TERAGLIN LAKESHORE VILLAGE
RESIDENTS' COMMITTEE
Site 21/2 Mulloway Road
CHAIN VALLEY BAY NSW 2259

Chairman: [redacted]

Committee:

[redacted]

Statutory Review of the Residential (Land Lease) Communities Act 2013
Policy and Strategy Division
Department of Customer Service
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150

TO WHOM IT MAY CONCERN

Dear Sir/Madam

Please find enclosed our Submission for the Statutory Review of the Residential (Land Lease) Communities Act 2013. This Submission has been prepared on behalf of the Homeowners at Teraglin Lakeshore Chain Valley Bay.

Hopefully, the points raised will be considered by you when the Review is undertaken.

We thank you for the opportunity to have input into this Review and look forward to the outcome.

Yours sincerely

Charles Dalgleish

Chair, Residents' Committee
Teraglin Lakeshore

[redacted]

STATUTORY REVIEW OF THE

Residential (Land Lease) Communities Act 2013

PROVIDED by the RESIDENTS' COMMITTEE

On Behalf of the RESIDENTS TERAGLIN LAKESHORE CHAIN VALLEY BAY

A HOMETOWN AUSTRALIA COMMUNITY

TERAGLIN LAKESHORE VILLAGE
RESIDENTS' COMMITTEE

[redacted]

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

POLICY AND STRATEGY DIVISION, DEPARTMENT OF CUSTOMER SERVICE
PROVIDED BY

CHARLES DALGLEISH, CHAIR, RESIDENTS' COMMITTEE, ON BEHALF OF THE HOMEOWNERS
TERAGLIN LAKESHORE
CHAIN VALLEY BAY NSW 2259

Teraglin Lakeshore has 338 Homeowners ranging in age from 55 to 92 years. This comprises of 122 single and 108 couples.

At Teraglin Lakeshore most Homeowners are single pensioners paying site fees from a single pension payment. **The current Site fee is 37.7% of the single pension income and 25% of the couple's pension income.**

Living within a Community governed by the "Act" is no longer an affordable option for those on fixed, limited incomes such as the aged pension. Many of those living in Teraglin Lakeshore (especially women) are of the generation where superannuation has not been available. Each time the rent increases, life becomes more difficult. The ability to maintain their homes and gardens is reduced, as these jobs are often performed by paid (at the expense of Homeowners) contractors. Though low income, pensioners with limited resources were identified and acknowledged as the Operator's target group. This group is being priced out of the market, and those already owning homes within these Communities are being priced out, with nowhere to go. As noted above the percentage of income paid as site fees has increased from 19% to 37.7% in 4 years **since the last review.**

There is a widening chasm of imbalance between Homeowners and Operators. Homeowners are primarily aged, on limited incomes, with no or little access to advocates and legal advice. Their one asset is their home, which they cannot pack up and take with them when Community living becomes too expensive and or too difficult. Their greatest fear is the loss of their home, which means they are often placed in a position whereby they will agree to changes, rather than partake in conflict/ argument with the Operator or their representative.

We also support the Review Summaries by the Tenants' Union of NSW, Independent Park Residents Action Group (IPRAG NSW) Inc, Sanctuary Lennox, Riverbend Residents' Committee, Stanhope Gardens and their Homeowners.

Signed on behalf of the Residents and Committee of Teraglin Lakeshore Chain Valley Bay.

[redacted]

Charles Dalgleish
Chair
3 March 2021

Provided to Statutory review: Residential (Land Lease) Communities Act 2013 No 97 NSW

Provided by the Residents' Committee on behalf of the Residents of Teraglin Lakeshore Chain Valley Bay

[redacted]

Introduction

Any changes to the "Act" need to look through the lens of "fairness". The current Act does not provide "fairness", to Homeowners. It most definitely provides numerous opportunities for Operators at the expense of Homeowners.

The 'Act's objectives may well have had the intention of providing fairness, but the Objectives themselves did nothing to ensure this.

We argue that all Objectives except (f) have not been achieved. This is due to the lack of transparent, accessible, fair processes available to Homeowners, to dispute when these objectives are not being adhered to by the Operators.

The current options to resolve disputes are onerous for pensioners, who must challenge large companies, many of whom are International with numerous entities. They also have in house solicitors and support provided to them by a large well-resourced Association who boast of having the ear of the Minister.

There is NOTHING FAIR ABOUT THIS CURRENT 2013 ACT

Summary of changes required within the Residential Land Lease Act. 2013

We seek the following changes to the Residential Land Lease Communities Act 2013, because we believe these changes may reduce the potential for disputes arising between Homeowners and Operators.

We do not believe that simply making the changes we have noted will alter the unfair playing field, when disputes do occur, and resolution is attempted.

The recognition that there is a huge disparity in the abilities and resources of Homeowners and Operators, needs to be enshrined throughout the reviewed "Act". The unfairness needs to be up front and centre in all considerations in regarding to changes to the "Act"

This acknowledgement of the unfair nature of the situation for Homeowners must frame all changes made to the "Act"

The stakeholders

OPERATORS/OWNERS

Hometown Australia Pty Ltd, T/A Teraglin Lakeshore Chain Valley Bay (The Operator), is a subsidiary of Hometown America. As identified by Hometown representatives, their priority is increasing profit for their investors.

Hometown Australia has grown from 2 communities to approximately 40 in NSW in 4 years creating a monopoly without any Government control or involvement. They have both in house solicitors and access to solicitors and resources in and out of house. They have designated employees with legal expertise to take on any dispute initiated by a bunch of pensioners.

NSW Operator/Owners also have a large well-funded/ well-resourced Association to support them. This Association also has solicitors employed. This Association boasts that they have the ear of Ministers. Does this Association, and perhaps its members as well pay donations to the current Government?

HOMEOWNERS

These are primarily aged pensioners, on fixed and limited incomes, who own, outright, their homes that are placed on the Operator's site. Homeowners' priority is maintaining their homes, managing site fees that are becoming untenable, though when first moving in these Communities were affordable living. The average rent increase in the past nine years has gone from $140 per week to $178 per week representing an increase of $4.22 per week. The CPI has only increased $1.74 per week.

They may have, as in the case of Teraglin Lakeshore, a Residents' Committee, whose members represent the same demographic. They are active community members, not solicitors or people with full understanding of legal frameworks. They are pensioners, who wish to get on with their lives in a secure, affordable community.

When they do attempt to challenge the monolith, it becomes an extremely stressful process, often carrying the weight of the entire community, in relation to the outcome. They gain support from the Tenants Union, by phone. They once were able to gain limited support from PAVS, until the current Government removed their funding.
Funding is provided to ARPRA. What about increasing funding to the Tenants' Union of NSW and consider supplying Government funding to Independent Park Residents Action Group (IPRAG NSW) Inc and Registered Residents' Committees within villages.

ARPRA does not represent most Homeowners especially where there is a strong Residents' Committee.
We believe that Fair Trading view ARPRA as the Homeowner's advocate. We do not agree, ARPRA only represents a minority of Homeowners and believe that they are not the voice of all Homeowners. It is an exclusive club of paid members only. The Tenants' Union of NSW, IPRAG and Residents' Committees have no membership charges.

SITE AGREEMENTS

The following additional clauses should be removed

- The social media clause, gagging clause...Intimidatory
- Terms enabling Operators to charge security deposits for electricity and gas
- Terms regarding homeowners taking ownership and being responsible for the preservation of site infrastructure such as concrete slabs, driveways, retaining walls or any structure that is not the home or an associated structure
- Any term requiring the homeowner to pay a bond to the Operator as a condition of obtaining written consent to add or alter a structure on a residential site

The "Act" states that when purchasing a Home, the potential buyer can negotiate. This may well be the meaning of the "Act" but is not the case. The Operators position is ***"take it or leave it"***

At a recent meeting with Hometown 19/2/2021, the Hometown representative suggested that potential purchasers could always negotiate Site Agreements (as noted in Agreement). When asked if that negotiation also included the right to Site fee by Notice, as is available to all existing Homeowners (230), Hometown replied that ***there will never be negotiation on that issue.*** All new Site agreements will include, Site fee increase, by Fixed Method. When asked what they would negotiate on, there was no response.

In Teraglin Lakeshore, potential Homeowners are being asked to agree to long term site fee agreements of 3.75% per annum for five years. This is cumulative. This represents an increase of $36 over five years with no explanation. The Residents' Committee has received several phone calls from concerned potential Homeowners regarding this matter.

The concerns being raised by potential buyers, are about the site fee agreement and the number of additional clauses within the Site Agreements.
These potential purchasers were concerned that they were being required to lock in Site fees, by Fixed method for 5 years at a percentage amount that was way above the common site fee within the community. These people withdrew their interest, and the current Homeowner lost their sale. Therefore, the Operator was interfering with the right to sell 107 (3).

If a fixed rate is included in the Site Agreement it should be for one year only, allowing for re negotiation at the end of that period. Our view is that the fixed method should/must be removed and only by notice with explanation apply. This would mean in our village; the existing 338 plus new Homeowners are on the same method of increase (by notice).

