

Residential Communities Submission Paper

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

Yes the objectives are still relevant.

2. Has the Act been effective in delivering it's objectives?

No it hasn't. The wording of the act is vague and doesn't explain sufficiently what is required. The dispute resolution process is too complex. The penalties are inadequate to deter the owner/operator from contravening the Act. Owners/Operators freely bully and intimidate home owners. Encourages growth but not viability.

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?

Not sure.

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

No. My disclosure statement indicates a no fences policy which appealed to me when I purchased. I was told my neighbour was thinking about installing a six foot colour bond fence, but no approval had been issued nor would be unless all parties affected agreed. Approval was granted without consultation. I also stated I had been to another [REDACTED] and had been very impressed by their library. I was told that a library was to be built in the old camp kitchen and I was shown pictures on a phone of what was planned. I was convinced the pictures were at the community I had mentioned and was greatly interested in the thought of this being built. I have since learned there are no plans to build a library in the immediate future. I feel that I was lied to and misled in order to entice me to purchase. The previous operator had promised a bus and a security gate to other residents in order for them to purchase. This operator has no intention of providing other at this stage.

5. Does the Disclosure Statement provide enough information to a prospective home owner to allow them to make an informed decision about purchasing into the community? Why/Why not?

If the disclosure statement contains false or non-updated information then it is not a true representation of what is on offer.

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

I found the disclosure statement easy to read it wasn't full of legal jargon. However, there was a lot of it and I doubt most people would read all of it. Even though it is there responsibility to do so.

7. Is the disclosure statement provided at the right time? I.e. Should it be given at an earlier time?

I don't see how it could be given at any other time. The fact you have 14 days to read it should be ample, and it is the purchaser's responsibility to read it.

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

No I think it is ok.

9. If an operator of a community fails to provide a disclosure statement to a prospective home owner before entering into a sight agreement with them, a penalty will apply. Do you think the maximum of 100 units (\$11000) is appropriate?

Yes.

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

Yes. Some have no \$per week entered and no site dimensions shown.

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

Yes I believe it does. By having a standard form owner/operators are not able to add their own clauses that may not be fair or reasonable. The standard form enables consistency and a point from which the prospective home owner can complain if they believe that the conditions in that agreement are not correct. Individual site agreements per operator would cause confusion.

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

No they seem to be ok.

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

No.

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. No. No.

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

The register does not show who the owner of the community is and it should. A website does not indicate who owns it. There should be a separate column indicating the owner.

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.

Yes. If someone is already on a notice method then they should not be severely penalised when changed over to the fixed method. While convenient to the operator to have everyone on a uniform fixed rate, it takes away the residents right to negotiate on their own behalf. There are many reasons why an operator may not be entitled to raise the site fees by the percentage they have determined but it is currently difficult to challenge. The fixed method that should be allowed is fixed by negotiation yearly. Not fixed on demand.

17. Should there be any restrictions on the method that can be used for fixed fee increases, or is the existing flexibility working well and/or necessary for the operators?

The current fixed method system allows operators to impose whatever increase they want, fair or otherwise. Naturally a business out to make a profit will raise the fees as much as it can. It doesn't take into account whether the fees are appropriate or otherwise. The fixed amount should be set by an external body taking into account the current CPI and pension increases that

have occurred during the year. If the CPI is negative and there have been no pension increases then how is a pensioner expected to cover the increase in fees. If the fees increase at the same rate every year without being checked then how is that fair. At the moment the current system works in the favour of the operator. Operators just state we are not prepared to negotiate and you have signed a five year agreement for fixed rates, it is extremely difficult to get a reduction. A lot of residents are not aware of how to challenge their increases and the chances of winning are not that good. The fixed method yearly negotiable should be used. Operators are looking only at self funded retirees who have money behind them.

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

This is a stupid question. Of course there should be a requirement to only increase once a year. When you don't have an income other than the pension how many increases do you think a pensioner can sustain? The problem with the government is they don't have to live on the aged pension. If you have to count every penny, one increase is enough per year. This increase should be set by a body set up to regulate this industry. Most operators are greedy and they will take advantage of anything that allows them to get another dollar.

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.

If the operator has not provided any new facilities or services during the current year or has removed facilities or services. The CPI is negative and the aged pension has not risen during the year sufficiently to cover the rise in fee. If one partner dies, the surviving partner should be able to get a reduction in fees. The government has no problems in moving them onto a single pension so why can't operators also acknowledge their change in circumstances. If financial hardship has occurred a temporary relief should be granted without catch up fees.

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

I think the current process is too involved. Most people think it is too much hassle. They maybe computer illiterate, or illiterate, or lack confidence and therefore unless someone assists them feel unable to complain. Some feel there will be consequences from the operator if they do complain. Again we

are talking about vulnerable people. If you are well educated and computer smart then you will see it as no problem and get straight into the process. Also 25% of sites should not be able to make decisions for the whole community.

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

I think it should be challenged if you think it will cause financial hardship. We aren't a flock of sheep and each person has individual needs. However, this legislation appears to be a one size fits all format. There needs to be more flexibility to the reasons under which you can challenge the site fees.

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

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

No. If a person is selling their home and they are on the notice method they may be paying considerably less than someone who is on a fixed site fee agreement with a residential site of the same size. This can influence the purchaser against buying because they will be paying considerably more than the current owner. This will impact on the person selling.

