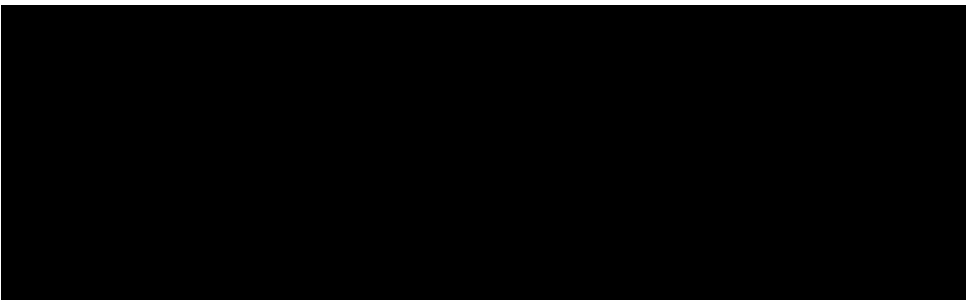


STATUTORY REVIEW OF THE RESIDENTIAL (LAND LEASE) COMMUNITIES ACT 2013

Submission by Bob Morris on behalf of the Kincumber Nautical Village Residents Committee

Contact Details:-



FIXED METHOD INCREASES

The current legislation seems to be quite clear on the intent of how a Fixed Method increase should be applied. Four options are provided which include CPI, a dollar amount, a percentage or a percentage of the increase in the Aged Pension. A fifth option of "other" with the word specify, is provided to give an alternative if an Operator does not want to choose one of the four available options. Operators are directed to select **ONE** only, which is written in capital letters.

The legislation clearly uses the word "or" to show a selection needs to be made.

The Land Lease Living Association which is NSW Peak Industry Body representing Holiday and Residential Parks and Manufactured Home Estates produces a publication entitled "Land Lease Living". Their current advice to potential purchasers about a Fixed Method Increase is:

"There is an up-front agreement about how and when the site fees will increase. A Fixed Method may take a number of different forms. For example, increases in site fees could be linked to the Consumer Price Index (CPI) or a percentage of the aged pension or a set dollar amount (or example \$5 per year) or a set percentage (for example 2% per year). Home owners must be given at least 14 days notice before an increase takes effect. Under the Land Lease Residential Communities Act 2013 Fixed Method increases cannot be challenged except as an unfair term under the Australian Consumer Law.

Clearly the expectation of this advice is that **ONE** method only is selected. This is consistent with the meaning of the word **"OR"** which indicates mutually exclusive options.

On Page 12 of the discussion paper of the Statutory Review the following words are written in reference to the Fixed Method.

"The Standard Form Agreement allows an Operator to choose from a selection of Fixed Method Increases".

In January 2018 I purchased a home in Kincumber Nautical Village. A temporary reduction in site fees was offered which is explained later. In November 2018 I was given notice of an increase of \$15 per week in my site fees. When I looked at the detail the method for calculating this increase was as follows:-

"CPI plus 3.75% plus a proportional share of all increases of costs incurred by the Operator in the previous 12 months". I immediately sought a meeting with Management as it was my belief that this method did not comply with Section 65 (2) of the current Act. In March 2019, I met with [REDACTED] the owner of our village to discuss the issue. After 8 months of negotiation he refused to change his method of increase.

In October 2019 I commenced proceeding on behalf of 51 other residents to challenge the legality of this method with NCAT. The Hearing was conducted by Senior Member Ross and on the 3rd September 2020 she handed down her decision. She found the method offended the Act and ordered the Operator to cease using this method and to abide by Section 66 (2) and apply the lowest of the three methods in the contract.

This decision has been appealed by [REDACTED] and the date for that appeal is 25th March 2021.

The NCAT decision has been supported in Parliament by both the local member for Terrigal, Adam Crouch and the member for Gosford, Liesl Tesch. [REDACTED] attempted to have the appeal heard in the

Supreme Court and has indicated that an unfavourable decision will be appealed in a jurisdiction that will be prohibitive for the Pensioners I represent to manage costs involved.

This could mean a final decision on the non compliance of his method will not be determined for months or even years to come.

This is why it is essential for an amendment to the Act to clarify the original intent. The use of multiple Fixed Methods using the word “other” is becoming more widespread and there is an urgency to rectify this situation, which produced site fee increases in excess of \$18 per week in 2018 in Kincumber Nautical Village to the great detriment of the Pensioners who reside here.

It should be noted that the \$36 per fortnight increase in 2018 represented 200% of the Pension increase for that year. The same result would have been achieved by the Operator selecting the percentage increase of the Aged Pension Fixed Method and inserting 200%. That is clearly not what was intended by those drafting the Legislation.

