IPRAG Inc
Independent Park Residents Action Group (IPRAG NSW) Inc
Representing Residential Land Lease Communities Home Owners

STATUTORY REVIEW
RESIDENTIAL (LAND LEASE) COMMUNITIES ACT 2013

Members of IPRAG Incorporated are volunteer representatives of a network of land lease community home owners. We are comprised of individual activists, residents committees, regional associations and experienced Tribunal advocates.

Established in 2013, IPRAG has an elected committee but is not a 'fee for membership' organisation. Our committee members, with up to 30 years experience, live in land lease communities located from the Queensland border to Western Sydney where they provide cost-free information, assistance and Tribunal advocates for home owners in surrounding communities.

Our members have extensive knowledge of the legislative framework. We also have cost-free specialist legal advice on call.

IPRAG consults with relevant organisations and lobbies Government and Members of Parliament regarding issues that impact the wellbeing of land lease home owners. We are confident in claiming to be able to present the prevailing views of approximately five thousand home owners.

Our objective is to ensure mutual respect and a workable balance of rights and responsibilities between home owners and community operators.

THE OVERALL VIEW

Although Government's goal is to establish a fair balance of rights and responsibilities between operators and home owners, it must be acknowledged that this cannot be legislated into existence because of the unique business model of land lease communities.

Operators hold extraordinary powers of control over the physical, mental and financial wellbeing of their home owner residents. These are particular powers that are not available to operators of retirement villages or to landlords under the Residential Tenancies Act and should not be used as comparisons.

Many unfair powers are granted to operators by inadequate consumer protections within the Act and by the simple fact that many operators feel free to ignore the Act (and orders of the Tribunal) when it is in their interest to do so.

Despite the many important and welcome improvements introduced by the current Act, the overall balance has been slanted way too far in favour of operators. This has facilitated, or actually legalised, a number of predatory practices which can only be described as gouging and elder abuse.

It is heartbreaking to watch as poorly resourced people, especially the elderly, the ill and financially challenged, are forced into unequal battles for their basic human rights to live peacefully in their own homes and to sell their homes without obstruction when they need to leave the community.

Industry representatives will say problems are caused by only a few unethical operators. This has never been true since commencement of the Act in 1998. If it is a minority, it is far too large a minority.

It is abunbantly clear that the industry has never been capable of regulating itself. It is also abundantly clear that the Fair Trading regulator has failed historically and continues to fail in its duties of compliance and enforcement.

IPRAG offers what we hope are some constructive suggestions alongside our criticisms.

OBJECTIVES

Object (a) seeks to improve governance of our communities. However, the level to which governance is improved is dependent on the level to which all objectives are met.

Objects (a), (b), (c), (d) and (e) have not been met as Government intended and will not be met until the regulator properly performs its duties of compliance and enforcement.

Object (f) – to encourage growth and viability of the industry has been met and exceeded. This is evidenced by the stampede of national and international corporations to buy into the market.

Object (f) was never relevant to legislation about fair trading and consumer protection. Industrial growth is a matter for the Department of Planning, Infastructure and the Environment.

During the 2011 review the industry claimed operation of residential parks was not financially viable. However, the submission of the peak bodies (CCIA and MHIA) in response to the discussion paper provided no evidence to support this claim.

Fair Trading should now detach itself from propping up an extremely profitable industry that is more than capable of taking care of itself.

Objects (a) to (e) are still relevant.

Object (f) replaced object (b) of the repealed Residential Parks Act – to provide legislative protection for residents.

Object (f) should be removed and the previous object reinstated – to provide legislative protection for home owners and residents. ('Residents' includes those who rent a home within a community.)

INFORMED CHOICES

Disclosure Statements

IPRAG has seen disclosure statements of one to three pages and has copies that falsely state all sites in the community are occupied by home owners.

We have copies that answer Safety and Security questions as follows.

Q. Is the community situated on 'flood prone' land?
A. No we are not aware.

Q. Is the community situated in a declared bush fire prone area?
A. No we are not aware.

At the Site Fee section, the approved form disclosure statement is formatted as:

The current site fees for the site you are interested in are -- $xxx- weekly
Current range of site fees paid in the community are -- Low: $xxx – High: $xxx
It is proposed that your site fees will be: $xxx – charged weekly

The three points above refer to fair market value provisions at s109 (5) and (6) regarding control of fees for sites of similar size and location in the community. Operators notoriously ignore these provisions by imposing illegally high site fees on uninformed new-comers. Even if FMV were to be explained in the disclosure statement which is provided 14 days in advance of entering the agreement, how could the new-comer or their legal advisor possibly determine if the information was compliant with s109? They would need an aerial photo of the community, a community map with dimensions of each site and evidence of fees for every comparable site.

