Chapter 1 – Objectives of the Act

Objects

1. In my opinion the objectives of the Act are more relevant than when the Act was implemented. It is whether these objections are being met that is in question.

   "Governance" seems to have become a Buzz word for the 21st Century, loosely defined as "*the action or manner of governing a state, organization ….*". Corporate Governance has become of paramount importance, with corporations considering the effect on **stakeholders** of the decisions that they make and the actions that they take. This involves a high level of transparency.

   Stakeholders in land lease communities include the residents, who are treated on a "need to know" basis. In the case of the village where I live, residents are informed when they actually see events, construction etc taking place. There is no transparency.

   The Act sets out rights and obligations, procedures and documents that supposedly enable prospective homeowners to make informed choices. Great! Ticked all the boxes here, but that is where the accountability ends, and the onus is passed to the resident.

   It is rather frustrating to know that a homeowner has rights but cannot enforce those rights – again the onus is on the resident.

   Informed choices are provided by means of a Disclosure Statement. That Disclosure Statement is provided by the operator, no means of ensuring that the statement is correct.

   The procedures for resolving disputes between operator and homeowners are beyond the expertise of most individual homeowners. The procedures are both costly and intellectually challenging.

2. The Act has not been effective in delivering its objectives. While the objectives are admirable, there are no tools, information or means readily available to an average resident to ensure they are met.

3. The objectives of the Act should be expanded to include meaningful consequences and penalties for operators who fail to ensure the objectives are met. The onus should not be placed upon the resident. With an adequate compliance authority, there should be little need for a resident to pursue matters through the tribunal system. This requires legal representation as an individual homeowner is no match for the legal resources available to operators. The present system is both unjust and unfair and heavily weighted towards the party with the most resources – the operator.

There is no equity in the present system at all. There is no effective service that provides guidance or interpretation of the Act that is not biased towards the operator and no effective complaint mechanism that a resident can easily access.

There is no protection for existing residents against the changing nature of land lease communities.

Chapter 2 –Informed choices for prospective homeowners

Marketing and information disclosure

4. The ban on inducing a person to enter into an agreement through false, misleading, or deceptive statements is not at all effective. The disclosure statement is written and provided by the operator and the prospective homeowners must rely on this information alone – possibly a very biased point of view. For example, point 8 Flood Prone Land – just because the Community has not been flooded in last 5 years does not mean the Community is not built on flood prone land, has flooded in the past and will do so again. Independent parties should provide this information, e.g., Local Council and local fire authorities.

   Details of any development proposed or submitted to local council should be provided along with the DA application number and conditions approved by Council so that the resident can gain the true impact of any approved development. For example, a homeowner purchases a home in a village whose major appeal is an abundance of trees and grassy communal areas. This is all removed and replaced by more homes.

5. Provides no information as to the plans the operator has outlined for repairs to existing infrastructure and whether and to what extent this will impact on site fees. Examples may include - roads are to be resurfaced, a drainage system needs to be implemented, refurbishment and upgrading of existing facilities. Details of proposed capital expenditure should also be included and how this will impact on site fees. Example is homeowner purchases a home and agrees to site fees to what he considers are reasonable and affordable only to have them increased by 80% over the next 10 years.

6. Overly simplistic and no advice to seek further information and where this information can be found.

7. Disclosure Statement should be provided with ample time for a prospective buyer to investigate all aspects of the Statement including sourcing documentation from independent authorities.

8. Could be improved by providing disclosure statements to the Residents Committee and encouraging prospective homeowners to get a second opinion from the Committee and other residents.

9. $11,000 penalty is nowhere near adequate. ACL penalties are much harsher.

Chapter 3–Site fees

Site fee increases.

17. While the Act should allow for flexibility and choice between fixed method or increase by notice – this flexibility should not be extended to allow for both methods to be used within the same Community at the same time. Allowing both methods to co-exist effectively erodes the powers of those residents subject to increase by notice to challenge a rent increase. In many cases residents are unaware of how many residents are under a different form of agreement and this increases the difficulty of obtaining the necessary 25% for Tribunal action. Fixed method increase cannot be challenged under the Tribunal.

