



Australia's property industry

Property Council of Australia

ABN 13 00847 4422

Level 1, 11 Barrack Street
Sydney NSW 2000

T. +61 2 9033 1900

E. nsw@propertycouncil.com.au

propertycouncil.com.au

[@propertycouncil](https://twitter.com/propertycouncil)

Creating for Generations

12 March 2021

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

Policy and Strategy Division

Department of Customer Service

4 Parramatta Square

12 Darcy St

PARRAMATTA NSW 2150

Review of laws for residential land lease communities-reviewing the Residential (Land Lease) Communities Act 2013.

The Property Council of Australia welcomes the release of the NSW Government's public consultation on the statutory review of the Statutory Review of the Residential (Land Lease) Communities Act 2013.

We commend the NSW Government for bringing the laws governing land lease communities into the 21st century and creating a modern framework.

The Statutory Review

This statutory review of the Act governing the operation of land leases seeks to examine the efficacy of the Act in achieving its key targets as set out in the 'objects' of the Act.

The question we have asked industry is how has industry, and consumer tastes and preferences changed since the last the last review? What measures need to be improved or clarified to give greater confidence to investors and consumers alike?

The key themes from our members include the need to strike the right balance between the rights and obligations of residents and operators; and support for the continued investment into the sector and increasing supply of this alternative housing option as part of the State's overall housing strategy.

The Objects of the Act

This statutory review seeks to evaluate the efficacy of the objects of the Act. The objects of the Act stated in section 3 are:

- (a) to improve the governance of residential communities,
- (b) to set out particular rights and obligations of operators of residential communities and homeowners in residential communities,
- (c) to enable prospective homeowners to make informed choices,
- (d) to establish procedures for resolving disputes between operators and homeowners,
- (e) to protect homeowners from bullying, intimidation, and unfair business practices,
- (f) to encourage the continued growth and viability of residential communities in the State.

The view of the property industry is that the objects of the Act remain relevant. The objects have in large part been effective and the growth of the sector is testimony to this fact. However, as will be expanded on later there is a need to balance operator and residents' rights and responsibilities and to have the objects explicitly reflect this.

Operators, investors, and residents – feedback from industry

It is important to stress that when reviewing the Act consideration be given to the rights and responsibilities of both residents and operators.

One piece of feedback from industry in relation to the environment in which the Act operates is that there is a desire for greater protection for operators and their employees. Anecdotally, there has been an increase in the level of disputes between operators and residents and the industry would appreciate urgent attention to this point.

In order to improve standards and choice for consumers (residents) it is critical that more operators (investors) come into the market. Government can do this by having a

balanced approach that understands that operators need to make a reasonable return and have certainty around the regulatory settings.

Having more players in the market will increase choice, offer more diverse and improved services and amenities, as well as tackling cost. Competition in every industry has been shown to be healthy, beneficial, and welcome. The challenge for Government is to incentivise new entrants given the low return on investment, and high entry costs.

Specific issues

Embedded Networks

Often a source of contention and disagreement between resident and operator embedded networks present an opportunity for Government to set out clear guidelines for both parties and support this important initiative by continuing a targeted public awareness campaign.

There has been some confusion as to how embedded networks work and who benefits, as well as how embedded networks compare to other options.

As has been seen in many other areas of government where there is a lack of knowledge there is often uncertainty, confusion, and disagreement. Government could and should do more in this space. This would go some way to de-risking the investment proposition, enticing new entrants to the market, and giving consumers greater confidence.

Selecting a reform option

Of the three reform options listed in the Discussion Paper (1,2 and 3) it is the view of the property industry that Option 3 is the optimal outcome going forward. However, it should be noted that the property industry, specifically developers and operators in this instance, wish to work constructively and collaboratively with owners on these issues.

There is a view in industry that there is more work to be done with owners' associations such as the Caravan and Camping Industry Association of NSW (CCIA).

We also acknowledge the excellent work and leadership of the CCIA and look forward to working with them to better understand and service the needs of owners and residents.

Site Fees

The mechanism for site fee increases is set out in site lease agreements, in compliance with the Act. Notwithstanding this, disputes about site fee increase are not uncommon. The Act provides residents safeguards as to how site fees can be charged and increased. Further restrictions or regulation would have detrimental impacts for industry. For

instance, many operators have an annual site fee increase equal to CPI or CPI plus a certain percentage or dollar amount, as the “fixed method” allowed for under the Act. In recent years the increase in utility costs has far exceeded CPI. Operators are already restricted in passing on the increased operating costs as increased site fees, except where the site agreement allows for market rent review at fixed intervals (usually 3 or 5 years). Operators are concerned that their ability to operate a sustainable business will be materially affected if further restrictions are introduced.

Insurance

This is a significant issue for the industry. Many are under increasing pressure due to ever increasing insurance costs. For example, one provider (indicative of the broader industry) reported having experienced an increase of ~41% in its premium for its property and business income insurance (Industrial Special Risks “ISR”). On a like for like basis the increase was circa ~15% to 20% (i.e., when one strips out acquisitions and increases due to additional value in the parks for capex).

The other important and related issue is having insurers take on the risk. Simply getting insurance is getting harder. The feedback we have had is that in addition to the increase in premiums many are reporting increases in deductibles and limits on liability for loss due to flooding and cyclones.

Stamp Duty Reform

One of the key selling points for residential land lease communities is that there is no stamp duty payable on the purchase of a home.

It will be critical that the Government’s tax reform agenda take into consideration the impact on land lease communities.

Conclusion

The Property Council looks forward to working with the Government and all stakeholders in a constructive fashion to deliver a plan that will increase choice, affordability, and opportunity for all.

We look forward to reading the report on the outcome of this statutory review into land lease communities when it is tabled in each House of Parliament in November 2021.

We would strongly advocate for industry consultation on any proposed amendments as a result of the statutory review of the Act. It is important that all stakeholders are offered the opportunity to review and comment, noting our comments above regarding

the need to strike the right balance and to acknowledge land lease communities are a viable and diverse housing option.

The property industry looks forward to working with Government and all stakeholders to deliver world class housing options and a dynamic land lease community sector in NSW.

Should you have any questions or seek further clarification on any of the above, please do not hesitate to contact Senior Policy Advisor, Sean Conway on 0438 065 924 or sconway@propertycouncil.com.au

Yours sincerely,



Jane Fitzgerald
NSW Executive Director
Property Council of Australia