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Date: 10th March

Attention:

1. Are the objects of the Act still relevant to residential land lease communities?
2. Has the Act been effective in delivering its objects?
3. Should the objects of the Act be expanded or updated to reflect the changing nature of land lease communities? Please identify how they should be expanded or updated and why.

Homeowners require greater powers to deal with other residents who abuse, threaten or intimate them. Rather than the present which forces operators of LLC to be policemen and Solomon. This could be provided by allowing residents to act directly, through their residents committee, or both, and or jointly with the operator of LLC to the tribunal.

4. Is the ban on inducing a person to enter into an agreement through false, misleading or deceptive statements or promises working effectively? **Yes**
5. Does the disclosure statement provide enough information to a prospective home owner to allow them to make an informed decision about buying into the community? **Yes** Why/why not?
6. Is the form of the disclosure statement easy for prospective home owners to understand? **Yes**
7. Is the disclosure statement provided at the right time? **Yes** I.e., should it be given earlier or later?
8. Does the disclosure statement form need to be improved? If yes, how would you improve it? **New dwelling purchases, the 14 day cooling off period exception that applies where a purchaser makes payment or occupies the dwelling should also apply to the situation for the purchase of a new dwelling that is yet to be constructed and installed. To apply where the purchaser has already entered into a binding site agreement and also enters into a purchases agreement and pays a deposit for a new dwelling. The issue arises where the factory constructing the new dwelling won't allocate factory space until the purchase contract is binding. This can lead to the purchasers missing a factory slot leading to months of delay in delivery.**
9. If an operator of a community fails to provide a disclosure statement to a prospective home owner before entering into a site agreement with them, a penalty will apply. Do you think the maximum penalty of 100 units (\$11,000) is appropriate? **No it's an enormous penalty for what could be an admin oversite.**
10. Are you aware of home owners not being provided with the correct written site agreement? **No**
11. Does having a prescribed standard form site agreement work well?

12. Should the list of prohibited terms in site agreements be modified? If so, what type of terms should be included or removed?

13. Should the requirements about additional terms be changed or improved?

14. Have you accessed the communities register? If so, was the register easy to navigate? Did the information on the register inform a decision you made regarding a community?

15. What information should be included on the public register and how should the information be presented?

16. Should the Act continue to allow for both the fixed method and the notice method of site fee increases? Yes Why or why not? If not, what method should be allowed?

17. Should there be any restrictions on the method that can be used for fixed method fee increases, or is the existing flexibility working well and/or necessary for operators?

18. Should there be a requirement that site fees can only be increased once per year, whatever method is used? Why or why not

19. Should there be any grounds on which a site fee increase that is based on a fixed method is able to be challenged in the Tribunal?

20. Is the process for resolving disputes over site fee increases by notice working effectively? Yes

21. Should there be changes to the grounds for challenging site fee increases by notice? Yes, the 25% test should continue to be the test throughout the mediation process. This would stop a small number of vexatious claimants continuing to a tribunal hearing.

22. Should the factors the Tribunal may have regard to when determining site fee disputes be expanded or changed? What changes would you suggest? Haven't experienced this process.

23. Are the provisions governing site fees for new agreements fair and effective? No, existing site fees should not be able to be transferred to a new site agreement as in the case of a sale. They should be able to be re-negotiated by the operator as part of entering into a new site agreement. This would allow the operator to regularly test the market, of course this could also thwart a sale therefore a pre-agreed maximum factor would have to be established as against the current charge.

24. Have you entered into an agreement with an operator/home owner that included a voluntary sharing arrangement? Statutory Review of the Residential (Land Lease) Communities Act 2013 Page 39 of 46 No, in our experience it is not a viable option for our residents, of whom the majority live off a pension or fixed income. Negotiating annual rent increases is difficult enough, the chances of obtaining 75% approval to pay extra into a capital improvement fund is the stuff of dreams for most of our residents.

25. If you have been party to an agreement with a voluntary sharing arrangement, were there any problems with parties understanding or meeting the terms of the arrangement?

26. If you have been party to an agreement with a voluntary sharing arrangement and are a home owner, did the arrangement assist you to afford to live in the community?

27. Should there be neighbour to neighbour obligations that are able to be enforced by other home owners? Why or why not? Yes, it is not reasonable that the LLC operator is the only recourse for residents neighbour disputes. It forces LLC operators to be not only policemen but also Solomon and often results in the operator (through no fault of the operator) becoming the enemy. This makes

ongoing relationships strained and can result in an offended resident/residents becoming uncooperative and unsupportive of the operator.

