

RESIDENTIAL (LAND LEASE) COMMUNITIES BILL 2013

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Bill introduced on motion by Mr Anthony Roberts, read a first time and printed.**Second Reading**

Mr ANTHONY ROBERTS (Lane Cove—Minister for Fair Trading) [4.08 p.m.]: I move:
That this bill be now read a second time.

I am pleased to introduce the Residential (Land Lease) Communities Bill 2013. This bill makes good on the Government's pre-election commitment to improve the governance of residential parks. I would like to acknowledge from the outset the work done by my colleague the member for Albury, Greg Aplin, who laid the groundwork for this reform package when in opposition. The bill repeals and replaces the Residential Parks Act 1998 following a comprehensive review of that Act which the Government has conducted over the last two years.

The review found that the current law is seen as confusing and cumbersome and creates unnecessary conflict between residents and operators. As a result, the Government has totally rewritten the law, including providing a more suitable title. "Residential (Land Lease) Communities" represents a more appropriate title given the increasing community feel of parks and the permanency of the residents. Changing the title and the language used in the legislation better reflects the modern arrangements found in these places today. Residential land lease communities have become a very important part of the housing mix, particularly in regional and rural areas, and especially along the coast. They provide an attractive and affordable lifestyle choice for many retirees. The first step the Government took in its review was to amend the law in 2011 to establish a register of all the residential communities in the State. As a result, we now know that there are close to 500 residential communities across New South Wales with over 33,000 permanent residents.

When I visit residential communities one thing that particularly strikes me is the strong sense of community among the residents and the informal networks of support they provide to each other. The legislative proposals in the bill will reinforce this model of community living. Appropriate consumer protection safeguards in the existing Act will be kept and expanded upon. There is a large number of reforms that will benefit home owners. Equally, there are changes to the law that address some of the main concerns of operators. This bill is a fair and balanced package of reforms. It was developed following considerable consultation with residents, operators and other interested parties. Details of the review were mailed directly to operators and resident representatives for each residential park listed on the register. There were two formal rounds of public consultation: first, with the release of a discussion paper in November 2011; and, second, with the release of a draft bill in April of this year.

Well over 2,000 submissions were received during the review. This was a tremendous response and is an indication of the widespread level of knowledge and interest in these important reforms. Every single submission received, however big or small, has been carefully considered and given equal weight. In addition, my office held a series of roundtable meetings with key stakeholder representatives to discuss the issues and options in more detail. These meetings were valuable and robust. While those present did not agree on everything, I was pleased to see consensus reached in a range of different areas. Since

becoming the Minister for Fair Trading I have been pleased to visit many residential communities across the State to hear first-hand the issues of concern to residents and operators. Many of my colleagues on this side of the House have also visited communities in their electorates and made representations to me on behalf of their constituents. All of this feedback has played a role in shaping the final bill, and I am proud of the wideranging consultation.

Following the extended consultation period, the Government has taken on board the concerns raised and amended some sections of the bill. Changes have also been made to the bill to address any unintended consequences that have been identified in comments. Some residents who had their say on the bill raised the issues of the introduction of voluntary sharing arrangements, provisions regarding rights of additional occupants under the age 55, the introduction of special levies for community improvements, and perceived changes to the termination provisions. All four of these issues have been addressed by refinements made to the consultation draft bill. I now turn to the provisions of the bill. The objects of the bill are: to improve the governance of residential communities, set out particular rights and obligations of operators and home owners, enable prospective home owners to make informed choices, establish procedures for resolving disputes between operators and home owners, protect home owners from bullying, intimidation and unfair business practices, and encourage the continued growth and viability of residential communities across this great State.

The bill includes a range of new terms to be consistent with the new title and the shift away from the tenancy laws. For example, the bill uses terms such as "residential communities", "home owners", "site fees", "operators", "homes" and "community rules". The outdated language of "caravan parks", "moveable dwellings", "relocatable homes" and "rent" is gone. The bill makes it much clearer who is and who is not meant to be covered by the legislation. The exemptions are more specific to arrangements found in this industry and include holiday lettings, long-term casuals, itinerant workers and full-time employees. As I mentioned earlier, the establishment of a register in 2011 by the Liberal-Nationals Government has been a useful source of statistical data and very helpful with communication during the review. Provisions relating to the register in the current Act have largely been carried across into the bill. However, under the bill the information from the register that is publicly available is to be expanded to include the name of each community operator and details of any enforcement or disciplinary action taken against them. The addition of these details should help to improve accountability and transparency.

