 (hereinafter referred to as the M.M.B.W. Report) this simpler distinction appears to be favoured.
20 For recent figures of development costs of parks, see *A.N.Z. Bank Survey,* op. cit. p. 14.
21 Caravan parks in combination with other facilities such as holiday flats or cabins, on-site caravans and retail store facilities, seem to have better chances for success": Report on Tourism, *Parliamentary Papers,* Tasmania 1976 p. 12; and also *Victorian Inquiry Report* p. 79.
22 Op. cit. p. 16 para. 5.11.1(c) and (e).
23 Ibid. para. 5.11.1(g).

> " 'Camper' includes each and every person camping in tents, caravans or similar temporary accommodation on any land with or without the permission of the proprietor and with or without payment of any fee or the giving of any consideration to the proprietor."

The draft *Camping Regulations* 1976, largely drawn up pursuant to the recommendations of the *Victorian Inquiry Report,* include exactly the same definition—no consideration has as yet been given to granting the long term caravanner any higher status than "camper". The long term caravanner is thus seen as someone who would "camp" in an upgraded "tourist" park, whilst a mobile home resident would "live" in something similar to a conventional housing estate.

The confusion is compounded in the *Victorian Inquiry Report* by the inclusion of the word "caravan" in the phrase "mobile home caravan park"—does this mean that "mobile home" may in any case include "caravan", *or* that a mobile home park may also accommodate caravans; presumably the *intention* is that it means neither of these alternatives.

Perhaps the solution to these problems is to designate any park that contains long term residents as "mobile home parks", whether the unit in which they live can be properly called a "caravan" or a "mobile home". Surely the essence of the definition is that the resident regards the unit in which he lives and the park in which it is located, as his "home".

It may be that for administrative or aesthetic reasons, or for the purposes of sewerage and sullage, more "permanently" built homes could be placed in one part of a park whilst "family holiday caravans" *serving* as mobile homes would be accommodated in another part.[24]

A mobile home is defined in the Victorian Inquiry Report as

> "a unit designed and built to be towed on its own chassis and or sub-chassis and designed without a permanent foundation for semi-permanent or permanent living. A unit may contain parts that may be folded, collapsed or telescoped when being towed and expanded later to provide additional cubic capacity as well as two or more separately towable components designed to be joined into an integral unit capable of being again separated into the components for repeated towing."[25]

In the English *Mobile Homes Act* 1975, "mobile home" has the same meaning as "caravan" in the *Caravan Sites and Control of Development Act* 1960[26]

> "Caravan means any structure designed or adapted for human habitation which is capable of being moved from one place to another

[24] The *Victorian Inquiry Report* notes the possibility that a park could have more than one classification in its area subject to satisfactory controls; see p. 42 para. 6.10.2.

[25] The last part of the definition "Two or more separately towable components" refers to the "double wide"' and "triple wide" mobile homes common in North America; see Davidson, op. cit. p. 21. It is to be noted that this definition easily encompasses the family holiday caravan as well as the more substantial and more permanent mobile home.

[26] *Mobile Homes Act,* 1975 (Eng.) s. 9(1).

(whether by being towed or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted . . ."[27]

The "mobility" component in these definitions is supplied by the words "designed and built to be towed" and "capable of being towed", respectively.

Contrast the definitions found in the *Buildings and Mobile Homes Act* 1974 (Manitoba)

"s. 1 . . .

(h) "mobile home" means a portable dwelling unit that

(i) is capable of being transported on its own chassis and running gear by towing or other means or

(ii) is placed on the chassis or body of a motor vehicle or

(iii) forms part of a motor vehicle and is designed to be used as living quarters or as accommodation for travel, recreation or vacation purposes."

It will be seen that the "mobility" component in the definition is not as obvious. It is even less clear in the *Landlord and Tenant Act* 1970 (Manitoba)

"s. 81 . . .

(b) 'mobile home' means any dwelling that is designed to be made mobile, and constructed or manufactured to provide a permanent residence for one or more persons, but does not include a travel trailer or trailer otherwise designed."

One finds exactly the same definition in the *Review of Rents Act* 1975 (Ontario).

There is thus a clear recognition by the legislatures in the latter two definitions that a mobile home is a unit that will not necessarily be moved from its site once it is placed there. This accords with the factual situation in many mobile home sites in North America.[28] Further, by virtue of the fact that definitions of "mobile homes" are found in a *Landlord and Tenant Act* and a *Rent Review Act,* there is a clear legislative acknowledgement that mobile home residents and park owners are capable of being subjects of a relationship of landlord and tenant.

PART THREE: THE LANDLORD-TENANT RELATIONSHIP IN THE CONTEXT OF MOBILE HOMES

(i) *Licence or Lease?*

In order to determine whether the park resident has any security of tenure at all under present conditions in Australian caravan parks, it is

[27] *Caravan Sites and Control of Development Act* 1960 (Eng.) s. 29.

[28] "The term 'trailer' has been replaced by 'mobile home'. The change in usage was undoubtedly motivated by a desire to avoid connotations attached to the former term and to reflect transformations in the product itself. In fact, this new term is rapidly losing its descriptive value since the so-called 'mobile home' is increasingly shedding its mobility. Bartke and Gage, "Mobile Homes: Zoning and Taxation" 55 *Cornell Law Review* 493.

important to investigate the nature of the relationship between the park owner and the resident. In the absence of any agreement, it appears that a resident may be evicted from the park at any time, usually on one hour's notice.[29] It does not seem to make any difference whether the park is used, officially or unofficially, as a "long stay" park.[30] The resident appears to be either a licensee, a tenant at will, or, at best, a periodic tenant.

Although the relationship is often categorized as a license on receipt forms,[31] this alone does not determine the question. The relationship between the parties is said to be determined by the law, not by the label which the parties choose to put on it;[32] the law looks to the intention of the parties.[33] Whilst the distinguishing feature of a lease is said to be that exclusive possession of the land is granted, for an ascertainable period,[34] the grant of exclusive possession is not necessarily inconsistent with the giving of a mere licence.[35]

Although there is no doubt that the mobile home resident has exclusive possession of his home, there is some question as to whether he has exclusive possession of the land on which the home is placed. For example, if park regulations provide that nothing shall be stored under the unit, it could be said that the park owner should have reasonable access to the ground underneath to ensure that this regulation is being complied with.

Further, if the park owner wished to use the land on which the unit was placed for building further facilities, installing a road, or merely for the purpose of re-arranging sites, it would be unlikely that the resident could refuse to move his unit to another site offered by the park owner. If the park owner is able to demand this, pursuant to park regulations or otherwise, it is improbable that the resident has exclusive occupation of that particular site.[36] The position of the resident in a park could be likened to that of a resident in conventional housing

> "a tenancy of a room or rooms in a dwelling house will be shown to exist where the occupier has not only the sole right to occupy the room or rooms but has the right to exclude the landlord therefrom. This is

[29] For example, "I agree that you shall be at liberty to determine this licence upon giving one hour's notice which may be given at any time": reverse side of receipt of Snowtel's Caravan Park, Cooma, N.S.W.

