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

Provided to

Policy and Strategy Division, Department of Customer Service

Provided by

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CONTEXT

Below is the age demographic of [redacted]. We believe these demographics would be similar across all Residential Land Lease Communities.

Over 90. 9 Residents. **80-90** 43 Residents. **70-80** 16 Residents

65-70 20 Residents **60- 65** 4 Residents. Under 60. 7 residents.

In [redacted] the majority of Homeowners are single pensioners paying site fees from a single pension payment. **The current Site fee is 33.9% of 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 [redacted] (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 their target group in their above-mentioned submission to Treasury, 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 20% to 33.9% in 4 years. **Since the review in 2013**

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.

A grievance or complaint requires the fortitude of David against Goliath.

RESPONSE TO QUESTIONS ASKED the on line survey

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

The Objectives are reasonable objectives except for the Objective V1 *to encourage the continued growth and viability of residential communities.* Since 2017 [redacted] has grown from 2 Communities to 38 in NSW. **This objective no longer needs to be in the "Act.**

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

When the Act was reviewed in 2013 the vast majority of 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. They have access to legal and financial resources that homeowners can only dream of. Social demographics have changed considerably, 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 pensions.

As Residents we are constantly being reminded of the Operators responsibility to INVESTORS. There is a growing sense that Homeowners are merely the cash cow for investors, yet [redacted] has 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 received any increase,**

I 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 promote the governance of residential communities.

The Act contributes no means to do this. The responsibility appears to lay with Homeowners (predominantly pensioners) to identify poor governance, to evidence poor governance, and to enter a domain of dispute against monoliths with in -house solicitors and the support of an incredibly well-resourced Association who has the ear of the Minister. We have no well-resourced ethical support and or Association.

Arpra does not represent the majority of Homeowners in Residential Land Lease Communities and should not be seen to be doing so

b)To set out particular rights and obligation of operators of residential communities and homeowners in residential communities

The rights are heavily weighted towards the Operator. There is no fairness or equity within these stated rights and obligations. David versus Goliath again. To expect pensioners to challenge when the obligations of operators are not adhered too is again unconscionable. It is also **Elder abuse.** Pensioner versus cashed up monolith, solicitors, accountants, administration and a mighty Association ("Land Lease Living, Caravan & Camping and Manufactured Housing Industry,") supporting them

There is something wrong with this picture. There is something so unfair about this, that is hard to understand how this "Act' could ever have been approved.

c)To enable prospective Homeowners to make informed decisions.

The Act does nothing to enable this. Homeowners are not provided with dimensions of their site, they have no ability to talk with other members of the community 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.

In the case of [redacted] 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 4% annually for 5 years.

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

d)**To establish procedures for resolving conflicts between operators and homeowners**

The procedures available are restrictive and legalistic. The majority of 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 information. Homeowners feel powerless, which leads to statements such as "no one complains".

This belief that no one has complaints well serves the Operator

OPERATORS/ Owners.

[redacted] Operator is a subsidiary of an American company, and as identified by [redacted] representatives their priority is increasing profit for their investors.

[redacted] having grown from 2 communities to approximately 40 in NSW in 4 years. They require no further leg ups.

They have 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.

Operators/ Owners also have a large well-funded/ well-resourced Association ("Land Lease Living, Caravan & Camping and Manufactured Housing Industry,") to support them. This Association also has solicitors employed. This Association boasts that they have the ear of Ministers.

It is our understanding that this Association and perhaps [redacted] as well pay donations to current Government

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.

They may have in the case of [redacted] 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, by phone. They once were able to gain limited support from PAVS, until the current Government removed their funding, and Apra was provided with this funding.

Arpra does not represent the majority of Homeowners.

They are basically on their own, with advice from other communities, if they know who to speak to.

e)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.**

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 fear 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 I 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
- 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 Operators 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.

Example include (provided by Accountancy firms with knowledge of the Residential Land Lease Communities Act 2013, and the tax office.

- 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 used by staff
- Roads, drains. All necessary infrastructure

Though members at the Tribunal, on a number of occasions, have removed these items from Operators' Operational expenses claim, some don't. 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.

f)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 but 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
- 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. Our experience is that on the rare occasion that the Tribunal insisted on evidence anything but "appropriate business practices "was displayed. In a Tribunal hearing were [redacted] was involved numerous irregularities and payments were found when invoices were 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.

The Ministers responsible for the Aged/ seniors should be included as recipients of all submissions and those they claim to represent are being unfairly and unconscionably

treated by Operators. The combination of investor focused Operators and the "Act" with no teeth creates an environment for **Elder abuse.**

[redacted] and their Association **"**Land Lease Living, Caravan & Camping and Manufactured Housing Industry," **advised Government that they provide affordable housing to those on limited incomes. (Submission to Treasury 2017)**

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".**

[redacted] **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 or more.**

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 members of the community. Then there first act within the community involves an expectation that they will challenge the Operator. It doesn't happen.

One year later they may consider action under Sect 25 or Sect 109, if they somehow find out about it and then without resources, they can apply to NCAT.

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, doesn't 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, 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 let to great misfortune and at times loss of the sale of a home.

