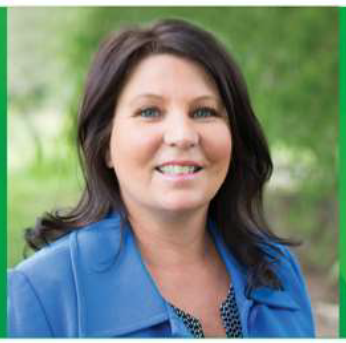

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Statutory Review of the Residential (Land Lease) Communities Act 2013
Policy and Strategy Division
Department of Customer Service
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Tamara Smith MP
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08 March 2021

Submission to Review - *Residential (Land Lease) Communities Act* 2013

Dear Review Committee,

Thank you for the opportunity to make a submission to the review of the *Residential (Land Lease) Communities* Act 2013.

I make this submission in my capacity as the Member for Ballina and based on the issues raised to me by many constituents living in residential land lease communities within the Ballina electorate.

Overview

There are 29 residential land lease communities in the Ballina electorate and an estimated population of 750 people in the Ballina electorate who reside in these residential villages and that are affected by the operation of the *Residential (Land Lease) Communities* Act 2013.

Since I was elected in 2015 I have met with dozens of constituents who live in residential land lease communities within my electorate. Sadly, what should be a time of joy and peace for retirees who have invested their superannuation in dream locations with like-minded people, has instead become a time of financial stress and anxiety due to the behaviour of some of the people and organisations that manage residential land lease communities.

Major concerns raised by residents centre around the lack of financial transparency on the part of operators and constant rate increases. By many accounts, the current legislative framework does not guarantee protections or support for residents and is heavily tipped to favour operators. There are also concerns that many of the regulations under the legislation are ambiguous and this leaves residents vulnerable to exploitation by operators.

Unreasonable/Unjustifiable site fee increases

Residents are concerned that they are not financially protected by the current legislation.

Section 67 (3) states that site fees *must not be increased except by notice in writing given to all the home owners in the same community at the same time under site agreements to which this section applies.* In Section 67 (4c) it states that the notice must include an explanation for the *increase.*

Residents feel that the clause "*provide an explanation*" is vague, broad and allows for the Operator to manipulate the terms to their advantage. It suggests that any explanation will suffice as there is no requirement for reasonableness and ultimately it is only if an increase is disputed and taken to the Administrative Appeals Tribunal (AAT) that the validity of rate increases are questioned. There is no requirement under legislation for operators to keep transparent accounts of how resident's contributions are spent, or for them to share the financials with the community of residents. Homeowners are expected to take the Operator at their word when it comes to the justification of a rate increase and they have no way to challenge the veracity of the claim. In one matter that came to my attention a constituent reported that site fee increases in their village had exceeded the CPI by approximately $678,000 over the last 9 years. The Operator vigorously avoids having to justify annual site fee increases with verifiable figures because there is no requirement under the legislation.

In another matter reported to me a resident disputed a rate increase and took the matter to the AAT and the Commissioner highlighted on the public record that he was unimpressed with major financial accounting errors on the part of the Operator of that village. Those errors included;

- Over $60,000 of 'capital works' being incorrectly cited by the operator as 'Operational costs'
- Copies of invoices paid to 3rd parties submitted as evidence of operational costs even though neither the 3rd parties nor their services were connected to the village
- Purchases of equipment for entities and people not connected to the village
- Inaccurate transfer of figures from invoice to balance sheets submitted to AAT, and
- Inaccuracies in significant items such as the cost of water use and electricity.

At the very least Operators should be held accountable in terms of their financials. It is only when a resident triggers a complaint that the financial records are even discovered. Unlike a Body Corporate where residents are legally entitled to see all financials administered by the Body Corporate – the Operators of Land Lease Communities are not under any such requirement. It means they could de-fraud residents for many years and then skip town.

ACTIONS:

1. **Clauses used in the updated act should be clear and precise. Vague clauses such as "notice must include an explanation" are vague and meaningless and leave residents subject to exploitation.**

2. **Insert a reasonableness test for rate increases.**

3. **A requirement that Operators provide residents on a quarterly basis, transparent financial records of how resident's rates are spent.**

Additional terms

Another issue residents have raised is with regard to Section 28 that enables operators to insert additional terms to their agreements. The clause states that "the parties may insert additional terms in a standard form of site agreement, but only if the terms (a) do not contravene this or any other Act."