28. Should the Act be clearer on whether ongoing maintenance of a residential site or certain aspects of a site is the responsibility of an operator or a home owner? Why or why not? **I think it is clear enough and fair as it is, however some organisation for their own purposes choose to see it differently by wanting to shift yet further costs onto the operator.**

29. Is the Act clear about rights and responsibilities relating to repairs and maintenance of the home and alterations, additions and replacement of the home? **Yes**

30. Should there be any changes to the provisions about repairs and maintenance of the home, and alterations, additions and replacement of the home? **Yes, although we have never had to deal with this issue, I don't believe a homeowner should have the right to replace an existing dwelling with new. It should only be the operator and owner of the land that has this right, provisions to be developed that detail each parties' rights in how a replacement is to be conducted. This clause as it stands could allow an existing homeowner or a new purchaser of an existing home to capture the value from the sale of a new dwelling. It is the owner of the land that creates the value of the sites within the LLC not the owners of the homes. Buildings depreciate, it is only land that increases in value, this is driven by a number of factors most of which involve a lot of hard work and investment by the owner. Residents in LLC do not own the land therefore they have no right to benefit financially from investment in capital improvements. Having stated this, this bill of course empowers residents to benefit from any increase in the land value when they sell their dwellings in place, As stated above I don't think it should apply where a resident wants to install a new dwelling.**

31. Are the special levy provisions useful or are upgrades usually funded by site fee increases? **As already stated, the special levy doesn't work for our community. I make comments further down regarding capital upgrades and improvements.**

32. Are the rules of conduct adequate and are they having the intended effect of ensuring appropriate conduct by operators? **Yes**

33. Should the content of the rules be expanded to cover other issues?

34. Are the operator education requirements effective? **Yes**

35. Can you suggest other educational resources or topics to facilitate a greater understanding of the role and responsibilities under the Act? **Yes, Residents committee members, in particular the chairperson should also have to undertake an education program.**

36. What delivery methods could be used to improve mandatory education?

37. Before reading this discussion paper, were you aware of the option of communities having community rules? **Yes**

38. Does your community have community rules? **Yes**

39. Does your community have a community rule regarding age restrictions? If so, does this impact your community? **Yes, without the rules our community wouldn't function as smoothly as it does. The age restriction is a key element in empowering operators of an LLC and its residents to maintain an aged likeminded and harmonious community.**

40. Where residents committees are in place, should they be involved in the development of community rules? Why or why not? **Yes, for relevant input, to create commitment, and take ownership.**

41. If there is no residents committee in place, how could residents contribute to the development of community rules? **Through an annual review process with the operator of the LLC.**
42. Is the system of enforcement of community rules appropriate? **Yes.**
43. Are community rules being used to improve life in residential communities? **Yes, without question. Community rules allow for each LLC to adopt rules that are important and relevant to that community, provided of course they don't contravene the act.**
44. Should residents committees also be required to take part in mandatory education? If yes, what topics should be covered? **Yes, same as the LLC operators.**
45. If your community has a residents committee, is it working effectively? **Yes**
46. Do you have any suggestions for changes to the way residents committees are established or run? **Greater powers to discipline fellow residents and empowered to join with the operators of the LLC to mediate and adjudicate in resident-to-resident disputes.**
47. What are your overall views on utilities charging provisions under the Act, other than electricity charging in embedded networks, which is discussed below? **The amounts allowed to be recharged are hopelessly inadequate and antiquated. Presently operators of LLC are heavily subsidising utility (water & sewer) costs to their residents.**
48. How well do the current provisions relating to accounts, access to bills and other documents work? **Fine**
49. What are your views on the operation of section 77(3) as it applies to an embedded electricity network in a community? **It is totally inadequate, there is no longer a method whereby operators of LLC can recover costs associated with upgrades or improvements, especially in cost saving investments such as solar to their networks. Presently operators of LLC have no methodology or capacity to recover capital improvement costs made to their networks from their community.**
50. Which reform option for electricity charging do you support and why? **Option 3, brings NSW LLC embedded networks under the same legislative frame work as every other industry and state and resolves some of the issues raised in 49.**
51. Are there other reform options which you think should be considered? Statutory Review of the Residential (Land Lease) Communities Act 2013 Page 40 of 46
52. What is your view on the impacts these options would have on electricity bills in your community? **No greater than previous or if they were a user outside of an NSW-LLC. There are also Govt energy & rent subsidies that are available to residents of LLC.**
53. If your community uses another method other than the Reckless method to calculate electricity charges that has not been considered in this paper, can you describe your experience with this?
54. As an operator, what costs do you incur due to maintaining an embedded network and to what extent do you recover these? **All costs associated with any capital upgrades or improvements, especially cost saving investments such as solar to our network where they can't be expensed through the P&L**
55. Are the current discounts in the Regulation appropriate? **They shouldn't be there at all.**
56. Are you an operator or home owner with less than 60 amps? Are there any steps which could be taken to increase this level? **No, and no LLC operator is going to invest in energy & utility**