This must be rectified in the review

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

Although fairly straightforward, it can be too much for inexperienced buyers, particularly elderly persons to understand initially. The fact that they are actually 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, the Tenants Union and residents' Committees

THE SITE AGREEMENT AND THE DISCLOSURE STATEMENT MUST BE PROVIDED AND ALLOWED TO BE REMOVED FORM 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. In our community the majority of people are on Site fee by notice. New Homeowners are being required to sign site agreements for 4% 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.

The right to **ASSIGN** your lease must be added/ returned to the Act.

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?

Should be minimum $20,000 and commensurate to the financial holdings of the Owner, but again I note I have never been made aware that any penalty has been imposed. This must be large enough to deter bad practice. This matter is very difficult to prove, and complaints can easily be discredited by Management. There should also be a large monetary penalty for not entering into **real** negotiation re Site Agreements and Site fees at time of purchase.

It would be interesting to see a list of penalties provided. I 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 nothing more than petty cash to large companies.

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

Yes. A common omission is the site dimensions. The majority of past Site Agreements do not have the necessary dimensions, and new agreements should have this section filled in as a mandatory condition.

Additional terms within site agreements need to be limited and represent the Act and other laws. New Homeowners are providing to the Residents Committee a list of additional terms that fill 8 pages and differ very much to agreements made with previous Homeowners.

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.

Potential Homeowners are advised that the Site agreements are “standard” again potential Homeowners are expected to “trust” Current Site agreements are not ‘standard,’ as they include many additions.

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

Many communities have additional terms added, eg. Pet Agreements, which can make the document very cumbersome while not being actually part of the document. If the Site agreements were "standard" then yes they would work.

We are told they are standard and unless you are aware of what is standard and what is not, you accept the word of the Operator, unwisely. Operators have added so many additional terms they cannot be seen as "standard" site agreements.

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

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.

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, and 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.

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.

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 in regard to 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 affect 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 first purchasing should be reviewed in 12months from signing, with the opportunity to change to "By Notice"

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.

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, if the operator combines several fixed methods as we have seen in the past. 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

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,

If the Operator acted fairly, provided the evidence, the explanation, 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

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**

*** 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?

That section 83 is expanded to include proof of increase in operating costs, because at the moment it only covers utilities.

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

The demographics of a community should be acknowledged as should be any lack of increase in pensions

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 my answer to Question 5. Operators always 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 wished to introduce a five-year lease arrangement to current Homeowners. Their methods were coercive, intimidatory, unconscionable and bullying. Some of these actions should be described as Elder abuse and should be treated seriously by an overseeing authority.

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

No. Have never seen it used.

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?

n/a

27. Should there be neighbour to neighbour obligations that are able to be enforced by other home owners? 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 the operator tries 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, 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 that hold up erosion. **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?

Should point out that local council approval may be required for additions to the home, but this has to be realistic. Currently [redacted] is demanding council approval for such things as changing a window. Council laughs and says no way. [redacted] says you still need approval.

On this day I assisted a Homeowner who has been attempting to get permission for a small garden shed. [redacted] has agreed to the request on the condition that the Homeowner gains a letter from Council saying they do not have to approve. Council refused to write such a letter, as they are only required to approve or not approve applications that come under their jurisdiction. In this case they have no role.

The Homeowner is elderly and is now confused and distressed. This will now become a dispute between Operator and aged Homeowner, over a garden shed request that requires no Council approval. **This is Elder abuse.**

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

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 etc are the Operators 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.

My 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 the moment 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 Operators Professional Development.

Having said that it is our belief that Operators with their Association and their inhouse solicitors know the Act. They assume we don't. 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's not fair, it's 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 and all its 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.

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.. In truth they are a vulnerable group.

In our Community we have over 9 people over 94

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

Yes, 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.

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

Enforcement is selective.

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.

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 au fait with the legislation. Therefore, they need effective advocates. They have the may be able to receive some advice by phone with the tenancy advice service but this is limited by this agencies 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.

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

This 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.

The Committee at [redacted] 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.

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", clear separation from Management to be very clear. Clarity that they are NOT third tier management.

Ability to access grants to manage their administrative responsibilities. As it stands Committee members pay from their own limited income for photocopying and advice.

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

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

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

NA

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?

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

None as many of us have solar systems but also are not connected to the main system

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

Many in our community have taken up solar. We all have separate accounts. It works very well

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

Operators insisting on vetting potential installers.

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

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 of itself interference with a sale. So no it is not working well.

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

No. They should hold a real estate licence.

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.

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

No guidelines for suggested commission rates are available. 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. 2013. **The terminology is Site Agreement**.

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 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 beachside areas. Homeowners are in continual fear that zoning will be changed to allow development (a great profit for Operators) and loss of home for Homeowners.

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

No

70. Are the compensation provisions working well?

I do not know as any compensation of any homeowners in communities is not published

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

A tribunal with teeth and an understanding of the imbalance within parties to the dispute.

Address the changes to the Act requested by all submissions

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 at the moment. 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 recent mediations the Operator has had a solicitor with them, arguing they are just observing, which of course is rubbish.

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 complaint…and then it becomes "no one complains" **which is then used against Homeowners at times such as this review.**

Kim Wright

Homeowner

[redacted]