

# **RLLC Discussion Paper Submission – Completed by Ballina Waterfront Village & Tourist Park**

## **Chapter 1**

### **Objectives of the Act:**

Since the introduction of the RLLC Act 2013 the nature of Land Lease Communities has changed. There has been improved governance with operators being more educated, having good practices and standards and are heavily regulated, no longer does the cowboy operator exist.

In the Objects of the Act part (e) states -

(e) to protect home owners from bullying, intimidation and unfair business practices,

This should be changed to –

(e) To protect home owners and operators from bullying, intimidation and unfair practices,

Where the RLLC Act 2013 fell short is in failing to provide sufficient protection for operators from home owners bullying and intimidating behaviour. We feel this is necessary as we, as operators, have suffered persistent ongoing bullying and intimidation with very little protection and support. The lack of consequences for home owner behaviour has seen a significant rise in bullying and intimidation towards operators, as evidenced with the disgraceful treatment towards operators during the electricity issue. Operators were sworn at, threatened, called rip-off merchants and treated like criminals when operators were simply following what the NSW Department of Fair Trading had instructed them to do. At one park the home owners called “A Current Affair”, a story was aired showing the name of the park on signage behind the reporter, false and misleading claims were made by both the reporter and the home owners which saw the good name of the park dragged through the mud and threatening messages were sent to the manager.

Some examples of bullying and intimidation that we have had directed towards us, the operator, from home owners are -

Being spat at, sworn at, abused, yelled at, threatened, had constant lies told about us, faeces left at the front door of the office and being persistently harassed. We had a home owner who erected defamatory and derogatory signs about us, the operator, in his front yard. We have, on numerous occasions, been falsely accused of harassment when simply trying to follow up on arrears rent.

Often times a home owner will accuse an operator of bullying and harassment with absolutely no evidence. It should be an offence under the Act for a home owner to accuse an operator without evidence.

The notion that operators are the perpetrator or villain is a very old and outdated view and is no longer the case.

An over governance, and failure to regulate home owner's behaviour and accountability, would see more family owned and small businesses wanting to sell and, therefore, bigger corporations will be taking over residential communities thus making the relationship between operators and home owners more impersonal with home owners just becoming a number.

The objectives of the Act have not created harmonious communities between home owners and operators as they do not provide fairness for both the operator and the home owner.

The Act states that one of its objectives is to encourage the continued growth and viability of residential communities in the State – The financial viability of residential communities and their

ability for growth is greatly impacted by the constant applications for reductions to a proposed site fee increase. Even in cases where an operator has been able to prove their operating costs more often than not the NCAT will still make orders to reduce the increase even when the increase has not been excessive. Even during mediation operators are compelled to offer a reduction in order for them to implement any increase. Some challenges to site fee increases can take anywhere from a few months up to a year to be resolved, again, impacting the financial viability of a community.

## **Chapter 2**

### **Informed choices for prospective home owners:**

The requirement for a prospective home owner to have a disclosure statement for 14 days before proceeding with a sale is quite restrictive, there should be an ability to remove the compulsory 14 days for the disclosure statement, if necessary.

Home owners should be required to have compulsory home & contents insurance inclusive of public liability due to the close proximity of other homes in the community and the high risk this presents.

## **Chapter 3**

### **Site fees:**

#### **Site fee increases:**

Fixed method –

It would be unreasonable to restrict the ability of the operator to use a fixed method calculation for site fee increases. A fixed method calculation for site fee increases gives certainty for both the home owner and the operator, and each are able to plan ahead because of the certainty that a fixed method gives.

There should be no grounds to challenge site fee increases for fixed methods, that comply with the Act. A home owner is completely aware, due to receiving a disclosure statement, of what the fixed method calculation for site fee increases is and by signing a site agreement, constituting a contract, that is what they have agreed to.

By notice –

There needs to be greater definition on the 25% of home owners needed to challenge a site fee increase. The requirement of 25% should apply both before and after mediation, before an application can proceed through to the NCAT to be challenged. Quite often parks have found that when a site fee increase dispute is started the home owners do have the required 25%, however, following mediation where the operator has made an alternative offer to the home owners there are several, or more and on some occasions even the majority, of home owners who are happy to agree to this and drop out, meaning that the home owners no longer have the 25% required to challenge the increase. The home owners who do not agree, following mediation, are still able to proceed to the NCAT despite no longer having the required 25%. Some operators have reported that when they have requested a list of the home owners who make up the 25% requirement this has been denied to them.

If an operator is able to prove their operating expenses and or the grounds on which they have based their increase then the increase should not be able to be reduced, provided the increase is not excessive.

Site fees under new agreements –

Following the sale of a home the operator is able to increase the amount of the site fee for that particular site to bring it in line with the fair market value of other similar sites within the community. This is fair and reasonable as the home owner who is selling (the vendor) may have been on a very old agreement with an old and outdated site fee increase method under the Residential Parks Act 1998 with a markedly lower site fee compared to the current fair market value of other homes in the park. It would be unfair to restrict an operator's ability to increase a site fee, following the sale of a home, to bring it in line with fair market value and it would also cause other home owners on sites of a similar size and location to feel that it is unfair for a new resident to be paying lower site fees than they are.

