

Outasite Lite



NEW ACT TO COMMENCE 1 NOVEMBER 2015

On 7 August the final regulation for the *Residential (Land Lease) Communities Act 2013* was released by Minister Dominello, the Minister responsible for Fair Trading. Mr Dominello announced that the new Act will commence on 1 November 2015.

The Tenants' Union of NSW is pleased to see that a number of concerns raised in our submission on the draft regulation have been addressed.

We said there should not be any exemptions to the requirement for new operators to undertake a mandatory education briefing on the law. The exemption has been removed.

We said that sewerage usage charges should not be separate charges payable by home owners and that the proposed method of calculation was too complex.

Unfortunately the charges have been retained but the final regulation provides clarity. The charges can only be applied to sites where water is separately measured or metered but where sewerage is not. Also, water and

sewerage services must be provided to the operator by a water supply authority that charges for water and sewerage separately and specifies a sewerage discharge factor.

The new method of calculation for sewerage usage is: the metered water usage for the site multiplied by the sewerage discharge factor.

Sewerage discharge factors are set by water supply authorities and they are not all the same.

We said that 'capable of flowing' in relation to electricity did not have the same meaning as 'supply' and could lead to higher charges for home owners. The final regulation refers to supply.

We said that the penalties at clause 16 in the draft regulation were set too low and would not deter poor behavior in operators. Some of the penalties have been increased.

We said the removal of restrictions on the sale of homes in old agreements was positive, but that it should be extended to include terms in agreements that prohibit the sale of homes.

A WIN FOR WALLACIA RESIDENTS

You may remember we reported on emergency access issues at Wallacia Caravan Park in our May issue of *Outasite Lite*. Residents considered the emergency access arrangements in the park to be complicated and inadequate – putting them at risk.

Tom Mortimer, a Tenant Advocate from the Western Sydney Tenants' Service who assisted residents, tells us more about how a great outcome was achieved ...

Emergency access issues had been a concern for the community of Wallacia Caravan Park since 2012. A number of residents had approached the park manager informally, making clear their concerns surrounding the main and emergency exits, and the potentially tragic consequences. They also made an application for orders from the Consumer Trader and Tenancy Tribunal in 2013.

Unfortunately, the residents' view was not shared by the manager, and the Tribunal application was unsuccessful because it was made 'out of time'. So the emergency access issues, as well as a series of additional concerns – for example, the condition of the toilet block – remained unresolved.

Residents approached us at the Western Sydney Tenants' Service at Macquarie Legal Centre for assistance in the second half of 2014.

The service's co-ordinator Franya Repolusk is as good a negotiator as you will ever meet, and a veteran in hands-on residential parks work. She agreed to take carriage of the matter for 13 Wallacia residents. Myself and another advocate, Jayd Raffoul, provided assistance. We also consulted with Paul Smyth from the Tenants' Union's residential parks team.

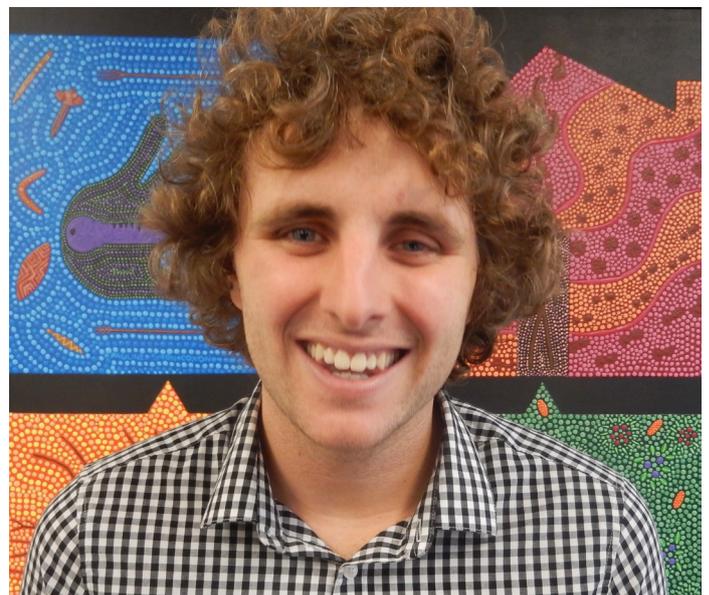
After being frustrated in all our attempts to deal with the park's manager, we decided we needed to go higher up the pecking order. We confirmed that the Mayor of Penrith was a Trust member. So in February 2015 we contacted his Council office directly, outlining the gravity of our concerns and suggesting a meeting to nut out a solution.

This spurred the Trust to reconsider. They agreed to meet and negotiate on the issue.

After a long, drawn out meeting with myself, Franya and a resident on one side and a Trust member and his solicitor on the other, we were able to finalise a series of proposals to take to the next Trust meeting. The proposals addressed all of our concerns regarding the park. Most importantly, they provided that local emergency services would be given a pin number that would allow them rapid access to the park via the front gate.

The proposals were considered, adopted, and acted upon in the months following that Trust meeting. Residents were relieved they would now be living in a safer environment and had been able to move past a longstanding dispute. Our service was happy to have played a role in achieving this outcome.

The take away message here is that nobody should accept living in an unsafe environment. If you're concerned about the state of your residential park, your local Tenants Advice and Advocacy service wants to hear about it. So don't hesitate to get in touch.



Tom Mortimer



In our new feature 'This is my park' Janice Edstein of Sea Winds Village shares her experiences of park living.

What keeps you busy throughout the week?