Whilst this clause on its face is reasonable in that it allows for both parties to insert additional clauses, residents feel that these additional terms have allowed operators to keep introducing different clauses as and when they feel like. One particular case that was brought to my attention was an additional clause that stated;

"*Residents agree that they will not on any social media or otherwise do anything that negatively impacts on the reputation of the business. This includes without limitation, adversely commenting in the residential community, its home owner and tenants or all of them".*

This kind of 'gag clause' essentially denies residents their fundamental right to freely express themselves. They are neither employees of the operators nor are they shareholders in a business. Why then is an operator gagging what residents can talk about in the public domain. Whilst we doubt the legal veracity of the clause, many residents whose average age is 80 years old are intimidated by such a clause and would comply. Residents have bought properties ranging from $400,000 - $700,000 whilst paying rent for the land and amenities for as long as they live there. Asking residents to guard the reputation of the operators business is appalling and I believe, unconstitutional.
In another case that was drawn to my attention, an additional clause was added that effectively doubled resident's electricity bills without prior consultation with the residents.

ACTION:

1. **Require that additional terms have to be agreed upon by at least 80% of current residents**
2. **Make it explicit in the legislation that additional terms that contravene any other laws in NSW are unlawful**

Rules of conduct for operators

Section 54 of the act requires operators to comply with the rules of conduct. Specifically an operator must;

i. *have a knowledge of the Act and other laws relevant to the operation of a community*
ii. *act honestly, fairly and professionally*
iii. *not mislead or deceive any parties in negotiations or a transaction*
iv. *exercise reasonable skill, care and diligence*
v. *not engage in high pressure tactics, harassment or harsh or unconscionable conduct*
vi. *not use or disclose any confidential information obtained while acting on behalf of a resident*
vii. *take reasonable steps to ensure employees comply with the legislation*
viii. *when acting as a selling agent for more than one home in a community, act fairly and advise prospective home owners of all available homes in the community*
ix. *not solicit residents through communications that the operator knows or should know are false or misleading*
x. *ensure all material details are included in any documents that someone is asked to sign*
xi. *not provide false information about the effect of the legislation, and*
xii. *Section 56 prohibits an operator from retaliatory conduct against a home owner for making a complaint, applying to the Tribunal or promoting the establishment of a residents committee.*

These rules might be adequate but in practice the rules have little or no effect. Residents of one village in the Ballina Electorate reported breaches of the rules of conduct to the regulator and have been very disappointed by the outcome. They report that no action was taken after they made a Code of Conduct complaint and that the operator continues to breach the rules of conduct with apparent impunity.

It is extremely difficult for the residents to prove any misconduct by Operators without "hard evidence", which is also not clearly defined under the legislation. Incidents of verbal abuse, threats and intimidation from operators have been reported to me in the past and yet with no hard proof residents cannot support their complaints. The balance of power is tipped in the operators favour because elderly residents are expected to spend their own money and invest time into obtaining evidence of misconduct and prosecuting the matter through the AAT.

ACTION:

1. **The review must consider a new approach to dealing with poor operator conduct**
2. **Reverse the power imbalance so that vulnerable residents are protected.**

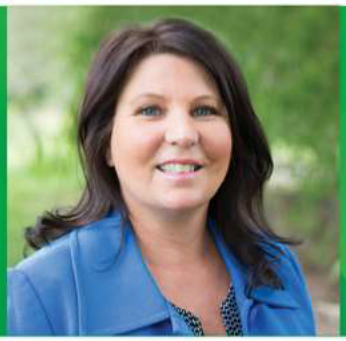
Resident advocacy

Many residents have reported to me that the only independent body that is in place to protect the rights of residents – the Affiliated Residential Park Residents Association (ARPRA), is not advocating strongly enough on behalf of residents.

Members of the organisation have reported to me that they feel let down by ARPRA and that there is an imbalance of power between the well- meaning organisation and the residents. The organisation has been reported to be funded by the operators which makes it a compromised party in the conflict resolution process. Residents don't trust ARPRA when they know that Operators hold the purse strings.

ACTION:

1. **The review should consider having an independent/transparent advocacy body that represents residents**



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Conclusion

Whilst many residents living in Residential Land Lease Communities are mentally and physically alert, others are not able to understand the complexities of the Act and ongoing site agreements. Moreover, having to raise issues and concerns through fair trading and ATT are laborious, legalistic and can only be navigated by legal teams and the accompanying hefty financial costs. This leaves the home owners vulnerable and powerless in terms of their representation.

There is nothing that protects the residents from constant rent increases and when we are hearing that the state of common property and amenities are in dire need of repair and that repair requests can take YEARS there seems to be a total lack of rights for residents.

Thank you for the opportunity to contribute to this important review.

Sincerely

[redacted]

Tamara Smith MP,
Member for Ballina