

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

List of questions in the discussion paper

1. Are the objects of the Act still relevant to residential land lease communities?

The objects of the Act are still relevant. Where these objects fail is that there does not appear to be a commitment on the part of the regulatory authorities to enforce compliance and provide training to the various "stakeholders" meaning the front line park operators who are tasked with the day to day operations of the park. With large corporations owning many parks there is not much point in having senior personnel trained in the running of a park when they are not the ones at the coal face. With the park that I am in [REDACTED] we have to often wait for a decision from head office in the USA to come before the Community Manager of the park can act. These are often minor matters.

Homeowners generally come from more vulnerable members of society and with any dealings with park operators the homeowner often elderly females are at a distinct disadvantage.

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

Not as far as homeowners are concerned. Action only occurs on matters affecting homeowners if it appears an application to the Tribunal is in the wind. When this occurs it appears that the objective of the park operators is to do the minimum amount of work so it looks to an outsider that something has been done.

3. Should the objects of the Act be expanded or updated to reflect the changing nature of land lease communities? Please identify how they should be expanded or updated and why.

The objectives of the Act need more clarity where that are expanded on in the Act itself. Drafting errors that should have been rectified years ago need to be addressed eg Sect 45 "tenancy agreement". This was a straight out drafting error and has caused a lot of harm to new people coming into parks in the form of exorbitant site fee increases that would not have occurred if they had been able to have a site agreement assigned to them. Homeowners should not have to go to the Tribunal to get an interpretation on wording in the Act eg "fair market value" which incidentally different Tribunal members have interpreted in varying ways with no consistency amongst Tribunal members.

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

No because a lot of the time it could be a year or so when we find out what was promised to the new homeowner. The park operators try and keep all of these site agreement negotiations as private as possible. In this park the previous park owners when selling new homes said that the homeowners were allowed to park in the visitors parking and that they could have large dogs. Both were contrary to the site agreement and community rules.

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

The disclosure statement does not provide a realistic example of site fees for homes in the vicinity of the new homeowner so the homeowner does not know what a fair site fee would be.

6. Is the form of the disclosure statement easy for prospective home owners to understand?

No it is very untidy in the way it is set out. Most new homeowners don't even bother reading all of it.

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

The issue with providing a disclosure document other than an assortment of errors where the park operator has been too keen with cutting and pasting is where the operator takes a week or so to prepare the document and this results in considerable inconvenience to new homeowners. One homeowner in our park had to change a move in date as a result of tardiness by a previous operator preparing a disclosure document. The homeowner had to stay in a motel for a few days, all added costs to someone with limited income.

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

Yes, it needs to be set out better with important information right at the front of the document even if it is in summary form and expanded on later.

9. If an operator of a community fails to provide a disclosure statement to a prospective home owner before entering into a site agreement with them, a penalty will apply. Do you think the maximum penalty of 100 units (\$11,000) is appropriate?

Ideally the penalty could be commensurate with the size of the organisation but in my view it is not so much not providing a disclosure document but providing an inaccurate or misleading one.

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

Yes, Homeowners were given site agreements with wrong names of new homeowner, wrong park name and wrong park managers name and they were also given the wrong Community Rules and on one the incorrect site fees.

11. Does having a prescribed standard form site agreement work well?

Yes when it is used.

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

Yes. These should be removed, terms relating to the homeowner maintaining infrastructure that is clearly the responsibility of the park operator such as retaining walls and drainage. Removal of terms relating to the homeowner making comments on social media. Removal of any term

relating to paying the park operator a bond by the homeowner where the homeowner wishes to carry out work on their site.

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

The number of additional terms should be limited to 10.

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. Awkward to find at first. No as the only information is name, address, phone and website details.

15. What information should be included on the public register and how should the information be presented?

The number of parks the operator owns, do they have a resident's committee and contact details of the chairperson. Email address of park operator. Full name of the park operator not just the trading name. How long have they had an authority to operate and is it current. If it is a large corporation a list of all their parks.

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 only method allowed should be by notice. In this park, [REDACTED] the operator, only wants fixed method site fees. Usually a \$15-\$20 per week increase in site fees followed by 3.75% per annum which in these economic times is ridiculous. Once a homeowner agrees to this arrangement the only way that it can be contested is via federal consumer protection legislation.