Up until the end of June 2015 when I retired from Port Stephens Park Residents Association I spent most of my time either at meetings, forums or Tribunal hearings, as well as attending to the various Secretary/Treasurer matters needing attention. A lot has happened regarding residential parks during this time, including the *Residential Parks Act 1998* and the review in 2006. I was honoured to be associated with both, along with Jim Clark, Darrell Dawson and others. Jim Clark and I also worked together on two Education Programs across NSW in 1999-2000 and 2002-2003 under APRA (Affiliated Park Residents' Associations of NSW). I was the Secretary/Treasurer of both the APRA and ARPRA (Affiliated Residential Park Residents Association) at one time.

Why did you decide to live in a park? My husband John had to retire in his 50s because of heart problems and as we were previously renting we only had a limited amount of money to spend on buying a house. We moved into Sea Winds 22 years ago. We considered village life was the most affordable way to go. I can't say the same for affordability now.

Can you tell us about Sea Winds? Sea Winds is situated on the corner of Nelson Bay Road and Frost Road in Anna Bay, about 8kms from Nelson Bay, Port Stephens. It is a beautiful part of NSW.

What made you pick Sea Winds? Of all the parks in the Port Stephens area, we liked Sea Winds because of its rural position, but only 3kms from shopping centre and beaches. Sea Winds had about 10 homes when we bought into the village, but now it has 148 homes and 227 residents. Over the years the village has developed a great social atmosphere.

What changes have you seen at Sea Winds?

There has been no change at Sea Winds. In fact the village has gone backwards maintenance and service wise over recent years. I feel that when villages are full the owners think they don't have to impress buyers anymore so nothing gets done until it breaks down, and then things get a band-aid fix. I believe this applies to most villages.

What is the best thing about living in Sea winds? The best thing about living in our village is the great social life and the caring manner of the residents.

If you could change anything, what would you change about your park? I would encourage management to inform residents regarding water and electricity stoppages and to improve their accounting systems.

If you could say one thing to people who might be interested in living in a park what would it be? If there was a way to get the knowledge out to people buying into residential parks before they approached the management I feel this would be a great achievement. If buyers were savvy with their rights, the Act, inflated rent increases and rules before they approached the village it would be harder for management to tell them things that weren't true, for example non-acceptance of assignments.

Who would you want to get stuck in an elevator with? If I were stuck in an elevator I would want to be in there with Ricky Martin.

What question would you ask the next featured resident? How do you think the *Residential (Land Lease) Communities Act* is going to impact on your village life?

*Sea Winds Village was purchased by a new owner in December 2014.

NEW ACT contd.

The final regulation removes the effect of any restrictions or prohibition on the sale of dwellings in site agreements signed prior to the commencement of this Act.

We said that the standard site agreement should not allow for site fees to be increased 'in accordance with variations' in the Age Pension. Our concern was that such terminology would allow for an agreement where the full pension increase would go directly to the operator as a site fee increase every time the pension was raised.

The clause now provides that increases may be a percentage of the increase in the Age Pension. The Tenants' Union is uncomfortable with a provision that links site fee increases to the Age Pension and we would caution home owners against agreeing to such terms however, the final regulation is an improvement on the draft.

We said that the regulation should provide limitation periods for Tribunal applications to avoid the default time limit of 28 days set by NSW Civil and Administrative Tribunal rules. The final regulation provides for sensible time limits for a number of applications.

The final regulation clarifies and improves many of the provisions in the draft regulation but the Tenants' Union believes further changes were necessary. In particular, the standard site agreement still does not reference the right to assign and this is disappointing.

There is also a new term in the standard site agreement that enables site fees to be set at a percentage of the Age Pension. There is potential for conflict between this clause and provisions of the Act relating to site fee increases so this is one to watch out for.

A full copy of the final regulation can be downloaded from the NSW Government legislation website at www.legislation.nsw.gov.au.

Get advice from your local service:

NSW Tenants Advice and Advocacy Services

Eastern Sydney	9386 9147
Inner Sydney	9698 5975
Inner West Sydney	9559 2899
Northern Sydney	8198 8650
Southern Sydney	9787 4679
South Western Sydney	4628 1678
Western Sydney	8833 0933
Blue Mountains	4782 4155
Central Coast	4353 5515
Hunter	4969 7666
Illawarra South Coast	4274 3475
Mid Coast	6583 9866
Northern Rivers	6621 1022
North Western NSW	1800 836 268
South Western NSW	1300 483 786

Aboriginal services

Greater Sydney	9698 0873
Western NSW	6884 0969
Southern NSW	1800 672 185
Northern NSW	1800 248 913

Tenants NSW website

www.tenants.org.au

CPSA Factsheets

www.cpsa.org.au/pavsfactsheets



The Tenants' Union of NSW is:

- A community legal centre specialising in NSW residential tenancies law.
- The peak resourcing body for the NSW Tenants Advice and Advocacy Program.

Copyright of *Outasite* remains with the Tenants' Union of NSW and individual contributors.

Subscriptions: *Outasite* and *Outasite Lite* are free publications published by the Tenants' Union of NSW. To check or update your details, or add someone to the mailing lists just give us a call or email.

We also invite contributions.

Editor: Julie Foreman
Phone: 02 8117 3700
Email: tunsw@clc.net.au
Web: tenantsunion.org.au
Address: Suite 201, 55 Holt St, Surry Hills NSW 2010

Disclaimer: The articles in *Outasite* are primarily intended for people who live in, or are affected by, the state laws of New South Wales, Australia. While every effort has been made to ensure the legal information in these articles is correct and up-to-date, it is not a substitute for specific legal advice. The articles are intended to be a general guide to the law only. You should seek expert assistance if you are faced with a problem. Views expressed by contributors are not necessarily held by the Tenants' Union.