Statutory Review of the Residential (Land Lease) Communities Act 2013
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12 March 2021

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Dear [redacted]

Submission on Statutory Review of Residential (Land Lease) Communities Act 2013 Discussion Paper, December 2020

Introduction | About Hometown Australia

Hometown Australia is proud to build on the experience Hometown America has earned over more than two decades as one of the largest and most respected operators of land lease communities in the USA.

With almost 300 employees, Hometown Australia is home to approximately 11,000 home owners in 52 communities, 33 of which are located in NSW.

We are members of the *Land Lease Living Industry Association* and as the peak industry body in NSW, we have worked very closely to inform them our perspectives and recommendations in light of this very important review of the *Residential (Land Lease) Communities Act 2013* (the Act).

We fully support the industry association's submission and provide the following supplement.

Chapter 1 – Objectives of the Act

Objects

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.

The objects of the Act are still relevant however, they need to be updated to better acknowledge the shift in the industry from providers of solely low-cost and affordable housing to providers of high end housing for persons with an active lifestyle. It must be acknowledged that there are varying wealth levels of home owners who usually hold significant value in their home. This provides the home owner an array of choice in accommodation types and locations. More focus should be on the viability and growth of these communities together with better flexibility to accommodate a more robust operator and home owner relationship.

Chapter 2 – Informed choices for prospective home owners

Marketing and information disclosure

4. Is the ban on inducing a person to enter into an agreement through false, misleading or deceptive statements or promises working effectively?

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? Why/why not?
6. Is the form of the disclosure statement easy for prospective home owners to understand?
7. Is the disclosure statement provided at the right time? 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?
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?

While it has been important to address issues of misleading or deceptive statements within this Act, consumers have always been protected by similar principles established under s 18 of the Australian Consumer Law. We support the inclusion of s 25 of the Act highlighting to operators that they must not engage in this type of conduct.

The disclosure statement as approved by the Commissioner provides an appropriate level of information to assist prospective home owners to make an informed decision about the operator and the community itself. The disclosure statement in its current form deals with a wide range of relevant information about the operator and the community but there is limited focus on the responsibilities of home owners in residential communities despite the reference to it in s 22(3)(b) of the Act. Expectations of home owner's behaviour, their obligations to maintain their home and pay to site fees within a timely manner are important items to highlight to prospective home owners to help them understand whether they are a good fit for this type of communal living arrangement.

The requirement not to enter into a site agreement within 14 days of receiving a disclosure statement has created problems for both the home owner and the operator. The reality is home owners often sell their existing home quickly and the 14 day disclosure period may leave the purchaser without accommodation since the operator cannot allow them to take up occupation of their new home until that disclosure period has ended. And further, the existing home owner will be required to pay 14 days of site fees even though they may have already left the community.

There is an understanding throughout the industry that the 14 day disclosure period is there to protect home owners from making an impulse decision to purchase a dwelling without enough consideration of their legal responsibilities. Our view is the ability for a home owner to waive the 14-day disclosure period in certain circumstances will facilitate a more agile transition into the residential community. In Queensland, a waiver of the disclosure period is permitted. This has served many home owners in Queensland well however, our view is that NSW should go even further to reduce the disclosure period to 3 days. This is appropriate given the Act already provides an additional 14-day cooling-off period once the site agreement has been entered into.

With regard to penalty provisions, if the Commissioner has not prosecuted any operator for failing to provide a disclosure statement before entering into the site agreement then it would be unjustifiable to increase the penalty. Additionally, if there are no repeat offenders of this provision it is clear that the current penalty provides a sufficient general deterrent.

Site agreements

10. Are you aware of home owners not being provided with the correct written site agreement?
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?

Undoubtedly, there have been historical issues with past operators not providing the correct written site agreement to home owners, providing a site agreement that is not in the prescribed form or simply incomplete. However, since the introduction of the Land Lease Living Industry standard site agreement which incorporates the requirements of the Act for operators who are members that association this issue has largely been extinguished.

The prescribed standard form site agreement follows the provisions of the Act closely and works well in its current form. The ability of operators to include additional terms allows for community specific rights and responsibilities to be outlined and agreed. Our view is that the prohibited terms are appropriate, and we do not see the need to have any of those removed from the list. Further, s 28 of the Act is clear that additional terms cannot contravene or be inconsistent with the Act or any other law and there is an appropriate mechanism for the parties to seek resolution of a dispute of an additional term in the Tribunal.