In the past, after a potential new homeowner removes themselves, the Operator makes an offer much lower to the desperate seller which means the Operator is buying and reselling at a profit.

Operators must not be given the right to be the sole agent for the sale of houses within Communities and they must never be given the right for a final offer to purchase. This is not acceptable and is not the purpose of the villages – over 55 and affordable living.

ASSIGNMENT
Existing Site agreements, inclusive of site fee agreements and terms should as a matter of urgency be allowed to be forwarded on to a potential buyer.

S45 The words "tenancy agreement" should be replaced with "Residential Site Agreement"
The use of the word "tenancy" in this case was a drafting error and has caused many disputes and hardship for Homeowners. This was undertaken, by the previous Minister, to be changed. IT MUST BE CHANGED.

The Residential Land Lease Act 2013 does not apply to those with Tenancy agreements. A Homeowner must be able to assign their lease, when selling, and the Operator must advise any potential purchaser of this right.

Example of how Operators, benefit from refusal to assign Site Agreement
A house was for sale in Teraglin Lakeshore Village for a period, for $320,000. People enquiring about the sale advised the Committee that they found the site agreement being provided by the Operator to be unreasonable. The agreement included a fixed Site fee increase of 3.75% over five years. This amount is cumulative and does not reflect current site fees in the Community, which are all "By Notice" except new Homeowners in the last six months. The sale failed. The Operator did not disclose the proposed development of 88 new homes within the village on the Disclosure Statement.

SITE FEE INCREASES

Fixed Site Fee Method needs to be removed
If not removed a new Homeowner should only be required to sign up for a ***Fixed Method for one year,*** with negotiation to change to By Notice, possible after they have settled into the community

Site fee increases by notice
Division 3 Sect.67 4(a) to include an explanation of the increase
What currently occurs is the Operator will provide some very broad terms regarding their justification. No financial figures, no invoices, no audit. Homeowners are expected to take the Operator at their word.

This section should include the following points

- ***to provide evidence to support the request for increase, including invoices and receipts.***
- ***A description and purpose of each operational expense incurred and increased since the last site increase(only)***
- ***How the increase was apportioned across sites in the Community***

- ***To require retiring non-recurring expenses and cost reduction associated with a reduction in services to be credited (deducted) from the site fee before any new increase is added.***
- ***Reduction of site fees be amended to allow a site fee reduction for retiring non- recurring expenses and other reductions in expenses additional to those listed in article 64 of the Act without first seeking a tribunal direction.***

To assist with compliance with these requirements the Site Fee Notice should be of an **approved form**, which Operators are required to use.

Sect 74 should state that only operational costs incurred during the 12 months period prior to the site fee increase notice, should be recovered via site fees.

Section 74 (b) "projected outgoings and operating expenses "incurred by the Operator.
THIS SECTION MUST BE REMOVED. It is unjust and unreasonable

Tribunal discretion Sect 73a
The Tribunal must be given discretionary powers in relation to factors to determine whether an increase in Site fee is excessive and not be bound by Sect73. Some of the factors the Tribunal should be able to include in their determination would include

- Age demographic of the community
- Whether pensions have increased in that period
- Percentage of pensioner income required for Site fee. Currently 37% Single and 25% Couple
- Hardship issues
- Behaviour and conduct of the Operator, including during mediation
- The lack of resources of the Applicant, to argue their case, in comparison to the resources available to the Respondent/ Operator
- Any incidences of bullying, intimidation and/ or coercion by the Operator

The determinate "Range and Level of site fees within the Community" must be removed. Currently our Operator is ONLY offering new site agreements with long term fixed site fees of 3.75% per annum for five years. This will continue to further the disparity between the range of site fees. The upper end figure that this action will create will warp any "average" site fee figure e.g., currently at $178.00 per week plus 3.75% equals $185.00 per week. An increase of $7.00 per week without any explanation.

The determinate "Land Value" must also be removed. It is irrelevant and should be discarded.

CAPITAL EXPENDITURE
It must be made clearer within the "Act" that this is the Financial responsibility of the Operator and not to be gouged from Homeowners via increasing Site Fees
The Act should identify CAPITAL AND CAPITAL WORKS (**Capital expenditure**) AS THE RESPONSIBILITY OF OPERATORS TO MAINTAIN. THEY ARE THEIR ASSETS.
Information provided from accountancy firms with knowledge of Residential Land Lease Communities identifies Capital Expenditure to include amounts spent to acquire or significantly improve long term assets, such as land, equipment, buildings, furnishings, and fixtures.

Examples of Operators Capital expenses include

- Painting or repainting common property (buildings)
- Acquiring or replacing fixtures and fittings that are part of common property
- Repairing or improving the capacity of common property (buildings)
- Office and computer equipment
- Tools, equipment used by maintenance person
- Vehicles and buggies used in village by staff
- Roads, drains, etc. infrastructure

Though Tribunal Members have, on several occasions, removed these items from Operators' Operational expenses claim, some Members do not. It needs to be clear in the Act. And words like maintenance of, upgrades and improvement do not change a Capital expense to an Operational one...as is attempted consistently by Operators.

Sect. 64 should be amended to include a reduction in site fees, where there is a reduction or withdrawal of services/facilities in a Community and reoccurring costs
The review of the 'Act" should also remove the requirement of at least 25% (or a lower percentage prescribed by the Regulations) of affected residents to challenge a site fee increase and clarity should be provided within the "Act" as to what "opting out" means and what is required

COMPLIANCE ACCOUNTABILITY AND UNFAIR BUSINESS PRACTICES

Any misconduct by Operators, any non-compliance by Operators, should receive a penalty that is commensurate to financial holdings of the Operator and all their entities combined.
Providing penalty points or a mere $100, or even up to $10,000 fine to Internationally owned companies with a myriad of entities provides no compulsion to abide by responsibilities.

Mediation

As soon as COVID allows, all mediation sessions must return to face to face.
Records of Mediation should be maintained and be allowed to be used when Operators refuse to provide information or refuse to demonstrate commitment to resolution.

Success of Mediation should not be judged on the basis that Applicants do not apply to the Tribunal.

The "Act" needs to clearly reflect the inequity between pensioner Homeowners and large National and International companies, with in-house solicitors, administration, resources, and a hugely resourced Association supporting them.

Every objective except (f), needs to identify processes that recognise these inequities.
Every attempt at dispute resolution between Homeowners and Operators is inherently unfair and unconscionable.

This must be addressed within the "Act". Residential Land Lease Communities have become places where fear is palpable. Fear for security of housing, fear of not being able to maintain their houses and gardens. And just fear of the Operator.

Accountability, compliance, professional behaviour, professional business practises
All good words, but with no transparent, affordable, safe, accessible means for Homeowners to challenge when these Operator obligations are breached, it is free reign for Operators.
If a Homeowner has the capacity, the knowledge, the strength to challenge the monolith, what is the penalty given to the Operator? 50 pts or perhaps a fine equivalent to their petty cash, for an International Company.
We have NEVER seen penalties or a fine given to an Operator.
This fact alone says a lot about the unfairness of the current Act.

The Teraglin Lakeshore Residents' Committee provides one example (though not the only experience). This example relates to a Site Fee dispute that went to Tribunal.

- On receipt of a Site fee increase of $12pw, the Residents' Committee repeatedly requested clarification of operational costs, which was refused by the Operator
- At Mediation, the Applicants again requested clarification of operational costs. explanation of the expenditure since the previous rent increase and invoices. This was refused by the Operator. The mediator did not request they provide this information.
- Went to Tribunal and after consultation at the request of the Member, rent was reduced to $5.00.

How do Homeowners assess whether the proposed rent increase is fair and reasonable without this information?

- They do not. If the proposed changes are applied in site fee explanation this would be rectified
- At the first proceeding with the Tribunal, the Operator agreed to conciliation at the Member's request and during conciliation, figures were produced that did not warrant the $9.00 increase. It was reduced to $4.00
- The above process also applied at our second hearing. Site fees were reduced from $12.00 to $5.00 and the Operator was instructed to repay the overcharge

What the Applicants found in these invoices should cause concern and an immediate change to this section of the Act to emphasise the need for Operators to provide financial documents including invoices to allow for a determination of fairness in their site increase notice.
What we also found and provided to the hearing was evidence of ***"unfair business practices" and potentially of a criminal nature.***

Outcome of the hearing
Fair? NO
Nothing is "fair" for Homeowners within any level of dispute.
If there is any query relating to Operators responsibilities to provide affordable housing to low-income pensioners. We provide an excerpt from a submission provided to Treasury, by Operators including Hometown and their Association. ***(see Attachment 1)***

20th April 2017

"Affordable housing

Any changes to the treatment of RLLC site rental income will result in the higher tax and investment costs being passed on to aged residents who are typically from a low socio- economic background.

Australia's growing pool of retirees is living longer. For people aged 65-69, some 70% have less than $100k in accumulated superannuation. For many retirees, the sole source of accumulated wealth is ownership of the family home. 50% of Australians have less than approximately $470k in total equity. Typically, those retirees who are looking to downsize and free up equity, will only be able to free up equity of between $60-120k. They typically cannot afford a retirement village villa or unit in their desired location.