18. Site fees being only increased once per year should remain, but this should be extended to CPI increases. I give an example of my Community where I did not receive a rent increase for approximately four years, as the operator had not performed the improvements outlined in an agreement. At the end of the four-year period 4 years accumulated CPI was added to an increase of $10, totalling $22.90 per week. This makes budgeting extremely difficult and presents a major “bill” shock to a resident whose sole source of income is a pension. If an operator does not, for whatever reason, hand down a site increase in a 12-month period, then the right to incorporate this into future increases should be lost.

19. Site fee increases based on a fixed method should be able to be challenged in the Tribunal where that method impinges on the rights of residents under rent by notice to a challenge in the Tribunal. The term “other” on a Standard Form Agreement should either be removed or be allowed to be challenged in the Tribunal as it gives operators scope to concoct a value for an increase under the fixed method.

Many Standard Form Agreements provide for a period of time at a fixed method which then reverts to rent increase by notice. This is most confusing to residents and obviously beneficial to the operator. If a method of site increase appears on a standard form agreement, I believe that it should be able to be challenged in the Tribunal and that a homeowner should not have to rely on ACL for satisfaction.

Increase by notice.

20. S(69) The process for resolving site fee increases is certainly not working effectively. The timeframe of 30 days to submit a form for compulsory mediation is unrealistic. Calling a residents’ meeting alone to gain interest in a challenge requires at least one week. Then there is the necessary paperwork to ensure that 25% of residents are willing to support a challenge. Advocacy organisations need to be contacted, as a degree of legal expertise and advice is required before the matter goes to mediation. The operator has this at his complete disposal and will be able to pre-arrange this as he knows when the increase will take place, the residents do not. If time permits (usually not) the advocate will need to address the residents’ meeting so that residents may receive an informed opinion. The process of 25% resident support for mediation and then, only when that fails, can the issue be taken to the tribunal is cumbersome, costly, and heavily weighted in favour of the operator.

In addition, S69(2) states that only homeowners who receive the notice can form part of the 25%. In the case where not all residents receive a rent increase notice – obviously, they cannot challenge it, which again will impact on the number of residents available to challenge. The Residents' Committees, who coordinate the challenge do not have information regarding which residents received a notice and which residents did not. S67(3) states that all homeowners in the same community to which this method applies must be given a notice – but they are not. In my recent experience upwards of 120 residents did not receive a notice for various reasons. Some reasons were obvious – short term "fixed term" method residents, some residents because their level of rent at present was considered by the operator to be sufficient and some residents on lower levels of rent were simply "missed" for no apparent reason. What are the penalties for a breach of S67(3)? This is not outlined in the Act.

21. The grounds for challenging a rent increase fall into two categories – both based on increase being excessive and yet excessive is not defined by the Act.

S (72) Site fee increase substantially excessive with respect to comparable sites in the Community. The process for resolving site fee increases in this instance is unachievable. A resident has no way to know if his increase is substantially more than a resident on a comparable site. Site increase notices and increases are not put-on display for all residents to view. What is a "comparable" site – this is not defined, nor is "substantial". The evidence required to be presented to the Tribunal is at the complete disposal of the operator, while the resident must rely on other means, usually the good nature of his neighbour who may be unwilling to be a party to an issue that does not concern him directly to gain the necessary evidence to present to the Tribunal. The process is biased towards the operator and again puts the onus back on the resident – a person with the least available resources. An operator should be prohibited from giving a higher level of rent increase to a resident compared to another resident unless justification can be shown and accepted by the Commissioner.

22. The Act at present gives an overly broad scope as to what the Tribunal will consider when a challenge to an increase is made. There is no clear definition under the Act as to what is considered reasonable. The examples are numerous. Resurfacing of roads within a community – cost is passed on to homeowners by way of rent increase, not a general expense for the maintenance of an asset owned by the operator which should be absorbed by the operator. Construction of drainage – passed on to residents, even though it was necessary and suggested by local Council. Improvement to facilities and facilities – the Act does not define whether capital improvements can be passed on to residents by way of a rent increase. Electricity, water and payroll costs – we have only the operators word that these have increased. The operator is not required to supply supportive documentation unless requested. Should not the operator be required to furnish all such documentation and reasons for an increase to the Commissioner prior to giving notice of an increase? The Act should mandate that any increase (other than CPI) be approved by the Commissioner before it is handed to homeowners. The Act should clearly define which costs can be included as valid reasons for rent increases.