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?

CPI increases only. The current fixed methods are all for the benefit of the operator.

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

Increases should be yearly. It would be quite stressful for many of the elderly homeowners in the park if it was more than once a year. It also allows them to budget better taking into account the occasional pension increase.

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, most homeowners don't usually find out the ramifications of the site agreement until often months later.

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

No. A huge amount of work has to take place before the site fee objection even gets to a mediation and then the mediation is not compulsory for the operator. Just getting all the required signatures can take a few weeks especiall in parks with hundreds of residents.

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

Yes. The park operator must be able to prove actual expenses for operating the park, not just putting down a list of expenses. Also projected costs that are at the very best guesimates

should not be allowed, who knows what might happen in the future. Operators with many parks often put out a generic list of expenses which is the same for all parks and then don't expect to have to justify it when asked to do so. Items of a capital nature should not be allowed.

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

The Tribunal should ignore projected increases as they are to open to abuse by unscrupulous park operators and their creative accountants.

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

No. The new homeowner either agrees with the site agreement or they have to find a home elsewhere.

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

No.

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?

Not applicable.

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

Not applicable.

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

No. Issues between neighbours are nearly always covered by the Act, the site agreement or the community rules. These are the responsibility of the park operator to manage. Trying to put the onus back on neighbours is just another way of the park operators avoiding their responsibilities.

28. Should the Act be clearer on whether ongoing maintenance of a residential site or certain aspects of a site is the responsibility of an operator or a home owner? Why or why not?

Yes. Anecdotally most homeowners are just confused about who does what or is responsible for various matters in the park. It needs to be set out clearer before they take up residence in the park. They are given a lot to digest before they move in and a lot gets overlooked. An introductory session with the park owner and experienced homeowners in the park explaining what can and can't be done could be useful.

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?

This could be made clearer with some sort of handout. Very few people read the Act but a simple one page handout might make a difference.

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

It should be made clear to the park operator that they are responsible for compliance with local government building regulations relating to homeowners and that they should not insist

homeowners have to submit building applications to council for home renovations. The council will not accept the application as the homeowner is not the owner of the land.

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

I have not seen the special levy provisions used. The special levy is used where the homeowners agree to pay a special levy to enable the operator of the community to provide a specified new facility or service for the community or to make a specified improvement to the community. Infrastructure and major maintenance are not what the special levy was designed for. Upgrades are usually funded by site fee increases. The fact that 75% of homeowners have to agree to the special levy is a barrier in itself.

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

I believe the rules of conduct are adequate, they are just not followed or enforced unless an application is made to the Tribunal. If Fair Trading had more resources to police these rules of conduct then there would be less chance of ending up in the Tribunal.

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

The rules are adequate, it is compliance that is the problem.

34. Are the operator education requirements effective?

No. The emphasis should be placed on training the front line staff such as the community manager as these are the people that need to know the day to day in and outs not the executives who we hardly ever see.

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

A course in empathy would be handy. Short online say 5-10 minutes videos on various aspects of the act and regulations similar to Khan Academy courses. This way staff can be kept up to date on matters relevant to running the park. Training related to dealing with older and at risk people would also be handy.

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

Online and regular emails, Youtube video channel as well as short, less than 15 minute podcasts.

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

Yes.

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?

No. They tried to bring in one and we had it thrown out at the Tribunal together with a number of other rules.

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

Yes. If the committee is not involved then in most instances no one will stand up for the residents and the park operators will put in any rules they want.

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

They would have to try and negotiate with the park operator and if this did not work they would have to take action at the tribunal.

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

No. The community rules are not enforced and have only recently an effort has been made to do something as a result of Tribunal Orders. Letters have gone out to homeowners to clean up their sites.

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

No. They are not enforced. If they were enforced it would be a different matter.

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

Yes. They should have a good general knowledge of the Act, the Regulations and the LOCAL GOVERNMENT (MANUFACTURED HOME ESTATES, CARAVAN PARKS, CAMPING GROUNDS AND MOVEABLE DWELLINGS) REGULATION 2005.

45. If your community has a residents committee, is it working effectively?

No committee.

