



public interest
ADVOCACY CENTRE

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

26 February 2021

About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney.

Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development, communication and training.

Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program (EWCAP) represents the interests of low-income and other residential consumers of electricity, gas and water in New South Wales. The program develops policy and advocates in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives input from a community-based reference group whose members include:

- NSW Council of Social Service;
- Combined Pensioners and Superannuants Association of NSW;
- Ethnic Communities Council NSW;
- Salvation Army;
- Physical Disability Council NSW;
- Anglicare;
- Good Shepherd Microfinance;
- Financial Rights Legal Centre;
- Affiliated Residential Park Residents Association NSW;
- Tenants Union;
- The Sydney Alliance; and
- Mission Australia.

Contact

Douglas McCloskey
Public Interest Advocacy Centre
Level 5, 175 Liverpool St
Sydney NSW 2000

T: 02 8898 6534

E: dmccloskey@piac.asn.au

Website: www.piac.asn.au



Public Interest Advocacy Centre

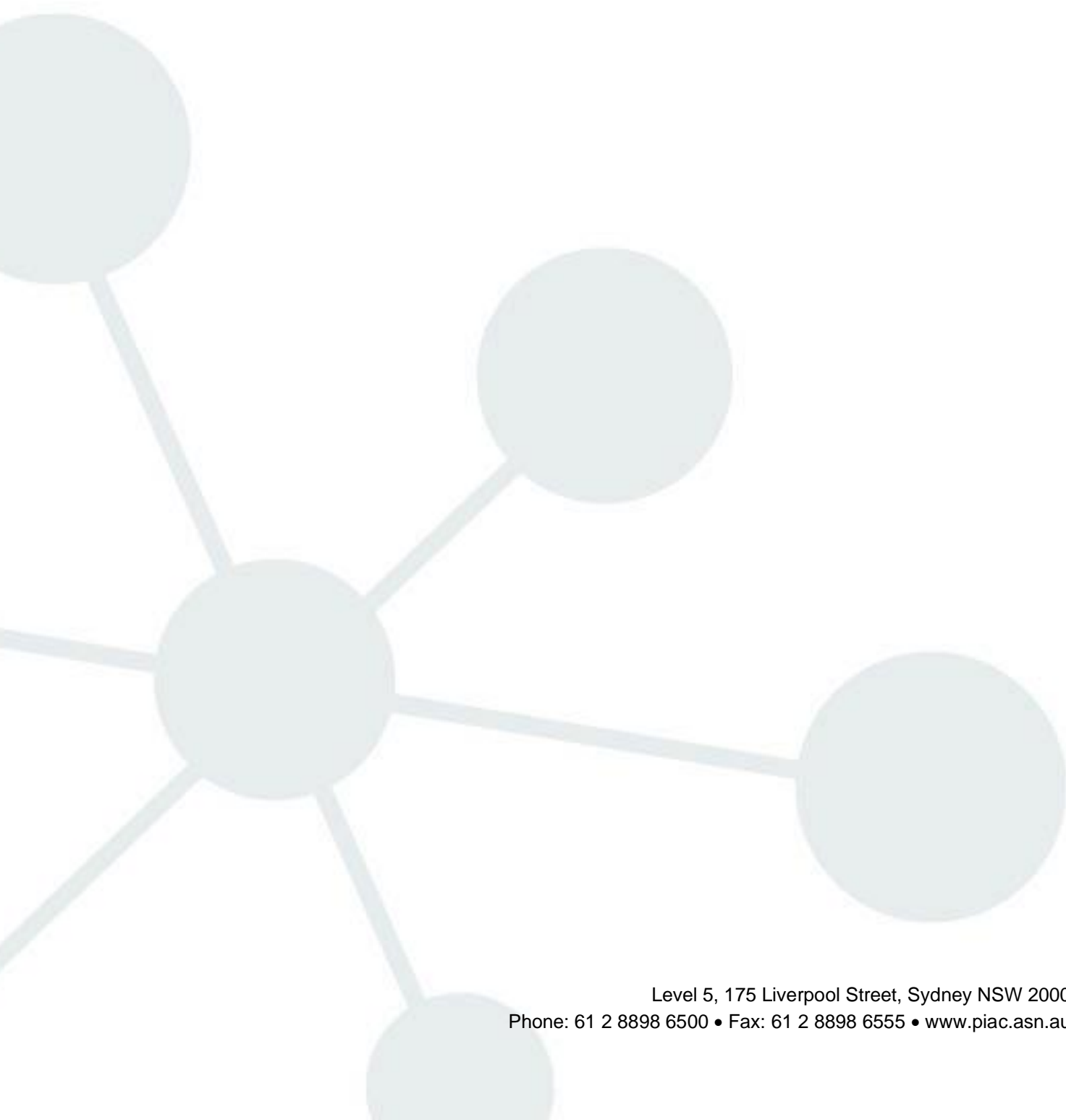


@PIACnews

The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.



