

CPSA



**COMBINED PENSIONERS
& SUPERANNUANTS
ASSOCIATION OF NSW INC**

Comment on the Residential (Land Lease) Communities Regulation 2014

January 2015

Combined Pensioners & Superannuants Association of NSW Inc (CPSA)

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CPSA is a non-profit, non-party-political membership association founded in 1931 which serves pensioners of all ages, superannuants and low-income retirees. CPSA has 130 branches and affiliated organisations with a combined membership of over 30,000 people living throughout NSW. CPSA's aim is to improve the standard of living and well-being of its members and constituents. CPSA depends for the majority of its funding for core activities as a peak body on a \$460,000 grant from NSW Family and Community Services' Office for Ageing. CPSA engages in systemic advocacy on behalf of its constituency. CPSA acknowledges the potential for conflict of interest arising for CPSA and the NSW Government as a result of this funding arrangement. CPSA is committed to managing any conflict of interest issues in an ethical manner.

CPSA welcomes the opportunity to comment on the *Residential (Land Lease) Communities Regulation 2014* (the Regulation). CPSA is only providing comment on clauses in the Regulation it believes should be redrafted.

Clause 5: Publication of information kept in Register about residents' committee

1. CPSA recommends that this clause allow for publication of the contact details for an appropriate member of the residents' committee, with their consent. Without such contact information, the mere publication of the existence of a resident committee will be of limited value.

Clause 9: Exemption from requirement for mandatory education

This clause weakens the education requirement for park operators. There is no evidence that having experience of operating a residential park in the previous two years constitutes 'experienced' or that two years of experience equates to operators having a good understanding of the *Residential (Land Lease) Communities Act* (the Act). In CPSA's view, mandatory education for all park operators is essential, not least because of the substantial changes from previous legislative instruments made under the Act. Education for park operators may reduce disputes between park operators and residents, having a positive flow-on effect for other services such as reducing presentations to Fair Trading and tenancy advice services, as well as mitigating the number of cases brought before the NSW Civil and Administrative Appeals Tribunal (NCAT).

2. CPSA recommends that all park operators be required to undertake mandatory education.

Clause 11: Exemption relating to charges payable for use of sewerage

The settings for calculating sewerage charges are ambiguous and expose operators to a higher number of disputes from residents.

The maximum sewerage charge for residents whose sewerage use is not individually metered is to be worked out by reference to their water use as a proportion of the community's. For example, if a resident's water use equates to 5% of the community's total water use, they will pay for 5% of the community's sewerage use.

What is unclear is how water use is calculated. For example, is it calculated as a proportion of only permanent residents' water use, or is it calculated as a proportion of the total community's water use, including water for the pool, holiday guests, the operator's residence, etc.? If so, that resident's proportion of water use will be substantially lower than that of a resident living in a community which calculates water use as a proportion of the residents' water use only, or which does not have a pool, holiday sites, etc. This will obviously affect the amount they pay for sewerage.

3. CPSA recommends that residents' water use for the purpose of working out their maximum sewerage use should be calculated as a percentage of all water use in the community.

4. Residents should also receive an itemised account for both their water and sewerage use, including the water and sewerage account(s) provided to the operator. This is important for

transparency and reduces the likelihood of disputes arising between residents and operators. Accounts should show the following:

- how the resident's water and sewerage use has been calculated;
- the community's total water and sewerage use for the period, including the total charges to the community;
- the charge for each unit of water and sewerage; and
- the resident's water meter reading for the period.

5. Residents should be able to easily determine from their account how their water and sewerage charges have been worked out. CPSA recommends that there be a standard water and sewerage account template for all park residents in the interests of simplicity for operators and residents.

Clause 14: Discounted service availability charge where less than 60 amps of electricity supplied

6. CPSA recommends that references to 'capable of flowing' be changed to 'supply'. 'Capable of flowing' does not guarantee 'supply' and therefore the Regulation should be amended to remove reference to 'capable of flowing'. This would ensure that residents are only charged for actual supply, rather than what could be supplied.

Clause 15: Maximum service availability charge – offence

In CPSA's view, the maximum penalty of ten penalty units is insufficient to deter non-compliance with the Act. CPSA recognises that the maximum penalty notice allowable by the Act for the regulations is ten. However, CPSA believes that this amount will do little to prevent an operator from charging more than the maximum amount for the service availability charge.

Clause 17: Sale of homes – existing agreements

7. CPSA welcomes this clause, but recommends that it also apply to prohibition of sales under section 80(1) of the *Residential Parks Act 1998*.

Schedule 1: Standard form of site agreement

8. CPSA recommends that point three under 'important information' be amended to remove references to 'age restrictions'. Inclusion of 'age restrictions' suggests that the Act condones inclusion of age restrictions in residential parks, which is not the case.

Site fees

CPSA is against section 65(2)(a)(ii) of the Act because it allows operators to increase site fees beyond cost increases for the park by linking increases to the Age Pension.

However, if this clause is to remain, the regulation needs considerable clarification. The option to have site fees increase 'in accordance with variations in (single/couple) age pension' is unclear and leaves open the possibility of operators taking all increases in a pensioner's pension. This would mean that pensioners would never see their pension rise.

If residents' site fees are increased in line with the Age Pension, operators will achieve windfall gains because the pension mostly increases at a rate above the Consumer Price Index (CPI). The pension is indexed to CPI or the Pensioner and Beneficiary Living Cost Index (PBLCI), or 27.7% of Male Total Average Weekly Earnings (MTAWE). Whichever index results in the highest increase is the index applied each 20 March and 20 September. In the ten increases to June 2014, the PBLCI was used on three occasions and MTAWE was used on six occasions. Therefore, tying site fees to pension increases will see fees rise at a faster rate than if they rose by CPI alone. Furthermore, linking site fees to the pension will see fees rise twice per annum, each March and September in line with pension indexation rather than once per year.

9. CPSA recommends that the Age Pension option be amended to read as follows: 'your site fees will increase (b) by the lower of the two: the indexation rate applied to the base rate of the single Age Pension OR one third of the dollar increase to the base rate of the single Age Pension. The Pensioner Supplement and Energy Supplement and their indexation will be excluded from all site fee rise calculations.'

10. CPSA recommends that the standard agreement outline what should be included in the itemised account for utility charges to be provided by the operator to the resident. This could perhaps be included in part 10 of the standard agreement.

11. CPSA recommends that part 10 (10.1) be amended to replace 'capable of flowing' with 'supplied'.

12. There should be a standard 'Deed of Assignment', as per section 45 of the Act. CPSA recommends that this be included after the Sub-letting clauses.

13. CPSA recommends that the information provision requirement for operators under the Australian Energy Regulator Exempt Selling Guidelines (Condition 2)¹ be included as part of the standard agreement.

¹ Australian Energy Regulator (2013) 'AER (Retail) Exempt Selling Guideline – Version 2' July, available at: <http://www.aer.gov.au/node/18677>