[30] The Narrabundah Park in Canberra, one of the few Australian parks which specifically caters for long term residents, gives no guarantee of security of tenure.

[31] See fn. 29.

[32] *Addiscombe Gardens Estate Ltd* v. *Crabbe* [1958] 1 Q.B. 513, 518.

[33] "Whether the document is a lease or a licence depends on the intention of the parties to be gathered from its terms": *Danita Investments Pty Ltd* v. *Rockstrom* [1963] N.S.W.R. 1275, 1277.

[34] *Francis Longmore & Co. Ltd* v. *Stedman* [1948] V.L.R. 322, 323.

[35] "At one time it was said . . . that the difference between a licence and a tenancy was that, on a tenancy the occupier had exclusive possession. . . . It is now perfectly well settled that a man may be a licensee (and no tenant) even though he has exclusive possession": Lord Denning in *Crane* v. *Morris* [1965] 3 All E.R. 77, 78. See also *Isaac* v. *Hotel de Paris Ltd* [1960] 1 All E.R. 348.

[36] See *Torrisi* v. *Oliver* [1951] V.L.R. 380, 385; also *Varella* v. *Marsicovetere* [1954] V.L.R. 550.

> sometimes expressed by saying that if the landlord retains control of the rooms in question the occupier is a lodger and not a tenant."[37]

If the landlord lives on the premises in conventional housing, a presumption is raised that he intends to retain control of the premises.[38] In the park situation, it may be that the premises could be regarded as the whole of the land constituting the park. If that is so, the park owner will in most cases live on the "premises".[39] But it has been held that this is only a presumption of fact, which operates only where otherwise the evidence is insufficient to determine the question.[40]

If the park is divided into clearly defined lots, either by fences, barriers, paths or gardens, it may well be that the presumption is stronger in favour of the resident having exclusive possession; *a fortiori* where the land has been subdivided under a registered plan of subdivision—it would then be a *similar* situation to a conventional housing estate. Bearing in mind Coppell A.J.'s doubt as to whether "one can safely apply decisions upon legislation relating to voting qualifications or to rateability to the question whether at common law there has been a demise or an agreement for a lease",[41] the case of *Field Place Caravan Park and Others* v. *Harding*[42] could be of some assistance. The point there was whether the caravan and the pitch could be regarded as one unit of occupation, and thus be classed as an individual rateable hereditament in a valuation list, or whether there were two units of occupation; that is the caravan occupied by the resident and the pitch or site occupied by the park owner. Lord Denning stated

> "You only have to look at the whole curtilage, with its fence, its mown grass, sometimes its garden, all appurtenant to the caravan, and you realise it is all one unit occupied for dwelling purposes by the owner of the caravan with his family. It is clearly one unit of occupation, capable of being one rateable hereditament."[43]

It was contended, for the park owner, that even if it was one rateable hereditament, the occupation of the resident and that of the park owner were in competition,[44] and that the person in paramount occupation was the park owner. An analogy was made here between the lodger and the house owner, where the house owner is rateable but the individual lodgers are not. The argument centred around what degree of control the owner exercised over the site. It was held that although the owner exercised a good deal of control, it was not such as to interfere with the exclusive

37 *Torrisi* v. *Oliver*, op. cit. p. 385.
38 *Burnett* v. *Guice* [1946] V.L.R. 257.
39 This he is required to do, for example, under the standard conditions laid down by the M.M.B.W.
40 *Helman* v. *Horsham and Worthing Assessment Committee* [1949] 2 K.B. 335, 349.
41 *Torrisi* v. *Oliver*, op. cit. p. 385.
42 [1966] 2 Q.B. 484.
43 Ibid. 498.
44 Loc. cit.

occupation that the resident enjoyed. Thus the analogy of the lodger was not appropriate in this situation.

In the case of *Norton* v. *Knowles,*[45] the caravan which the resident occupied was a caravan in two parts joined together, which could not easily be towed away: "it was surrounded and enclosed by a fence with a garden gate in it and was connected to drainage pipes, water pipes and electricity and telephone wires."[46] It was held that for the purposes of the *Rent Act* 1965 the premises on which the resident resided were the composite unit of the caravan and the land; it was seen to be immaterial that the caravan was not attached to the land; the complainant was thus held to be the "residential occupier" of the "premises", and the defendant was therefore properly convicted of harrassment of a "residential occupier" under the *Rent Act.*

It seems then that arguments in favour of a tenancy as opposed to a licence can be made in the case where the resident has been allowed to grow plants around the unit, or has made additions to it, in the way of steps, verandahs or patios; his case is even stronger where a unit is placed on blocks or directly onto the ground. If a tenancy is found to exist, the interest in the land which the resident occupies would pass from the park owner to him; if the relationship is based on a mere licence, no such interest passes.[47]

If the resident has a mere licence he only has rights based on the contract between him and the park owner. If the landlord determines the licence, the resident's only remedy would be to sue for breach of contract. Given that he would have a duty under ordinary contractual principles to mitigate his damages, and that in reality he would have to move to another park or location immediately, the damages that a resident could obtain would be minimal; perhaps he could only obtain return of the money that he had already paid in advance (if any).[48]

If the resident could be said to have a tenancy, the quality of that tenancy needs to be determined. If no term had been fixed when the resident moved into the park, it would be likely to be a tenancy at will, in which case the relationship could be terminated at any time by either party. However, it is probable that once rent begins to be paid at regular intervals, a periodic tenancy would be created.[49]

[45] [1969] 1 Q.B. 572.
[46] Ibid. 573.
[47] See *Minister of State for the Army* v. *Dalziel* 68 C.L.R. 261, 300. The difference between a tenancy and a licence is discussed by Lord Denning in *Errington* v. *Errington* [1952] 1 K.B. 290. For a critique of this case, particularly in relation to the possibility of an equitable estate arising out of a contractual licence, see Hargreaves, "Licenced Possessors" 69 *L.Q.R.* 466, esp. at p. 477.
[48] *British Westinghouse Electric and Manufacturing Co.* v. *Underground Electric Railways of London* [1912] A.C. 673, 689. There appears to be no obligation on either party to mitigate damages if there is a lease.
[49] Partington, *Landlord and Tenant* (1975) p. 109; as to possessory licences see ibid. p. 121. On the issue of tenancies at will, see *Binions* v. *Evans* [1972] 2 All E.R. 70; *Heslop* v. *Burns* [1974] 3 All E.R. 406.