Releasing equity while retaining pension and rental assistance from government is increasingly attractive and for some, the only viable option. RLLCs are becoming increasing popular as an affordable housing option as they allow retirees the conversion of home equity into a comfortable retirement in a community setting.

Currently, site lease payments average between $178-$198 per week. The rental covers the cost of management and maintenance of the community."

In this submission, provided to the Treasury (Attachment 1), by Operators and their Association they state that the average site fee is 20% of income (2017). In 2020 the average site fee in Teraglin Lakeshore was 37.7% of a single pensioner's income and 25% for a couple. This will increase in 2021.

Homeowners must be more than "cash cows" for investors.

Charles Dalgleish

[redacted]

Chair, Residents' Committee

RESPONSE TO QUESTIONS ASKED IN THE DISCUSSION PAPER

1. Are the objects of the Act still relevant to Residential Land Lease Communities?

The Objects are reasonable except for the Object Act 3 (f) *to encourage the continued growth and viability of residential communities in the State.* Since 2017 Hometown – just one example- has grown from 2 Communities to 40 in NSW. ***This object no longer needs to be in the "Act". Our concern is that this growth is creating a monopoly without any Government control or involvement.***

The objects may be reasonable but the ability to deliver them is not.

When the Act was reviewed in 2013 most caravan parks were long term caravan and annex accommodation. They are now purpose-built manufactured home sites owned by large investment companies such as Hometown and Ingenia which have become monopolies. They have access to legal and financial resources that Homeowners can only dream of. Social demographics have changed enormously, and the terms of the Act should reflect those changes.

The Act should reflect the power imbalances between Operators and Homeowners and should also reflect the intention of providing affordable housing to people on low incomes, including pensioners.

As Homeowners we are constantly being reminded of the Operator's responsibility to INVESTORS. There is a growing sense that Homeowners are merely the cash cow for investors, yet the Operators and their Association have presented themselves to Government and potential buyers that they provide affordable housing for those on limited incomes, particularly pensioners with no or limited superannuation ***ref. Submission to Treasury, provided by the Operators 20 April 2017***. They are pricing this primary group out of the market, creating fear and insecurity amongst existing Homeowners who are on pensions (***which have not been increased compared to the site fee increases which the Operators have imposed on a yearly basis without a fair explanation).***

We add that the objectives would still be relevant if the "Act" provided ***credible affordable and fair processes to enforce them.***

To promote these objectives and the "Act" in whole as "fair' is unconscionable.

a) To set out particular rights and obligation of Operators of residential communities and Homeowners in residential communities

The rights are heavily weighted towards the Operators. There is no fairness or equity within these stated rights and obligations. David versus Goliath. To expect pensioners to challenge when the obligations of Operators are not adhered to is again unconscionable. It is also **elder abuse.** Pensioner versus cashed up monolith, solicitors, accountants, administration, and their mighty Association.

To enable prospective Homeowners to make informed decisions.

The Act does nothing to enable this. Homeowners are not provided with dimensions of their site, in some cases, they have no ability to talk with other members of the community or the Residents' Committee prior to purchasing, they have no ability to negotiate, though one is supposed to have that right. The reality is "take it or leave it". A potential purchaser should be advised of the existence of a Residents' Committee if there is one with the chance to review the Site Agreement and the Disclosure Statement.

In the case of Teraglin Lakeshore, new purchasers should be advised that all other Homeowners are on site fee increase "By Notice" and that the Residents' Committee has successfully negotiated minimal increases over 3 years. The purchaser should have explained what disparate site fee they will be paying at 3.75% annually for 5 years compared to the existing Site Agreement which is By Notice of 1.87% for the last year for 230 Homeowners.

THE RIGHT TO ASSIGN YOUR LEASE MUST BE RETURNED TO THE ACT

b) To establish procedures for resolving conflicts between Operators and Homeowners

The procedures available are restrictive and legalistic. Some Homeowners are denied access to resolution due to the complexity and complications of the processes required. ***The review of the Act must put up front and centre a means to ensure fairness***

The following identifies the parties involved in every dispute resolution within communities.

It also needs to be noted that very few concerns are raised to dispute level because of the following: Homeowners feel powerless, which leads to statements such as "no one complains". The complaint mechanism and follow up action needs to be revised and funded.

This belief that no one has complaints well serves the Operator but not the Homeowner.

OPERATORS/OWNERS

Teraglin Lakeshore Operator (Hometown Australia) is a subsidiary of an American company, and as identified by Hometown representatives their priority is increasing profit for their investors.

Hometown is a large International Company, having grown from 2 communities to approximately 40 in NSW in 4 years. They require no further leg ups just more monitoring and scrutineering of the Legislation.

They have in- house solicitors and access to accountants and resources in and out of house. They have designated employees with legal expertise to take on any dispute initiated by a bunch of pensioners.

Operators/Owners also have a large well-funded well-resourced Association to support them. This Association also has solicitors available and boasts that they have the ear of Ministers.

HOMEOWNERS

Primarily aged pensioners, on fixed and limited incomes, who own their homes outright, that are placed on the Operator's site. Their priority is maintaining their homes, managing site fees that are becoming untenable, though when first moving into these Communities were affordable living.

They may have in the case of Teraglin Lakeshore have a Residents' Committee, with members representing the same demographic.

They are not solicitors or people with understanding of legal frameworks. They are pensioners, who wish to get on with their lives in a secure affordable community.

When they do attempt to challenge the monolith, it becomes an extremely stressful process, often carrying the weight of the entire community and other communities (as the hearing outcome will be used in future if it suits the Operators).

Homeowners may gain ***limited*** support from the Tenants' Union of NSW, by phone. They once were able to gain limited support from PAVS, until the current Government removed their funding, and ARPRA was provided with this funding.

ARPRA does not represent most Homeowners especially where there is a Residents' Committee.

In the past Fair Trading has relied on ARPRA as the advocate of homeowners. ARPRA represents only a small number of Residents Land Lease Community (RLLC) Homeowners. We and others have found the Tenants' Union of NSW and other Homeowner Associations Independent Park Residents Action Group (IPRAG) Inc. more capable of representing Homeowners' interests than ARPRA and ask that this be considered when assessing submissions and representations. More Government funding should be made available to the Tenants' Union of NSW, IPRAG and Residents' Committees.

Homeowners are basically on their own, with advice from other areas such as The Tenants' Union of NSW, Independent Park Residents Action Group (IPRAG NSW) Inc., and Residents' Committees, if they know who to speak to.

c) **To protect Homeowners from bullying, intimidation, and unfair business practices**

There is nothing in the Act that would ensure Homeowners are protected from bad behaviour. ***Identifying it within the Objectives does not make it so.***

Any recourse available to Homeowners is basically ***via sect 157 or Sect 25.*** A very arduous process, of gathering evidence and preparing a case to the Tribunal. Some Members have refused to accept Statutory Declarations, a vital form of evidence when it comes to ***elder abuse and dealing with the elderly Homeowner.***

The processes can be fearful. ***It is a valid response to feel fearful when challenging the bullying of a bully who has the backing of a huge company and its resources***. Yet this is our only option and then if the brave applicant has the good fortune to have a reasonable Member at the Tribunal the outcome will be an order to desist, which the Operator can choose to ignore. ***This is not fair or reasonable. Penalties need to recognise the financial position of the Operator.***

If penalties are awarded, they are not inducive to promote behavioural change.

Financial penalties should be awarded, and those penalties should be commensurate to the Operators financials situation. That is an International company with a multitude of entities, should receive a hefty financial penalty. What financial penalties are currently available (though we have never seen them awarded) would be less than the petty cash in the manager's office.

The Act should include

- A licensing system of Operators
- There should be a licence:

    i. To erect and maintain a RLLC village on the Owners land.
    ii. For the owner or another related party (the Operator) to operate a standalone RLLC village, on the Owners land, or within a mixed site, an RLLC village section on part of the land.
    iii. To be a village manager (either fulltime residential or part-time visiting) of a RLLC village.

1. An Owner/Operator would require both licences and an Owner/Operator/Manager all three.

2. Each licence would carry licencing qualification requirements and obligations relevant to the level of licence. For example, the Owner licence would have a provision that only. Currently Licenced Operators are permitted to perform the duties of 'Operator' under the Act. Operators under their licence may engage only Licenced Managers.

3. The licence should contain a set of mandated obligations to be performed and observed by the licence holder at each level of licence.

4. An Operator licence should attract an annual non-refundable licence fee based on the number of leased sites in a village, payable by the operator, to the Compliance Authority. The fund created by the licence fee to be used to resource the compliance authority activities and obligations. Substantial enforceable fines (commensurate with level of licence) should apply for breaches of licence conditions up to loss of licence by the Owner to operate a RLLC village. Fine revenue should also be paid into this fund.

5. There are many precedents for such licences e.g., licence to operate a hotel, homes for aged care, licence to operate as a real-estate agent, licence to drive a vehicle or operate machinery, plumbers' licence, chartered accountants, and many more. Licences are required to ensure only persons and organisations that are qualified and accountable, conduct business with government and the public, especially the vulnerable public. Exactly the public cliental RLLC operators deal with. If they fail to meet licence requirements, they can be removed from conducting that business.