Community registration and the Public Register

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?

The communities register is not as easily accessible or quickly located on the NSW Fair Trading website. However, the register does have appropriate contact information of each residential community registered in NSW and serves as an appropriate place to check whether the operator has updated those details with the regulator. We do not consider it necessary that the public register be presented differently other than to make it more accessible to the general public.

Chapter 3 – Site fees

Fixed and By Notice

16. Should the Act continue to allow for both the fixed method and the notice method of site fee increases? 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?

Our recommendation is that the fixed method and by notice method of increasing site fees should remain. This gives flexibility to both home owner and operator because if a home owner's financial situation changes or an operator suddenly has a major increase in its operating costs, they are not locked in to a rigid increase methodology. While we have used both in the past, our preference is the fixed method because it gives the operator certainty to be able to make sound business decisions based on current and future revenue. It similarly will give home owners certainty to know what they will pay in the future. Our experience has been that home owners usually prefer the fixed method too.

We support the rights of home owners and operators to freely negotiate the terms of their site agreement, including any increase method. In many of our communities we discuss the increase method at the beginning of a site agreement and then with home owners periodically. We do not support restrictions on the length of time a fixed method can apply. In some cases, home owners have approached us to lock themselves into site agreements on a fixed method for up to 10 years because certainty is so important to them.

In addition to this, we prefer the fixed method increase because a by notice increase usually results in a very time-consuming process that becomes a resource burden on our business. With that said, a by notice increase is very useful in circumstances where the operator has unjustly been lumped with a larger than normal increase in its outgoings or operating expenses like statutory charges. The other benefit of a by notice increase is that it gives the parties within a community an opportunity to renegotiate the site fees so that they are commensurate with any increased amenity that has been provided to a home owner.

As discussed above, home owners are given a wide range of information in the disclosure statement including the current range of site fees within the community and the site fee that was payable by the outgoing home owner. The reality is that home owners have considerable information to make sound decisions and the disclosure statement should encourage home owners to also seek financial and legal advice about the site agreement.

Our practice has always been to enter into simple fixed method site agreements where feasible. We support transparent and determinable calculations in the fixed method however, the fixed method should not be limited to the consumer price index ("CPI"), a specified dollar amount, or a percentage.

The CPI has long been the benchmark referred to in by notice site agreements. The CPI is a factor that the Tribunal will consider in determining whether a by notice site fee increase is excessive however, it is simply not reflective of the increases in the outgoings and operating costs of a business. We recommend that references to CPI be removed from the standard form site agreement as well as the factors to be considered by the Tribunal under s 74.

Hometown Australia currently enters into fixed method site agreements on the basis that the site fee increases once every 12 months, however, we do not support the embedding of this restriction into the Act.

There have been suggestions by home owner advocates that a prospective home owner should be presented with a choice of either a fixed method increase or a by notice increase at the beginning of the site agreement. We do not support this suggestion because it will create a further disparity of site fees amongst home owners in the community. This is already an issue at some communities where some home owners have entered into the community at different times and on different methods resulting in an unnecessarily large gap.

We respect the rights of parties to freely enter into contractual terms and be held to the terms that they have agreed to. The fixed method increase should not be subject to challenge unless there is a dispute that it does not meet the requirements of s 66 of the Act. For clarity, the fixed method site fee increase that was agreed between the parties should not be the subject of an application to the Tribunal for an assessment of whether that increase is excessive. In any event, our view is that if a home owner has agreed to an increase methodology, the increase resulting from that methodology could not appropriately be characterised as excessive. Operators make calculated and long-term business decisions based on this revenue and it would be inequitable to allow challenge to something that is calculable at the commencement of the agreement.

If the Act is amended to allow challenges to site fee increases by fixed method, we advocate that a third market rent review methodology be introduced. The market rent review method is one that is regularly used in Queensland to increase site fees based on an independent expert valuation. This has worked well in Queensland since it allows the operator to return the site fees to market and it is an unbiased review of the site fees in the community.

Challenging site fee increases by notice | Site fees under new agreements

20. Is the process for resolving disputes over site fee increases by notice working effectively?
21. Should there be changes to the grounds for challenging site fee increases by notice?
22. Should the factors the Tribunal may have regard to when determining site fee disputes be expanded or changed? What changes would you suggest?
23. Are the provisions governing site fees for new agreements fair and effective?