IPRAG recommends elsewhere that FMV provisions be removed from the Act because they do not function, but are widely abused as a gouging method by far too many operators.

The disclosure statement should be rewritten to state that the site fee for the buyer will commence at the amount payable by the departing home owner . The Act should be amended accordingly. There can be no argument against the fairness of this. (See also under Site fees.)

The site agreement requires the buyer to record whether or not they have obtained legal advice before signing. It not acceptable that advice is obtained only on the disclosure statement, general information from the Fair Trading website and perusal of the Ac, even ift by a lawyer who is unlikely to be familiar with how the system functions in reality as opposed to what is written in the legislation.

Buyers are presented with the site agreement and other documents to be signed 'on the spot' on the day of commitment. Considering that the buyer is committing to a contract – possibly for life – that requires an investment of hundreds of thousands of dollars with no guaranteed security of tenure, all information should be disclosed in advance.

Copies of the following documents should be provided in advance for proper scrutiny. They may be undated and – obviously – unsigned.

- Disclosure statement
- Site agreement with number of the site
- Additional terms with emphasis on negotiability
- Community rules
- Site condition report
- Community rules
- Community map

The industry has reportedly said their site agreement cannot be provided in advance because it is a copyrighted document. This makes no sense as the signee may show it to the world.

The disclosure statement should be a prescribed document. It should disclose that additional terms and methods of calculation for fixed method fee increases (if retained) are negotiable.

$11,000 penalty This might be appropriate for a small family owned community. For others this a minor cost of doing business.

Site agreements

Are we aware of incorrect site agreements? Yes. Many. See especially 2019 Supreme Court decision, Jonval Builders Pty Ltd v Commissioner for Fair Trading. A rare instance of enforcement by the regulator which was pursued to a conclusion for the home owner victims only because of a ten year effort by volunteer advocates who were founders of IPRAG Inc and the Tweed Residential Parks Homeowners Association which has membership of 450 households. The personal costs to these volunteer advocates and their families over ten years of ensuring progress of this case have been enormous, financially and health-wise – not mention the damage caused to the victims and their families.

Since the High Court recently dismissed Jonval's application to appeal it remains to be seen what, if any, action/penalty will be imposed by the regulator on the party found guilty of the most serious offences.

Prescribed agreements It is unthinkable that an agreement might be flexible and open to abuse.

Prohibited terms These should be expanded to include the following prohibitions.

- A term that attempts to transfer to home owners the costs and responsibilities of maintaining, repairing or replacing any component of the community that is the property of the operator. That is, capital assets and essential infrastructure, and whether or not it is on home owner's site, such as retaining walls, driveways and concrete slabs. (Driveways and slabs, when they exist, are recorded on the site condition report as components that are rented by the homeowner.)

- A term that attempts to transfer to home owners the costs and responsibilities of remedying dilapidation of the site or damage to the site that was not caused by the home owner, such as damage caused by flooding, subsidence or trees.

The industry's predatory additional terms numbers 56, 57 and 58 which include references to landscaping and hardscaping should be removed.

- A term in the nature of a non-disparagement clause. That is, a term that attempts to restrict a home owner's ability to criticise an operator, owner or a company to third parties, including through any form of media.

The industry's intimidatory additional term No 45 should be removed.

- A term that gives the operator either of the following rights however described –

  a right to buy a home before another person may be offered the home, or

  a right to make a final offer to buy a home after all other offers have been made to buy the home.

The second increases the power of the operator to delay/interfere with a sale when the home owner already has a firm buyer. An operator is free to make an offer for the house at any time but a home owner must never be forced into this situation against their will. During the 2011 review the industry lobbied for right of first refusal. Government must maintain its refusal to grant this potentially predatory power to operators.

Additional terms Most of the industry's 65 additional terms repeat terms already in the agreement and contribute to bamboozling those who are about to sign onto them – on the spot – with other previously unseen documents but one, and without any power to negotiate a 'take it or leave it' offer.

Additional terms should be limited to no more than twelve.