6. Loss of an operator licence would immediately result in suspension of site fees payable to the Operator. The village fees then payable into a suspense fund for use in ongoing operation of the village and the village going into administration generally as provided for in Part 13 of the Act.

7. Exposure to loss of licence is a powerful incentive to conducting business legally and ethically, reducing and simplifying the need for expensive court intervention by and at the expense of Homeowners.

8. Licence requirements for Managers should include a qualification system, leading to a Certificate IV or similar certification for both offsite line Managers, and on-site Managers.

9. Exposure to loss of licence is a powerful incentive to conducting business legally and ethically, reducing and simplifying the need for expensive court intervention by and at the expense of Homeowners.

10. Licence requirements for managers should include a qualification system, leading to a Certificate IV or similar certification for both offsite line managers, and on-site managers.

- Access to a regulator that is accessible, user friendly and with "real teeth"
- An increasing of the capacity for Tribunal Members to apply real repercussions for breaches of obligations and opportunity for referral to such agencies as the police, to assess bullying and intimidation (elder abuse) and unfair business practices (sometimes theft).

An unfair business practice consistently seen within site fee increase arguments is the inclusion of Capital Expenditure often termed improvement, repairs, replacement. These terms do not make the expenditure an Operational expense, they remain a Capital Expense for the purpose of improvement repairing and replacement of the Operator's asset.

It is obscene that Operators gouge payment for the benefit of maintaining and improving their assets from pensioners.

This needs to be addressed in the review

Capital Expenditure

The Act should identify CAPITAL AND CAPITAL WORKS (Capital Expenditure)

The Act must provide a clear position that Capital Expenditure, for the purpose of increasing, improving, maintaining, upgrading the Capital assets of the Operator are their financial responsibility.

Information provided from accountancy firms with knowledge of Residential Land Lease Communities identifies Capital Expenditure includes amounts spent to acquire or significantly improve long term assets, such as land, equipment, buildings, furnishings and fixtures, village upgrade and expansion.

- Painting or repainting common property (buildings)
- Acquiring or replacing fixtures and fittings that are part of common property
- Repairing or improving the capacity of common property (buildings)
- Office and computer equipment
- Tools, equipment used by maintenance person
- Vehicles and golf buggies
- Roads, drains. All necessary infrastructure
- Tree maintenance

Though members at the Tribunal, on occasions, have removed the above items from Operators' Operational expenses claim, some do not. It needs to be clear in the Act and words like maintenance of and improvement do not change a Capital expense to an Operational one as is attempted consistently by Operators.

d) **To encourage the continued growth and viability of residential communities in the State**

This objective can be removed. Yes, it has been incredibly effective for Operators, and offshore investors.

2. **Has the Act been effective in delivering its objects?**

The Act has many weaknesses, in particular "By notice site fee increases". The Act requires an EXPLANATION for increases. The explanations given are meaningless. In many instances the operator uses unfair, predatory tactics against a community with limited resources to defend itself. The ACT should require EVIDENCE with repercussions if not provided.

The "Act" must address this lack of accountability.

The section re Site fee increases by notice is one example

Division 3 Sect 67.4(a) must be changed to include the following points.

The Site fee increase notice must provide

- evidence to support the request for an increase, including invoices and receipts, relating to Operational costs within the Community receiving the notice
- To require the Operator to include, in the explanation, a statement (with evidence) of non-recurring expenses (cost recovery) included in a retiring site fee, and cost reduction associated with a reduction in services
- To require retiring non-recurring expenses and cost reduction associated with a reduction in services to be credited (deducted) from the site fee before any new increase is added
- Reduction of site fees, to allow a site fee reduction for retiring non- recurring expenses and other reductions in expenses additional to those listed in article 64 of the Act without first seeking a tribunal direction

- A description and purpose of each operational expense incurred and increased since the last site fee increase notice
- a description of how the increase was apportioned across sites in the Community

Sect 74** should state that **only operational costs incurred during the 12-month period prior to the site fee increase notice, should be recovered via site fees.

Projected increase in outgoings and operating expenses must be removed. It is unjust and unreasonable.

There is no possible means to ensure "appropriate business practices" within Site fee disputes unless EVIDENCE is provided.

Who knows what Operators are using to justify their demands? There seems to be an expectation that Homeowners "trust" Operators. Our experience would suggest there is no valid reason to trust.

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.**

Yes. There are 35,000 people living in Residential Land Lease Communities in NSW. Many are over 55's on low income, retirees or pensioners. Some residents are forced out of their homes to be replaced by newer, younger cashed up replacements on higher site fees that are yet to encounter the inequity. This is mainly due to Rent Assistance and pensions not keeping up with the rise in yearly site fees, which makes a severe impact on household budgets, particularly in the case of single pensioners. A cap on site fees or new site agreements to be CPI only would greatly assist the strugglers in these communities.

The main changing factor is the massive introduction in Land Lease Communities of large National and International companies, where money is taken offshore, where the investor is God and where the

Homeowner purpose is to fill the pockets of the investors. There is no safety or security of tenure within the Communities.

Operators and their Association 2018 "Land Lease Living Industry Association of NSW Ltd" ***advised Government that they provide affordable housing to those on limited incomes. (Submission to Treasury 2017) attached***

This should be enshrined in the Objectives

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

No. There are many instances where salespeople use misleading or deceptive promises to sell a home and receive a commission on the sale. The penalty should be a minimum fine of $20,000 or the contract voided and rewritten.

The Act states that Site agreements at time of purchasing a home are negotiable. ***They are not***. It is "take it or leave it". ***This creates a breach of the Operators responsibilities to not "hinder a sale".***

Hometown recently advised that there is no negotiation on whether new Site agreements can be changed to "by Notice" site fee increase from their new requirement that agreements identify site fees as being by "Fixed method" for 5 years at 3.75%, even though 230 existing homeowners are on "by notice". This is hindering a sale.

This is not negotiation of Site agreements.

A new Homeowner often does not realise that statements made by the Operator when they were considering purchasing were misleading and or false, until they move in and meet the Residents' Committee or members of the community. Then their first investigation within the community involves an expectation that they will challenge the Operator. It does not happen.

Is this reasonable NO. Is this fair NO.

Is this unreasonable business practice YES

So, no, the ban is not working because there is no reasonable safe means to challenge the Operator. It is another case of ***the Act saying it, does not make it so.***

5. **Does the disclosure statement provide enough information to a prospective homeowner to allow them to make an informed decision about buying into the community? Why/why not?**

The disclosure statement should disclose the site fee currently paid by the seller with an option to assign the current agreement. The usual practise is to raise the rent for new owners instead of remaining as the same level of homes in a similar situation, also changing the fee structure to "fixed" with no option to remain on or have "by Notice", leaving the possibility of disproportionate levels of site fees for identical areas of the community, particularly in rapid turnover of certain homes. Apart from the above the disclosure statement should be removed.

THE RIGHT TO ASSIGN YOUR SITE AGREEMENT MUST BE INCLUDED IN THE ACT.

The wording in the relevant section of the Act is incorrect. There are no Tenancy Agreements in Residential Land Lease Communities. They are Site Agreements. This incorrect wording has led to great misfortune and at times loss of the sale of a home. This was previously acknowledged with an undertaking to correct the error and change to "Site Agreement".

This must be rectified in the review

6. **Is the form of the disclosure statement easy for prospective homeowners to understand?**

Although reasonably straight forward, it can be too much for inexperienced buyers, particularly elderly persons to understand initially. The fact that they are buying a chattel, not property, needs to be spelled out to them, as well as the uniqueness of the Agreement.

7. **Is the disclosure statement provided at the right time? i.e., should it be given earlier or later?**

14 days should be enough time to seek further advice, but an explanation sheet to take away for further study would be helpful. This sheet should point the prospect to information availability through Fair Trading, Tenants' Union of NSW, IPRAG and Residents' Committee at the village.

THE SITE AGREEMENT AND THE DISCLOSURE STATEMENT MUST BE PROVIDED AND ALLOWED TO BE REMOVED FROM THE COMMUNITY TO ALLOW THE POTENTIAL BUYER TO GAIN INFORMATION. ***This needs to be added to the Act***

8. **Does the disclosure statement form need to be improved? If yes, how would you improve it?**

There seems to be no valid reason to maintain a Disclosure Statement, except to advise of current site fees and any other further development of the village. In our community, 230 Homeowners are on Site fee by notice. New Homeowners are being required to sign site agreements for 3.75% increase over 5 years. It is not until that move into their home and meet other residents to they realise they are paying well above everyone else and locked into 5-year leases.

Also, the right to ASSIGN your Site Agreement must be added/ returned to the Act.

9. **If an Operator of a community fails to provide a Disclosure Statement to a prospective Homeowner 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?**

This should be minimum $20,000 and commensurate to the financial holdings of the Owner, but again we note we have never been made aware that any penalty has been imposed. This must be large enough to deter bad practice and affect the licence if there was one introduced.

It would be interesting to see a list of penalties provided. We cannot find any Homeowner who has been successful in any form of complaint mechanism, in having penalties awarded to an Operator.