public interest
ADVOCACY CENTRE



Contents

Introduction	1
Responses to Discussion Paper questions	1
47. What are your overall views on utilities charging provisions under the Act, other than electricity charging in embedded networks?	1
48. How well do the current provisions relating to accounts, access to bills and other documents work?	2
49. What are your views on the operation of section 77(3) as it applies to an embedded network in a community?	3
50. Which reform option for electricity charging do you support and why?	4
51. Are there other reform options which you think should be considered?	4
55. Are the current discounts in the regulation appropriate?	5
59. What are the greatest barriers to home owners installing solar panels?	6
60. How can sustainability infrastructure be made more available in land lease communities?	6
Continued engagement.....	7

Introduction

PIAC welcomes the opportunity to respond to the Statutory review of the Residential (Land Lease) Communities Act 2013 (the Review).

All NSW residents have the right to expect equal access to an acceptable standard of safe and affordable essential services, and be provided equal access to assistance, protections and supports when they need them. This expectation should not depend upon the nature of their housing. This review is a crucial step in addressing long-term issues many residents of land lease communities (LLC) continue to experience with their essential services.

PIAC supports this review providing greater clarity regarding park operators' responsibilities in utility provision, simpler direction regarding service standards and billing, and ensuring that eligible residents have equal access to basic rights, supports and protections.

In the remainder of this submission we provide detailed input in response to the Discussion Paper questions.

Responses to Discussion Paper questions

47. What are your overall views on utilities charging provisions under the Act, other than electricity charging in embedded networks?

PIAC considers it appropriate for the Act to make provisions to ensure consistency in the regulation of utility charging and provision in LLCs, regardless of the circumstances of the residents and how those utilities are provided. Accordingly, PIAC recommends that provisions for utility charging in the Act be updated to provide for consistency of residents' outcomes, regardless of whether or not electricity is provided through an embedded network. This should include:

- Greater clarity to ensure minimum required information regarding usage and billing is provided to the resident. This information should be a functional equivalent to that provided by a market retailer, as detailed in response to question 48.
- Greater clarity around the format and provision of receipts and the retention of records by the operator. This should be a functional equivalent to that provided by a market retailer, as detailed in response to question 48.
- Ensuring the scope and form of information provided enables eligible residents access to rebates and Energy Accounts Payment Assistance (EAPA).
- Regulations providing clear information regarding limits on what a resident can be charged for. This should include requirements for clearly separated usage charges and Service Availability Charges (SAC), as detailed in our response to question 51.
- Regulations that limit SAC charges according to the service adequacy and the amperage of the resident's service, as detailed in response to question 51.

48. How well do the current provisions relating to accounts, access to bills and other documents work?

PIAC is concerned the provisions in the Act are not strong enough in specifying the required scope or form of information that operators must provide to residents. The result may be a lack of clarity for operators and potential disadvantages for residents. For instance, eligibility criteria for NSW energy rebates and EAPA require printed billing and the inclusion of NMI and meter read information. Residents in LLCs are often older and more vulnerable members of the community and are currently excluded from receiving the assistance required to be offered by market retailers, such as payment plans and hardship programs. The Act must ensure that residents of LLCs do not experience additional disadvantage due to inadequate billing information that excludes them from accessing rebates, EAPA and mechanisms for dispute resolution and redress.

Provisions in the Act should be strengthened, including:

- Section 83 making reference to specific documents or specific data points which constitute 'reasonable access'. A schedule of regulations would give this a practical application. This should include:
 - actual utility bills received by the operator, covering the relevant period;
 - documentation of calculations used to determine the residents SAC and usage charges for the relevant period;
 - demonstration of the amperage level delivered to the resident's property during the relevant period;
 - the approved calculation method used to determine the resident's contribution to the community energy infrastructure maintenance charge; and
 - information regarding the operator's membership with the Energy and Water Ombudsman NSW (EWON) (where appropriate).
- Section 84 to refer to the form of the receipt provided by the operator and a requirement that the operator retain a copy of the receipt for a period not less than 12 months. PIAC recommends that the Act stipulate that regulations include the generation of a standard form receipt that can be used by operators, ensuring that the required minimum information is always given to residents. This reflects market regulations on billing information.
- Section 84 to include additional detail in minimum requirements for a receipt, including:
 - The start and end meter reading and dates for the period being charged, and the usage amount the resident's bill is based on.
 - Amperage delivered for the period of the bill.
 - Itemised charges. This should be separated into:
 - usage charges for the period
 - SAC charges for the period (including any discounting due to reduced amperage); and
 - the community energy infrastructure maintenance charge for the period.