Reduction of site fees

S(64). Site fees may be reduced by a method set out in the site agreement or by mutual agreement between the homeowner and the operator.
I give as an example my own personal experience with the equity and the failure of the Act. Our pool was removed in early August 2019. Although a new pool had been promised to be built (on a different site) for about 7 years, the first the residents knew about this was when the earth moving equipment moved in and commenced demolition on the same day. The new pool was barely commenced. Now earth moving equipment just does not suddenly appear. This would have taken major planning and timeframe considerations on the part of the operator. The site of the demolition of the old pool was to be the site for approximately 20 new homes. This site then lay idle, with new homes only being moved in late 2020.

It came as no surprise to residents that due to “unforeseeable” circumstances the new pool was delayed and not opened till mid-March 2020. The residents were without a pool for the complete 2019-2020 swimming season. During this time, the operator continued to advertise that the village had a pool. No reduction in site fees was offered to homeowners by the operator until the matter was taken to the Tribunal.

The Tribunal system in this case can only be described as completely inadequate. Firstly, application to the Tribunal is by individual application – although the matter was considered and heard by the Tribunal as a group. Each individual must fill out a form and lodge it along with the fee. The procedure is cumbersome and time consuming for both the residents involved and the Tribunal – especially when there are approximately 130 individuals who wished to participate.

Surely all residents were involved by way of the fact that a pool existed when they signed their site agreements, had been part of the village for about 30 years and was built into their existing site fees. A collective approach here would be far more appropriate, as it affects all homeowners, not merely those who use the pool or were incensed enough to take the matter to the Tribunal. Where are the penalties for the removal of a facility? The operator will do the numbers and quickly realise that it is more cost effective to pay a small number of homeowners a small amount of money than to delay his course of progress. This is of course, only dependant on the homeowners taking the matter to the Tribunal in the first place. Those that did not got nothing for the removal of the facility. This is a case of the homeowners again being completely at the whim of the operator, who accepts no responsibility and remains unaccountable.

Chapter 4–Living in a land lease community.

I believe the Act does not pay enough attention to the mental health impact that living in a residential community has on many residents.

27. Education not enforcement would be beneficial to mutual obligations between owners. Education by way of induction to a prospective homeowner encompassing what it means to live in a community in close proximity to your neighbour. Enforcement by other homeowners can only escalate existing problems. Too little attention is placed on the “downside” of community living – lack of seclusion and privacy, sometimes you may have to suffer a little noise, and the need for compromise.

29. The Act is not clear about the rights and responsibilities relating to repairs, maintenance, alterations and replacements.

Residents committees

44. Residents' Committees most definitely should be required to undertake mandatory education. They need to be completely familiar with the Act and regulations and also what is required from them in this position. They are elected by residents to represent the residents and quite often the body that residents turn to for assistance and guidance. Some form of education in conflict resolution and mediation would also be most beneficial. The issue here is that the type of education required is not readily available. It is not sufficient to merely read the Act a few times. The Act requires interpretation in many parts, and this requires skill, expertise and experience. If residents' committees were able to gain knowledge in this area, then much time and money would be saved, and mediation achieved without advocacy intervention and hopefully reduce the number of issues that are taken fruitlessly to the Tribunal. Residents may also even achieve a more equal standing with the operator when it comes to Tribunal intervention.

45. My community's residents committee, although effective could certainly benefit from the above-mentioned education.

46. Resident's committees could benefit from being run along more formal guidelines, at least to the extent that it is mandatory to appoint a secretary, formalise minutes and agendas and conduct properly structured meetings.

Chapter 5–Utilities

Electricity charging in communities with embedded electricity networks.

49. My views on S77(3) is that the Act was very poorly drafted. Operators were quick to seize the opportunity interpret the Act in such a way that was beneficial to themselves, but exploited homeowners. It is both an example of a confusing piece of legislation and how the onus is once again put on the homeowner to do something about it.

