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

I, Kim Wright, submit this document, as a Homeowner living in [redacted]. I have been a Homeowner in this community for 9 years.

The current "Act" puts full responsibility on Homeowners, the majority of whom are pensioners who sought affordable housing This responsibility includes dealing with unfair site fee increases, lack of maintenance and unprofessional behaviour by Operators, who have a multitude of resources including a well-funded Association and in some cases "in house" solicitors.

The stakeholders
OPERATORS
Operators are the owners of the village. They own and therefore must take responsibility for the whole site and infrastructure.

In the Community where I live the Operator is a subsidiary of an American company, and as identified by [redacted] representatives their priority is increasing profit for their investors. Operators have access to in house solicitors, as well as a well-resourced Industry body.

MANAGEMENT
Management is a representative of the Operator, and therefore obligated to operate professionally. Training in professional behaviour does not seem to occur.

HOMEOWNERS
Primarily aged pensioners, on fixed and limited incomes, who own outright their homes 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 in these Communities were seen as affordable living.

A homeowner is a "captive audience", if their residency becomes untenable either due to unaffordable rent and/ or unconscionable behaviour by the Operator, they cannot just pick up their houses and leave. Selling has become a long arduous process, as buyers are resistant to paying the increased site fees.

Even when a Homeowner dies, until the house is sold by the estate, the Operator continues to receive rent. No matter what the economic reality of the country, the lack of increase in pension, the hardships incurred by Homeowners, the Operator continues to receive site fees.

As our manager was heard to say Residential Land Lease Communities are a "cash cow".

When examining the "Act" one has to start with the Objectives. Objectives need to be achievable and the Act should provide realistic and clear avenues for redress. I argue that the current "Act" does not.

Objectives

To improve the governance of residential communities

The "Act" contributes no means to achieve this. If an Operator chooses to conduct business in a way that does not evidence "good governance" the Act provides no teeth to enforce this. The responsibility is placed on Homeowners to identify poor governance, seek an area within the "Act" that may cover their concerns, (many issues are not covered) document evidence, identify an order that the Tribunal may be able to deal with, and then spend endless time and expense in hearings (without legal support). If they are lucky, they may get a member that considers the issues and places an order on the Operator. Some Operators ignore the order, requiring the Homeowner to go through the whole process again.
Governance must include processes that ensure accountability and regulation.
The process to lodge complaint regarding an Operators behaviour is beyond the capacity of the majority of Homeowners. Contacting regulators has proven to be of no value.

Operators should be licensed. At this time Operators basically operate the way they wish, and in the case of [redacted] that means putting the investor first in all circumstances.

Division 2 Conduct and education of operators
Section 55
This section covers the area of education of Operators and is totally ineffective. It is our experience that Operators employ solicitors and utilise their Association to find grey areas in the "Act" to best increase their profit, at the expense of vulnerable Homeowners. This needs to be addressed. Managers, the representatives of Operators do not appear to understand professional behaviour, such as their requirement not to breach confidentiality. It is my experience that Managers also take opportunity to "hinder the operations of the Residents' Committee".

One way to assist Homeowners would be to provide an increase in funding to places such as the Tenants union and re-fund an additional advocacy service specifically for Homeowners covered by the "ACT'. **NOT ARPRA**
Another way would be to strengthen the "Act" and leave less opportunity for interpretation by Operators.

To set out the particular rights and obligations of operators of residential communities and homeowners in residential communities.

I argue that the rights and obligations are heavily weighted towards the Operator. An outcome for a Homeowner to a dispute can be loss of their home. An outcome for an Operator for a serious breach of their obligations will be (if a Homeowner is able to pull together an application for tribunal, attend hearings etc). will if lucky be an order to desist, which they can choose to ignore.

The Tribunal Member has minimal capacity to apply the law that would be afforded outside of this legislation. The Tribunal Member needs to be given more scope to provide disciplinary action to Operators.

Operators need to be licenced and the responsibilities required within a license need to have appropriate mechanisms to ensure adherence.

There is no fairness or equity within these rights and obligations. Pensioners/ fixed income earners having to argue for their minimal rights against large International (some) companies whose priority is money making for investors. This is not a fair match and therefore the "Act" must lean towards supporting Homeowners rather than what it appears to do, which is support large companies.

