

Outasite Lite



Myrtle Glen

REVIEW RECOMMENDATIONS REPORT PRESENTED TO PARLIAMENT

As we approach the end of 2021 and look back, we can see the year brought many challenges, but also moments of joy and triumph. There have been lock-downs, wins and losses at the Tribunal, appeals and appeals from appeals. We have met face to face, online, and sometimes by phone. But, most importantly, the *Residential (Land Lease) Communities Act 2013* has been under review, and the report has now been tabled in Parliament.

The public consultation process enabled stakeholders to tell the Government what they think is working, and where improvements are needed. Whilst submissions closed on 12 March, the Government continued to meet and engage with key stakeholders throughout the year.

The culmination of this work is the *Residential (Land Lease) Communities Act 2013 Statutory Review Report*, which was tabled in Parliament on Monday 29 November. In this issue of *Outasite Lite* we take you through some of the key recommendations from the report.

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ENTERING INTO A COMMUNITY

The review found there is room for improvement to the information provided to prospective home owners and to the sale process, and is proposing a package of reforms to address these issues.

The first reform is to introduce a prescribed 'Sale Information Sheet' (SIS) to be prepared before a home is put on the market. The SIS is to be provided to prospective purchasers to provide:

- information on how to purchase a home and lease a site
- the proposed sale price of the home, and site fee, and
- what documents a buyer should expect to receive and when.

The review recommends that the disclosure statement and site agreement be made available to prospective purchasers within five days of being requested, and that home owners are required to provide the operator with at least 14 days notice of their intention to sell the home.

SITE FEES IN NEW SITE AGREEMENTS

This was a key issue pressed in the review by the Tenants' Union and other advocates. The review has found that allowing the 'transfer' of site fees would provide greater certainty and reduce a barrier to the sales process and 'fair market value' disputes.

The review recommends that the Act be amended to require that site fees for new agreements remain the same as the existing site fees for the same site, unless they are substantially below the site fees for other comparable site fees in the community.

SITE FEE INCREASES

Many submissions on fixed method increases argued that those methods containing multiple components are unpredictable, difficult to calculate and do not provide certainty to home owners. The review proposes that the Standard Form Site Agreement clarify that the 'other' option under the fixed method be limited to a single variable only.

Alongside the above recommendation, the review proposes that existing site agreements that are subject to multi-variable fixed method increases must be reviewed within three years of commencement of the Amended Act so that they comply with the single variable requirement.

The review also recognises the explanation provisions for increases by notice have not been effective and recommends that increase notices be required to include information about:

- the specific costs increases that have led to the site fee increase,
- how much these costs have increased since the last fee increase, and
- how these costs are being apportioned in the site fee increase.

Another area of contention is whether capital expenditure can be recovered through site fee increases. The review is recommending that site fee increases can include costs for community upgrades but that greater transparency will be required.

The review further recommends that, where part or all of a site fee increase is to pay for a community upgrade, the Tribunal be able to consider the following: the need for the upgrade in the context of the facilities available in the community, the contribution of the operator to the total cost of the upgrade, the reasonableness



of the amount that is being charged as a proportionate contribution to the community upgrade, and whether it is reasonable for this amount to be included in the site fee as an ongoing charge to contribute to the maintenance of the community upgrade.

The second key issue in the debate about site fee increases by notice focused on projected expenses. The review recommends that, if a portion of a site fee increase is based on projected expenses, the Tribunal should be able to consider the reasonableness of including those expenses in the increase, and whether previous projected increases eventuated.

UTILITIES & CHARGES

An important aspect of the review for home owners supplied with electricity through an embedded network is electricity charges. The review considers that the 'median separate charges' approach to regulation of electricity charging could present the best balance between the interests of home owners and operators.