The process of resolving disputes over site fee increases by notice takes far too long to complete. The process can take anywhere between 6 to 12 months depending on the workload of the Fair Trading mediation service and then the workload of the Tribunal.

Compulsory mediation can be a useful tool for the parties to achieve agreement however, it is sometimes a difficult exercise if the home owners' appointed representative is not prepared or has not sought appropriate instructions from the home owners they represent.

We recommend that the process of applying for mediation be amended so that home owners must provide the operator and the mediator with the detail of who is objecting to the increase so that an assessment of whether the 25% requirement has been met. There are many cases of home owners not obtaining the required 25% and the mediation service accepts the application without any scrutiny. In one case, the operator was forced to negotiate with two lots of appointed representatives due to the mediation service not appropriately vetting applications to ensure the 25% had been obtained. The mediation process should be clarified so that operators are not left in a position where they are compelled to waste resources for no real beneficial outcome to either party.

We have seen that in many cases, where only 25% of home owners have objected to site fee increases by notice, the appointed representative ends up making a decision that affects 100% of home owners. We recommend that the threshold be increased to 75% so that home owners are protected and informed of what is going to happen on their behalf.

There has been a heavy focus of the Tribunal and home owners on the operator's increase in outgoings and operating expenses without the appropriate weight being given to the other factors that need to be considered in s 74 of the Act. We recommend that s 74(3) be amended to remove the broad discretion afforded to the Tribunal so that it does not result in the current position that Tribunal Members find increases are excessive on the basis that outgoings and operating expenses have not increased significantly. While operating expenses may not have increased, the operator in many cases will make significant improvements to the amenity of the community and the Tribunal must take this into account when making their determination.

Another item of unnecessary focus are expenses that home owners say are "capital". The Act currently makes no reference to capital expenditure and our view is that position should remain. The reality is that if an operator is spending money on the community for the benefit of its home owners who also receive the full benefit of their own capital gain when they sell their home, then these are very relevant factors that the Tribunal must consider when determining whether a site fee increase is excessive. Additionally, this type of expenditure is required for the continued growth and sustainability of the community, it must be considered by the Tribunal.

We consider the provisions governing site fees for new agreements to be fair and effective. They are currently balanced as they do not provide the operator with an unfettered right to increase the site fee but allows an operator to reset site fees that have remained significantly below what the market is willing to pay. There is evidence that despite the fair market value provision homes are selling and there is little evidence that any existing home owners are making a capital loss as a result.

Voluntary sharing arrangements

24. Have you entered into an agreement with an operator/home owner that included a voluntary sharing arrangement?
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?

Hometown Australia have not entered into a voluntary sharing arrangement to date. Our view is that these types of arrangements are very similar to what happens in the retirement village industry with the inclusion of quasi deferred management fees ("DMF") or exorbitant exit fees. We believe the simple "rent" model that the land lease sector has been using to date to be the most effective because it has provided clarity and simplicity for our customers. Our understanding is that there has been limited take up of these types of arrangements across the land lease industry with the purpose of distinguishing itself from the complicated and negatively received DMF model.

Chapter 4 - Living in a land lease community

Quiet enjoyment by a home owner

27. Should there be neighbour to neighbour obligations that are able to be enforced by other home owners? Why or why not?

The level of responsibility that is placed on operators to police quarrels and disputes between neighbours is a severely onerous and one that does not present in any other form of living arrangement.

By virtue of s 38 of the Act, home owners have historically treated the operator as someone who must get involved with every single disagreement between and amongst home owners. The reality of the situation is that the operator has limited power under the Act to stop certain home owners interfering with the quiet enjoyment of their counterparts. The operator is forced to get involved with the types of disputes that would normally be resolved at community justice centre mediation or the NSW Police.

Our recommendation is that the legislation be amended to facilitate, in the first instance, mandatory mediation of the parties in conflict independent of the operator and in the second instance, the ability of the Tribunal on application of a home owner to make orders resolving disputes between home owners. Additionally, we would support the introduction of penalty provisions to incentivise compliance with behavioural obligations of home owners under the Act.

Repairs to and maintenance of the residential site

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?