Homeowners priority is to be secure and safe in their housing.
Again, Operators need to be licensed and an accessible process of monitoring put in place. I believe that the majority of Operators are well aware of the "Act"., they choose to ignore many of their obligations because historically Homeowners have not been in the position to challenge.

As an example, [redacted] Residents' Committee developed an application to the Tribunal claiming the Operator had acted in an unconscionable way, using bullying, intimidation, coercion and the breaching of confidentiality. The application was well evidenced. The development of the application took more than 500 hrs of the voluntary hrs of pensioners.
The Operator made agreements and encouraged the applicant to withdraw. It was withdrawn and some of the evidenced poor behaviour began again. A hard lesson learnt by Homeowners.

to enable prospective homeowners to make informed choices.

It is my experience that the act does nothing to "enable" this. An example. Homeowners are not provided with the dimensions of their site, though clearly articulated as a requirement in the Legislation.
Another example relates to **section 109.**
My experience is that new Homeowners are not afforded their rights under this section part 5 and 6 relating to "fair market value"
This non-compliance by Operators has meant an increasing disparity in site fees within communities, and a reduction in capacity to sell houses.
S45 The word "tenancy" should be replaced with "Site" The use of the word "tenancy" in this case was a drafting error and has caused many disputes and hardship for Homeowners. A Homeowner must be able to assign their lease, when selling.

To establish procedures for resolving disputes between homeowners and Operators

I will discuss one area relating to this objective. **Mediation in relation to Site fee increase disputes.**

As it stands this is a compulsory process before applying to the Tribunal for a hearing. It is a farce. The compulsory section only applies to the Homeowners, not to the Operators. It is bound by confidentiality so that Homeowners cannot raise within proceedings what actually happens in these meetings. This information may be enlightening to the Member in a hearing.

It is my experience that in mediation the Operator comes with no intention or information on which to assist in any negotiation, though the "Act" states that they should. There is bullying and intimidation that occurs within mediation, yet Homeowners cannot raise these issues within the Tribunal proceedings.

I note that it has been suggested that mediation is effective. What does that mean when no record of events is maintained or can be used?
If success is identified by numbers not applying for a Hearing in the tribunal, **this is not an effective measure.**

Homeowners meet with powerful representatives of powerful companies. If success is described as an acceptance of a site fee increase, I argue this is not success. What needs to be addressed is what actually occurred in mediation. A record should be maintained and either party should have the right to disclose it during and proceedings that follow.
These records should be on record so that a real assessment of "success" is possible.

It would appear that Operators are currently pushing to have a solicitor present at mediation, though **Section 152** seems, though again open to interpretation suggests this is not appropriate.

"A Party to mediation may be represented by a person who is not an Australian Legal Practitioner in the mediation"

Prior to a recent mediation session, I challenged the attendance of the Operator's solicitor.
I was advised by the Operator that I could not refuse mediation on that basis, which I did not refuse I was requesting they follow the "Act".
The issue here is even with my knowledge of legislation, this like so many sections of the Act provides no clarity and leaves open the ability for interpretation.

To protect homeowners from bullying, intimidation and unfair business practices.

How? If a Homeowner feels bullied or intimidated by an Operator, they have to be pretty strong and well supported to put these claims to the tribunal under **sect 157.** And if it goes to hearing they have to evidence these actions and even if the Member of the Tribunal agrees that these poor behaviours have occurred, they are extremely limited on what they can do. Perhaps an order to desist. And then the Homeowner returns to their community feeling even more fearful. If the Operator doesn't desist, the homeowner has to go through the whole process again to the toothless Tribunal.

- Licensing of Operators is required asap
- The regulator needs to be more accessible, user friendly and with "real teeth"
- Additional funding for the Tenants union to allow for real support, not a few phone calls.
- Refund a separate advocacy service for Homeowners, that can actually support Homeowners make lodgements to regulators and apply and attend hearings.

Unfair business practices
How does the "act" aim to ensure that Homeowners are not subjected to "unfair business practices"?

I refer the reader to **Sect 67. 4** Increase of site fees by notice and what the Operator needs to provide to justify their requested increase to Homeowners.