A tenancy of this kind could arguably attract the protection of the law of landlord and tenant. However, the difficulties in the transference of concepts are to be kept in mind

> "Because common landlord-tenant terminology does not adequately describe the park situation, improved tenant protection statutes are unavailable to park residents who therefore have fewer avenues of recourse than tenants at will in apartments."[50]

(ii) *Eviction*

The concept of eviction runs into difficulties when applied to caravans and mobile homes. To effectively evict the resident, the park owner must not only cause the removal of a person or persons from his land, but must also cause the home in which he or they are residing to be moved. In the normal landlord-tenant situation, once the tenant has been removed, the owner may resume possession of the premises. But in the mobile home sphere, the mobile home and the land on which it is placed may together constitute the premises.[51] The owner probably has no legal right to take possession of the home; he would most likely be a trespasser if he entered it; but he appears to have every right to take possession of the land once the resident has been removed. However, possession of the land is of no use to the owner unless the mobile home is removed or unless he is able to use it for his own purposes. If the resident has been evicted for non-payment of rent, does the owner acquire a "lien" over the mobile home until such time as the rent is paid? Does the park owner have any remedy of "self help" in these circumstances, or must he go through the courts to obtain a remedy? If he were able to claim possession of the land under, for example, s. 33(1) of the *Landlord and Tenant Act* 1958 (Vic.),[52] what would his remedy be in any case? Does he have the power to tow the unit away?

If the concept of "premises" as found in the case of *Norton* v. *Knowles*[53] were to apply to an eviction case between park owner and resident, then the park owner would be evicting the resident from "premises" which either belonged to both of them, *or* to neither of them.[54]

The tenuous position of a park resident seems to arise from the fact that caravan parks have, in the past at least, been seen as places of temporary or transitory residence, rather than as viable alternatives to

[50] Nyberg, op. cit. p. 819; see also ibid. p. 813; but note that the *Landlord and Tenant Act* 1970, Manitoba, and the *Landlord and Tenant Act* 1975, Ontario, have been made to apply to mobile homes.

[51] *Field Place Caravan Park and Others* v. *Harding*, supra.

[52] S. 33(1) provides that a warrant may be issued to enable the police to obtain possession of the premises by force on behalf of the landlord. See also s. 28(2) and s. 42A-F.

[53] Supra.

[54] See Nyberg, op. cit. pp. 813-5 for comments on eviction in the U.S.A.; see also *Lavoie* v. *Bigwood* 457F 2d, (1st Cir. 1972).

static, conventional housing. Because of this, security of tenure has not been regarded as a major issue by housing authorities, local councils, planning bodies, legislatures or park owners. It has thus been beyond the minds of most for the landlord-tenant relationship of the static home to be transferred to the park owner and mobile home resident.

PART FOUR: CURRENT LEGISLATIVE "PROTECTION" FOR THE PARK OWNER, THE RESIDENT AND THE COMMUNITY

It may well be thought that the community has a vested interest in disallowing the use of caravan parks as places of permanent residence.[55] Certainly the legislation that exists in Australia supports this view. Most states and local authorities have laws, regulations and by-laws governing caravan parks,[56] which may specify maximum periods of occupancy. The Victorian and New South Wales provisions will be more particularly considered here.

(i) *The Victorian Provisions*

In Victoria, the *Camping Regulations* 1965 do not at present specify maximum periods of occupancy. This has been left to local councils, many of which, officially at least, adhere to the 10 week rule laid down by the Melbourne and Metropolitan Board of Works.[57] However, neither the Board nor the councils strictly enforce this rule, apparently for the reason that they do not want to be seen to be putting people out on the street.[58] It is to be noted that the draft *Camping Regulations* 1976 do

[55] Carver, in *Mobile Homes: A Housing Alternative*?, op. cit. at p. 67 lists three obstacles to development of parks from a community attitude viewpoint: (i) old caravan parks are unsightly, providing housing for transients who partake little of community life; (ii) the density per acre is triple allowed for residential space in the lowest zoning classification; (iii) caravans are taxed (if at all) as motor vehicles and thus seemingly escape a proper share of local municipal rates that encumber conventional homes.

[56] For example, in Victoria the local councils derive their power from the *Health Act* 1958, s. 221, and the *Camping Regulations* 1965 made thereunder; in N.S.W., the *Local Government Act* 1919, s. 288A empowers councils to control and regulate the use of mobile dwellings—there is no statewide legislation for control and regulation of standards; each council may thus have its own standards and control; in W.A., the *Caravans and Camps Regulations* 1970, promulgated under the *Health Act* 1911-68, together with the *Town Planning and Development Act* 1928, empowers local authorities to control the use of caravan parks and enables them to define areas and land for use as such in their own districts; in Tasmania, the *Camping Ground By-Laws* made under the *Public Health Act* 1935, and in Queensland, the *Local Government Act* 1936-70, similarly vest powers in the local authorities.

[57] This rule was decided upon at a meeting of the Board on 29th September 1966. However, some local councils do have a longer period, e.g. "Any planning permit issuing for a caravan park with the Shire of Lilydale (Victoria) has a condition stipulating that 'no caravan, tent or other temporary structure shall occupy a site in the caravan park for a greater period than three months in any continuous period for 12 months' ": from an unpublished Engineer's Report submitted to Lilydale Council on 9th March 1976; see Akehurst, op. cit. p. 9.

[58] Information from an M.M.B.W. Officer.

provide for "long term campers" as well as specifying maximum periods of occupancy. A long term camper is defined as

> "a camper who intends to reside or who in fact resides at the camping area during any period of twelve months for a period or periods exceeding in total twenty-six weeks."[59]

Maximum periods of occupancy are provided for as follows

> 22. "The proprietor of a camping area shall not permit or suffer—
>
> (a) any long term camper to reside at the camping area during any period of fifty-four months for a period or periods exceeding in total fifteen months.
>
> (b) any camper (excepting a long term camper) to reside at the camping area during any period of twelve months for a period or periods exceeding in total twenty-six weeks."[60]

There seems to be no real distinction between a long term camper and any other kind of camper except an *intention* to reside or a *de facto* residing at a camping area in excess of the periods prescribed. It is submitted that there is no logical reason for distinguishing between the two kinds of campers on this basis. It is in any case to be noted that the limitations of Regulation 22(a) and (b) are inconsistent with the comments on the Recommendations in the *Victorian Inquiry Report*: "Long term caravan parks will be allowed to take caravanners for any length of time."[61]

It would have been more in line with the Recommendations to prescribe more clearly in the draft Regulations the conditions under which a long term camping area or park may operate. (It should be noted that the *Victorian Inquiry Report* did recognize that long term caravan parks require higher standards of operation than other kinds of parks.[62])

A further illogicality in the draft *Camping Regulations* 1976 surrounds the "mobility" component in the definition of "caravans".[63]

> "[A]ny object or structure having the general characteristics of a caravan, a house on wheels, a covered van, and any vehicles used or adapted for living purposes whether or not the wheels or axles thereof have been removed or not and whether it is resting directly on the ground or is placed on blocks or other supports."[64]

If a caravan may under the terms of the draft Regulations have its wheels removed and be set on blocks, there seems to be every encourage-

[59] Draft Regulation 3; note that at least one local council incorporates substantially the same definition into its by-laws: City of Springvale (Victoria), By-Law No. 188.

