



New South Wales

# Residential (Land Lease) Communities Amendment Bill 2024

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Residential (Land Lease) Communities Act 2013* (the *principal Act*) as follows—

- (a) to make certain amendments relating to voluntary sharing arrangements in site agreements, including to prohibit the payment of entry and exit fees,
- (b) to require operators to test emergency evacuation procedures at least once per year,
- (c) to limit the circumstances in which the operator of a community can enter a home on a residential site,
- (d) to allow home owners to make certain minor alterations or additions to their home without the operator's consent,
- (e) to limit the circumstances in which the operator of a community can issue a notice to rectify dilapidation to a home owner,
- (f) to require the operator of a community to give potentially affected residents notice before lodging a development application or planning proposal that may affect the community or a residential site,
- (g) to limit the number of fixed method site fee increases in a 12-month period and provide that a fixed calculation for site fee increases can use a single element only,
- (h) to make changes relating to utility bills and utility charges payable for electricity,
- (i) to increase the notice period for vacating a residential site, and expand a home owner's entitlement to compensation, where a termination notice is given on the ground that the site is not lawfully useable for the purposes of a residential site,

- (j) to prohibit termination of a site agreement on the ground that the residential site has not been used as a place of residence for at least 3 years,
- (k) to make other minor and consequential amendments.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

## Schedule 1      **Amendment of Residential (Land Lease) Communities Act 2013 No 97**

**Schedule 1[1] and [2]**—

- (a) replace the definition of *utility charge* to make it clear that, for electricity, a utility charge means a daily supply charge or usage charge for the supply of electricity, and
- (b) replace the definition of *tenant* to provide that a tenant means a person who has the right to occupy a residential site in a community under a tenancy agreement under the *Residential Tenancies Act 2010* relating to the residential site, and
- (c) insert other definitions consequent on other amendments in Schedule 1.

**Schedule 1[3]** amends existing provisions of the principal Act that relate to voluntary sharing arrangements in site agreements to—

- (a) prohibit payment, by a home owner to the operator of a community, of entry and exit fees under a site agreement that includes a voluntary sharing arrangement entered into after the proposed amendments commence, and
- (b) require that the operator of a community—
  - (i) first offer to enter into a rent only site agreement with a person before entering into a site agreement that contains a voluntary sharing arrangement, and
  - (ii) provide the person with information regarding the relative costs of each option.

**Schedule 1[28]** omits the existing provisions amended by Schedule 1[3] from Part 10, which deals with the sale of homes, as a consequence of the provisions being relocated to Part 4, which deals with entering into site agreements.

**Schedule 1[4]** requires the operator of a community to test emergency evacuation procedures at least once per year and to keep a record of tests conducted.

**Schedule 1[5] and [6]** limit the circumstances in which the operator of a community can enter a home located on a residential site while a site agreement is in force to the following circumstances—

- (a) with the consent of the home owner given at the time of entry,
- (b) in an emergency if necessary to avert danger to life,
- (c) to comply with an obligation under another Act or law,
- (d) in accordance with an order of the Civil and Administrative Tribunal (the *Tribunal*).

**Schedule 1[7]** makes a consequential amendment.

**Schedule 1[8]** allows a home owner to make certain minor alterations or additions to their home without the operator's consent and provides that modifications must not contravene certain Acts and regulations or an approval, consent or certificate under those Acts or regulations.

**Schedule 1[9]** clarifies that the Tribunal cannot make an order that an alteration, addition or replacement can be carried out without consent if the modification would contravene certain Acts and regulations or an approval, consent or certificate under those Acts or regulations.

**Schedule 1[10]** makes it clear that the operator of a community can only issue a notice to a home owner requiring the home owner to rectify significant dilapidation of the residential site on which the home is located if the operator reasonably believes that the home owner caused the dilapidation.

**Schedule 1[11]** requires the operator of a community to give affected residents at least 30 days written notice before lodging a development application or planning proposal that may affect the community, or a residential site in the community, including a brief summary of the development application or planning proposal.