infrastructural improvements/cost savings while there is no method by which to either recover the costs or obtain a return on the investment. In the long-term It is a totally hopeless piece of legislation for all parties, in the short-term it is unfairly advantages to residents of LLC.

57. What difficulties are operators facing in managing solar systems in communities? Without massive investment in infrastructure it threatens the integrity and ongoing safe operation of the imbedded network. Without the above it could allow a resident to use cheap daytime power surplus to negate their peak time use which is totally unfair to other residents and the operator.

58. Are there other forms of sustainability infrastructure that are becoming common in communities? I have just read that a large corporate operator of a number of LLC has accessed significant Govt subsidies to install solar. This may be a solution if simplified and made available to all LLC who don't have the in-house resources of large corporate owners.

59. What are the greatest barriers to home owners installing solar panels? Me for the above reasons but mainly the cost and no financial benefit to an individual homeowner. As stated, it requires the operator of the imbedded network to make a massive investment in infrastructural upgrades. To make such an investment in solar viable. It would also need to be made available to the whole of the community as this would avoid potential upgrade cost issues post the mains distribution point. However, a methodology needs to be established so that the operator can either obtain a return or recompense via site fee increases. The cost to the community could be reduced by Govt subsidies linked to a community investment.

60. How can sustainability infrastructure be made more available in land lease communities? Now you are asking the right question: By developing a calculation methodology whereby LLC operators can introduce either a return or depreciation factor as an expense in each year (not as, at present, an increased expense only) into the LLC community P&L costs increase calculation. Something like this I believe would have far greater uptake by LLC operators than the present cost sharing option.

61. Are the Act's provisions about the sale of a home and interference with a sale working well in practice? Yes

62. Is the Act's control over operators who act as selling agents appropriate? Yes

63. Should operators continue to be able to act as selling agents? Yes, in our case we provide the service to our residents at a minimal fixed cost to cover advertising and staff costs. The aim is to assist residents in moving on with their lives. It is not desirable for the community or the operator to have large numbers of homes for sale not being sold. Most of the agencies have no understanding of the act which causes us no end of issues when we have to unwind agreements due to their failure to comply with the regulations. Agencies also have next to no interest in pursuing what they see as small commissions even at 3-4% on sale price.

64. Do you have any other suggested changes to the provisions about the sale of homes?

65. Should the Act be amended to also prevent an operator unreasonably refusing consent to assignment of a site agreement? Why or why not? No, as operators we require this control measure on whom can become a resident in the community. The "not unreasonably withheld" isn't sufficient in keeping out purchasers who are likely to become disruptors to other park residents due to drug-alcohol, abuse, & financial history issues that they could otherwise hide. Dealing with them once they are a resident is another whole world of pain for the community and the operator. It is also the only opportunity that the operator has to modernise the site agreements and ensure that nothing has been kept/hidden about the community and the site from the purchaser. It also allows operators to stop the

“quick turnover” purchaser who are looking to take advantage of/apply sales pressure to an elderly resident hoping to make a quick profit from the trade with no intention of residing permanently in the community.

66. Are the provisions relating to the assignment of tenancy agreements working well in practice? 67. Are the provisions about sub-leasing by home owners working well? **Yes, it stops the investor purchaser who has no intention of residing in the community from buying. This along with the community age rule are the main control methods that the operator and the community have to stop the community being overtaken by tenants and absentee investor landlords. I could not imagine a worse outcome for residents of LLC, and in my opinion, it would result in the demise of the LLC as an affordable retirement option.**

68. Are the grounds on which operators can terminate a site agreement appropriate? Should any other grounds be added?

69. Are the notice periods that operators are required to give for the different termination reasons appropriate? **Unless the resident makes the mistake of committing a serious misconduct it can take 12mths to 2yrs to remove a resident who neither the operator or the community want due to their continued aggressive, disruptive, and belligerent behaviour. The notice periods of 90days for each stage in the process is too long and the resident knows how to play the long game. A positive change would be that time periods are shortened to 30days where the community via the residents committee and the operator are joint signatures to a site cancellation notice or application to the tribunal.**