Of course, there is merit in the Act providing more clarity about the ongoing obligations of home owners and operators. The Act is presently clear that an operator's obligation is only to ensure a residential site is in a reasonable condition, and fit for habitation, at the commencement of a site agreement. Any amendment to that obligation or insertion of a new obligation would have to consider the cause of any damage to the residential site, the type of structures including the dwelling and footings that have been installed on the site and whether the home owner has appropriately maintained those structures over time. Further consideration must be had to broadening the operator's right to access the site, the potential shift from reactive repair to proactive maintenance and the additional burden that will have on the parties.

We consider that additional terms of the *Land Lease Living Industry Association* agreement to appropriately deal with this issue and recommend that these provisions be adopted in the standard form prescribed by the Act.

Repairs to and maintenance of the home

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?
30. Should there be any changes to the provisions about repairs and maintenance of the home, and alterations, additions and replacement of the home?

Section 36(g) of the Act outlines a home owner's responsibility to maintain the home located on a residential site in a reasonable state of cleanliness and repair so that it is fit to live in and to keep the residential site tidy and free of rubbish. The responsibility is clear however, the Act does not provide a practical mechanism for the Tribunal to deal with dilapidation. Section 43 of the Act has become largely redundant with the insertion of the word "significantly". The legislation should be amended to return to the commonly understood concept of dilapidation. The additional imposition that the operator prove "significant" dilapidation limits their ability to ensure safety or a relative standard of the home.

The additional terms of the standard Land Lease Living Industry Association's site agreement clear up ownership of hardscape and landscape, including concrete slabs and driveways as being property of the home owner. Our view is that as they are owned and controlled by the home owner, they should have the responsibility of maintaining them.

The reality is that if a home is being replaced on a site, the concrete slab, driveway, and other hardscape is often reconfigured by the home owner. For this reason, these items could only be properly characterised as the home owner's responsibility to maintain. Additionally, operators would need far more control over these items if they were required to maintain them.

Upgrades and special levies

31. Are the special levy provisions useful or are upgrades usually funded by site fee increases?

Hometown Australia have not yet used the special levy provisions to fund projects within the community. We do not consider it appropriate to have home owners fully fund large projects for new or upgrades of amenities however, the suggestion that upgrades are funded by site fee increases is a misnomer.

Operators will generally consult with residents committees and home owners directly about the type of services and facilities they want in their communities. From there, the operator will develop a business case to fund the project. For most large infrastructure projects, the site fee increase sought by an operator will not cover anywhere near the cost to an operator.

Operators of land lease communities are not obligated to provide any additional services or facilities to home owners and must take into consideration factors like the ongoing maintenance of a new facility as well as the ancillary costs of that project before agreeing to the undertaking.

Operator conduct and education

32. Are the rules of conduct adequate and are they having the intended effect of ensuring appropriate conduct by operators?
33. Should the content of the rules be expanded to cover other issues?
34. Are the operator education requirements effective?
35. Can you suggest other educational resources or topics to facilitate a greater understanding of the role and responsibilities under the Act?
36. What delivery methods could be used to improve mandatory education?

The operator education requirement is currently that any new operator must read the content provided via the NSW Fair Trading website about land lease communities and sign a declaration that you have done so. Obviously, this falls short of appropriate education requirements and more should be done to promote the education of not only operators but home owners about this growing industry.

Hometown Australia works closely with the *Land Lease Living Industry Association of NSW* who provide very good resources that supplement the information provided by NSW Fair Trading.

We suggest that NSW Fair Trading consult with the industry's peak body about developing its education resources.

We find that online webinars and face-to-face seminars are a valuable method for the Regulator to engage operators and their employees in mandatory education.

Community rules

37. Before reading this discussion paper, were you aware of the option of communities having community rules?
38. Does your community have community rules?
39. Does your community have a community rule regarding age restrictions? If so, does this impact your community?
40. Where residents committees are in place, should they be involved in the development of community rules? Why or why not?
41. If there is no residents committee in place, how could residents contribute to the development of community rules?
42. Is the system of enforcement of community rules appropriate?
43. Are community rules being used to improve life in residential communities?

Community rules have been an important tool to assist operators with control and management of residential communities.

Most of our NSW communities have an age restriction within their community rules and our experience has been that most home owners choose to reside in our communities because they are age restricted.