**Schedule 1[12]** limits the number of elements that can be used in a fixed calculation, in determining an increase in site fees according to a fixed method, to a single element only.

**Schedule 1[13]** limits the number of fixed method site fee increases in a 12-month period to not more than twice, if linked to a variation in the age pension, or otherwise once only.

**Schedule 1[14]** provides that if an increase in site fees is wholly or partly attributable to an increase in the cost of specific items, the operator of the community must give a home owner details about the items, the increase in the cost of the items, and how the operator has apportioned the costs for the items when calculating the increased site fees.

**Schedule 1[15]** omits a reference to the value of the land comprising a community so that it is no longer specified as a factor that the Tribunal may have regard to when deciding whether to make an order relating to excessive increases in site fees.

**Schedule 1[17]** provides that the daily supply charge or usage charge payable by home owners and certain tenants for the use of electricity supplied to the residential site through an embedded network must be no more than, respectively, the daily supply charge or consumption rate of the median market offer made by the community's network service provider, as determined by the Independent Pricing and Regulatory Tribunal under the regulations. **Schedule 1[18]** requires operators of communities and third party suppliers who operate embedded networks to give home owners and tenants written notice of the charges payable for the supply of electricity to the parent connection point from which electricity is supplied to each residential site. The proposed section also requires contracts for the supply of electricity to the parent connection point to be reviewed periodically. **Schedule 1[19]** makes it clear that fees for late or dishonoured electricity payments must be not more than the amount that the operator or third party supplier can charge as a retailer or exempt seller within the meaning of the *National Energy Retail Law (NSW)*. **Schedule 1[22]** makes it clear that the operator of a community or third party supplier, or a person who issues utility bills on behalf of the operator of a community, must comply with the applicable electricity and gas billing requirements of the *National Energy Retail Rules* and the AER Exempt Selling Guidelines. The proposed section also introduces billing requirements for utilities other than electricity and gas that are similar to the requirements of the AER Exempt Selling Guidelines. **Schedule 1[26]** requires the Minister to review the principal Act, Part 7 within 3 years of the commencement of the proposed Act to determine whether the policy objectives of the part relating to utility charges for electricity remain valid and whether the provisions of the part remain appropriate for securing the objectives. **Schedule 1[16], [20], [21] and [23]–[25]** make consequential amendments to Part 7.

**Schedule 1[27]** makes it clear that, in determining fair market value for the purposes of a new site agreement, the site fees currently payable for residential sites of a similar size and location within the same community must be considered.

**Schedule 1[29]** increases the notice period for vacating a residential site, where a termination notice is given on the ground that the site is not lawfully useable for the purposes of a residential site, from 90 to 120 days. **Schedule 1[30]** provides that a home owner whose site agreement is terminated on this ground is entitled to compensation if the site became not lawfully useable through some action of the operator after the agreement was entered into.

**Schedule 1[31]** omits section 128 of the principal Act, which allows the operator of a community to terminate a site agreement on the ground that the residential site has not been used for at least

3 years as the place of residence of the home owner or another person permitted to reside at the site. **Schedule 1[32]** makes a consequential amendment.

**Schedule 1[33]** inserts transitional provisions consequent on the amendments in Schedule 1[12] and [13]. The proposed provisions give operators of communities 3 years, from the commencement of the proposed amendments, to identify all existing site agreements that provide for increases in site fees by a fixed calculation that uses more than 1 element and to vary those agreements so that only a single element is used in the calculation. The proposed provisions provide that, if those agreements are not varied within 3 years after the commencement of the proposed amendments, site fees under the agreements may only be increased by notice until the agreements are varied so that only a single element is used in the calculation.

## **Schedule 2      Amendment of Residential (Land Lease) Communities Regulation 2015**

**Schedule 2** makes consequential amendments, including to the standard form of a site agreement, that relate to maximum utility charges and discounted daily supply charges for electricity.