A number of important reforms are contained in part 4 of the bill. The bill will require operators to provide a disclosure statement at least 14 days before a site agreement can be entered into. The disclosure statement will draw attention to the key aspects of the agreement. Disclosure statements work well in other sectors, such as the retirement village industry. The bill maintains a cooling-off period of up to 14 days once an agreement is signed. These two measures will ensure that people take their time to consider whether the terms of an agreement are right for them and do not feel rushed or pressured into signing up on the spot. One area about which arguments in residential communities are not uncommon is the boundary lines between sites, given that there are no fences. To address this issue the bill will require the dimensions of each site to be specified in the site agreement.

Part 5 of the bill deals with the basic rights and responsibilities of home owners and operators. This covers such matters as mail facilities, the maintenance of trees and access to

sites by the operator, service providers and emergency vehicles. The bill recognises that the dilapidation of older homes in communities is becoming an increasing problem and gives more practical options for how these situations can be resolved. The intention is to encourage the home owner to repair the home and stay in the community rather than lose their home. The bill will require operators to be reasonable when considering a request from a home owner to have an additional occupant. Another provision that attracted attention when we released the consultation draft bill is the introduction of special levies for community upgrades. If, for example, the residents of a residential community that does not have a swimming pool would like to have one, they can agree to fund it by paying a special levy. They can also negotiate for the operator to make a contribution to the fund, given the benefits they would receive from such projects.

Under the bill the idea of a special levy could originate from either the home owners or the operator. Importantly, the bill will require at least 75 per cent of home owners to agree with the proposal as well as the operator's consent before a special levy can be brought in. Furthermore, the bill will require the money to be held in trust until the upgrade is completed and refunded to home owners if, for some reason, the work does not go ahead. These provisions will ensure that special levies occur only when there is widespread support within the community. Mandatory education for new operators was one of the three key parts of our election commitment. I am pleased to say that the bill delivers on that commitment. Within 30 days of becoming an operator an education briefing will need to be undertaken. The content of the mandatory education will be developed by the Commissioner for Fair Trading in consultation with key stakeholders. This reform will ensure that new operators understand the law and their responsibilities, and develop the necessary skills to fulfil their role.

The difficult burden of challenging excessive site fee increases is one of the major issues with the current law for home owners. These disputes account for the bulk of the tribunal's workload in this area. Looking at ways to simplify the process was one of the three key parts of our election commitment. The new collective approach to site fee increases in the bill delivers on that commitment. If an operator wants to increase the site fees by notice they will need to give all home owners notice at the same time. This will not be able to occur more than once per year. Under the bill, the home owners can object to the increase if at least 25 per cent of them do not agree that the increase is warranted. The matter then goes to compulsory mediation. Should mediation fail, a collective application can then be made to the tribunal. The bill has simplified the factors for the tribunal to consider in such cases to relieve much of the evidentiary burden from home owners. This new collective approach should help to reduce the number of disputes over site fee increases and make them easier and quicker to resolve when they do occur.

The bill clarifies that a home owner can only be required to pay usage charges for utilities if the use is measured separately or metered and the operator gives the home owner an itemised account. Operators will no longer be able to use site fees to cover any outstanding utility payments. This will enable home owners to access financial assistance services if they fall behind with their utility bills. Under the bill, operators will be able to charge a fee for late or dishonoured payments, but these fees cannot exceed the amount that could have been charged if the service was supplied directly by the local utility service provider. The bill will require operators to give receipts for utility payments and includes a range of new powers for the tribunal to resolve disputes over utilities. Community rules are an important feature of residential community living. They deal with such matters as pets, landscaping, parking, rubbish disposal and internal road speed limits.

The bill requires community rules to be fair, reasonable and clearly expressed. There is a rebuttable presumption in the bill that a community rule is not fair and reasonable if it does not apply uniformly to all residents. Under the bill the Commissioner for Fair Trading will be able to develop and publish a set of model rules. This will be done in consultation with key stakeholder groups, and I hope that the model rules will be widely adopted. Rather than the big-stick approach of a termination notice for a breach of community rules, the bill instead allows a 'notice to comply' to be issued by an operator. The tribunal is to be given broad order-making powers to deal with the situation where a person continues to breach a community rule. The bill recognises the important role that residents committees can play in a residential community. The bill sets out in some detail how a residents committee can be established and elected. The bill ensures that operators cannot try to deter committees from being formed by requiring incorporation or mandating insurance.