The Act currently provides that the operator must consult with a community's residents committee before it makes amendments to the community rules. While this can sometimes be an onerous and drawn-out task, we consider it important to seek the views of our home owners before making amendments. We support a requirement that like site fee increase objections, a 25% threshold should be met before a community rule can be contested. This will assist the democratisation of the community rules amendment process.

The system of enforcement of community rules requires the operator to issue a notice to remedy a breach before making an application to the Tribunal for orders. It is currently far too time consuming to make an application to the Tribunal about breaches of community rules and the power of the Tribunal to make orders which can be enforced is very limited. Further, there is a general reluctance of Tribunal members to make orders which may lead to the termination of a site agreement despite there being genuine cause for the ending of a site agreement.

Our recommendation is that the Tribunal's power to enforce community rules be improved with focus on the consequences if a home owner refuses to comply with orders.

Resident Committees

44. Should residents committees also be required to take part in mandatory education? If yes, what topics should be covered?
45. If your community has a residents committee, is it working effectively?
46. Do you have any suggestions for changes to the way residents committees are established or run?

Residents committees can be very constructive and useful if they are managed effectively and efficiently. However, given committees are run by volunteer home owners with limited resources and knowledge of operational aspects of land lease communities they can often create more problems for residents than they solve.

Home owners seem to have an inconsistent understanding of the appropriate role and function of a residents committee. In many cases this has led to division and animosity between different groups of home owners within the same community. When this occurs, the residents committee turn to the operator to intervene and unfortunately, the Act limits its involvement in these types of disputes.

Mandatory education and online resources about how to properly conduct residents committee meetings, the responsibilities of a residents committee to advocate for all home owners and respectful communication are topics that would be beneficial.

We find that most of our residents committees work well and have a constructive relationship not only with home owners but with us as the operator.

However, we do hear frequent complaints from home owners within our communities that the establishment of a residents committee has not been performed properly and in compliance with the Act.

We suggest that the legislation should provide a mandatory framework and constitution both for the establishment and running of a resident committee.

There are also complaints made to us that information provided to the residents committee is not always shared with the rest of the home owners or that the information is not provided in its entirety. We recommend the insertion of an obligation that the residents committee must report all matters

being discussed with the operator to all home owners within a reasonable time frame. This will assist in reducing some of the infighting and behavioural issues that are being experienced.

Chapter 5 – Utilities

Utility charging in a land lease community

47. What are your overall views on utilities charging provisions under the Act, other than electricity charging in embedded networks, which is discussed below?
48. How well do the current provisions relating to accounts, access to bills and other documents work?

There is currently a $50 maximum charge per calendar year placed on water and sewerage availability combined even though the operator is charged significantly more by the water supply authority. This restriction should be removed from the Act.

Section 76 of the Act places a limit on the types of fees and charges that may be levied to a home owner. While we understand that the policy consideration simplifies how home owners are charged, the limit removes all flexibility the operator has to customise facilities and services on a pay by use basis. For example, it is the home owner's responsibility to maintain the lawns on their site. Some home owners will contract a local mowing service however, the operation of s 76 limits the ability of the operator to provide this service at a competitive rate.

Our recommendation is that the Act make provisions for these types of issues to be dealt with in the additional terms of the site agreement.

Electricity charging in communities with embedded electricity networks

49. What are your views on the operation of section 77(3) as it applies to an embedded electricity network in a community?
50. Which reform option for electricity charging do you support and why?
51. Are there other reform options which you think should be considered?
52. What is your view on the impacts these options would have on electricity bills in your community?
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?

The poor drafting of section 73 of the Act has created a multitude of obvious problems for operators and home owners.

Having regard to the options set out in the Discussion Paper we support option 3 to remove provisions that govern what can be charged for electricity from the Act and allow national rules to apply. This makes the most sense given there are no justifiable arguments that operators of land lease communities should have such a restrictive and burdensome framework that does not exist for any other operator of an embedded network in Australia.

The Australian Energy Regulator's Exempt Seller Guidelines already provides detailed and practical consumer protections to home owners and operators have always been required to adhere to these.

For clarity, we only support option 3 if it does not restrict, limit or prevent a third-party provider supplying electricity directly to the home owner.

Amperage

55. Are the current discounts in the Regulation appropriate?
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?

We don't consider the discounting regime appropriate and under the current state of s 77(3) it is rendered largely redundant.