SITE FEES

Fixed method increases In its response to the 2011 discussion paper the industry wrote, 'Certainty of rent and rent increases can be introduced by ensuring that rent and rent increases can be set out in land lease agreements.'

Certainty of the amount of rent which is the only useful certainty, has failed because all but one of the methods for calculation are variable. The only certainty provided is about whatever method or number of methods may be used for the calculation.

Use of a 'number' of methods conflicts with the agreement's requirement that only one method/option may be used, but this requirement is widely disregarded.

The so-called certainty is also negated by use of the 'other' option which – in breach of the required one option only – is used to impose multi-component calculations which are more unpredictable factors and impossible for many to comprehend.

The only method/option that provides certainty about the amount of future rent is that which sets the increase at a specified dollar amount. IPRAG and has never heard of this transparent option being selected by an operator, probably because it doesn't make economic sense for the operator.

The option in proportion to variations in the CPI provides no certainty of rent amount, nor does the option by specified percentage, or by percentage of the increase to the single/couple age pension. A couple often becomes a single and too many operators have demonstrated lack of compassion and refusal to negotiate.

While the Act bars fixed method home owners access to justice before the Tribunal, s66 (7) (a) does provide for negotiation with the operator. The malfunction – again -- is operators' real-world power to refuse to negotiate.

In one Central Coast community agreements are being offered to buyers where the seller's current fixed method fee of $181 weekly will be increased to $235 weekly. Then by annual increase in July this year the fee will rise to $247 – take it or leave it. This is making it extremely difficult/impossible for people to sell their homes, especially small homes owned by the most vulnerable, pensioners with age-related health issues.

Fixed method relieves operators of all accountability and explanation with the added protection from challenges in the Tribunal while any unwarranted amounts may compound indefinitely. Why should these home owners be deprived of the reasonable rights available to those on increase by notice?

Fixed method increase should be discontinued as this fails the purpose of assisting home owners to manage their financial affairs. It also facilitates predatory practices.

If retained, it should be limited to increase by percentage of CPI as this is the only method not open to abuse.

Twice yearly increases This creates opportunity for increasing the average site fee across the community, which an operator may then use as justification for imposing unwarranted increases on other home owners without providing anything in return. The same may be imposed on those entering new agreements. This is increase of site fees by stealth which undermines the increase provisions provided by the Act.

Increase by notice Note. The discussion paper states that the notice must use the approved form. There is no approved form, only a model form.

Government intended that requirement for an explanation would provide transparency to enable home owners to determine whether or not the increase amount is warranted, or if any increase at all is warranted. (Because of recent low CPI some ethical operators did not increase fees last year.)

Government's intention has been thwarted by the widespread use of 'generic' lists of general factors that provide no explanation of how each factor contributes to the increase. All communities owned by one large corporation issue identical notices.

Concealed in a simplified list can be capital expenditures that increase the value of the operator's capital assets. These are the operator's responsibility without which the operator's profit-making enterprise would not exist.

A list may also conceal one-off, non-recurring costs that have contributed to previous increases but have never been deducted. These costs compound year after year and are paid for repeatedly by home owners for nothing delivered by the operator.

Non-recurring costs tend to be for repairs which are capital expenditure. Empowering operators to recover one-off costs from site fees increases operators' profit margins at the expense of home owners.

This opaque system facilitates and perpetuates predatory practices.

The Act should clarify that non-recurring costs/capital expenditure should not permitted as factors for increases.

For further clarification the Act should include definitions of capital asset, capital maintenance and capital replacement.

Re. S73 (4) should be amended to restore the discretion of the Tribunal to determine the validity of an increase

Re. S74 Matters to be considered

(1) (b) The words 'or projected' should be removed as there is no guarantee that any such cost will be incurred and no mechanism is provided for reimbursement.

(1) (c) (ii) should be removed as there is no guarantee the 'planned' repairs or improvements will eventuate and no mechanism for oversight or reimbursement.

(1) (e) Range and level of site fees within a community should be removed. Site fee increases are intended to cover increased costs of operating the community. Comparisons of site fees has no relevance to those costs.

(1) (f) The value of the land should be removed. This has no relevance to costs of operating a community.

Challenging site fees Home owner are increasingly disadvantaged by being confronted in mediation and in the Tribunal by senior executives of corporations and/or lawyers.

Operators often refuse to participate in mediation and /or refuse to provide information to assist in reaching a well informed agreement. If progressing to Tribunal, operators will need to disclose the information anyway to increase chances of a favourable decision, therefore the requirement for confidentiality is pointless.