Another important change in this part of the bill is that external representative organisations, or a local residents association, will have a right of reasonable access to each community to consult with residents. Part 10 of the bill includes a simpler and more effective process for home owners wishing to sell their homes on site. The bill gives all home owners a right to sell and to place a 'for sale' sign in or on the home. The bill provides significant penalties for any operator who seeks to interfere or hinder a sale. The current system of assigning existing leases upon the sale of a home was seen as complex and confusing. The bill replaces this process with an obligation on the operator to enter into a new site agreement with the purchaser, unless it would be reasonable to refuse. The site fees under the new agreement must be no greater than the current fees payable for the site or the fees payable for comparable sites within the community.

Proposed section 110 provides for voluntary sharing arrangements between residents and operators when they so choose. This has been designed to encourage investment, improve viability and take pressure off rising rents. Following extensive consultation with stakeholders, the bill now provides more protection to existing residents, more flexibility and choice to all parties, and better distinguishes between the differing circumstances in which such arrangements may be offered. Where an existing home owner is selling on site, the buyer will have the option of having a voluntary sharing arrangement provision in their agreement or not. It will be entirely up to the purchaser to decide which agreement they sign, and a new disclosure statement will be included. Part 10 of the bill also increases the level of consumer protection where an operator acts as a selling agent. A selling agency agreement will need to be entered into and any moneys received under that agreement will be required to be held in trust until the sale is completed.

The termination provisions in part 11 of the bill largely reflect the status quo of the existing Act. However, there has been a number of improvements to increase the security of tenure and protection for home owners. The bill removes the principal place of residence test and clarifies that an agreement does not end in most cases until the completion of the sale of the home. This ensures that home owners who pass away or who need to leave for some other reason do not lose the right to sell on site. The bill imposes a new obligation on operators who intend to close a community to take reasonable steps to help find another site elsewhere for all displaced residents. Compensation to residents in the event of closure or relocation has also been improved in the bill. For instance, one of the new factors for the tribunal to consider in deciding how much compensation to award to the resident is the current on-site market value of the home, determined as if the termination were not to occur. There is a

range of other changes in the bill to improve the compensation provisions as a result of termination or relocation.

The bill makes it clear that the home owner is to be compensated for both loss or residency and relocation. Whether the home owner chooses to relocate the home elsewhere will be up to them. The bill recognises that this may not be possible or desirable and that they may prefer or have no choice but to walk away from the home. Compensation is to be payable under the bill no matter what they decide. The existing law provides compensation only if the home owner keeps the home. Disputes between home owners and operators, or among the residents themselves, will arise from time to time. Currently, such disputes can only be taken to the tribunal. The bill recognises internal voluntary arrangements for dispute resolution. Another key reform area in this bill is the system of mediation as an alternative to the adversarial tribunal process. An application for mediation will be able to be made to NSW Fair Trading regarding any dispute involving home owners and operators. The bill clearly sets out the functions of a mediator, who may be a public servant or a person with appropriate expertise or experience appointed by the commissioner.

Agreements reached at mediation will be able to be turned into enforceable orders. While mediation will be voluntary for disputes other than about site fee increases, over time I hope that mediation will reduce the number of disputes going to the tribunal. The main feature of part 13 is the stepped series of sanctions the commissioner can impose where disciplinary action is warranted. This will include warnings, written undertakings, required training courses or prohibiting a person from being involved in the management of a community for a specified period. Any such action will be reviewable through the Administrative Decisions Tribunal. These sanctions, together with the rules of conduct set out in schedule 1, form the basis of a negative licensing system. Looking at ways to license operators was one of the three key issues identified in our election commitment.

Part 14 of the bill deals with a small number of miscellaneous matters including the regulation-making powers and the service of notices. The bill recognises practical methods of service, including email and direct delivery to a mailbox. A statutory five-year review has been inserted into the bill to ensure that the legislation continues to meet the policy objectives. In conclusion, this is an important piece of legislation that affects the lives of many people across the State. Simplifying and redrafting the law into plain English should serve home owners and operators well into the future. The introduction of this bill is a further demonstration of the New South Wales Liberal-Nationals Government meeting its election commitments, and working to make New South Wales number one again. I commend the bill to the House.

Debate adjourned on motion by Ms Tania Mihailuk and set down as an order of the day for a future day.