[60] Draft Regulation 3.

[61] *Victorian Inquiry Report* p. 44, para. 6.10.8.

[62] That is, nature parks, transit parks, tourist parks and temporary areas. See ibid. para. 5.11 and p. 47, para. 6.12.4: "Regulations for long term caravan sites will be stricter than for tourist caravan sites because the long term park will require more intensive provision of facilities of all kinds." See also ibid. p. 44 para. 6.10.8.

[63] Under the *Camping Regulations* 1965 a caravan was not defined at all.

[64] Draft Regulation 3; note that under the present M.M.B.W. conditions, a caravan must be kept mobile at all times—(condition 3).

ment for the mobile home resident to create an environment around the caravan unit that would be inconsistent with its mobility, for example a garden, steps, patio, etc., but under the terms of the draft Regulations the resident will have to move on, at the outside, every fifteen months. (This maximum period appears to be quite arbitrary, as does the period of fifty-four months in which the fifteen month period must fall.)

The need for long term sites was clearly recognized in the *Victorian Inquiry Report*

> "The demand for long term caravan sites has been clearly demonstrated during the Committee's inquiry. The Committee is of the opinion that long term caravanning is a fact of life and is growing rapidly as the housing shortage intensifies and the mobility in the workforce expands."[65]

The draft *Camping Regulations* 1976 certainly do not recognize this need. They represent a half-hearted attempt to deal with the "problem" of long term caravanners, but do not come to terms in any sense with the concept of the mobile home as defined in the *Victorian Inquiry Report.*

As noted, local councils have to date not strictly enforced the maximum occupancy provisions; it is unlikely that the provisions can be properly enforced in any case, because of the manner in which the by-laws are drafted. It appears that if a unit were moved from one site to another, the limitation period would recommence; it could be argued, at least where sites are not clearly defined, that if a resident moved the unit a mere inch, he would be occupying a new site. In any case, enforcement of maximum occupancy periods would appear to be administratively impossible. Local authorities do not wish to expend manpower on such activities (the council would need, *inter alia,* to require the park owner to keep accurate records of dates of arrival of residents and names and addresses of those occupying individual camp sites[66]).

The reason why councils have to date kept the maximum occupancy periods on their books, despite non-enforcement, is probably a political one; a positive move to allow residents to stay for an indefinite period might not be popular in the local electorate. It might also result in demands by park residents and park owners for better zoning classifications and more services and facilities, consistent with those enjoyed by "permanent" residents in conventional housing. These are demands which local councils may not want to encourage, if only for financial reasons.

From the viewpoint of the park owner, it is desirable for him to continue to flout the Regulations, in order to be able to run his park in an economically viable way. Any attempt to discourage residents by

[65] Ibid. p. 44, para. 6.10.8.

[66] Regulation 27 of the *Camping Regulations* 1965 requires this to be done; note that Regulation 31 of the draft *Camping Regulations* 1976 includes an obligation on the proprietor to take note of expected dates of *departure* as well. (This is consistent with the maximum period of occupancy provision.)

enforcing maximum occupancy periods would be detrimental to his business.[67]

The *Health Act* 1958 and the *Camping Regulations* 1965 appear to exclude non-private parks from almost all the Regulations; they are also exempt from annual registration.[68] The anomalous situation can therefore occur that a park run by a local council is not subjected to the regulations which the same local council is bound to enforce in the case of a privately owned park within its jurisdiction.

The *Victorian Inquiry Report* quite rightly recommends that all parks, (both private and non-private) be registered with the Health Commission,[69] making them all subject to the same regulations. There is however, no guarantee that local councils would not continue in the same way as before.

(ii) *The New South Wales Provisions*

Section 288A(4) of the *Local Government Act* 1919 (N.S.W.) provides that

> " a person shall not allow any land occupied by him to be used for camping purposes on more than two consecutive days or more than sixty days in any twelve consecutive months unless either—
> (a) he holds in respect of the land so used a licence . . .[70]
> (b) each person using the land as a site for a mobile dwelling holds in respect of that dwelling such a licence . . . or has made an application for such licence which has not been refused."

A similar provision operates in respect of the person keeping the movable dwelling on the site.[71]

Section 288A further provides that if a movable dwelling is removed from the site but is replaced within 24 hours from the time of its removal to the same site or another site within one hundred yards of the same site, then, for the purposes of reckoning the number of days, it will not be deemed to have been removed, or will be deemed to have been moved direct from one site to another.[72] This provision seems to be aimed at persons who wish to avoid paying for a licence whilst staying in the same area. It seems that as long as they move more than one hundred yards a day, even from one site to another and back, they will avoid having to

[67] Note, however, that park owners do sometimes try to discourage residents from staying too long, both because of regulations specifying maximum periods of occupancy and to maintain the image of a "tourist park"; see Granger, *Mobile Domestic Architecture* pp. 29-30.
[68] This step would require an amendment to s. 221 of the *Health Act* 1958.
[69] "The Caravan and Camping Committee could find no justification for the exclusion of non-privately operated parks from annual registration, nor for their non-compliance with the regulations governing the operation of parks": op. cit. p. 25, para. 5.3.8.
[70] A licence may be granted by the local council—see s. 288A(2)(a) and (b).
[71] Ibid. s. 288A(5).
[72] Ibid. s. 288A(9)(c).

obtain a licence; the proprietor of the land will similarly avoid the fees. If this provision were enforced, it would no doubt result in great inconvenience and harassment for the resident.[73] It is in any case clear that the resident has no security of tenure vis-à-vis the park owner as far as this legislation is concerned.[74]

PART FIVE: REFORM OF THE RELATIONSHIP BETWEEN THE PARK OWNER AND THE PARK RESIDENT

> "To suggest enactment of legislation for mobile home parks as an alternative land use system presupposes that mobile homes are an acceptable housing form. These two categories are conjunctive and like other forms of housing they relate house to land. If new legislation is proposed, then both aspects need to be considered as one."[75]

If the use of mobile homes is to be encouraged, then it is clearly necessary that residents will need greater security of tenure before they invest in a mobile home. Although it appears that the landlord-tenant relationship could be made to apply to the mobile home resident and park owner, the difficulties that tenants in *conventional* housing experience, gives no reason to suppose that mobile home residents would be better off having park owners as the equivalent of *landlords.*[76] To expand the categories of landlord and tenant law to their relationship could perhaps extend, rather than end, any oppression that park residents at present might suffer.