The Act should allow a provision for home owners to be charged for a site agreement as when a home owner exercises their right to the 14-day cooling off period, and pulls out of a sale, this is an unrecoverable cost to the operator.

Voluntary sharing arrangements – There should be a clause added that when someone dies the arrangement should end and not be handed over to family or beneficiaries.

## **Chapter 4**

### **Living in a Land Lease Community:**

Section 36 of the RLLC Act 2013, where home owners are required to respect the rights of the operator, and agent's and employees of the operator, to work in an environment free from harassment or intimidation have little or no effect. We suggest that Section 36 of the Act is expanded to include specific behaviour that is considered unacceptable misconduct and or introduce penalties for home owners who breach the Act and their site agreement with abusive misconduct. There should be consideration given to introducing an automatic termination for excessive aggressive misconduct. Operators should not have to be subjected to continuous persistent abusive behaviour.

We recently made an application to the NCAT regarding a home owner's bullying and intimidating behaviour, where the home owner was aggressively, verbally abusive to the park manager whilst slamming his fists down on the office counter, intimidating the manager. In the application we asked for orders to be made requiring the home owner to comply with Section 36 (i) and (j) of the Act. The home owner was not truthful in his submission and whilst the member accepted that the home owner had sworn at the manager the member stated that it was at the lower end of the scale of abusive behaviour and dismissed our application. The member did verbally advise the home owner that he was on notice regarding his behaviour.

Repairs to and maintenance of the residential site –

At the commencement of a site agreement the Act states that a residential site be in reasonable condition and fit for habitation. An operator is only required to provide a vacant site with connections for utilities, it is the home owner who installs hardscapes such as cement slabs, driveways etc and therefore they are the home owner's responsibility along with the site itself. Should the Act be amended to include that the operator, in addition to their initial obligation, have an ongoing requirement to maintain the residential site it would run the risk that some home owners would knowingly allow their sites to deteriorate and fall into disrepair in the knowledge that it would be at the operators cost to repair it. It would be unfair to place this responsibility onto the operator. The maintenance of the residential site should remain as the home owner's responsibility.

We feel that a site bond should be reinstated so as to ensure that the residential site is left in the same condition it was in at the start of the site agreement.

## Community rules –

Operators are mindful that their community rules exist to ensure that all residents live in a community where there is peace, harmony and safety. Some home owners consider community rules to be unfair and restrictive, however, without community rules there would be anarchy.

It is reasonable for there to be a community rule or additional term where approval is required for paint colours, so as to maintain an aesthetically pleasing park. Should there be no approval requirement for paint colours home owners would be able to have, theoretically, stripes, polka dots, bright block colours etc. It is to the home owners' advantage to have this in place as having an aesthetically pleasing environment, in terms of the colour of homes, window coverings, awnings etc, will add value to their properties. Murals that are visible on the exterior of homes should be considered an addition to the home and approval be required.

It is not unreasonable for residential parks who are a mixed community, that is permanent residents as well as tourists, to have separate rules for tourists. The rules for tourists are ostensibly the same as the community rules for home owners, however, there are some rules which are necessary to be specifically for tourists, for example, we have the following terms in our rules for tourists –

### EVICTON FOR BREAKING TERMS AND CONDITIONS

While it is rare, guests breaking any of these TERMS and CONDITIONS (such as noise, extra people, damage, illegal activities, rude, aggressive or threatening behaviour) may be evicted from the premises/Park without refund of their accommodation fees, security deposits and without notice at the absolute discretion of the operator or its agents.

### NOISE AND SECURITY

Noise must be kept to a minimum at all times, we cannot allow noise to interfere with our residents' peace and quiet. Quietness between 10pm to 8am will ensure that everyone enjoys their stay. Management are contactable 24 hours a day. Be security conscious; please lock up when leaving your accommodation and secure eskies, bikes and personal equipment. The operator will not be held responsible in any way for any lost, stolen or damaged goods and personal property. In the event of goods being left behind, the guest will be wholly liable for all costs in respect of returning the property to the owner.

There should be an easier process to change community rules provided that any change complies with the Act.

Residents committees – A requirement should be introduced that both the President and other appointees are only able to serve a maximum of 3 years, whether served concurrently or separately.

## Principal place of residence –

The requirement for a home in a residential park to be a home owner's principal place of residence should be reinstated.

Residential communities are for home owners to reside in and should be their principal place of residence. Homes should not be able to be purchased as an investment, these are residential villages expressly for residential living. If people wish to have a holiday home it should be in a holiday park not residential park.

