



3 March 2021

Statutory Review of the Residential (Land Lease) Communities Act 2013
Policy and Strategy Division
Department of Customer Service

Submission: Statutory Review Residential (Land Lease) Communities Act 2013

Thank you for the opportunity to provide input into the statutory review of the *Residential (Land Lease) Communities Act 2013*.

As the peak body representing people over 50 in NSW, we conduct community consultations and surveys on a regular basis that highlight the issues that are of importance to older people. It has become apparent through this engagement that residential communities are one of the few remaining affordable housing options (outside of the government funded social housing market) left in the marketplace for older people on low incomes living in New South Wales.

As housing becomes less affordable in New South Wales, particularly in the Sydney basin, there are a dwindling number of affordable housing options left in the marketplace. Many are forced to move to Sydney's fringe suburbs or out of Sydney altogether.

An increasing number of older people, particularly women, reach retirement with little superannuation and few assets. They may have low savings that prevent them from being able to live in suburban areas because of high housing costs and an inability to raise mortgage finance. In some cases, however, they may have sufficient savings to purchase a relocatable home. Many older women in particular end up in this accommodation due to the shortage of public housing and social housing for emergency accommodation and ongoing accommodation. It is important therefore to enable residential communities to continue to provide affordable housing options to older people on low incomes and ensure they are treated fairly and transparently by owners and managers. COTA NSW endorses the recommendations contained within the Tenants' Union report *5 years of the Residential (Land Lease) Communities Act 2013*, including (but not limited to):

Governance

- Introduction of operator licensing – to enable improved monitoring of non-compliance and the delivery of operator education.
- Rules of conduct for operators – it is currently difficult for homeowners to provide sufficient evidence for operator breaches. A streamlined user-friendly process for complaint handling and lodgement is required.
- Operator Education – within the current system it is difficult to monitor which operator and employee has undertaken mandatory education requirements. This is due to the organisational structures of some operators, which means senior staff may complete training but those staff working in Residential Communities site may not. It is these staff that off need the most training and education.



- Dispute resolution – the Act allows for robust mediation processes, however, the requirement to disclose information or evidence by both parties to the mediation must be enforceable and enacted. The option of utilising mediation for other disputes when tribunal orders are not available would be an enhancement to the dispute resolution process. The introduction of group application clause within the Act to enable homeowners to collectively address issues common to multiple residents of the park, such as: utility costs, community access procedures, common areas etc.

Fees and Costs

- Site fee increases – it has become more common for operators to use the fixed method for site increases. Site agreements state the negotiability of this method, but in reality, this is not the case - with the power differential still in favour of the operator. The increase in fees on new site agreements continues to be of concern. The Tenants Union detail a number of instances where the weekly site fees are significantly increased for the new homeowner. It is recommended that sections 109 and 111 are amended to state that current site fees apply to new owners.
- Repair and maintenance obligations – clarification within the Act is required in relation to defining what constitutes the 'site' (i.e. concrete slabs, retain walls, driveways etc.) and the corresponding responsibility of the operator to maintain and repair that essential infrastructure.

Utility Charges

The provision of power in residential land lease communities through that arrangement of embedded networks, prevent consumers from access to the retail energy market and a range of benefits, such as competitive prices, hardship provisions and accommodation for service interruptions. Regulation to address fair pricing has been complicated by legal proceedings and COTA NSW welcomes consistency and certainty in this space.

COTA NSW supports the incorporation of option 2 from the discussion paper with some caveats. The options outlined are predicated on achieving fairness and certainty for operators and residents. This option would enable costs to be addressed within the energy charges and should be levied on a demonstrable quantification of these costs and have regard to the level of energy usage (technical capacity permitting). As outlined in the paper profit taking by the operator in this model should be prohibited.

In 2018 the Australian Energy Market Commission (AEMC) reviewed arrangements in the embedded networks and concluded they were not fit for purpose in its advice to COAG arguing for revision of legislation/regulation in this space by the various state jurisdictions. Action in this space has been disappointing to date and further attention is needed by government.

Additional Recommendations

- Emergency Procedures – mandatory display of emergency evacuation procedures in easily accessibly common area stipulated in section 37 (h).
- Minor works - section 42 to be amended to allow homeowners to undertake minor alterations without consent e.g. locks, security alarms etc.



- Age restrictions - there are increasing numbers of older people that are becoming fulltime carers of their grandchildren. Modification of section 44 (5) should be extended to include children where the homeowner is a 'guardian' in accordance with that term in the *Children and Young Persons (Care and Protection Act 1998 (NSW)*. Consideration should also be given to removing age restrictions from the Act as contrary to anti-discrimination law and superfluous to the realities of Residential Land Lease communities.
- Site agreement - within section 117 allowance should be made to enable a joint homeowner to sever their interest in a site agreement, for reasons such as relationship breakdowns or other change in circumstance.

Thank you for the opportunity to provide comment.

Regards,

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