The current financial penalties that are supposed to be available are not large enough to deter the big operators. Again, they should have effect on the licence, demerit points or loss of same.

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

Yes. All details are not completed and noted. This also applies to the Disclosure Statement.

Additional terms within Site Agreements need to be limited and represent the Act and other laws. A standard form for both The Site Agreement and the Disclosure Statement must be developed and used by all Operators, with no exception. There should be no exceptions if the approved form is not used by the Operator, therefore they are not binding.

11. **Does having a prescribed standard form Site Agreement work well?**

Many communities have additional terms added, e.g., Pet Agreements, which can make the document very cumbersome while not actually being part of the document. If the Site Agreements were "standard" then, yes, that would work. Our Operator does not use the prescribed standard form. Their form is 18 pages plus the Disclosure Statement. This could be covered by Community Rules.

We are told by the Operator that it is standard and unless one is aware of what is standard and what is not, one accepts the word of the Operator. Operators have added so many additional terms they cannot be deemed as "standard" Site Agreements. We require a standard form, not one with alterations or additions. Again, standard Site Agreements should be used by all. If they are not, penalties should apply.

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

Yes. Most Site Agreements for older style communities still include clauses relating to the occupancy of caravan parks. This should be removed to reflect the fact that these are permanent homes, where guests can stay longer that 2 or 3 nights.

The following additional clauses should be removed

- The social media clause, gagging clause, intimidatory clause
- Terms enabling Operators to charge security deposits for electricity and gas
- Terms regarding Homeowners taking ownership and being responsible for the preservation of site infrastructure such as concrete slabs, driveways, retaining walls or any structure that is not the home or an associated structure
- Any term requiring the Homeowner to pay a bond to the Operator as a condition of obtaining written consent to add or alter a structure on a residential site

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

As each individual community has its own additional terms it is queried that these should be a part of the standard site agreement or should they be Community Rules, or should they be seen for what some of them are, which is intimidating. We believe that Community Rules should be part of the Site Agreement.

There should be no additional terms

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?**

Yes, but found it to be very difficult to navigate as well as not gaining access to the information being sought. The section where complaints are housed is impossible to find. The large operators have a separate entity for each village to avoid residents seeing the group complaints. This requires modification that all have access to all villages listed under the Management, Operator's names, and Operators to identify the problems villages may be experiencing.

15. **What information should be included on the Public Register and how should the information be presented?**

Complaints against the group should be shown. An operator could have 60 villages and 60 separate entities, so they should be under the Operators full name, site name and address.

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?**

The Act should remove 'Fixed method"

The gap between "fixed method" and "by notice" continues to grow. Most of the disputes are about excessive site fee increases. Currently the aim seems to be to sign Homeowners up to long term leases about site fees. This locks Homeowners into a cumulative fee, with no regard for years of low CPI and years where Operational costs are reduced and/or maintenance not done. This practice, which is currently only in effect in our community, for new Homeowners has created yet another disparity between Homeowners' site fees.

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?**

If fixed method remains it should be in only one form. Only such as CPI **OR** % of age pension. A combination of methods should not be allowed.

The Agreement when fixed term is used should be for 12months only from signing, with the opportunity to review the fixed rate and change to "By Notice". Again, we stress that Fixed Term should be omitted.

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

Yes, on a common date each 12 months, with the expenses used to justify the increase being those incurred during this 12-month period and, also consideration to a reduction on the non recuring expenses.

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?

Yes, but not as the Five-Year method stands. The Act says Fixed Method cannot be challenged.

The Act should allow a Fixed Method for new Homeowners for one year only. At the end of that year the Homeowner can negotiate staying on Fixed Method or changing to By Notice. The removal of the Fixed Method completely and only has By Notice with Explanation. (refer to 2 Explanation Definition)

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

No. There is no requirement for the Operator to produce any evidence at mediation OR conciliation. The process is inequitable. Pensioners against International Companies, supported by a well-resourced Association, and with their own in-house solicitors. It is as incredibly unfair process. David and Goliath. The disputes would be less if the Act includes the issues we have repeatedly raised here in relation to provision of evidence and the clarity regarding Capital Expenditure and explanation.

If the Operator acted fairly, provided the evidence, the explanation, (as outlined in 21 site fees increase by Notice must provide), was respectful and transparent, less disputes over site fees would occur.

If assignment of Residential Site agreements is returned to the Act, even less disputes will occur.

21. Should there be changes to the grounds for challenging site fee increases by notice?

The Act needs to include what has been mentioned previously and provided again here.

The Site Fee increase notice must provide

- evidence to support the request for an increase, including invoices and receipts, relating to Operational costs within the Community receiving the notice
- a description and purpose of each operational expense incurred and increased since the last site fee increase notice
- a description of how the increase was apportioned across sites in the Community
- Recurring cost removed prior to new increase being applied

Sect 74** should state that **only operational costs incurred during the 12-month period prior to the site fee increase notice, should be recovered via site fees. No recurring costs.

Projected increase in outgoings and operating expenses must be removed. It is unjust and unreasonable

*** Capital expenditure to NEVER be included in reasons for Site fee increase***

22. Should the factors the Tribunal may have regard to when determining site fee disputes be expanded or changed? What changes would you suggest?

We suggest Section 83 be expanded to include proof of increase in operating costs, because now it only covers utilities.

The unwillingness of Operators to provide information within mediation should be seen relevant within the Tribunal.

The demographics of a community should be acknowledged as should be any lack of increase in pension income.

The Member must be able to consider all issues they deem pertinent.

23. Are the provisions governing site fees for new agreements fair and effective?

No. Refer to our answer to Question 5. Operators always endeavour to charge the top rate instead of fair market value as required under section 109. Part 10, including Sections 104 to 115 do not appear to have any penalties attached to bad practices in this area.

Within our Community Operators have indicated they will be introducing a five-year lease arrangement for current Homeowners. This method is coercive, intimidatory, unconscionable and bullying. Some of these actions should be described as elder abuse and should be treated seriously by an overseeing authority. New Homeowners do not receive a choice between Fixed Method or By Notice. In our village 230 Homeowners are on By Notice. Why are new Homeowners only given fixed at 3.75% for five years? By doing this the Operator distorts the average site fee for the village. ***This must change.***

24. Have you entered into an agreement with an Operator/Homeowner that included a voluntary sharing arrangement?

No. We have never seen it used in our village.

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?

No.

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

No. Not in this village

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

Should be covered in the community rules or directed to Community Justice. There seems to be this continual move towards Homeowners taking on more responsibility.

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 Homeowner? Why or why not?

Yes. There have been occasions where Operators have tried to avoid maintenance issues claiming they are the responsibility of the Homeowner. Often outside agencies are not aware of Community Rules and conditions, so the prospective purchaser is not fully informed as to the fact they are not buying property, only a chattel, but a lifestyle based on certain conditions and the uniqueness of community living.

The Site is the responsibility of the Operator, this includes subsidence and retaining walls, common areas, roads, drains, waterways, tree maintenance, to mention a few. ***This must be made clear in the Act.***

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?

We should point out that local council approval may be required for additions to the home, but this needs to be realistic.

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

We have never seen the special levy used. Requires at least 75% of residents to agree. Special levies should only be considered for additional items requested by Residents. They should not be considered for works and repairs to infrastructure. This is the responsibility of the Operator.

Upgrades of the Operators asset must be identified within the Act as the financial responsibility of the Operator NOT HOMEOWNERS.

The community buildings, roads, pools, common areas etc are the Operator's assets for which Homeowners pay site fees to access.

It is the Operators responsibility to repair, maintain, upgrade, improve THEIR ASSETS. This cannot be emphasised enough.

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

Yes, the rules are adequate, but NO they are thoroughly disregarded in many instances.
It is very difficult to prove retaliatory conduct by Operators and there is virtually no support from NCAT in this area as penalties are never applied, even if the case is proven. Some Operators rule as petty tyrants who have absolute power over the community which is too afraid to stand up for their rights.

Our experience is that the Operators attitude towards Homeowners is as described above is merely to increase funds for investors. This attitude comes out in their behaviour towards Homeowners and Residents' Committees that stand up and advocate for Homeowners.

The process of complaint is arduous and even if conducted the outcome is minimal and often ignored by Operators. There needs to be stronger penalties if aiming to deter Operators for inappropriate conduct. These penalties must be commensurate with the Operators financial position. Points or a minimal fine (though again we state that we have NEVER seen them ordered by the Tribunal) are of no consequence to an International company with many entities.

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

This should include a Duty of Care to be more sensitive to the Mental Health issues that arise in the community. This could be covered by Section 37, 1a. as well as an awareness of elder abuse, and its criminal status.

34. Are the Operator education requirements effective?

No. ALL Operators should have to do a course with a minimum set standard of education; an accredited course that gives more information than a one-hour video. This should be undertaken by all Managers and key staff. ***Cert 3 in Holiday Parks and Resorts is available through TAFE NSW or Cert 4 in Holiday Parks and Resorts is available through training.gov.au.*** Similar courses could be written to cover Residential Communities. At present, only new operators are required to do any education through Fair Trading, but the big companies and old operators prior to 2015 have no such responsibility. Updating of accreditations should be part of the Operator's Professional Development.