Solutions to some of the difficulties could be found in the form of standard forms of agreement of lease, cluster tenure, mobile home subdivisions and mobile home park resident's co-operatives.

(i) *Written Agreements*

Standard forms of "tenancy agreement" or lease are usually drafted heavily in favour of the landlord;[77] normal market conditions do not usually allow a tenant to choose his own terms. Perhaps the only effective method of giving a mobile home resident protection, without necessarily giving him a legal estate in the land, would be to enact a statutory standard form of agreement which would govern in detail the relationship between the resident and the park owner. Such an agreement would

[73] It appears that not many councils enforce the licensing provisions: "The present situation allows the caravan parks to continue business with no effort to enforce the laws placed on them": Granger, *Mobile Domestic Architecture,* op. cit. p. 31.

[74] It is to be noted that a Joint Committee of the Legislative Assembly and Legislative Council on Parks for Mobile Homes and Caravans was set up in 1977, but has yet to report.

[75] Carver, in *Mobile Homes: A Housing Alternative*? op. cit. p. 57.

[76] The comments found in the Report by the Landlord and Tenant Committee of the Law Institute of Victoria to the Council of the Law Institute, November 1976 p. 31, could equally apply to park owners; see also Nyberg, op. cit. p. 812.

[77] Bradbrook, "Poverty and the Residential Landlord-Tenant Relationship" (Law and Poverty Series, A.G.P.S. 1975) p. 15.

circumvent many of the problems associated with the distinction between a lease and a licence, and with the landlord-tenant relationship itself.

Perhaps the best known example of such a statutory agreement is found in the *Mobile Homes Act* 1975 (U.K.). This Act imposes a duty on the owner to offer a written agreement to the park resident within three months of the resident's arrival.[78] The agreement must contain a number of conditions as laid down by the Act;[79] these are very definitely drafted in favour of the resident, though protections are also accorded the park owner.[80]

This legislation gives the park owner reasonable access to the site, and the right (if necessary) to move the mobile home to another part of the site.[81] It is thus unlikely that such an agreement would pass the legal estate in the land to the resident. With tenure statutorily protected, this would not ordinarily be disadvantageous to the resident. Whether such an agreement would be transferable to the Australian context is a difficult question, given the lack of recognition of long term residence in our present caravan parks. No doubt, however, an adapted form of such an agreement might be introduced; the minimum term could be reduced somewhat,[82] at least until such time as long term caravan parks do in reality become accepted as mobile home parks. However, it is to be noted that in the two years that the *Mobile Homes Act* has been in operation, only about a third of all residents have taken up agreements.[83] In the light

78 Section 1.

79 The agreement must contain, inter alia, the name and address of park owner and resident, a description of the part of the site occupied by the resident sufficient to enable it to be precisely identified, the date of the commencement and the length of term of the agreement, which shall not be less than 5 years, unless the owner's estate or interest in the land is insufficient to enable him to offer such a term; the occupier may, however, determine the agreement by giving at least 28 days notice; see s. 3; see, further, *New Law Journal* Precedent no. 252, *Mobile Homes Act,* Form of Agreement, *New Law Journal,* 12th and 19th February 1976.

80 These include the right of a park owner to determine the agreement for breach of an undertaking; this is subject to a requirement that where the breach is capable of being remedied, he must serve written notice of breach on the occupier and then give the occupier a reasonable opportunity of remedying it; see s. 3. This "reasonable opportunity" would most likely apply where the resident is in breach of an undertaking to pay the rent—for further examples of statutory protection for both parties in the United States context: Nyberg, op. cit. p. 821 ff. Certainly, a balance must be struck between the often competing interests of the park owner and the resident: see United Kingdom *Parliamentary Debates* on *Mobile Homes Bill,* op. cit., *passim.*

81 S. 3(h).

82 If the term were five years, such a statutory scheme would probably not be acceptable to park owners. A distinction needs to be made between the security of tenure that an English tenant may obtain (quite often he is protected for life) and the usual term of a residential tenancy in Victoria, i.e. six months to one year before renewal is necessary. The *Mobile Homes Act* should be viewed against the background of Parliamentary Reports (*Caravans as Homes,* Cmnd. 872, 1959 and *Caravan Parks, Location, Layout, Landscape,* Ministry of Housing and Local Government, H.M.S.O. 1959) and earlier legislation (*Caravan Sites and Control of Development Act* 1960, *Caravan Sites Act* 1968).

83 Review of Mobile Homes, *Journal of Planning and Environment Law,* op. cit. p. 345.

of this, possibilities should be examined for developing a different tenure system on new sites, and perhaps eventually for existing sites.[84]

(ii) *Leasehold System*

The major difficulty of implementing a leasehold system in existing sites would lie in obtaining the park owner's agreement. Being the dominant party in the resident-park owner relationship to date, the granting of individual leases would need to be agitated for by the residents of caravan and mobile home parks (in the absence of legislation introducing mandatory leasing provisions). However, the political organization of residents in Australian parks is not at all evident; and many would be fearful of setting up or forming a mobile home residents' union,[85] because of the threat of eviction.[86] Even "outsiders", such as social workers or health educators, must be careful not to tread on the toes of the park owner, for fear of being ordered off the premises and being branded as "troublemakers".[87] Nevertheless, a leasehold system, though not entirely appropriate, because of the difficulties of park owners wishing to move units and not being willing to grant this kind of interest to residents, seems preferable to a situation where residents, for whatever reason, do not take up "agreements" offered to them under legislation such as the *Mobile Homes Act.* Leases appear to be more common in the United States; given that mobile home parks are like "factory built housing" estates there, this is only to be expected.[88] This difference is to be borne in mind when considering the further alternatives suggested below.