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 in regard to their justification. No financial figures, no invoices, no audit. Homeowners are expected to take the Operator at their word. This section should read "**to provide evidence to support the request for increase".**

I will provide an example of what happened when the Member of the Tribunal order an Operator to provide figures and invoices. Before doing so though, I will note for your consideration that it is not normal practice for a Member to make this order. It is usual that the Operator will argue that the "Act" does not require them to do so. **IT SHOULD**

My own experience as an Applicant at a hearing regarding a site increase is as follows.

- On receipt of a Site fee increase of $8pw, the Residents Committee repeatedly requested clarification of operational costs, which was refused
- 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.

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

- At the first proceeding within the Tribunal, the Applicants argues strongly that we could not assess the fairness of the increase without financial information. The Operator argues strongly that they were not required to provide this information and had performed their obligations with the Site Fee Increase letter.
- The Member agreed with the Homeowners and ordered the Operator to provide financial information for the current and past years, including invoices.

What the Applicants found in these invoices should provide cause for 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 found and provided to the member was over $60,000 of capital works included in Operational costs, invoices for other legal entities not connected to [redacted] Village, purchases of equipment not for [redacted] Inaccurate transfer of figures from invoice to balance sheets and inaccuracy in significant items such as water use.

I do not believe that [redacted] Village is the only community that would have this experience

On the basis of this information and the lack of maintenance and repairs evident the Member awarded the Applicants a no site fee increase.

This issue should have been taken up as unconscionable behaviour and suspect in regard to criminal behaviour, but again the "Act" has no teeth in regard to consequences and protection of Homeowners against "unfair business practices". The Member was required only to set a site increase.

This section of the "Act" must change to require Operators to provide financial records to support their argument for increase in rent. These figures must relate to operating expenses, which requires a definition.

The Act must demand specific information, to justify the Operators demand for an increase in site fee. The Act must also demand evidence to justify an increase in site fees, be provided within the Site Fee Increase Notice,

Currently Operators are **demanding payment for essential services such as roads and drains.** They should not be used as bargaining points for Site fee increases. They are essential services/ infrastructure and access to, is included in site fees. It is the Operators' responsibility to ensure these services remain functional to the level of the development.

Capital works allows for improvement of the overall asset owned by the Operator and should not be included in Operating expenses.

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.

It is ridiculous that the Act includes in **Section 74 (b)** "projected outgoings "incurred by the Operator. **THIS SECTION MUST BE REMOVED**.

There is no valid reason for Homeowners to pay for "projected costs" It is the experience of [redacted] and other communities that those "projected" projects, never occur.

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

The review of the 'Act" should also remove the requirement for 25% 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

To encourage the continued growth and viability of residential communities in the State.

This may once have been a valid objective when residential communities offered affordable safe secure housing. It is no longer that. This objective has undoubtedly been achieved, at the expense of the security of Homeowners.

We are a captive audience. We cannot just pack up and remove our houses when the site fee becomes too high to maintain, when our ability to maintain our homes is reduced by our incapacity to afford repairs etc.

The Operators responsibility to investors is their priority. They do not have to consider the needs of Homeowners or their capacity to live a safe secure lifestyle in their later years. No matter what happens they will continue to receive the site fee for every house in every community.

In the Community where I live [redacted] receives over $700,000 every year, from 83 houses.

The Operator has resources including solicitors to constantly seek ways around the "Act" and to force change on Homeowners. The Act has so many holes in it that a full-time solicitor can spend their days finding ways to avoid what may have been in the intent of sections of the Act. It is then the responsibility of Homeowners to challenge this. **This is not fair or reasonable**

The "Act" needs to reconsider the obligations to Homeowners. Return the focus to Affordable living and provide teeth to the Members, when the Act is clearly not being adhered to by Operators.

In relation to the tribunal it is my experience and the experience of other Homeowners I have approached, that it is a gamble as to the Member you have at the Tribunal and their understanding of Residential Land Lease living.

The Hearings would be best served by having members who are specifically interested in and well versed in Residential Land Lease Communities.

A record should be maintained as to how many times the same Operators turn up before the Tribunal on similar offences, but unfortunately the process of going through the Tribunal is too arduous for the majority of Homeowners, so this valuable information will not be recorded.
The record of hearings and outcomes should be maintained and accessible to all.

I hope you can take the time to consider my points

Kim Wright
[redacted]