Mediation must be compulsory for home operators as well as for home owners.

Operators should be required to provide documentation to justify the proposed increase.

Site fees under new agreements Government's intention to regulate site fees by fair market value requirements when a home is sold by a departing resident has failed.

As explained under the 'informed choices' section many operators ignore FMV. Instead it is used as a predatory opportunity to impose illegally large increases upon unsuspecting new home owners and to increase -- by stealth -- the average site fee across the community which disadvantages home owners in a site fee dispute.

The information that the fee for the incoming home owner must not be more than the fee currently payable for comparable sites (fair market value) is not disclosed in advance to the buyer. As noted previously, even if it were to be disclosed (at the last minute during the appointment for signing of a 'take it or leave it' agreement) how would the newcomer know if the information was correct? The incomers, especially the elderly and the alone, are inclined to believe in the integrity of the operator.

Following are a few examples of operators' abuse of FMV requirements.

1. When a single pensioner (with medical documents attesting early stage dementia) entered an agreement, FMV for a site of similar size and location was $151 per week. The operator set the lady's fee at $191. When, during a protracted Tribunal action, the operator's site fee records were successfully summonsed, a settlement was hastily offered. (Several other new comers were also paying the illegal site fee.) The applicant's site fee was reduced to the legal amount with a refund of $2,754 for overpaid fees.

2. The estate agent of another single pensioner was told by the potential buyer they were being deterred because the operator advised the site fee would be increased from $154 per week (FMV) to $204 per week. The seller applied to the Tribunal for orders that interference cease and that the operator consent to assignment of her agreement.

Members have delivered conflicting decisions about assignment due to confusion caused by Government's refusal to amend the admitted drafter's error at s45 (3).

The Member in this case made orders that the operator not unreasonably refuse to assign the agreement. The operator then wrote to the home owner stating he would not obey the orders. The buyer withdrew from the sale. Due to her financial situation, the home owner finally sold to the only willing buyer – the operator – for $40,000 dollars less than the estate agent's client had agreed to pay.

3. Another single pensioner in the same community learnt that potential buyers were being deterred upon being told by the operator the FMV fee would be increased by $50 per week. Also unable to sell to anyone but the operator, and needing to leave the community, she eventually did so for an amount she claimed was greatly below the minimum advised by her estate agent.

Examples of more FMV abuses from a Western Sydney Hometown community as at July 2020.

1. Mrs B. FMV appeared to be $180 per week. She was charged $201. The Tribunal reduced this to $189.

2. Mrs P. FMV appeared to be $183 per week. She was charged $201. The Tribunal reduced this to $189.

3. Ms T. FMV appeared to be $183 per week. She was charged $201. During Tribunal action a consent agreement was made.

4. Ms D. FMV appeared to be $183 per week. Again, during Tribunal action a consent agreement was made.
The only reason these home owners took action is because an IPRAG advocate lives in the community, advised them of their rights and acted on their behalf. This is a community of several hundred homes and our advocate is currently dealing with continuing FMV abuses.

Fair market value provisions should be removed from the Act because:

- **it is ignored by far too many operators**
- **it facilitates predatory gouging of money from unsuspecting newcomers to the community, and**
- **as a method for buying home cheaply from trapped residents, and**
- **as a method for illegally increasing the average site fee across the community**
- **without needing to comply with the provisions for legally increasing fees**
- **it is a major factor in contributing to interference in home sales**
- **incoming home owners have no way of verifying the truth of the information**

The solution Site fees for new agreements should remain the same as the amount being paid by the departing home owners.

LIVING IN A COMMUNITY

Maintenance of sites There can be no justification for the inequity of transferring to home owners the costs of maintaining and repairing land and essential infrastructure, or anything else that is owned by the operator and merely rented by the home owner who has not contributed to dilapidation of site.

In the three areas that address this issue the Act is facilitating predatory practices. This appears to reflect the disturbing removal of the repealed Act's objective to provide legislative protection for residents in favour of increasing viability/profits for operators.

Operator's responsibilities at S37 (k) require the operator to ensure the residential site is in reasonable condition and fit for habitation at the commencement of the agreement. The repealed Act did not include 'at commencement of the agreement', therefore the operator was justly responsible for the ongoing condition of the site which is his possession, not the home owner's.