Depending on the age of a community usually dictates the standard of amperage supply. In many cases, it is cost prohibitive to upgrade electrical infrastructure that has remained in place for a very long time.

Sustainability Infrastructure

57. What difficulties are operators facing in managing solar systems in communities?
58. Are there other forms of sustainability infrastructure that are becoming common in communities?
59. What are the greatest barriers to home owners installing solar panels?
60. How can sustainability infrastructure be made more available in land lease communities?

Introduction of solar into an already heavily loaded embedded network is a potential risk that has been identified. We welcome provisions that will assist the operator to install its own sustainability infrastructure however, with the current electricity charging regime there is great difficulty with achieving this.

Greenfield developed communities are utilising solar generation and that infrastructure is working well in that environment. Regard should be had to the difficulty of retro fitting newer technology with older infrastructure.

Chapter 6 – The end of the agreement

Interference in a sale

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

We are of the view that the provisions about interference are clearly expressed and largely adhered to by operators.

Selling Agents

62. Is the Act's control over operators who act as selling agents appropriate?
63. Should operators continue to be able to act as selling agents?
64. Do you have any other suggested changes to the provisions about the sale of homes?

We consider the provisions relating to operators as selling agents to be appropriate.

Assignment (transfer) of site agreements and tenancy agreements

65. Should the Act be amended to also prevent an operator unreasonably refusing consent to assignment of a site agreement? Why or why not?
66. Are the provisions relating to the assignment of tenancy agreements working well in practice?

Regarding assignment of site agreements, some of these site agreements have outdated and unfavourable terms. In some cases, they reference legislation that is more than 20 years old. Our preference has always been to refresh terms by entering into a new site agreement in-line with the current Act. Despite the removal of assignment from the Act, home owners are not presenting any evidence of significant capital loss. Our view is that on this point, the Act is balanced in its approach to the objective of protecting consumers but also encouraging the continued growth and viability of residential communities in the State.

If the reasonability test to assignment was to be reinstated under the Act, further provisions should also be added that the operator can amend the site fee and increase method similarly to what is done in other states like Queensland. This makes sense and is the accepted practice.

Sub-leasing by home owners

67. Are the provisions about sub-leasing by home owners working well?

These provisions are working well. They provide the right balance that a home owner may sub-let on necessity but limit the home from being treated as an investment class asset.

Terminating a site agreement

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?
70. Are the compensation provisions working well?

Our experience of the termination process is that it is difficult for the operator to end an agreement even where there are genuine breaches of the Act. Tribunal Members are reluctant to terminate site agreements even when there are serious or significant breaches of the Act. In many cases, the operator must make multiple applications to the Tribunal before the appropriate orders are made.

Given the level of difficulty to terminate a site agreement we recommend that the notice periods be reduced to 60 days under s 122 so that the matter can proceed through to the Tribunal more quickly. There is usually an additional 4-6 weeks before a Tribunal member makes a determination of an application, which is sufficient time for a home owner to remedy their breach and avoid termination.

Chapter 7 – Resolving disputes

Mediation

71. Are there other ways that residents and operators can resolve disputes?
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?

We support alternate dispute resolution processes and would much prefer the use of these as a mandatory first step before an application to the Tribunal can be made. We assume that there is little take up of the Fair Trading mediation service because home owners and operators are not aware that it can be used for more than just disputes about site fees.

We have had success with mediation by digital means and are supportive of that continuing if it assists the resourcing limitations of Fair Trading.

Chapter 8 – Administration and enforcement

Powers of Fair Trading Investigators

73. Are the Commissioner's disciplinary powers adequate?
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?

The Commissioner's disciplinary powers and the powers of Fair Trading investigators are adequate in relation to operator conduct. However, we support those powers to be expanded to reprimand home owner conduct that results in harassment and intimidation of their fellow home owners as well as the operator's employees and agents.

Community Engagement

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

As stated above, we welcome engagement for education of the industry and would happily have staff attend online webinars and face to face seminars around the State.

Conclusion

For the most part, we believe that the policy objectives of the Act remain valid and the terms of the Act remain appropriate for securing those objectives. We look forward to seeing the outcome and positive steps towards improving the legal framework that supports our industry.

We welcome the opportunity to further consult with the Department of Customer Service on any aspect of this submission.

Yours sincerely,

Stuart Strong
Joint Managing Director