50. I support option 1 the Reckless method - that both operators and third-party retailers would be only be able to charge a homeowner what they have been charged by the energy provider for the electricity consumed by the homeowner. This means that the operator should not be able to profit from supplying a utility (electricity) that he must provide under the Act. I have been subject to this method since 2019 and have seen my power bill decrease dramatically. With only 30-amp supply, I often wondered why my quarterly power bill was so high. I now know it was because I was being charged the full retail rate and was unable to bargain for a discount as other residents, who were not on embedded power, were able to do.

56. I am a homeowner with less than 60-amp power supply (30 to be exact) and receive a service availability discount accordingly. The supply is certainly not adequate, but I make do by juggling appliance usage in an all-electric house. I would like to know if there is anything that can be done about it, as I have been told that even paying the cost (metre box plus connection) to connect to external power retailer would not give me any more amperage.

Sustainability infrastructure

59. Many homeowners in my community are installing solar panels. The only barriers that I am aware of involve some types of dwellings are not suitable.

60. Perhaps the operator could follow the example of the many homeowners in my community that have installed solar power and have solar panels installed on the office and community buildings. Perhaps new construction houses could come readily equipped with solar panels. Water tanks would be beneficial as well as well as encouraging instead of discouraging the use of grey water.

Not really infrastructure, but sustainability nonetheless, sadly, many of the newer land lease communities are not addressing the 21st Century concerns for global warming and climate change. The need for a certain number of trees and grassed areas is not on the agenda of the operator who sees only more houses equals more profits. This can start with something as simple as the banning by the operator of black plastic under rocks – a recipe for long term disaster in any environment, particularly if that community has drainage issues. The emphasis is placed instead on "lifestyle" and low maintenance. To avoid land lease communities becoming a 22nd century wasteland the operator should encourage rather than discourage the laying of grass not rocks in new construction and preserve trees as far as possible.

Green space areas and community gardens play a vital role in the mental health and wellbeing of residents. They provide a common area of tranquillity and congregation, rather than the segregation of being contained within a dwelling with no aspect except their neighbours dwelling and the road.

Chapter 8 – Administration and enforcement

Complaints and disciplinary action

74. Any breach of the Act should receive a penalty, without this there is no deterrent for a breach of the Act. Without out a penalty involved, the Commissioner is hampered in the disciplinary actions that he may impose.

76. The powers Fair Trading investigators are appropriate, but I suspect that too few complaints ever reach the Commissioner. The first course of action seems to still involve the Tribunal and the scope of what the Tribunal can order, and resolve is very limited.

Community engagement

77. Community education information session via webinar would be an excellent idea. The more information that a resident has, the better equipped he is to deal with the issues that are confronting residential land lease homeowners at the present time. I believe if residents were

better equipped to make informed choices this would provide a balance to the inequity that exists at present between homeowner and village operator. This could in turn reduce disputes and reduce the need for Tribunal intervention. Webinars are both cost effective and more readily available to a larger number of residents than travelling is to what is mostly a distant venue. Most webinars are recorded so that vital points are not missed and may be viewed at a later time.

78. I personally no access issues that prevent me from attending a digital community engagement session. I do, however, have issues that prevent me from travelling to physically attend a session.

Conclusion and Other Issues

1. Neither the Act nor the scope of questions answered here addresses the impact of the changing nature of Residential Land Lease Villages on older, long-term homeowners.

Many residents bought dwellings pre-2013 based solely on affordability. Land Lease Communities are certainly flourishing. But what becomes of longer-term residents – those that bought modest homes in villages based solely on affordability? Many now are having “resort style” living imposed upon them with escalating site fees to match.

Many are not protected by the terms of their site agreements.

The never-ending increasing site fees spurred on by development of Communities and the need for operators to compete with each other each hoping to gain a “a competitive” edge has seen these residents caught in the “cross-fire”.

Many residents purchased homes to provide for a level of stability in their retirement, a level that they believed at the time they would be able to afford. This belief has now been eroded, leaving them with an uncertain future at the most vulnerable time of their lives.

2. The Act needs to define a course of action to follow when an individual resident receives a site increase notice that is factually incorrect, for example incorrect additions or dates of previous increases are wrong. This is an issue for an individual. The Act seems to deal only with increases that are excessive either on a collective or comparable basis.

A resident may be severely disadvantaged by this, yet the Act makes no mention of a remedy.

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