It is our belief that Operators, with their Association and their inhouse solicitors, know the Act. They assume we do not know it. They also work on finding grey areas and loopholes. Even in this review they will have the resources of a large Association and their lawyers. It is not fair; it is not reasonable, and it is unfathomable as to how anyone could consider the current Act as being fair and reasonable.

35. Can you suggest other educational resources or topics to facilitate a greater understanding of the role and responsibilities under the Act?

Understanding of elder abuse, intimidation, social awareness, and professional development, in all forms.

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

Should have to pass a test on the Act; social awareness as to the aspects of community living; elder abuse, mental health and public relations included in professional development and all its parts.

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

Yes, we were aware, but it must be monitored that all villages have community rules and form part of the Site Agreement.

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, in many communities. Ageism can be challenged as discrimination. Many residents believe this to be a legal regulation, which is not the case.

The aged community serves the purpose for Operators. Aged people are often less secure, and more fearful for their security and will agree to things rather than "cause problems". Aged people are often not able to read legislation, site agreements, etc. They are a vulnerable group.

In our Community we have over 6 Homeowners over 90.

40. Where Residents' Committees are in place, should they be involved in the development of community rules? Why or why not?

Yes, they should be involved in setting up community rules not just when they are amended. Management should listen to and heed resident opinions as reported by the Residents' Committee. All residents need to be consulted and this is the role of the Residents' Committee, to ensure this.

41. If there is no Residents' Committee in place, how could residents contribute to the development of community rules?

They are not able to do so. All communities must have a Residents' Committee as outlined in the Legislation. This should and could be expanded.

42. Is the system of enforcement of community rules appropriate?

No, if so, only in selective areas. This depends on the Operator and the Community.

43. Are community rules being used to improve life in residential communities?

This section has the intention of establishing a uniform way of life that is convenient for all members of the community. However, Community Rules are often not enforced equally and fairly. Several factors apply. Some Managers do not wish to act or are incapable of taking steps to be involved: some Managers play favourites and allow privileges to favoured residents; some Managers and staff do not believe that the Community Rules apply to them, e.g., No pet policy, but the Manager for Hometown has dogs and a cat.

44. Should Residents' Committees also be required to take part in mandatory education? If yes, what topics should be covered?

Yes, they should have knowledge of the Act and of community rules, but it is a big ask to have Homeowners read and become familiar with the Legislation. Therefore, they need effective advocates. They may be able to receive some advice by phone from the Tenants' Union of NSW and IPRAG but this is limited by these agency's resources. Residents' Committees should be encouraged to develop strong constitutions that recognise their role as support and advocates for residents, includes expected behaviours, grievance procedures and reflects the Act. A booklet outlining their responsibilities and

obligations could and should be developed. At least one member of the Residents' Committee should be able to have training about their obligations.

45. If your community has a Residents' Committee, is it working effectively?

This is very dependent on the personalities involved, their knowledge, including the Act, Tribunal processes and their ability to mediate negotiate and conciliate. This varies from Community to Community and is highly geared around the reasons for the existence of that committee. Some are the mouthpiece of Management, there for their own glory or self (and friends) interest. Our Residents' Committee is strong and has always represented all Homeowners. They have acted on behalf of the Homeowners to access electricity accounts. They have had success at the Tribunal on electricity over charge refunds and rent increases.

The Committee at Teraglin Lakeshore is hard working, giving of their time and at times their own financial resources to support Homeowners.

Hard working Committees, actively assisting residents become the target of the Operator and experience attempts to hinder their effectiveness. The Residents' Committee should be the main Committee having sub-committees such as social club, bowls, etc, working within the Residents' Committee making sure that the Operator is abiding by the Legislation and Community Rules.

46. Do you have any suggestions for changes to the way Residents' Committees are established or run?

Knowledge of the Act, fearlessness, understanding of the "majority", separation from Management to be very clear. Clarity that they are NOT third tier management. The ability to always work with all Homeowners and Operators abiding by the Legislation and act in association with both for the benefit of the community.

The ability to access grants to manage their administrative responsibilities. As it stands Committee members pay from their own limited income for photocopying, advice, and other expenses. Again, one Committee within the village and all other Committees are an off shoot of the Residents' Committee.

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

OK with a reservation on sewerage charges and its monitoring of cost. We pay a total cost of water @ $2.07 per kl plus the same use again for the sewerage @ $0.86 per kl.

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

At this stage, there is no problem, but we had to go to the Tribunal to be granted access to electricity accounts from the Operator. We were granted access by the Tribunal which is a very long and tiresome process. The access is made very clear in the current Legislation and must be able to be enforced without going to the Tribunal.

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

Not acceptable until the Reckless decision was handed down. After that decision, our Operator is applying that method. We feel that a fair electricity charge is being applied to all Homeowners on the embedded network if the Reckless decision is applied.

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

Reckless decision is fair to all. If you have a mixed village with embedded and direct supply, consideration should be given to the common area electricity usage expenses. We have 130 Homeowners on embedded network and 100 on direct supply.

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

No, Reckless only.

52. What is your view on the impacts these options would have on electricity bills in your community?

Not applicable, Reckless only

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?

Not applicable

54. As an Operator, what costs do you incur due to maintaining an embedded network and to what extent do you recover these?

No comment, we are not the Operator

55. Are the current discounts in the Regulation appropriate?

No. Providing all discounts received by the Operator are passed on to the embedded network users.

56. Are you an Operator or Homeowner with less than 60 amps? Are there any steps which could be taken to increase this level?

Homeowners only receive 35 amps. The supply should be increased to at least 60 amps to allow a better supply of electricity to the Homeowner

57. What difficulties are operators facing in managing solar systems in communities?

Unknown, as our Operator will not allow solar power, at this stage without approval.

58. Are there other forms of sustainability infrastructure that are becoming common in communities?

None. 130 of the 230 homeowners have electricity supplied by the Operator, the balance received from an outside direct supplier.

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

The Operator's consent

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

Allow this to be done by having it as an alternative in the Legislation.

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

Refusing to negotiate Site Agreements and disallowing assignment is interference with a sale. Therefore, it is not working well. The Legislation must agree to assignment.

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

No. They adjust the selling price to suit themselves and change the Site Agreement to their own advantage and the Homeowner's disadvantage.

63. Should Operators continue to be able to act as selling agents?

Yes. The Act sets out adequate guidelines but there is no control to make sure the seller does the right thing. It appears there are no penalties for ignoring elements of Sec 10 Homes for Sale, 104 to 115. A Competency Certificate should be undertaken by Managers, or staff, who wish to sell homes in their village.

A course could be developed by Fair Trading in Sales Competency and greater understanding of the Legislation.

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

Guidelines for suggested commission rates should be stated. This should be included with added guidelines as to the actual service offered and undertaken.

65. Should the Act be amended to also prevent an Operator unreasonably refusing consent to assignment of a site agreement? Why or why not?

Currently Operators have been able to use the typo in the current act referring to Tenancy Agreements instead of Site Agreements. ***This must be addressed.***

Yes, assignments of the lease should be allowed, to stop operators charging the new Homeowner the top site fee. An interpretation of the term "unreasonable" is needed.

This is a ***MUST ADD*** to the Act. Allowing the assignment of site agreements, will reduce many of the issues and disputes between Operators and Homeowners.

66. Are the provisions relating to the assignment of tenancy agreements working well in practice?

This is incorrect terminology: should say Site Agreement ***NOT*** Tenancy Agreement. We do not have Tenancy Agreements in Residential Land Lease Communities.

It is concerning that even within this review survey the wrong terminology is used. It needs to be understood that Tenancy agreements are not relevant to the Residential Land Lease Communities Act 2015. The terminology is Site Agreement. (Has been agreed to be changed on many occasions by both the previous Ministers and Fair Trading). ***The Act must be changed to allow the assignment of Site Agreements.***

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

This is dependent on the Operator's directions and the Homeowners ignorance of the ACT.

68. Are the grounds on which Operators can terminate a Site Agreement appropriate? Should any other grounds be added?

No additions needed, but the grounds that relate to change of purpose needs to be changed. Large International and National Companies with an eye for development are purchasing communities in prime areas. Homeowners are in continual fear that zoning will be changed to allow development (a great profit for Operators) and loss of green space for Homeowners.

69. Are the notice periods that Operators are required to give for the different termination reasons appropriate?

Yes

70. Are the compensation provisions working well?

We do not know of any compensation to any Homeowners in communities as at the present, it is not published.

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

Mediation with meaning and outcome agreed to and binding by both parties and a tribunal with teeth and an understanding of the imbalance within parties to the dispute.

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?

There are several barriers to success with NCAT hearings. Lack of education and awareness of residents, inaccessibility of court proceedings for those outside city boundaries, fear of retribution and retaliation from Operators. Fair Trading needs to have a specialist in Residential Communities to prevent conflicting advice being given as their authority covers too wide an area. NCAT should have a specialist in the R (LL) C Act to hear cases.

NEVER, NEVER, any more non face to face mediation and hearings as body language can tell a story the same way as oral evidence. It is harder to present evidence over the phone rather than in person.