(iii) *Cluster Titles*

There seems to be no legal reason why potential residents could not jointly buy an area of land and set it up as a mobile home park, all parties owning the common facilities, roads and public areas, whilst retaining separate title to their mobile home site; in Victoria this could be done under the *Cluster Titles Act* 1974.[89] (Certain amendments relating to bathing and other facilities would need to be made.) The main obstacle in the path of this kind of development would, of course, be the financial stability and organization of residents, many of whom appear to fall into

[84] See ibid. p. 346.
[85] In both the United States and the United Kingdom, residents have well organized associations which can increase their bargaining power with park owners and local and state authorities; not all residents belong to these associations, of course.
[86] See for example the comments by various speakers on the *Mobile Homes Bill* (Eng.), *Parliamentary Debates,* op. cit., *passim.*
[87] Information from Lois M. Parker, Liaison Community Officer (Schools Commission Innovation Program) Canberra.
[88] See Davidson, op. cit. pp. 45, 48 and 49.
[89] This would be similar to the "condominium park" found in the U.S.A.: "Recreational facilities and landscaped areas are jointly owned by the tenant in the condominium park. However, the resident receives a grant deed to the mobile home space. Maintenance and upkeep are guaranteed by a covenant of the purchase agreement": Davidson, op. cit. p. 48.

the lower income bracket. Nevertheless, with encouragement from government sources, such "estates" could be established in the future.[90] The other obstacles to a scheme of this kind would, of course, be the obtaining of permission from the relevant planning authority and obtaining adequate finance.

(iv) *Mobile Home Sub-divisions*

The development of land for sub-division has been highly profitable for investors in recent years; given the difficulties once again of planning authorities, a mobile home park sub-division could be a good investment possibility; the zoning restriction may in any case work in favour of the developer because planning authorities would be more willing to allow this kind of development in outlying areas. However, the social problems associated with isolation of residents from the rest of the community would not be desirable;[91] such subdivisions would need to be integrated with conventional subdivisions in order not to be, and appear to be, on the fringes of the community.

(v) *Co-operative Mobile Home Parks*

The possibility of a group of residents leasing an existing park *in toto* from a park owner (i.e. a local authority or private owner) would seem to be economically the most feasible way of being able to guarantee security of tenure for a substantial number of residents, as well as giving them a greater role in controlling their own affairs. Such a scheme would not run into zoning problems or be refused registration with a local council; the park would already be there. The basic difficulty would perhaps lie in the organization of such a scheme. Residents would need to be convinced that the idea was a good one; they would also need to be committed to that particular area for some time. An organization like the Tenants' Union in Victoria could well be the focal point of such a scheme, in order to assist in establishing the principle of co-operative tenancy in the minds of local authorities and planning bodies. A last suggestion would be the co-operative *purchase* of land for a park, or of an existing park, (i.e. as opposed to development by a profit motivated investor). Such a scheme would, of course, require substantial government backing, through such bodies as the Victorian Housing Commission.[92]

Apart from the great difficulty of introducing such ideas to residents, these alternatives all throw up the common problem of the attitude of the general community to the idea of accepting such schemes as an extension of conventional housing strategies.

[90] See Beale, op. cit. p. 10.

[91] See Davidson, op. cit. p. 49, and Morris and Woods, *Housing Crisis and Response* (Cornell University 1971) p. 35.

[92] "If long-term caravanning is necessary to meet some specific failings in the housing and social welfare areas, then an alternative approach could be that all such parks should be owned, developed and managed solely by some public agency leaving only tourist parks to private developers": M.M.B.W. Report, op. cit. p. 11.

PART SIX: PLANNING AND BUILDING CODES

If mobile home living is to be officially recognized as part of the Australian housing scene, there will be a need to alter the present planning and building codes,[93] to protect both the interests of the park owner, the mobile resident and the community.

Planning law and building codes are very closely linked. The layout of a park, the quality of its facilities and the design standards of the mobile homes themselves can directly affect the question of whether a municipal or state planning authority will allow a park in a particular area.[94]

(i) *Planning Codes*

(a) MOBILE HOME RESIDENTS

At present there are no parks *designed* for permanent living in Australia.[95] With the restrictions on zoning by various authorities this is not surprising.[96] It is clear, however, that mobile home residents have much the same need for access to community facilities such as transport, health services, schools and shops, as residents of conventional housing. In short, they lack the supporting infra-structure enjoyed by other residents.[97] From a social viewpoint, residents seem to find it difficult to integrate with people from the conventional housing community.[98] This is partly a result of the location of the park; both in England and in Australia, mobile home residents have been seen as nomads,[99] gypsies[100] and second class citizens.[101]

As Akehurst points out,[102] very little social work is carried out in Melbourne's caravan parks, probably because of lack of knowledge by

[93] "Caravans are being used as a form of housing and, therefore, our approach to the planning of long stay parks should be made in this context. Amenity, access to facilities, micro-climate, social mix, etc., are as important for the caravan dweller as for any other medium density dweller": *N.C.D.C. Survey of Long Term Caravan Parks,* op. cit. p. 13. "Occupancy time in mobile home parks is approximately equal to that in apartments": Bunn, *Mobile Home Parks Code* (Canberra, Department of the Environment Housing and Community Development, 1977) p. 11.

[94] Bartke and Gage, op. cit. p. 497—see also p. 511. Further, Bair, op. cit. pp. 290-1.

[95] Holthouse, op. cit. p. 35.

[96] "The Committee has found that planning authorities have a negative attitude to caravan park construction . . . planning authorities place unnecessary requirements on construction of the parks as well as forcing them into unfavourable areas through zoning": *Victorian Inquiry Report,* op. cit. p. 39, para. 6.8.7.

[97] The problem in England is outlined by Mr Crouch in *Parliamentary Debates,* op. cit. p. 960. See also *N.C.D.C. Survey,* op. cit. p. 13. Akehurst, op. cit. touches on these difficulties, at p. 3. See also Bair, op. cit. p. 296 and Bunn, op. cit. p. 11.

[98] Parker, "With Wheels Under Them", op. cit.

[99] United Kingdom, *Parliamentary Debates,* op. cit. p. 978, Mr Pattie.

[100] It should be noted that in England, at least, gypsies are recognized as a special class—see *Caravan Sites Act* 1968, s. 6, which imposes a duty on local authorities to make sites available so far as may be necessary to provide adequate accommodation for gypsies residing in or resorting to their area. See also *Parliamentary Debates,* op. cit. p. 916. There does not seem to be a recognized class of gypsies in Australia, although Parker, "Permanent Living in Australian Caravan Parks", op. cit. cites evidence that mobile home residents have been regarded as such.

[101] United Kingdom *Parliamentary Debates,* op. cit. p. 978, Mr Pattie.

[102] Op. cit. p. 3.

welfare services of the size of the permanent "mobile" population. Work carried out in Canberra by Parker[103] points up some very serious social and health problems. These factors indicate that mobile home parks should be very clearly distinguished from the ordinary tourist caravan park, and be accepted as an integral part of the community.

A further difficulty from the point of view of planning is where the land comprising the mobile home park is reclassified for an alternative use; this was discussed in the Parliamentary Debates on the *Mobile Homes Act* 1975

> "a mobile home site should be designated as such. It should retain that designation and it should not be possible to turn it into development land so that the site owner may suddenly sell out. If land can be designated in this way it will do much to raise the standards of caravan parks, and it will recognise their contribution to the nation's housing stock."[104]

In other words, then, planning legislation could be effective in giving the resident a further guarantee of security of tenure (assuming that he has gained a security of tenure vis-à-vis the park owner pursuant to an agreement through the alternatives previously noted).