This approach involves:

- Setting the maximum amount that a resident may be charged (by an operator or contracted third party supplier) at the median retail market price, comprised of separate usage and supply charges that are contained in the median market offer for each distribution area, as identified by IPART.
- Residents who receive low quality electricity supply receiving the following discounts to their daily supply charge:
 - 30% discount for 31-60 amps
 - 60% discount for below 30 amps.

Electricity pricing was one of the most challenging parts of the review and it is recommended that further work be done to understand the implications of the above measures. The review recommends that the proposals above be reviewed within three years of commencement.

Recommendations have also been made to introduce new provisions specifying the minimum information in, and frequency of bills for utilities.

The recommendation for electricity charges:

- *Set the maximum amount a resident may be charged (by an operator or contracted third party supplier) at the median retail market price, comprised of separate usage and supply charges that are contained in the median market offer for each distribution area, as identified by IPART.*
- *Residents who receive low quality electricity supply receive the following discounts to their daily supply charge:*
 - *30% discount for 31-60 amps*
 - *60% discount for below 30 amps.*

COMMUNITY RULES

The review proposes reforms that will enable a process for residents to propose new rules or change existing rules and for group applications to the NSW Civil and Administrative Tribunal (NCAT). Further consultation will be undertaken on these proposals.

The review recommends clarifying that age restriction community rules are allowed under the Act subject to support by the residents, and the introduction of relevant exemptions.

SITE MAINTENANCE & REPAIR

Another key issue for the Tenants' Union and home owner advocates was the apparent transfer of responsibility for site infrastructure to home owners. We contended that operators should be responsible for maintenance of the site and home owners should only be responsible for any damage they cause to the site.

The review recommends that operators should be responsible for maintaining infrastructure that forms part of the structure of the site and cannot be removed. Again, further consultation will be undertaken regarding how these principles will be expressed in the Act.

Additionally, it is recommended that a notice of dilapidation can only be issued regarding a home, or where dilapidation to the site has clearly been caused by the home owner.

MINOR ALTERATIONS TO HOME

The review proposes to expand the minor alterations home owners can make to the home without the need for operator consent to include: window locks; window screens and shutters; door screens; and exterior lights.

It is also recommended that it be clear in the relevant provisions of the Act that any modification or alteration to the home is required to comply with the relevant Local Government Regulation.

EDUCATION

There is an acknowledgement that both operators and home owners need to better understand their respective rights and responsibilities and it is recommended that the mandatory education obligations cover all operators and their employees. Additionally, new materials should be developed to enable home owners and resident committees to improve their knowledge and understanding of the Act.

OPERATOR CONDUCT

Operator conduct is probably the biggest complaint the Tenants' Union receives from land lease community home owners. The review is recommending that a breach of the rules of conduct by an operator constitutes a penalty offence, and that the rules of conduct also apply to employees acting on behalf of the operator.

TERMINATION

The review recommends that termination for non-use of a site should no longer be available and that the notice period when a site is unlawful should be extended from 90 to 120 days, with compensation payable to the home owner if the operator has taken action that has rendered the site unlawful.

This is a brief overview of the report and recommendations. You can find the full report here: <https://www.parliament.nsw.gov.au/lc/tabledpapers/Pages/tabled-paper-details.aspx?pk=81194&houseCode=lc>

Recommendation:

Provide that a breach of the rules of conduct by an operator constitutes a penalty notice offence and may warrant a penalty infringement notice.

Extend the application of the rules of conduct to include employees acting on behalf of the operator where relevant.

END OF YEAR CLOSURE

The Tenants' Union is taking a break over the holiday period from Thursday 23 December 2021 to Friday 7 January 2022 (inclusive). If you need advice during this period you can call the hotline:

Phone: 1800 251 101 or 8117 3750

Dates: Thursday 23 December 2021 to Friday 7 January 2022 (excluding 27 & 28 December and 3 January 2022)

Hours: 10am - 1pm and 2pm - 5pm

Last but not least, we wish all of our readers, supporters and collaborators a safe and Merry Christmas and a very Happy New Year!



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