The only possessions of the home owner are the house and associated structures which may be legally taken away by the home owner at the end of the agreement. They do not have the right to take away the operator's essential infrastructure such as retaining walls, driveways and concrete slabs. Driveways and concrete slabs are recorded on the site condition report as components of the operator's site. The attempt to transfer responsibility for those is a breach of the terms of the condition report.

Predatory tactics are found in the industry's additional terms – numbers 56, 57 and 58. These include granting operators the right to expand community rules at any time to impose more responsibilities on home owners regarding the preservation of the operator's capital assets, and to make home owners responsible for capital assets that may exist in the future.

At S43 – Dilapidation, responsibility for rectifying dilapidation of the site (operator's capital asset) is transferred to the home owner even if the dilapidation is not caused by the home owner breaching a term of their agreement. This would include damage caused by flooding, subsidence, collapsing retaining walls and trees etc.

S37 (k) Remove, 'at the commencement of a site agreement for the site.'

Repeat -- Remove the industry's additional terms numbers 56, 57 and 58.

Amend S43 (1) (a) to only – 'the home located on the residential site is significantly dilapidated.'

Operator conduct The following information was provided by IPRAG to the Department of Customer Service, Policy Division in July last year and will repeat some information in other parts of this submission.

Many operators feel free to disregard the rules for three main reasons. Firstly, home owners' fear of retaliation. Secondly, it is extremely rare that home owners are able to provide evidence such as witnesses or operator's documents. For some reason the Fair Trading regulator does not accept statutory declarations as hard evidence even though NCAT does. Thirdly, because Fair Trading is seen to be incapable of enforcing its own rules.

Consequently, the number of complaints received by the regulator do not reflect the extent of misconduct.

Examples

1. A Hometown senior employee met with a home owner advocate to discuss a potential dispute and the relevant sections of the Act. During the conversation the Hometown representative stated that the corporation has its own procedures and would operate the community as they saw fit.

2. As outlined also under operator education, an operator promised to carry out overdue maintenance if the home owners signed new agreements with site fee increases by fixed method. When they complied the operator reneged on the promise believing protection from Tribunal action was afforded by the fact that fixed method increases cannot be challenged under the Act. This restriction applies only to the agreed method for calculating the amount of fee increases.

3. A buyer was being deterred by the operator's advice that they must sign a new site agreement under which the current weekly site fee of $151 would increase to $194 per week. (A breach of s109 fair market value requirement.)

The home owner sought orders from the Tribunal that the operator not interfere with the sale and not unreasonably refuse to assign the current agreement. The agreement had been made under the Residential Parks Act which was clear about the right to assign. Both orders were made.

The operator emailed the home owner stating the orders would not be obeyed. The illegally high site fee continued to be offered as not negotiable as is required by the Act.. Eventually the home owner needed to leave and had no choice but to sell to the operator for $40,000 less than the original potential buyer had agreed – via the owner's estate agent – to pay.

This was reported to Fair Trading by letter dated 15/11/2016 with evidentiary documents attached.

4. In a community where site fees were increased by notice, the operator issued notices that offered terms for the increase to be set by fixed method. The home owners were reluctant. The operator responded by threatening that if they did not comply the community would be closed and they would need to find somewhere else to put their homes.

A complaint was sent to Fair Trading with eleven statutory declarations which were rejected as hard evidence.

5. The next year in the same community the operator sent increase notices stating a $17.50 increase per week. Also, three alternative arrangements for smaller amounts were offered, one of which could be chosen instead of the $17.50. All amounts appeared unwarranted.

The operator requested to address a residents meeting and was denied. However, the operator entered the meeting, refused to leave and said, if a dispute was intended the $17.50 would apply to everyone and he had the financial evidence to ensure the Tribunal would grant that amount.

In light of their previous experience, the home owners decided there was no point in reporting the misconduct to Fair Trading.

6. In the Lake Macquarie area, an operator refuses to work with the properly elected residents committee. Instead, decisions that affect the whole community are made with the 'social club'.

7. Similarly, in the Port Stephens area, an operator does not acknowledge the elected residents committee and will deal only with the 'events committee'.

8. Regarding the Act's inadequate requirement that an 'explanation' for site fee increases be included in increase notices.

In a case before the Tribunal, the Member ordered the operator to provide the home owners' representative with the financial documents used to calculate the amount of the increase. As well as financial miscalculations, the documents revealed invoices from businesses with no connection to the community, equipment bought but used for purposes not within the community, and $60,000 of capital works included as operational costs. The Tribunal ordered that the increase was not payable.