70. Are the compensation provisions working well? **Haven't experienced this process.**

71. Are there other ways that residents and operators can resolve disputes? **Not once numerous written notices, face to face meetings and finally mediation has failed, unfortunately no.**

72. Are there barriers to accessing mediation provided by Fair Trading? Should mediation continue to be provided by digital means after social distancing measures end? **Yes, however my one experience with the formal mediation process was a joke, we, being myself & the resident only, (no mediator was offered or made available) had to conduct our mediation in the public foyer of the local court. We now arrange our own mediation process with the chairman of the residents committee present either as a support person or an independent witness if the resident arranges their own support.**

73. Are the Commissioner's disciplinary powers adequate? **More than, from an operator's perspective.**

74. Are there breaches of certain provisions of the Act that are currently not offences that should be offences?

75. Are there any other offences that should be penalty notice offences?

76. Are the powers of Fair Trading investigators appropriate? **Haven't experienced this process.**

77. Would you be interested in attending a community information session via webinar? **Yes**

78. Do you have any access issues preventing you from attending a community engagement session digitally? For example, internet access, computer or smartphone access, digital literacy etc **No**

I have some further comments that are not covered in the review document.

With the ageing of residents in LLC and that they are living longer, issues concerning physical and cognitive capacity are becoming more prevalent. A number of residents for whatever reason continue to fall through Govt support cracks while they also lack any family support. In the situation where an operator becomes concerned that a resident may present a danger to themselves and or the community, operators require a process where they can rightfully alert a designated authority. Especially where the resident is known to be living in unsanitary conditions and are unable to properly care for themselves.

What happens at present is that an operator cannot take action unless the resident's behaviour is such that either the police become involved or the operator can take action for failure under the act/site agreement or community rules. When this finally occurs and eventually it always does, the resident is usually in a very distressed state, mentally, physically, and financially. They normally have little to no financial resources and their dwelling due to its state is normally worthless.

If police have been involved other Govt support agencies finally also become involved, unfortunately due to the way these agencies are mandated to operate simply frustrates the situation for the operator further. The operator in order to obtain possession of the site (that they already own) so as to avoid possible years of delays usually agree to accept the dwelling and forgive any site fees owing. Our experience is that each time this occurs the costs to us in removal, cleanup and forgone site fees usually equates to the community's total annual site fee increase for that year. This is a totally unsatisfactory outcome for us and the resident, where earlier intervention could have resulted in a far better outcomes.

I have also observed how the LLC bill and regulations have changed over the last 9 years and the impacts that these changes have on us as business owners and operators. It has been my observation (and this document is no exception) that the starting point for those that draft and promote changes to bills, acts, and regulations is from the premise that the resident requires full protection from the unscrupulous operator. Maybe this was the case in past history and in other states maybe it still is the case. I can assure you that it is no longer the case in NSW, operators of LLC in NSW are very much second-class citizens under this present bill.

Over the years I have watched the erosion of operator's rights to the point now where while we are the owners of the business and the land once we enter into a site agreement, we can lose control of the site forever. Think about that for a minute, even a 99-year lease has an expiry. How is it possible that beneficiaries can assume the same rights as a resident when the site agreement was with the resident not the beneficiaries and neither own the land, it beggar's belief.

How hard can it be to develop an outcome that allows the transfer of the value for the dwelling to the beneficiaries while returning the land/site back to its rightful owner. It's not hard, simply introduce the standard valuation and first refusal purchase clause that is in every partnership agreement. Each party (operator & executor) obtain their own valuation of the home based on its removable value. If different and valuers can't agree the appointed arbitrator decides, the operator then has first right of refusal. If refused, the executor is free to sell on the open market for removal. If a purchase offer is accepted lower than that offered to the operator, it must first be reoffered again to the operator.

The beneficiaries obtain fair value for the home, the operator has the opportunity to take back possession of the site. This would avoid what happens at present where the operator is left to deal with a number of unknown beneficiaries who have no knowledge of how LLC function. They mostly become very upset when an

operator advises them that based on their assessment of the home's value, they haven't won lotto but what they have inherited is the responsibility of maintaining the home and grounds while continuing to pay the weekly site fees until it sells. Believe me, that information goes down a real treat and normally sets the scene for an ongoing difficult relationship. In most cases the family either, can't agree, don't have the financial resources, or both. In our situation we end up maintaining the site and accruing the site fees until the home has been sold. **Thanks for the hospital pass.**

Can I also remind decisions makers that it is the owners of LLC that provide the capital and take the business risk that provides residents the opportunity to purchase affordable homes.