People are also told this is the contract, these are the fees take it or leave it. Where I live the Operator is currently asking new agreements with 4% increase every year for five years. While it is the persons responsibility to consider the impact of this, it is not until you go on the pension the full ramifications of this agreement will impact on you. Five years is a long time and circumstances can change. The operator at this community has stated they will not negotiate a fixed rate increase when residents have tried to renegotiate into their five year contract.

Question 24 to 26 Not Applicable.

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

There are disputes which occur between neighbours regularly. Most of these can be handled by the neighbours themselves. However, when the matter becomes a problem then the Operator should fairly and impartially manage the problem. However, this is not always the case that the Operator is fair and

impartial. This comes down to the skill of the operator in being adequately trained in conflict management, their role in the community, and their temperament. It would appear that many operators are employed to sell houses and are good at this. However, when it comes to managing the community they have not got enough work experience as a manager nor do they receive sufficient training to do their job well. The community suffers as a result of this.

There are also over zealous neighbours who appoint themselves as watchdog of the community and will complain about every little detail. These people would be an absolute pain if they were given the opportunity to have any authority over other residents.

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?

The Act should be crystal clear on who is responsible for what. Operators want to earn money not spend it. If they feel that it is not their responsibility they are not going to fix it. If it is a grey area on whose responsibility it is then the argument will just drag on. The house is the owner's responsibility and the outside depends on what the repair is.

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?

I am happy with the wording of the Act in relation to repairs and maintenance of the home as it is pretty much common sense. There is no problem asking the Operator about this if unsure.

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

No

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

I have not been in this community long enough to experience special levy's. I have been told it is complex and depends what the upgrade reason is. (To sell homes?)

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

Absolutely not. The operators treat the rules of conduct as if they don't exist. They behave how they want to completely in contravention of the Act. They have the owners supporting their behaviour. If the Act was applied properly there would be few problems with operators in the Community. When the Operator has residents who are personal friends and favours them over the rest of the community it causes unrest. They ignore rules relating to interference with the functions of the residents committee. They engage in actions of bullying and harassment. The residents then have to prove that this is occurring, which isn't easy, and their complaints are ignored.

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

What would be the point of that when they don't follow the rules that already exist.

34. Are the operator education requirements effective?

No. They don't seem to cover enough management content. Real estate is the main feature of the managers. The needs of the community are irrelevant to the operator. Managers should have at least a diploma in management preferably a degree. They should also have some educational background in aged care.

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

May be try reading the act for starters. As stated above knowledge of management and aged care.

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

The same as for anyone else, could be online courses, attendance at TAFE or University. Or perhaps employ people with the necessary skills to begin with.

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

NO

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?

Our community is for over 55's and you have to prove that you are over 55 to live here. However, once you have moved in you can get permission for younger people to live with you. This defeats the purpose of being in an over 55's community. It is up to the operator to decide who can live here without the approval of the residents.

40. Where residents committees are in place, should they be involved in the development of community rules?

As the Act states that a residents committee is a conduit between the residents and the operators and does not have the power to set policies it should not be involved in setting community rules. This should be done between the residents and the operators.

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

Through Residents meetings with managers Circulars from management to residents through letter box advising proposed rule and asking for feedback.

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

I was unaware that I could lodge a complaint against a resident quoting the section of the rules being broken. That failure by the manager to act could then be referred to the Tribunal. I thought the operator was supposed to take action and unfortunately our Operator does not. Perhaps if home owners were aware of this maybe the system might work better than it does in the community in which I live.

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

The intention may be there for it to do so, however, it comes down to the effectiveness and fairness of the operator.

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

No if the system is working properly the committee should be able to liaise with the operators and residents without any difficulty.

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

No the operators continuously interfere with the operation of the residents committee. They try to dictate when meetings will be held for both the committee and the residents. They have allowed bullying of the residents committee and when complaints are made they ignore them.

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

Yes, the operators should do their job and let the committee do theirs without bias and intimidation.

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

The Act seems to be written for permanent sites only and not for a combination of permanent and holiday.

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

The access to bills works well in this community. The set up of the bill is confusing in this community as it shows two different payment due dates. If you are unaware of the 21 day rule the bill only gives 14 days to pay.

49 to 54 As I get my electricity from an external party I feel these questions are not relevant to me.

55 and 56 do not apply to me.

57 to 60 As I get my electricity from an external party I have installed solar panels and reap the rewards from my electricity supplier.

61. I have no personal experience in this matter.

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

There is no difference in my opinion between selling a house in a community and selling one normally. The operator/managers should be licensed real estate agents and subject to the same rules as any other real estate agent. This is a complex area and allows the door to open for unscrupulous behaviour to occur. It is an easy way to get a job in real estate without having to get the qualifications and knowledge required normally.

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

Yes if properly qualified and there are no conflicts of interest.

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. Obviously the Operator has the opportunity to interfere with the sale without cause. Just not liking someone is not a sufficient reason.

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

I have no idea.

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

I have no idea. It was not allowed under the previous operators but I am not sure about current operators.

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

It seems ok.

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

It seems ok.

70. Are compensation provisions working well?

I have no idea.

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

Mediation.

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?

It is always better if the two parties are present to discuss the matters. One party can always turn the computer/phone/tablet off during mediation.

73. Are the commissioners disciplinary powers adequate?

Yes

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

Don't know.

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

Don't know.

76. Are the powers of Fair Trading investigators appropriate?

Yes.

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

No.

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.

Have only basic computer skills.