## **Chapter 5**

### **Utilities:**

A tenants organisation has stated that the RLLC Act brought in a fairer charging regime for electricity, however, operators rejected it and this led to home owners taking action through the Tribunal. This is not correct, operators did not reject anything they were simply following what the NSW Department of Fair Trading had instructed them to charge for electricity. Operators were unaware that there was any issue with the way that they were charging for electricity under the RLLC Act until the case of *Reckless v Ballina Waterfront Village & Tourist Park* where the Supreme Court ruled that the interpretation of section 77 (3) meant that the way that operators were charging for electricity did not comply with the RLLC Act.

The government worked long and hard on having a fair system for electricity charging under the Residential Parks Act and Regulations and it was the intent of the Government to continue that charging system under the RLLC Act, however, due to an amendment not being made following the deregulation of the electricity market in 2014 this meant, following the Supreme Court decision, that electricity was no longer able to be charged the same way.

It would be unfair and unreasonable to restrict an operator's ability to lease out their embedded networks to a third party embedded network retailer. Operators are not experts in electricity and should have the ability to lease out their networks to expert network retailers.

Of the options that have been put forward in the discussion paper Option 3 is the only workable, viable option.

## **Chapter 6**

### **The end of the agreement:**

**Selling a home –** We feel that regulation for real estate's selling in a residential land lease community should be introduced as there are agents not complying with the disclosure statement time limit of 14 days and not following other sale procedures. There should also be mandatory education of the RLLC Act for real estate agents.

**Sub-letting –** Allowing unlimited sublets would not be fair to the operator, for example, if a home owner were to go away travelling for a year or even years at a time then the operator is the one who is left to deal with any misconduct by the sublet. We have already had experience where a home owner put in an unauthorised sublet and then when that person left, they put in another sublet. On both occasions the sublets were not provided with community rules and the meters were not read upon commencement of the sublet, due to us not being notified of the sublet, resulting in the home owner not wanting to pay the utilities that ultimately, they were responsible for.

**Assignment –** Assignment should not be permitted, it is a new person (home owner) coming into the community so the old agreement should not apply to them. The same procedures of application should apply to any new person as they do to other potential home owners. If assignment is permitted the operator has no way of knowing the history of the beneficiary or family member and whether or not they have a good rental history and will, or be able to, pay the site fees and operators should therefore retain the right to refuse. Upon death a home owner's site agreement should end and any beneficiary should, as they are a new person, be required to sign a new agreement.

## **Chapter 7**

### **Resolving disputes:**

Mediation is not promoted by organisations such as the Tenant's Union of NSW and other sub-organisations and instead, in our experience, they encourage home owners to proceed directly to the NCAT, without an open and fair discussion between both parties and they appear to foster the attitude that the operators are the enemy and presume that operators are wrong and/or guilty of an offence. This has been demonstrated by the behaviour of a tenants' advocacy service towards us, as operators, during the electricity issue.

Compulsory mediation should be introduced to prevent the number of applications to the NCAT which would mean that many applications may be able to be resolved at this level and therefore would not waste the NCAT's time.

The NSW Dept of Fair Trading often gives out misinformation to home owners and operators making it difficult when trying to resolve a dispute. Government websites constantly have outdated information on their sites.

Operators are very often treated unfairly when it comes to trying to resolve disputes and there seems to be an attitude that operators are the enemy and are automatically assumed to be guilty. In early 2019 a flyer was sent out, by the NSW Dept of Fair Trading, to residential communities in the Northern Rivers, inviting both residents and park operators to attend a free Residential Land Lease Communities Information seminar held in conjunction with a Northern Rivers tenants advocacy service, on the 20 February 2019. When we arrived to sign in, we were told that as an operator we were not allowed to ask any questions, or participate in the discussion (approximately 6 park operators attended the meeting). We found this to be unfair and when we questioned the person from Fair Trading, we were told that our only forum for questions was online. During this meeting one of the advocates from the Northern Rivers Community Legal Centre gave out incorrect information regarding the charging of electricity following the Supreme Court ruling on Section 77 (3) of the Act.

## **Chapter 8**

### **Administration and enforcement:**

The Commissioner should be given the power to discipline home owners. Section 36 of the RLLC Act does not go far enough to address the misconduct of home owners. Penalty notice offences should be introduced for home owners who breach the RLLC Act with offensive behaviour and misconduct.

### **Additional comment:**

We have concerns when a person who has a caravan or other movable device who has no principal place of residence, either inside or outside of the residential park, being able to lay claim to a site when staying for any length time on a permanent site/long-term site. Operators should be able to permit a long term stay under an arrangement, for example, a tenancy agreement or some type of agreement that is reflective of this, with the same or similar terms as in a tenancy agreement.

This type of rental request is in high demand and we constantly receive requests for such. Being unable to place people on a type of tenancy agreement for this kind of situation means people are unable to find long term accommodation, they are also paying higher a tariff by having to stay on short term sites and must constantly move around to different parks. This issue has not been addressed under the RLLC Act.