In a recent mediation the Operator has had a solicitor with them, arguing they are just observing, which of course is rubbish. This must be stopped and controlled.

73. Are the Commissioner's disciplinary powers adequate?

Have they ever been used? The ability to access this is very unclear. It should be made very accessible and transparent. As a community we would have used this if we had known how to.

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

It does not matter as breaches are never addressed or penalised. If these areas became offences, then penalties could be attached. These penalties would need to be commensurate to the financial holdings of the Operator.

Referral to authority to take criminal action should be available, particularly in relation to elder abuse, unconscionable behaviour, and inappropriate business practices.

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

No but many should be treated as criminal offences and or serious fines for inappropriate behaviour and/ or loss of licence.

76. Are the powers of Fair Trading investigators appropriate?

We have had no experience, or evidence, that these investigators were ever appointed or began their investigations. People have given up trying to lodge complaints and then it becomes "no one complains" ***which is then used against Homeowners at Mediation and Tribunal Hearings.***

ATTACHMENT 1

Division Head
Corporate and International Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

20 April 2017

By Email

Dear Sir / Madam

Submission on Stapled Structures Consultation Paper

We thank Treasury for the opportunity to make a submission on the March 2017 Consultation Paper on Stapled Structures (**Consultation Paper**) released on 24 March 2017.

This is a joint submission made on behalf of the following organisations:

- Land Lease Living, Caravan & Camping and Manufactured Housing Industry Association of NSW;
- Aspen Group;
- Gateway Lifestyle Group;
- Hometown America; and
- Ingenia Communities.

Executive Summary

There are approximately 70,000 people living in residential land lease communities (**RLLCs**) in Australia. Approximately 95% of these are low-income retirees on pensions. RLLC operators provide value for money, affordable housing options to Australians, and will continue to grow as an attractive housing alternative for Australia's growing pool of retirees, given the current housing affordability crisis in Australia.

RLLC businesses typically operate by way of a stapled structure. There is however no integrity risk to the revenue as a consequence of the operation of RLLC businesses via stapled structures, as RLLC Operators clearly operate two businesses capable of being operated separately, and the taxation outcomes achieved for both the active and passive businesses are consistent with Australian taxation principles for such businesses.

Any change to the tax policy applying to stapled structures is likely to adversely affect the RLLC industry.

In particular, any change to the flow-through treatment of passive income from RLLC operations will reduce the Australian RLLC sector's international competitiveness, especially when compared with the US, being the world's largest RLLC market. Such change will reduce after tax returns and therefore increase the cost of capital for RLLC operators, and thus reduce the level of investment in the RLLC sector in Australia, and adversely affect the ability of RLLC operators to continue to provide affordable housing to senior Australians.

Overall, what this means is any change to the availability of stapled structures to the RLLC sector will invariably have an adverse impact on some of our most financially vulnerable senior Australians. In this submission we have sought to provide further detail on the RLLC sector, and the potential consequences on not just the RLLC sector but more importantly over 70,000 residents that call an RLLC home.

In summary, we submit the following:

- The RLLC sector should be permitted to continue operating as stapled groups.
- Integrity measures are not required for cross staple dealings of the RLLC sector as they do not result in the conversion of trading income into passive income.
- A specific REIT regime is not required.
- Consultation must not be rushed.

Further details in relation to the above submissions are included in this paper.

1 Who we are

We are industry representatives, and some of the key players in, the RLLC industry in Australia.

RLLCs are communities where residents purchase a dwelling, and lease the land which the dwelling is located on, from a RLLC provider. The land is located in a RLLC, which are often also described as Permanent Parks, Manufactured Home Estates, and Lifestyle Communities.

1.1 Industry statistics

There are over 2,500 RLLCs and caravan parks around Australia, and of those, 1,650 are pure tourist parks, 750 are mixed use parks with tourists and permanent residents, and 170 are dedicated RLLCs for (predominately) senior Australians.

The RLLCs are targeted towards retirees aged over 55, and it is estimated that over 70,000 Australians live in RLLCs and mixed use parks, compared to 190,000 living in retirement villages.

New South Wales and Queensland contain 82% of the RLLCs within the industry.

To use NSW as an example, the NSW Fair Trading Register of land lease communities as at 31 January 2017 shows 495 RLLCs listed on the register (95% of them in rural and regional NSW), with 33,912 residents, and a total of 62,991 sites available. Permanent residents occupied 20,591 sites where the dwelling is owned by the resident, and 3,193 sites where the dwelling is rented from the park owner. An additional 13,414 sites are used by long-term casual occupants. Approximately 34,607 persons permanently live within the RLLCs in NSW alone.

Specifically, the signatories to this submission represent the following organisations:

Land Lease Living, Caravan & Camping and Manufactured Housing Industry Association of NSW

The Land Lease Living, Caravan & Camping and Manufactured Housing Industry Association of NSW represents the interests of owners and operators of caravan and holiday parks, residential land lease communities, and manufacturers of homes and cabins used in land lease communities and holiday parks. It represents over 720 businesses throughout NSW.

Aspen Group

Formed in 2001, Aspen Group is an ASX-listed property group strategically focused on providing "value for money" accommodation. The accommodation sector is considered to have positive long term structural characteristics, with an enduring customer need and effective capital utilisation. Aspen has been a leading owner and manager of holiday and accommodation parks since 2004.

Aspen currently owns 5 holiday and accommodation parks across Australia.. Aspen is seeking to expand its portfolio within the "value for money" accommodation sector.

Gateway Lifestyle Group

Gateway Lifestyle Group (**Gateway**) was formed and listed on the ASX on 15 June 2015 as an owner and operator of Manufactured Housing Estates (**MHEs**). Today Gateway owns and operates over 50 MHE parks throughout Australia, and is home to an estimated 9,000 residents.

Gateway believes in affordable and sustainable housing communities for all senior Australians.

Gateway aims to expand its portfolio of affordable housing options by acquiring new MHE parks and developing existing parks and greenfield sites, leveraging their low cost platform across more residents.

With more and more senior Australians requiring an affordable and sustainable living solution, Gateway strongly believes a stable income tax environment is critical to ensure affordability is not compromised, as any adverse impact is likely to be borne by their residents in the short term and beyond that an additional call on the already constrained welfare budget of the Commonwealth.

Hometown America

Hometown Australia Communities is headquartered in Sydney, NSW and is a subsidiary of Hometown America (www.hometownamerica.com), one of the top five owners and operators of RLLCs in the USA. Hometown formally commenced operations in Australia in August 2016, and now has two properties under management, which contain 357 approved sites. The company's goal is to grow, through acquisitions and development, into one of the top owners of residential land-lease communities in Australia.

Founded in 1997, Hometown America is a privately held company that owns and operates residential land-lease communities across the USA. Today, the company owns and operates more than 55 communities in ten states containing over 23,000 homes. Hometown's properties are known for their quality amenities, professional on-site management, and the affordable lifestyle they provide for residents. Hometown's residents enjoy an inspiring lifestyle, a welcoming and friendly environment, and Hometown's dedication to providing a higher standard of living

Ingenia Communities

Ingenia Communities is a leading Australian property group that is listed on the ASX and owns, operates and develops a growing portfolio of lifestyle communities across key urban and coastal markets. With a market capitalisation of over $500 million and supported by over 4,000 investors, Ingenia Communities has a portfolio of 62 communities located in NSW, Queensland, Victoria, Tasmania and WA. Over 4,100 residents reside in over 3,250 homes in these communities.

2 Removal of stapled structure efficiencies will increase the cost of capital, and reduce the level of investment, in the RLLC industry in Australia, impacting the ability to provide affordable housing

Question 13: If tax laws are amended to remove the tax advantages of stapled arrangements, what impact do you consider this would have on the Australian economy, including the cost of capital, level of investment and price of assets? Please include any supporting evidence

It is crucial that the RLLC sector is permitted to continue operating as stapled groups. Stapling allows RLLC operators to be internally managed and run an integrated business platform. Any move away from allowing stapled structures in the RLLC industry without some other change to the law to allow income from site rentals to be treated as passive income will inappropriately increase tax costs in Australia. This will result in an increase in the cost of capital and level of investment in Australia.

Given some RLLC operators fall within the MIT regime, removing the benefits of stapling will have a clear negative impact for the industry to attract offshore investment. Even though there is increasing consumer and market awareness for this sector, the Australian RLLC market is still at an infantile stage and relies heavily on local and overseas investment to fund growth. RLLC operators are also looking to the US to leverage industry know-how as the RLLC market in the US is mature. Any changes with increased tax costs to RLLC operators or less attractive withholding tax arrangements for offshore investors will impact on sector growth.

In the event that cross staple payments and receipts are not deductible or become assessable, operators will either be faced with a larger tax bill or costs of re-organisation/restructure. For instance, debt facilities may need to be re-arranged such that each of the stapled entities is a named borrower to the facility rather than having just the land-owning stapled entity being the named borrower (see section 3 below for details on the typical use of a stapled structure in the RLLC industry). Not only will this involve costs that would otherwise be used to fund operations and development, the cost of funding may increase depending on how banks assess the credit profile of the stapled entities.