(b) THE PARK OWNER

The park owner, before he outlays large sums of money to develop a mobile home park,[105] also needs to know that the land he is developing will not be reclassified after he commences operation. It is certainly more open to planning authorities to reclassify land in favour of conventional housing or for other purposes where the homes on the land are allegedly "mobile". He will also need to know that he is not going to be closed up by the local council.[106] Bartke and Gage comment on zoning with respect to mobile homes

> "The subject is a fascinating one because mobile homes present peculiar problems and challenges to the utilization of urban land. . . . recent technological developments in the field of prefabrication and modular construction may suggest approaches and alternatives to the solution, or partial solution, of the problems of the housing of low income families. In many cases, however, zoning may be a stumbling block in the path of such experiments."[107]

[103] Parker, "Permanent Living in Australian Caravan Parks", op. cit. The community aspects of mobile home living in the United States have been well set out in Morris and Woods, op. cit. p. 33.

[104] United Kingdom, *Parliamentary Debates,* op. cit. p. 960, Mr Crouch.

[105] See *Victorian Inquiry Report,* op. cit. pp. 59-65 for financial aspects of parks in Victoria.

[106] "As a general rule, municipalities should not be allowed to introduce retrospective by-laws which adversely affect caravan parks by altering the conditions under which the parks were originally given approval to commence operations": *Victorian Inquiry Report* p. 20, para. 5.14.2. Although the *Victorian Inquiry Report* is directed primarily at increasing the opportunities for "tourist" caravanning, there is no reason why the above statement should not apply to all "mobile" development.

[107] Bartke and Gage, op. cit. p. 492.

The difficulties that have beset park owners and local authorities in North America and England might well be avoided if uniform guidelines were laid down for the zoning and design of mobile home parks, before mobile homes become popular in the Australian housing market.[108]

One of the most vexing problems appears to be that of restricting "mobile home park developments to undesirable commercial or industrial areas or to outlying areas beyond the limits of zoning control".[109]

In the Melbourne metropolitan area, many caravan parks are operating under the guise of accommodating tourists, whereas in fact they are catering for many long term occupants;[110] they are thus located in areas where tourists might use them. (At best, the zoning classification that can be obtained is Residential C[111]).

On the other hand, there are also advantages that park owners in the United States have enjoyed because of zoning restrictions.

> "Perhaps the most frequent restriction is that mobile homes must be placed in parks, rather than single lots. Communities usually couple such a restriction with the requirement that parks be licenced and located only in certain areas. . . . The immediate effect of such restrictions is scarcity of space available for mobile homes. This tension between growth and restriction has propelled mobile home park owners into a dominant market position."[112]

(c) THE COMMUNITY

The community is entitled to see well ordered development of residential housing within its borders. This has been the major reason why caravan parks have in the past been classified into low residential, commerical and industrial zones. Davidson explains that one of the reasons why mobile home parks in the United States have been classified into the *commercial* zone is because they have been regarded as commercial enterprises; that is, the site is *rented* to mobile home residents.[113]

The problem of regulation and control, as Morris and Woods[114] have stated, is closely interrelated with the general pattern of social relationships between the mobile home community and the general community

> "Without controls and community participation in decisions related to them, the projection of unfavourable images and stereotypes through pressure groups in both communities may seriously impede the development of good relations between the two communities."[115]

[108] "The adoption of a Code setting out minimum standards is necessary to ensure that mobile home parks will be of high quality. The absence of such a code in the early stages of mobile housing development in North America had resulted in many low quality mobile home parks: O'Reilly, "Mobile Homes Are On The Move", *Shelter* June 1974 Vol. 2, No. 10, p. 4. See also Beale, op. cit. p. 9.
[109] Davidson, op. cit. p. 143.
[110] See fn. 8 supra.
[111] M.M.B.W. Report, op. cit. p. 9.
[112] Nyberg, op. cit. p. 811.
[113] Davidson, op. cit. p. 143.
[114] Op. cit. p. 41.
[115] Loc. cit.

An example of how community interests are protected is a recent appeal to the Town and Country Appeals Tribunal. An application by Melbourne Caravan Park Motel Pty Ltd to the Melbourne and Metropolitan Board of Works for a long term caravan park in an area under the Board's control was referred to the Tribunal, and rejected on the following ground

> "It is considered that the establishment of a long term caravan park would be tantamount to the creation of substandard dwellings, lacking the proper amenity that should be expected in a residential area."[116]

It may well be that this planned caravan park lacked "the proper amenity that should be expected in a residential area", but to refuse such an application outright is in a sense burying one's head in the sand as far as the problem of accommodating mobile home residents in a community is concerned. There are, however, indications from within the Melbourne and Metropolitan Board of Works that a more enlightened policy is forthcoming.[117]

(ii) *Building Codes*

If the proposition that mobile homes should be properly sited in estates similar to static housing[118] is accepted, it is obvious that stringent standards need to be formulated for the design of mobile home parks and mobile homes.[119]

In Victoria, the mobile home concept could already be covered in the *Uniform Building Regulations* under the *Local Government Act* 1958; a dwelling house is defined there as

> "a building (whether temporary or permanent) used or intended, adapted or designed for use as a separate residence for an occupier having a right to the exclusive use of the building and containing bathing or sanitary facilities within its bounds. . . ."[120]

Thus, if a mobile home has bathing or similar facilities of its own, it could comply with the definition in all respects. At this stage of development, most units used for long term occupancy in Australia do not appear to have these facilities and thus would not qualify.

However, it is unlikely that in the immediate future, building inspectors of local councils would take those mobile homes with internal facilities into their purview. It is in any case probable that an amendment would need to be made to the Building Regulations in order to make the matter absolutely clear.

116 Appeal No. X75/1135, heard at Melbourne, 5th April and 7th June 1976.
117 M.M.B.W. Report, op. cit., *passim*.
118 *Victorian Inquiry Report*, op. cit. p. 16 and Bunn, op. cit. p. 3.
119 For further comment, see: *Task Force into Modern Housing Techniques Ministry of Housing and Construction* (Canberra, June 1974).
120 *Local Government Act* 1958 (Vic.) s. 918A.