46. Do you have any suggestions for changes to the way residents committees are established or run?

No one should be allowed on a committee without having had some form of training probably from Fair Trading. Most people don't want to be on committee because of the work load, personal expenses, people pay for a lot from their own pockets eg paper, toner, fuel etc. It can be a thankless job, with constant criticism and occasional abuse.

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

*There is not enough transparency on how we are charged for utilities. Myself and another advocate fought with the previous park operators over bulk LPG bills. They clearly did not understand the various methods of measuring LPG. Around 180 homeowners received refunds in the range of \$100 - \$600. Our gas bills still have the term **Therm** on them which is an American term.*

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

Access to utility bills often entailed threats of going to the Tribunal. At this park the previous owners did not know what meters the homeowners we connected to.

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

N/A

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

N/A

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

N/A

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

N/A

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?

N/A

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

N/A

55. Are the current discounts in the Regulation appropriate?

N/A

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

I think it would take a major upgrade of the infrastructure.

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

Our park has 120 solar panels on the office and 2 community halls that have been up for a few years but are not connected.

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

Don't know.

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

Cost and access to meter boxes.

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

Don't know.

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

I sell homes in the village for homeowners. The main issue is the big jump in site fees and the fact they want 5 year agreements with 3.75% site fee increase per annum. They also refuse to assign site agreements. I have no real evidence to say they have deliberately interfered in my sales. The other issue with selling homes is that when a homeowner moves out possibly to a nursing home or into care with relatives they still have to pay sites fees. Usually the park operator will put a hold on these fees until the home is sold, now [REDACTED]

is looking at stopping that which means the homeowner or their family will have to try and sell the home quickly, this means substantially dropping the price hence what could be a considerable loss.

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

I can't see any problem with the Act's control over operators. It is just that when the operators sell a place and then do all the 'legals' and set out the fees and terms and conditions, it is not really at arms length. We do not know what they are being told.

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

Yes, because if they are not acting as selling agents they are either going to do a deal with an outside agent or an outside agent will come in and sell the property. With outside agents there are many issues due to them not being familiar with the legislation.

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

No.

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

Yes. The operators use not assigning a site agreement as a way to impose large site fee increases on new homeowners. I believe the right to assign should be enshrined in the Act and that only specific circumstances allowing non- assignment by the park operator would be allowed and evidence would have to be provided by the park operator justifying non-assignment.

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

No and as many others who have put in submissions to this review will say the drafting error in the Act that said, "tenancy agreement" instead of "site agreement" should have been changed years ago but there does not seem to be the will to do so. As a result of this inaction many homeowners have been taken advantage of and disadvantaged financially. When they look like starting a new period in their life and moving into a new community they do not want to start off this life fighting with the park operator even though it is the person selling the home who has to instigate the action over the site agreement.

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

No they are too restrictive. You can rent out the home for 12 months in 3 years. People have moved out of homes in the village and are living in Nursing homes or being cared for by relatives or have passed away and to be able to have someone rent the home until it is sold provides some financial relief for them many of whom have very limited financial resources and rely on family members to help them out.

68. Are the grounds on which operators can terminate a site agreement appropriate? Should any other grounds be added?

No.

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

I think there needs to be some flexibility in the times for notice periods. 90 days might be more than adequate for one person whereas 12 months might be too short for another. I think the Tribunal should have a fair degree of flexibility in the matter.

70. Are the compensation provisions working well?

I have no experience with this.

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

We need a lot more informal mediation without having to constantly go to the Tribunal.

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?

I feel I am very computer literate but prefer face to face in Tribunal matters and mediation matters.

73. Are the Commissioner's disciplinary powers adequate?

They probably are but have they ever been used?

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

No opinion on this at this stage.

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

I can't think of any.

76. Are the powers of Fair Trading investigators appropriate?

I don't know we have always been told they don't have enough staff. If we have an issue that we want resolved it might be a minor matter and appears as though it might be just one complainant but in reality it could easily impact a few hundred people.

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

Yes.

78. Do you have any access issues preventing you from attending a community engagement session digitally? For example, internet access, computer or smartphone access, digital literacy etc.

No, I look forward to them if they occur.