

Statutory Review of the Residential (Land Lease) Communities Act 2013
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Submission by

I believe that there are multiple amendments and corrections that need to be made to the Residential (Land Lease) Communities Act No.97 2013. There are also issues that need to be addressed in the Regulations and a review of the Planning Laws for Residential Parks should be undertaken to properly regulate what is now free for all development in Residential Parks.

The Right of Assignment of site agreements must be restored. The drafter's error in Section 45 must be corrected. In practice, this is asset stripping of the elderly. This is financial elder abuse. The lack of assignment of site agreements is totally against the Objects of the Act "to protect home owners from bullying, intimidation and unfair business practices." The wording of the Act must have a clear and specific reference to SUPPORT the assignment of leases.

Site Fee Increases:

S.65 and S.66 Fixed method increases should be removed as an option in new site agreements. This idea has not worked and has created a new level of unfairness.

S.67 Increase of site fees by Notice. The Act should prescribe that site fee increase notices be of one standard form issued by Fair Trading.

The notices should be accompanied by an explanation and evidence of the increased expenses of a community, presented in a manner acceptable to an auditor firm. Non-recurring expenses should be explained in full and when the site fee increase to cover a non-recurring expense will be reduced to normal. I believe that this will make the Compulsory Mediation more likely to be successful in reaching agreement rather than nothing more than a mandatory step before a Tribunal hearing.

S.73 The 'projected increase...in the outgoings and operating expenses for the community' is speculation and conjecture. This has increased the complexity of NCAT proceedings. Section 73 (4) should be completely removed.

S.74 Matters to be considered about excessive increases:

(b) "projected increase" should be removed.

(c) (ii) should add "with costings to the satisfaction of the Tribunal" and an explanation as to why these planned "repairs or improvements" should not or cannot be covered by a Special

Levy.

(e) the range and level of site fees in a community should be removed. It is no longer a relevant factor in residential communities.

(f) the land value should be removed. Rezoning for instance can change the potential land value yet changes nothing to the residential community or the services provided to Homeowners.

The Tribunal should have full discretion to determine a site fee increase.

Additional Terms in Site Agreements.

S.28 Additional terms should be limited to twelve (12).

S.28 This should be added "(d) any term giving the operator right of first refusal on homes, or the right to put in final offer after all other offers have been submitted."

S.31 The minimum period in S.31 (6) should be reduced to 12 months.

The discussion paper asks whether there are additional terms that should be prohibited. I believe that the Act should make these terms prohibited:

- The 'social media' term. Or any such term. This is unworkable and in my opinion against many other pieces of legislation, as well as being unfair and restrictive. There is already Legislation that covers Operators from slander.
- Terms enabling operators to charge security deposits for electricity and gas.
- Terms regarding that the Homeowner taking ownership or being responsible for the maintenance or preservation of any infrastructure that is not the home.
- Any term requiring a Homeowner to pay a bond to the operator as a condition of obtaining written consent to add or alter a structure on the residential site.

Negotiation of new site agreements:

Homeowners should be referred to a Tenant's Advisory Service as well as a solicitor.

Homeowners should be advised of the Community's Resident's Committee in the same language as S.16 (d) "whether the community has a resident's committee and, if so, the name and site number of an office holder of the committee."

Potential purchasers should be given the Disclosure Statement and site agreement at the same time.

The cooling off period should be changed to six months.

Operator Conduct:

Penalties for Operator misconduct are too lenient.

Park Operators should be licensed, much the same as Publicans are.

Homeowners and park Residents should be informed of who the Park Owner, Park Operator and Park Managers are. This should include ABN and ACN numbers, details of Company Directors and Company Secretaries and the ASIC contact address. Homeowners and park Residents should be informed within 30 days of ANY change in these details.

Other:

The concept of "Existing Use Rights" as applied to Residential Parks must be made unambiguous and reflect recent court decisions supporting the issue.