The comments found in the *Baddac Report*[121] are of significance by way of showing the current thinking in this area in Victoria

> "If caravans or portable buildings are to be used for permanent living they should comply with minimum habitation standards. These standards should preferably be Australia-wide standards. Except in the case of buildings used for permanent living, caravans and camp-sites are not the concern of building control authorities, and would be adequately supervised by town planning and health authorities."[122]

The Building and Development Approval Committee, in compiling the *Baddac Report,* discussed whether mobile homes should be specifically included in new provisions being drawn up at the present time to standardize and consolidate the disparate regulations governing building standards, etc. The use of the term "portable dwelling" in the recommendation above is a compromise position, and thus indicates a failure to appreciate the extent of long term residence and the importance of introducing standards in this area.[123]

One of the difficulties of applying conventional building regulations to mobile homes is that the homes are not constructed on site, but on an assembly line in a factory,[124] thus making it inconvenient, if not impossible,[125] for building inspectors to inspect the processes of construction. It is possible that the *Victorian Housing (Standard of Habitation) Regulations*[126] could be made to apply to a caravan or mobile home if it was fitted with a bathroom;[127] but without direct reference to mobile units, it is unlikely that these regulations would be taken seriously by local building inspectors.

An enlightened approach to building standards *has* been taken in South Australia; in the *Housing Improvement Act*[128] the definition of "house" is interpreted by the South Australian Housing Trust to include caravans, for the purposes of repair orders and rent control.

It follows that where a caravan has been condemned by an inspector, the Act allows the resident to obtain expedited treatment in an application for public housing.[129]

121 *A Report on the Building and Development System in Victoria,* Part I; *Building Regulations,* Report of the Building and Development Approval Committee submitted to the Premier, April 1977. (The *Baddac Report.*)

122 Ibid. p. 15.

123 Information from an officer of the Town and Country Planning Board.

124 For a brief description of the manufacturing process, see O'Reilly, op. cit. p. 5. Note that the *Baddac Report,* op. cit. p. 8, recommends that new building materials and methods should be approved state or federal wide rather than on a local council level as at present. This recommendation is apparently designed to cope with "factory built" dwellings—which of course includes mobile homes.

125 This is particularly so if the home is built outside the jurisdiction of the council where the mobile home is placed. This is not at all unlikely, given the factor of mobility. For the U.S.A., see Bair, op. cit. p. 293.

126 *Housing (Standard of Habitation) Regulations* 1971 (Vic.).

127 Regulation 43.

128 *Housing Improvement Act* 1940-73 (South Australia) s. 4; see also ss. 23 and 52.

129 Section 44(2).

Non-applicability of building codes to mobile homes might not be such a bad thing. As Davidson has pointed out

> "by possessing immunity to local building codes, the mobile home industry has the opportunity to innovate with new materials and building techniques . . . thus creating an improved product to be located in mobile park developments."[130]

PART SEVEN: CONCLUSION

> "Whether we like it or not mobile homes are almost with us, but there is not one reason why they should ever be built as second class housing or why Australian mobile home estates should ever develop as low density slums."[131]

The caravan industry in Australia seems to have realized the potential of mobile homes as a housing alternative and has commenced to cope with, and, quite probably, feed the demand.

The law, on the other hand, has not begun to deal with the phenomenon in any significant way. Changes which have been signalled do not appear to come to terms with the concept of mobile home living.[132]

It is clear that more extensive work needs to be done to ascertain whether people who reside in caravan parks on a permanent basis always do so by choice, or are forced to by circumstance.[133] Only when government authorities are confronted with the hard facts in relation to living patterns of this substantial number of people will something perhaps be done to accommodate them (in both senses). It may be that a government scheme in the form of operating parks exclusively for lower income groups, on exactly the same basis as is done with static housing, will be found desirable. This type of assistance would certainly take the pressure off the public housing lists.[134]

Australia appears to be some years behind both the United States and the United Kingdom in its transition from caravans to mobile homes. There is thus much to be learned from the experience of both countries, in order to avoid many pitfalls. It is important, in any case, to bear in mind the distinct possibility that there will eventually be a further transition from mobile homes to "factory built" homes. If planning authorities and government are able to anticipate this trend,[135] it may well be possible to *limit* the development of mobile home parks, to cater for those who

130 Davidson, op. cit. p. 143.
131 Anderson, in *Mobile Homes: A Housing Alternative*?, op. cit. p. 54.
132 With the exception of the interpretation of the *South Australian Housing Improvement Act*, supra.
133 A survey is being conducted at present by the Centre for Urban Research and Action in Melbourne, directed at park residents, to complement the earlier work done on park owners (see fn. 8).
134 *M.M.B.W. Report*, p. 11, para. 4.
135 Conversations with officers of the M.M.B.W., the Town and Country Planning Board and the Ministry of Tourism have confirmed that this further trend is already in its initial stages.

actually *want* to live in them, and provide other housing alternatives for those who live in them because they have no effective choice.

Certainly, legislation is called for to protect the interests of mobile home residents. A comprehensive scheme would probably be too much to ask for at this stage, but no doubt amendments can be made to existing statutes. If, for example, the *Landlord and Tenant Acts* in the various states and territories were amended to specifically include mobile homes, mobile home residents and park owners (which of course implies a lease between the parties, a large step in itself), the provisions relating to control of rents would be able to regulate to some extent the site rents being charged.[136] (At this stage there is no control whatsoever.[137]) However, it is submitted that the introduction of standard statutory agreements would obviate many difficulties.

If local councils allow mobile home parks to be established within their municipal boundaries, there should be some encouragement for a social worker or community worker to be detailed to help mobile home residents to cope with their immediate environment, as well as helping them to fit in with the rest of the community. Such a worker could encourage developments such as a child minding centre, women's groups, a co-operative shop, a common vegetable patch and, in larger parks, a kindergarten.

Although Australia is not yet at the stage where all personal details are centrally recorded on computer as seems to be reasonably widespread in the United States, the use of such systems for collecting data of children's medical and dental records, school registrations and schooling difficulties[138] could be useful in helping children who would be disadvantaged by frequent moves intra- and inter-state.

Mobile homes may provide the answer to the problem of inner city high rise development, as well as providing an answer to the encroachment of sprawling suburbs on the surrounding countryside. By the encouragement of mobile home parks as vibrant, socially self-sustaining communities, a vast number of people could begin to lead more "permanent" lives, whilst having a *free* choice to move on when necessary or desirable.

Official agencies in Australia have not, on the whole, faced the question of permanent living in caravan parks squarely. Until such time as this is done, the transition from the long-term caravan to the "permanent" mobile home, inevitable as it appears to be, will not be an easy one.

136 For example, in Victoria, the Rental Investigation Bureau, in South Australia, the Prices and Consumer Affairs Bureau, and in N.S.W. the Rent Controller could be used.

137 With the exception of South Australia.

138 "The new Uniform Migrant Student Record Transfer System can trace the full scholastic and health history of any child as he moves from one State to another": Parker, *Children of the Road* (1977 unpublished).