Sectoral impacts

Question 15: Are there any specific sectoral impacts that should be considered?

2.1 Affordable housing

Any changes to the treatment of RLLC site rental income will result in the higher tax and investment costs being passed on to aged residents who are typically from a low socio-economic background.

Australia's growing pool of retirees is living longer. For people aged 65-69, some 70% have less than $100k in accumulated superannuation. For many retirees, the sole source of accumulated wealth is ownership of the family home. 50% of Australians have less than approximately $470k in total equity. Typically, those retirees who are looking to downsize and free up equity, will only be able to free up equity of between $60-120k. They typically cannot afford a retirement village villa or unit in their desired location.

Releasing equity while retaining pension and rental assistance from government is increasingly attractive and for some, the only viable option. RLLCs are becoming *increasing popular as an affordable housing option as they allow retirees the conversion* of home equity into a comfortable retirement in a community setting.

Currently, site lease payments average circa $140-$180 per week. After rental assistance, the rent works out at less than 20% of the pension. The rental covers the cost of management and maintenance of the community.

2.2 Sectoral impacts which should be considered

Whilst it is difficult to quantify any negative impact from any proposed changes as a result of the government's review of stapled structures, the RLLC industry is wary that the tax costs of operations will increase whether as an intended or unintended consequence of any changes arising from this review; and the industry's ability to attract investment either onshore or offshore will be affected.

To the extent changes are made without a complete review of the meaning of passive *income for the purposes of Division 6C, there is a real risk that MHE operators with a* stapled structure will have to pay more tax, for example, as a result of cross staple lease payments being made non-deductible. Increased tax costs will be, at least partly, passed on to residents.

As noted above, site lease payments currently average $140-$180 per week. If the tax cost of any amendments to the tax concessions available to RLLC providers were to be passed on in full, it represents an increase of up to $54 per week in site lease, which some retirees will need to fund out of their pension payment. This represents approximately 14% of the maximum basic rate of pension for singles, or 9% of the

maximum pension payable to a couple. This is a significant portion of the aged pension and could render RLLC living unaffordable for some pensioners.

3 Use of Stapled Structures in the RLLC Industry

3.1 Income generating activities of RLLCs

RLLC providers provide budget accommodation in residential parks to low income retirees in the over 50's demographic in Australia, effectively by separating land ownership from house ownership. RLLCs are targeted at the over 50s age group.

Permanent residents of RLLCs purchase and own a manufactured home, and enter into a Residential Site Agreement (**RSA**) with the RLLC operator to lease the dwelling site upon which the home is located. The fee payable under the RSA for site rental covers the costs associated with the day to day operation and management of the RLLC, and the use of the community facilities.

A manufactured home is a self-contained dwelling that is either built or packaged off-site and then transported to the estate for installation. This includes any associated structures that form part of the dwelling. It is a chattel, not a fixture, although it is usually not a moveable dwelling.

The land and community facilities continue to be owned by the land owner, who operates the residential park or leases it to a manager.

RLLCs are regulated by state legislation, and generally provide retirees with a long-term affordable housing option.

3.2 "Active" and "passive" businesses of RLLC Sector

Similar to real estate investment trusts (**REITs**), the RLLC sector operates two businesses which are combined, but are capable of being operated entirely independently. The two businesses consist of an "active" business and a "passive" business:

- the "active" business consists of
  - deriving income from building and selling manufactured homes; and
  - deriving service income from residents for operating the RLLCs; and
- the "passive" business consists of deriving rental income from the leasing of land on which dwellings are located to residents.

The use of stapled structures within the RLLC sector, to separate the active business and the passive business, does not result in a conversion of trading income into passive income, and is not the subject of the integrity risks which are identified in the Consultation Paper, for reasons explained below.

3.3 Income tax treatment of RLLC Sector income

Stapled structures are used within the RLLC sector as a result of consultation with the Australian Taxation Office (**ATO**). The ATO has previously expressed the view that it does not accept that a payment received under an RSA would be accepted as "rent" income, on the basis that the fees received under the RSAs are not purely related to site rental.

As a result, if a landowning trust enters into RSAs directly with residents, it would be treated as a trading trust for the purposes of Division 6C of the *Income Tax Assessment Act 1936*. The income earned by the trust, which includes passive rental income from residents, would be deemed to be active income assessable at the corporate tax rate in the event that the trust is a public trust.

It is clear that the income streams earned under an RSA can be distinguished, such that it would be possible for residential parks to have two separate businesses operated by two third parties, that is:

- a landowner deriving passive rental income; and

- an RLLC operator earning active income from operating the residential park.

During the Private Binding Ruling request process, the ATO stated that it would only consider Division 6C not to be breached where:

- a trust and its sub-trusts own land only;
- a trust and its sub-trusts lease the land to an operator company and/or its wholly owned subsidiaries under a normal lease agreement; and
- the operator company and/or its wholly owned subsidiaries enter into the RSAs with residents, and operate the residential parks.

On 6 November 2014, the Commissioner of Taxation issued Private Binding Ruling 1012722925808 (the **PBR**) consistent with this view.

Due to this view, stapled structures have become more prevalent in the RLLC industry. However, unlike other industries referred to in the Consultation Paper, the use of stapled structures in the RLLC industry is designed to retain the "passive" status of income from providing land to residents/ occupiers, as well as to "aggregate" the active businesses of developing and selling homes and providing services with that passive business.

4 International competitiveness

Question 5: How important is tax in determining the international competitiveness of Australia as a foreign investment location for assets and activities typically placed in stapled structures?

4.1 Comparison to taxation of RLLC Operators in the US

The US MHE market is the largest, and longest-standing, in the world, and for those reasons provides the best comparison.

(a) US RLLC operators qualify as US REITs

There are a number of US RLLC operators which are structured as US real estate investment trusts (**REITs**). The largest listed RLLC REITs in the US include:

- Sun Communities Inc, which owns over 250 communities with approximately 93,000 sites; and
- Equity Lifestyle Properties Inc, which owns over 380 communities with approximately 143,000 sites; and
- UMH Properties Inc.

Broadly, the US REIT regime allows shareholders of qualifying REITs to access concessional tax treatment. In order for an entity to qualify as a REIT, it is important that the entity predominantly invests in assets which fall within the definition of "real property". For the purposes of the REIT rules, the definition of "real property" and "real estate assets" includes mobile home units installed in a planned community.

Accordingly, RLLC operators are able to access the tax concessions available under the US REIT regime.

(b) Comparative tax treatment of US RLLC operators and Australian RLLC operators

We note that the current taxation treatment of RLLC operators in Australia under the Stapled Group structure, is in substance the same as the taxation treatment of US RLLC operators that elect into the REIT regime.

The below table provides a high level summary of the taxation treatment of different streams of income from a RLLC operator in the hands of each relevant stakeholder, under both systems.

Stakeholder	Rental/ passive income	Active income	Retained income
RLLC operator	Tax exempt/ flow-through status	Corporate tax	Corporate tax
Domestic investors (individuals)	Individual tax rate	Individual tax rate	N/A
Foreign investors (individuals)	Withholding tax (generally, 30%, or 15% for distributions to investor in country with a valid tax treaty)	Australia: No withholding tax unless unfranked (generally, 30%, or 15% for distributions to investor in country with a valid tax treaty) US: Withholding tax (generally, 30%, or 15% for distributions to investor in country with a valid tax treaty)	N/A

The substantive impact the taxation treatment under both the US and Australian regimes is that:

- Income from the "active" business, as described above, is subject to the corporate tax rate;
- Income from the "passive" business, as described above, is subject to flow through taxation treatment, and non-resident investors are able to access the concessional withholding tax rate of 15%.

If stapled structures are removed in Australia, without being replaced by a regime allowing equivalent concessional taxation treatment of passive income derived by RLLC operators, Australia's RLLC sector would become uncompetitive with the US.

We submit however that Government should resist replacing the current taxation regime for AMITs with a new REIT type regime in Australia. The AMIT rules are already a world class tax regime for collective investment vehicles and the rules have only just been implemented after many years of consultation between industry, Treasury and the ATO. Adopting a REIT regime will likely add complexity and trigger considerable restructuring and financing obligations with no additional tax integrity benefits.

4.2 Importance of tax in choosing to invest in Australia

Tax plays an important role in attracting investment capital in order to fund the acquisition and development of RLLCs. In the case of the RLLC operators listed on the ASX, the ability to provide flow-through tax treatment and access to the MIT regime is key in attracting overseas equity capital.

For foreign groups looking to establish a business of developing, owning and operating RLLC, unless Australia is competitive with other jurisdictions in respect of the way it taxes returns from RLLCs, those groups will establish RLLC businesses elsewhere.

Without overseas equity capital, the growth of the RLLC sector would be greatly hindered, thus impacting the ability to provide affordable housing to senior Australians.

We understand the policy concerns raised in the Consultation Paper and support a targeted solution. This cannot be rushed however and Treasury needs to work with industry and the ATO to address the integrity concerns in the Consultation Paper while preserving the longstanding tax arrangements that currently apply to the RLLC sector that have been widely adopted and relied upon by sponsors and the broad investor community.

Yours sincerely

[redacted]

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