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## RESIDENTIAL (LAND LEASE) COMMUNITIES AMENDMENT BILL 2024

### STATEMENT OF PUBLIC INTEREST

#### **Need: Why is the policy needed based on factual evidence and stakeholder input?**

A residential land lease community is one in which residents often own the home they live in (for example, a caravan) and lease the land on which the home sits from a community operator. Some residents may instead rent the home from the home owner.

These communities are important as they provide an alternative form of housing for the people of NSW. Many of these communities also provide a lower cost housing option.

The *Residential Land Lease Communities Act 2013* (the Act) regulates the relationship between operators and people who live in residential land lease communities.

The Bill is needed to ensure that the relevant laws remain fit for purpose and properly balance the interests of residents and operators so that residential land lease communities are a viable alternative housing option in NSW.

A statutory review of the Act was tabled in Parliament in November 2021. The review found that the Act generally remains valid and fit for purpose, but also made 48 recommendations to improve the Act's effectiveness.

During 2020 and 2021 there was extensive consultation as a part of the statutory review. This included:

- a three-month public consultation where over 350 submissions were received,
- a further four-week public consultation on the policy options about electricity charging where 100 survey responses and 11 written submissions were received, and
- face-to-face consultations with key internal and external stakeholders about proposed reforms to the Act.

Further targeted consultation has also been completed on the draft Bill this year to ensure the reforms work as intended.

The Bill will implement 21 of the 48 review recommendations for the benefit of residents and operators. More information about this is provided below.

#### **Objectives: What is the policy's objective couched in terms of the public interest?**

The Bill is in the public interest as it aims to:

- improve the lives of residents who live in residential land lease communities, and
- support operators of these communities so that their businesses remain viable.

The Bill will achieve these aims as it will, for example:

- make site fee increases more certain and easier to understand for residents,
- implement electricity charging rules in communities with electricity embedded networks that provide greater certainty for residents about their electricity bills and support operators to upkeep their embedded networks,
- modernise laws that better balance the rights of residents and operators. An example of this is making it easier for residents to modify their homes without operator consent but clarifying that these must comply with relevant local government regulations,

- increase transparency for residents so they are better informed about matters that impact them. An example is requiring operators to give notice of their intention to lodge a development application or planning proposal.

**Options: What alternative policies and mechanisms were considered in advance of the bill?**

The NSW Government considered the following options:

1. Option 1 – Take no action and maintain the status quo.
2. Option 2 – Implement the statutory review recommendations.

If the statutory review recommendations that are implemented in the Bill do not progress, then communities will not obtain the benefits of those changes. More information about the pros/cons and benefits/costs of the options are provided below.

**Analysis: What were the pros/cons and benefits/costs of each option considered?**

Option 1, to take no action and maintain the status quo, is not preferred. Option 2, to implement the statutory review recommendations, is the preferred option.

Taking no action (option 1) would mean that the issues that the statutory review identified would continue to be unaddressed. Implementing the statutory review recommendations (option 2) means identified issues will be addressed and the laws governing residential land lease communities will be improved for the benefit of residents and operators.

For example, there are significant concerns about how some community operators use multiple components as a part of their ‘fixed method’ site fee increases for residents. This approach has caused significant confusion for residents and can lead to financially detrimental outcomes for them. The Bill will implement recommendation 10 of the statutory review to limit such fixed method site fee increases to a single element. This will enable residents to more easily understand such site fee increases and budget for them.

Another key example that demonstrates why option 2 is preferred relates to electricity charging in communities with electricity embedded networks. *Silva Portfolios Pty Ltd trading as Ballina Waterfront Village & Tourist Park v Reckless [2018] NSWSC 1343* (the Reckless case) found that an operator is not entitled to charge a home owner more than the operator has been charged for the electricity a home owner consumes. This has meant that operators cannot recover their administrative and maintenance costs as they can only pass on electricity usage charges to residents. It has also meant that electricity billing for operators and home owners in these communities has become complex and uncertain.

The Bill implements the electricity charging related statutory review recommendations (recommendations 20-23). This includes introducing a new price cap on operators and third-party suppliers for the electricity charges they can impose on residents in communities with electricity embedded networks.

Some residents in these communities may experience some increase in the electricity charges they pay. Other residents will experience a decrease in their electricity charges. Overall, there will be a net benefit for all parties in these communities as there will be certainty around electricity pricing. The Bill will mean that residents will know what they will be charged from month to month and operators will be able to recover the costs of maintaining and administering their embedded networks.

The Bill will also implement additional measures to increase transparency around electricity charging for residents in these communities.

It should be noted that the Independent Pricing and Regulatory Tribunal (IPART) recently undertook a review of embedded networks in NSW. The Government expects further work

on embedded networks to occur in the future. As the residential land lease communities sector has been advocating for reforms for many years to address the electricity charging issues, the Government is implementing these reforms in the Bill now as an interim measure. Key stakeholders understand and support this approach by Government.

Some of the other statutory review recommendations the Bill will implement may increase the administrative burden on operators. However, the Bill limits any increase in burden to ensure they are necessary and proportionate to the benefits for residents. For example, the new utility billing requirements in the Bill have been made consistent with the requirements of the National Energy Customer Framework. This will make it easier for operators to comply with these new requirements.

**Pathway: What are the timetable and steps for the policy's rollout and who will administer it?**

NSW Fair Trading within the Department of Customer Service (DCS) regulates residential land lease communities.

The Bill will commence on proclamation. The proclamation date, or dates, will be determined in close consultation with key stakeholders. This process will include any transitional considerations for the industry and development of supporting administrative and education measures.

**Consultation: Were the views of affected stakeholders sought and considered in making the policy?**

Extensive consultation was undertaken during the development of the reform proposals in the Bill during the statutory review of the Act from November 2020 to November 2021.

The statutory review of the Act commenced on 30 November 2020 with the release of a Discussion Paper for a three-month public consultation period. Public consultation closed on 12 March 2021 and over 350 submissions were received.

From 19 July to 16 August 2021, DCS undertook a further four-week public consultation on two electricity charging policy options. The consultation received 100 survey responses and 11 written submissions. Since that time, DCS has also completed further face-to-face consultations and roundtable discussions on the reforms.

This year, DCS completed targeted consultation with key stakeholders on the Bill.

It should also be noted that the 2022 NSW Legislative Assembly inquiry into embedded networks recommended that the statutory review's recommendations relating to electricity charging in embedded networks in residential land lease communities (i.e., recommendations 20-23) be implemented urgently.

Key external stakeholders consulted about the Bill and statutory review recommendations include:

- the Affiliated Residential Park Residents Association,
- the Caravan Industry Association of Australia,
- the Energy and Water Ombudsman NSW,
- the Public Interest Advocacy Centre,
- the Tenants' Union of NSW, and
- the Independent Park Residents Action Group NSW Incorporated.