- The method of calculating the resident's charge (pass through of charges paid by operator, or appropriate proportion of retailers' default offer).

PIAC accepts that it may be more practical for the Act to refer to information and documentation requirements stipulated in associated regulations, and have specifics provided in the regulations, to allow for more detail and flexibility to respond to requirements over time.

49. What are your views on the operation of section 77(3) as it applies to an embedded network in a community?

Embedded networks continue to result in inconsistent outcomes for residents in LLCs. There remain significant gaps between national energy regulations covering embedded networks, and NSW legislative provisions, which result in many LLCs residents experiencing issues with:

- Unsafe or inadequate utility connections.
- Utility usage that is unmetered or not recorded in an acceptable or transparent format.
- Utility billing that is not provided in an acceptable or consistent format.
- Utility charges that exceed what is appropriate for their connection adequacy, i.e. the amperage level provided.
- Utility charges that exceed the costs incurred by the operator.
- Utility charge calculations that effectively cross-subsidise larger users in the community.
- Utility arrangements provided through a third party operator residents did not consent to. This situation can result in a loss of protections included in the current Act regarding disconnection, charging and other safeguards.
- Utility arrangements that prevent residents from accessing rebates and EAPA support they are otherwise eligible for.
- Utility related charges, such as 'utility network maintenance' charges that are incorporated in other residential charges residents are already required to pay.
- Lack of consistent coverage of park operators by expert dispute resolution through EWON, and a lack of clarity where EWON or the NSW Civil and Administrative Tribunal, is responsible.
- Inability to refer to clear consistent guidance regarding utility arrangements and charging to inform complaints or dispute resolution processes.

PIAC supports an update to section 77 (3) that improves consistency in billing and charging and provides a transparent means for operators to bill residents more appropriately.

The Act currently provides inadequate clarity of direction and information to operators regarding their responsibilities in the provision of utilities. It is likely that many operators do not have access to simple information regarding how to discharge their responsibilities, manage utility services and charge appropriately. This gap may be providing an incentive for operators to contract this responsibility to third parties, with negative implications for the basic rights and protections of residents. PIAC considers that more clarity and detail in operators requirements relating to utilities, along with more consistent, simple information regarding how to undertake them, would be in the interest of operators as well as residents.

Additional provisions should be considered to address the ongoing issues in embedded networks outlined above, including those outlined in response to questions 48, 51 and 55 in this submission.

50. Which reform option for electricity charging do you support and why?

PIAC supports implementing a variation on those presented – please refer to the response to question 51.

51. Are there other reform options which you think should be considered?

PIAC recommends that an alternative reform option be adopted using aspects of option 2, with a number of changes to ensure the framework is fairer, more practical and more flexible in response to the impact of likely developments. This includes:

- Key parameters and principles of utility charging to be included in the updated Act, with a reference to detailed schedules and guidelines regarding utilities charging to be provided in regulations.
- The Act to apply to operators or any authorised third party acting on their behalf and assuming comparable responsibility for utility provision to residents. Operators and any such third parties should be subject to the relevant provisions of the Act.
- Provision for the option of an explicit ‘community energy infrastructure maintenance’ (network) charge to be recovered by operators under a defined set of circumstances. This charge should be referred to in the Act, and have an accompanying guideline for calculation options and terms to be included in accompanying regulations. Parameters for this charge should include:
 - That it only be allowed to be levied in a defined set of circumstances.
 - That it relates only to a defined list of direct energy infrastructure upgrade and maintenance costs, and not include any allowance for administration, consultancy or general maintenance or facility upgrade costs. The eligible infrastructure and other costs should be set out in the regulations.
 - That it may only be charged subsequent to the installation of infrastructure it relates to. That is, that the charge be a recovery of costs already incurred not a recovery of prospective costs.
 - That it cannot be charged to residents receiving less than 60 amps.
 - That it allows an operator a choice between a simple generic cost calculation or an approved method for actual cost calculation.
 - That it has a specified limit, proportionate to overall SAC charges paid by the resident. That is, that the network charge for a period not exceed a specified amount or a specified percentage of the SAC, whichever amount results in a smaller charge.
- A requirement to clearly separate usage charges, SAC and network charges passed on to the resident in any record keeping or documentation provided to the resident.
- An option to pass through the resident’s portion of direct utility costs incurred by the operator (separated into usage and SAC) plus the resident’s share of network charges (calculated according to the terms set out in the regulations).

- An option to pass through the resident's portion of the SAC and usage charges based on the Default Market Offer (DMO) of the utility provider for the community, plus the resident's share of network charge (calculated according to the terms set out in the regulations).
- A requirement for the operator to select the option that results in the lowest charge outcome for the resident.