Note. It has been a problem discussed in all previous reviews of the Act that operators often wish to cheaply buy a resident's home for their own purpose. It might be for re-sale at a profit, or to be rented as-is to recoup the purchase price before being sold for removal. When a home is removed it is replaced by an operator-owned home which delivers a substantial profit from the sale and an opportunity to increase the site fee, often in breach of fair market value requirements.

For these reasons unethical operators may use their powers of on-the-ground control to interfere with, delay or prevent the sale of homes. Constantly delayed sales reduce the value of a home as people become desperate to leave. For reasons already noted, home owners trapped by this misconduct are usually defenceless. When they reach the point where they must leave the only buyer is usually the operator. Those targeted are mostly elderly pensioners living in older style homes.

Home owners only consumer protection in this situation was the right to assign their agreements which was provided under the repealed Act. Government's mismanagement of the assignment issue under the current Act is addressed elsewhere.

9. A prospective buyer paid a holding deposit to the home owner's estate agent. Then the operator told the buyer that if he later sold the house it must be removed from the community. The knowledgeable manager who has decades of experience is well aware that under the current Act all homes may be sold on site. The Tribunal accepted a statutory declaration by the estate agent as hard evidence and found that the operator had interfered with the sale, but no order was made because the application was made out of time. Eventually the home was sold at a loss to the disabled pensioner of $12,500.

10. In the same community. Having bought a home owner's house, when signing the site agreement, the single aged pensioner was told by the same manager that if the house was later re-sold it must be removed from the community. Expecting not to live long enough to sell the house, the buyer was not concerned.

The home owner later changed her mind and asked the manager to show her the relevant legislation. She was told it was a term of her site agreement. The home owner was unable to find her agreement and was convinced it was not amongst the documents she had been given. When she offered to pay for a photocopy she was told this was impossible because the agreement is protected by copyright. That is nonsensical and an apparent attempt to continue concealing the right to sell on site.

11. When the a single pensioner buyer of a resident's home entered a site agreement, the site fee under section 109 fair market value requirements, should have been $151 per week. The operator set the amount at $194 per week. During a Tribunal action brought by the home owner the operator's site fee records were successfully summonsed. Several other new home owners were also paying the non-compliant fee of $194.

Before the return of summons hearing the operator delivered a letter to each, including the applicant. Enclosed was a copy of page 3 of the standard site agreement which records the home owner's name and the amount of site fee payable at date of commencement. The new pages fraudulently recorded the commencement fees at $172 per week. Also enclosed was a refund cheque and a direct debit authority form to have future payments reduced. The letter requested home owners to substitute the new page 3 into their agreement, sign the bank authority and return it the operator.

The applicant home owner did not sign the bank authority and returned everything, with a witness, to the operator. Nevertheless, her next direct debit payment had been reduced to $174. On her instruction the operator corrected the amount. A private settlement was eventually reached with total rectification and full refund of overpaid fees.

This incurred more serious breaches than will be listed here. The matter was reported to Fair Trading with all irrefutable documents in May 2018. To date no action is recorded on the Fair Trading website.

Operator education The following information was provided by IPRAG to the Department of Customer Service, Policy Division in July last year and will repeat some information elsewhere in this submission.

Mandatory education for new operators only has not produced the results anticipated by Government. Firstly, because some of the least educated have been operators since long before 2015. Secondly, being self-regulated there is no certainty that operators genuinely undertake or learn much from the minimal options provided by Fair Trading.

Also, the Act did not anticipate that representatives of corporations would often take on day-to-day decision making by meeting directly with home owners, appearing in mediation and before the Tribunal.

Examples

Note 1. Each example is evidence that the operator/senior employee is non-compliant with their obligation under the Act's rules of conduct for operators. Rule No.1 -- Knowledge of Acts and regulations.

Note 2. The workload of the Tribunal would be reduced if operators were properly educated.

1. During a Tribunal hearing the operator respondent sought leave to have legal representation. The reason submitted was that the operator did not understand the Tribunal decisions and relevant Acts cited by the applicant's representative (an IPRAG aged pensioner).

2. In the same submission the operator disclosed personal information about the applicant that had been provided in confidence at commencement of their site agreement.

Note. Here the operator also revealed ignorance of rules of conduct No 5 -- Confidentiality.