This fact seems to get forgotten when decisions are being made as to the rights of residents as against operators. It seems to me that decisions makers are pushing for residents to have the same safety of entitlement as title holders but without the additional purchase cost that accompanies this.

Things have moved on, LLC community's in NSW are mostly owned and operated by large corporates or grouped within large family operations, (ours is an exception as will have already been noted from this presentation). This makes for a very professional industry where directors of the companies both public and private are very conscious of their responsibilities under the various regulatory authorities that have oversight of their businesses, this bill being one of them.

Therefore, I ask you the creators and decisions makers to also move on by acknowledging the positive changes that have occurred within the industry for this review and leave the fixed positions of the past behind. A saying comes to mind **"don't kill the goose that lays the golden egg"**.

By way of background

We have owned and operated our park since 2012, during this time we have developed an excellent working relationship with our residents and the residents committee. It was not always this way, when we took over the relationship between the residents and the previous owner was one of open hostility. It has taken a number of years to undo the damage caused.

However, the residents in our community are now happy, friendly and respectful of each other and of management. We treat all our residents with respect, we listen to their concerns and take action when required and where appropriate. During this time, we have successfully negotiated rent increases eight times with our residents.

We have twice been involved with the tribunal, once regarding a resident for serious misconduct against other residents. The second involved an abandoned dwelling. Over the years we have invested millions into park infrastructure improvements and new community buildings.

These improvements have increased the value of our residents' dwellings by tens of thousands. Our community is now sort after by new entrants and dwellings for sale sell out quickly and at high prices. This competition has also resulted in the lifting of standards within the community which has a compounding effect I have highlighted the above sentence because I think this is often an overlooked factor by residents' organisations and decision makers. Yet it is the single biggest driver to value and quality of life for residents in LLC.

Kind Regards

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Date: 10th March

Attention:

By way of an addendum to my response to question 30 and “my further comments” regarding a beneficiaries right to the continuation of ownership beyond the death of the resident in the statutory review discussion paper.

The right for a resident to replace a dwelling raises the following issues,

The type and age of the dwelling to be installed.

Building compliance regulations in general and additional for our community regarding bushfire and flood.

Site coverage, height, separation distances, installation compliance, with the caravan & camping regs 2005.

Local body regulations regarding disposal of the old dwelling, connections to services, and development contribution levies.

Disruption to the park’s operations, Connection to the park’s services, restoration of the site’s infrastructure.

Removal and install health & safety compliance management for all site works, in particular, neighboring and other community residents, the operator’s assets & infrastructure, public liability insurance.

The above list is thwart with possible contentious issues that an operator is forced to go through with a resident who is wanting to replace their existing dwelling. I can guarantee this would end up every time with the tribunal being involved. The issues are far to complex to expect a resident to ever understand them. The resident would see it as the operator being unreasonable and simply trying to block their proposal.

The right for a resident to replace their dwelling needs to be removed from this clause.

One of the biggest failings with the existing bill is that an operator has too few opportunities in which modernise and renew their community. An operator requires a method whereby they can regular (at least once in a residents lifetime) take back possession of their sites. Community rejuvenation is vital to ensure the continuation of a healthy, safe, environmentally sustainable and vibrant community. It allows operators to modernise the dwellings, so they comply with new building regs and safety codes. It also allows the operator to modernise the services to the site and site infrastructure.

I cannot emphasize enough the importance of an operator’s ability to rejuvenate their communities by being able to remove and replace the old, ugly, noncompliant vans & annexes

in their communities. Without a method for replacement therefore rejuvenation of LLC communities I hold fears as to their sustainability and therefore the future of LLC.

For example

We only allow the installation of manufactured homes in our community; these replace the old caravan & annex that occupied the site previously. It means that the new homes comply with the new building codes, energy efficiency regulations including the appliances and new local body regulations for fire & flood. It allows us to replace with new, carports, driveways footpaths, and connections to the park's services-water & sewer. However, the opportunities to do this are few and far between and therefore the progress of community modernisation progresses very slowly. At a minimum to speed up this process we require the right to take back a site upon the death of resident under the conditions I have previously outlined and not have the site able to be transferred in-situ to the resident's beneficiaries.

Kind Regards

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