55. Are the current discounts in the regulation appropriate?

PIAC does not consider the current regulations appropriate to support the safety and adequacy of electricity supply to residents in LLCs. Many residents continue to receive inconsistent supply, sometimes well below the minimum required to sustain a safe and healthy household.

Regulations in the Act should provide protections to resident, so that:

- Residents are not required to pay unreasonable costs for supply that does not meet basic requirements.
- Residents' energy costs reflect the supply they receive and are more flexible to the range of circumstances experienced by residents.
- There is an incentive for operators to upgrade connections over time to meet acceptable levels of minimum supply.
- The regulations provide a regulated mechanism for operators to recover costs related to the upgrade and maintenance of connections that meet acceptable levels of minimum supply requirements.

PIAC recommends that the Act and regulations be amended to better integrate standards for supply adequacy with provisions for SAC and network charging. Specifically:

- Provisions for community energy infrastructure maintenance (Network) charges recoverable by operators of embedded networks, should ensure that these charges are not able to be recovered from any residents receiving supply at less than 60 amps.
- Provisions for network charges recoverable by operators should relate to defined upgrades of infrastructure, and a defined set of services related to their installation and upkeep. A schedule setting out options for calculation of these charges, either based on a standard cost or actual costs, should be included in regulations. This schedule should also include provisions that limit these charges to a maximum amount or maximum percentage of the SAC charge for a resident.
- Provisions for any network charges only be able to recover a contribution to costs already incurred, not for prospective infrastructure or service upgrades.
- Provisions setting out staged discounts for resident's SAC charges, so that:
 - Residents receiving supply at less than 20 amps are not charged SAC. Supply at this level is not capable of maintaining basic standards for occupation.
 - Residents receiving supply between 20 and 30 amps can be charged 50% of the applicable SAC for that resident.
 - Residents receiving supply between 31 and 59 amps can be charged 70% of the applicable SAC for that resident.

PIAC recommends that the details of calculations, charging schedules and guidelines be included in regulations rather than the Act, to provide greater flexibility in response to potential changes that may impact upon the operation of the Act and utility arrangements in LLCs.

59. What are the greatest barriers to home owners installing solar panels?

Residents in LLCs are likely to experience the same impediments to installing solar panels and other renewable technology as other NSW households with low incomes. However, they are also likely to experience additional barriers as a result of their circumstances, which amendments to the Act could address. Specifically:

- Residents in LLCs are often likely to regard asking permission to install solar panels as a risk that may place increased pressure on their relationship with the community operator. The provisions in section 43, and other protections for residents may be amended to help address this issue.
- Residents may not currently have a connection that is capable of accommodating a solar system without a substantial upgrade, both to the residence and to the connecting community infrastructure. Provisions on supply adequacy, the facilitation of network maintenance charging and other incentives for operators, may help to address this.
- Multiple residents with solar systems operating at the same time may have an impact upon the community connection to the surrounding network. It could result in requiring the community to upgrade connection infrastructure or move on to a different connection arrangement. While provisions to fairly recoup community infrastructure costs may assist in addressing this, it is likely that Distribution Network Service Providers will need to be consulted in implementing durable solutions that are affordable for community operators and residents.

60. How can sustainability infrastructure be made more available in land lease communities?

PIAC supports the facilitation of the availability of sustainability infrastructure in land lease communities, but does not consider it a priority at this stage of this review. PIAC would support the Department of Customer Service working with the Department of Planning Industry and Environment to initiate a process to develop a suite of recommendations enabling the implementation of sustainability infrastructure in land lease communities. Such a process should engage with energy networks, resident and consumer stakeholders, to identify opportunities to use sustainability infrastructure to improve community resilience, independence and long-term financial sustainability. PIAC would welcome an opportunity to contribute to such a process.

In this review, PIAC recommends that priority be given to addressing the underlying utility infrastructure arrangements, to provide a more functional and efficient framework for the future implementation of any renewable energy based responses. Key areas of focus should include:

- Implementing durable mechanisms for the upgrade and maintenance of appropriate community energy infrastructure provided in LLCs, by creating transparent means for operators to equitably recover costs from residents.

- Updating utility adequacy requirements and discount provisions in the Act and regulations, to provide clearer incentives for operators to upgrade utility metering, connections and infrastructure to a level that is capable of supplying contemporary energy requirements and potential future renewable energy installations and other Distributed Energy Resources (DER).
- Greater clarity and transparency in the usage and billing information provided to residents to provide a more consistent and reliable basis for the calculation of cost and benefit impacts of potential future renewable energy and other DER interventions.

Continued engagement

PIAC would welcome the opportunity to meet with the Department of Customer Service and other stakeholders to discuss these issues in more depth.