3. A Hometown operator was insistent that any building work to be done to residents' homes needs approval from council and home owners must submit their plans to council. In fact, if the work is of a kind that requires council approval it is the operator who must submit a development application.

4. This is detailed also under operator conduct, above. An operator promised to carry out overdue maintenance if home owners signed new agreements with site fees increased by fixed method. The home owners complied but the work was not done. Eventually the home owners spoke about a reduction in site fees because of the condition of the community. The operator replied that site fees set by fixed method could not be challenged. The operator did not know those with fixed method have the right to apply for a reduction if standards of maintenance are reduced. Only the terms that fix the method for calculating the amount of increases cannot be challenged.

5. A Hometown operator had to be convinced by an IPRAG advocate that it is the operator/owner who must apply to council for permission to remove trees from home sites, not home owners.

6. In a former Gateway community the operator did not know how to calculate gas charges for home owners, or in what units gas is to be measured. After months in the Tribunal the operator was ordered to refund over $50,000 to home owners.

7. Several home owners in a Central Coast community have agreements with a term that sets site fee increases at CPI. After many years notices were issued for amounts much higher than CPI. Because the agreements were made under the repealed Act the operator believed he could unilaterally alter the CPI terms.

8. When Ingenia became owner of a community a video recording was sent to the residents committee. The video explained procedures that would be used to operate the community, much of which was non-compliant with the Act. After a failed conversation with a senior employee who stated contempt for the Act, the residents committee met with a more senior employee and the recording was withdrawn.

9. Re. special levy for community upgrade. During an NCAT conciliation it was necessary to produce the Act in order to educate the Hometown operator/senior employee. The Act requires that 75% of home owners must agree to fund the upgrade after following the required procedures. The Hometown representative argued that the work could be done without any prior procedures and site fees automatically increased to repay the costs.

10. In the same conciliation, the Hometown representative insisted maintenance that, under the Act, is clearly the operator's responsibility was to be paid for by the home owners.

Community Rules and Residents Committees Whether or not a community has a residents committee, all home owners should be advised in writing of proposed additions or changes to community rules. The final decision should be made according to 75% of responses received.

UTILITIES

IPRAG supports all views submitted by the NSW Tenants Union.

END OF THE AGREEMENT

Sale of home and interference The provisions are not working well.

There are far too many reported and verified instances of interference facilitated by the imbalance of bargaining/negotiating powers between the parties. References are made in two other sections of this submission.

Fixed method increases The site agreement provides that the method/s used to calculate site fee increases by fixed method, and additional terms are negotiable. Reports received are that operators do not negotiate about anything even when requested. Agreements are offered as 'take it or leave it'. This is interference.

Fair market value Theoretically, this is the factor that mandates the amount of site fee for new agreements as set out in the disclosure statement -- although this is undisclosed in the disclosure statement. As evidenced by numerous verifiable reports and Tribunal actions, far too many operators ignore the undisclosed FMV provisions and illegally impose huge unwarranted increases on incoming home owners.

Prospective buyers are often deterred by the illegal site fee and 'take it or leave it' agreements. This is interference.

Interference is facilitated by contradictions in Section 109 – Operator to enter new site agreement

(2) The operator must enter into a new site agreement after the request is made, unless:
(a) the operator declines to enter into the agreement and does so on reasonable grounds ....
(b) without limiting paragraph (a), the operator and the purchaser or prospective home owner do not agree on the terms of the proposed agreement.

Subsection (b) gives full negotiating rights to both parties, but (a) empowers operators to refuse to negotiate.

This in-built contradiction facilitates the superior powers of operators to control, delay and interfere with the sale of homes.

Assignment S45 (3) The confusion and conflicting Tribunal decisions resulting from Government's reversal of its promise to correct the one word drafter's error -- 'tenancy' (after the then Minister, Mr Kean, admitted in writing that this was an error that he promised to rectify) has facilitated interference in home sales and created hardship and financial loss for many home owners.

Assignment is the **only** consumer protection available to victims. It has been used only as a last resort, and only on the rare occasions when a victim is able to produce evidence. Deterred buyers do not want to become involved in a legal dispute.

In other states and territories assignment with consent of the operator continues to work well as the normal sales practice. Assignment causes no loss of, or detriment to the rights of operators. They may continue to reject unsuitable buyers, may continue to offer buyers new agreements and may increase site fees in accordance with the Act.

ADMINISTRATION AND ENFORCEMENT

The failures of administration and enforcement have been addressed throughout this submission.

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