Many potential buyers in established communities have experienced some upheaval in their lives, such as marital separation. Funds are limited and the attraction of no stamp duty and no legal fees is welcomed. When presented with numerous pages of a Contract, they do not seek legal advice but rely on the honesty and integrity of the Operator. Often too late, they discover the fine print.

Original Contracts should not be for the duration of the Lease, as is currently available. They should be limited to a maximum of 2 years, at which time residents will be in a position to understand the Contract and be able to negotiate moving forward.

Unlike the Notice Method, there is no mechanism for a resident on the Fixed Method to challenge excessive increases in site fees. There should be an avenue for such a challenge to be made, especially if an increase is more than 50% of the increase in the Aged Pension in any given year.

ASSIGNMENT OF LEASE AND SECTION 109

These 2 issues are inextricably linked. The amendment that was accepted in relation to the Assignment of leases used the word “tenancy” rather than “site” agreement. The intent was obviously for leases to be transferred. In its interim report of December 2012, the Fair Trading Advisory Council made the following recommendation:-

“Recommendation 9: that a resident selling a relocatable home be required to provide a Disclosure Statement to a prospective resident, that includes provisions whereby, in the event that there is a transfer of a relocatable home together with the benefits of an existing lease, that a new lease be required which should replace the existing lease and include no worse conditions than those in the existing lease”.

My experience highlights the total abuse of this principle in the absence of the ability to an assigned lease. I purchased my home in January 2018. At the time of purchase the site fee for the previous owner was \$203.71 per week. I was informed my new site fee would be \$227.00 per week. When I questioned this, I was told “that’s what happens for new residents”. I was offered a temporary reduction to \$220.00 per week which would then revert back to \$227.00. per week on the 30th November 2018. In actual fact on the 30th November 2018 the new site fee became \$242.00 per week. From January 2018 to November 2018 the increase was \$38.29 per week or 18.8%. Clearly this is outrageous. It occurred because the Operator abused Section 109 which allows for “Fair Market Value”. The calculation has been made on the basis of more than

3 years of applying a Fixed Method increase which has been found to have been illegal and has artificially raised the Fair Market Value.

Section 109 allows for sites of similar size and location to pay the same site fees. This has been blatantly disregarded. A resident in this village has a site of a mere 92 square metres who is now paying more than a neighbour with a site size of 150 square metres. The 92 square metre site is less than the 130 square metre minimum size as required by the regulations covering manufactured housing estates.

The unscrupulous abuse of Section 109 by greedy operators needs to be addressed and amended to prevent these outrageous outcomes. The Assignment of leases which reflect the intent of the Act and offer protection to vulnerable residents would go a long way to addressing this issue.

SITE RESPONSIBILITY

A huge issue in this village is that of retaining walls and site maintenance. Our contract states that retaining walls are the property and responsibility of the resident. Section 24 of the 1998 Act required Operators to repair and maintain the residential site. This was omitted in the 2013 Act to the great benefit of Operators. It is clearly a responsibility of an operator to maintain the security of a site. In regards to retaining walls, there should be 2 criteria to be examined. If the retaining wall is structural, then it is clearly the responsibility of the Operator. However, an ornamental retaining wall used for example as a garden would rightly be the responsibility of the resident.

In this village which is partly on a slope, there are aquifers which are causing dangerous erosion to some sites. Again this should be the responsibility of the Operator as residents own their home but lease their site. The Act needs to clarify this issue.

MULTIPLE METHODS OF SITE INCREASES

Currently in this village there are 3 methods of site fee increase being used. This causes enormous confusion and results in different rates of increases being applied. This would seem to be a logical argument for 1 method to be used and understood by all residents. It would be fair and equitable for all increases to be consistent.

PENSIONER REBATES

The vast majority of residents in Land Lease Communities are pensioners. Gas and electricity rebates are available by either direct negotiation with retail providers or through Services NSW in the case of embedded electricity provision or gas bottles of at least 45kg.

In the Sydney and Hunter water board districts it seems as though eligible pensioners can claim the rebate. On the Central Coast of NSW water is provided by the Council and because of their regulations this rebate is not available to home owners. This seems inequitable. A solution would be for a similar method as is applied to embedded electricity and bottled gas where the rebate could be claimed from Services NSW. This is of course a cost to the Government but the present predicament of Central Coast Council is such that there is no possibility of them funding such a rebate for many years to come.

CONCLUSION

It is widely acknowledged that the 2013 RLLC Act heavily favoured the Operators. This review provides a welcome opportunity to clarify the many issues raised and to restore the balance between the rights of the residents and the opportunity for Operators to maintain a successful business, while always keeping in mind that the vast majority of residents in well established villages need the support offered to welfare recipients requiring affordable housing.