



Residential parks are now often marketed to people over 50, with parks being advertised as 'lifestyle villages' or 'retirement living' for the 'young at heart'.

## IS AGE JUST A NUMBER?



*Julie Lee, Tenants' Union  
Residential Parks Officer*

I was recently delivering an information session to park residents about the new Act covering residential parks when I was asked a question about a term of the site agreement restricting the sale of homes to people over a certain age. My response that an age restriction term could be invalid was not popular and it left some in the room feeling uneasy about the community they live in.

It is not unknown, or even uncommon for residential parks or communities to be marketed at certain age groups, for example over 50s. They are often described as lifestyle villages, or retirement living and the

advertising is full of images of happy older people living active lives in harmonious communities.

There is no doubt that this type of advertising attracts potential home owners in the desired age bracket, but is it misleading? It could be.

These residential parks operate within the boundaries of the *Residential (Land Lease) Communities Act 2013* (The Act). The Act provides for community rules to be put in place about the use, enjoyment, control and management of the community. This is where references to age restrictions are commonly found. However, a community rule is of no effect if it is inconsistent with the Act or any other Act or law. Likewise, an additional term of a site agreement must not contravene this or any other Act or law.

What this means is that if a community rule or a term of an agreement seeks to restrict the sale of homes only to people over a certain age it could be invalid because it contravenes anti discrimination legislation.

The *Anti Discrimination Act 1977 (NSW)* and *Age Discrimination Act 2004 (Commonwealth)* make it unlawful to discriminate against another person regarding the provision of accommodation or services on the basis of age.

In 2001 the Residential Tribunal heard a case about this issue. The operator argued that the age restrictions were understood and supported by the residents, but the Tribunal Member found that age restrictions were a breach of the NSW Anti Discrimination Act.

Residents' support for age restrictions is the reason the issue is controversial and difficult to discuss, but it is an important one to explore. So, setting discrimination and legal issues aside for a moment, lets look at the impacts age restrictions can have more generally.

Restricting the sale of homes in communities to people over a certain age may provide benefits for the community, but what about the individual selling the home? Advertising and age restrictions reduce the pool of potential buyers for a home to one section of the community. By locking out potential purchasers the sale price of a home could be impacted. One purchaser who meets the age restriction may offer less than the asking price and another, who is only a couple of years shy of the age restriction may meet the asking price, but the vendor may have to accept the lower offer on the basis of age.

And what about family? Put yourself in the position of a home owner with an adult child who has fallen on hard times, or become ill and in need of care. They could be prevented from living with their parents and receiving their support because of age restrictions in the community. What if this was a grandchild and the only other option was for the child to go into residential or foster care – would you still support age restrictions?

No-one thinks that these things will happen to them, but they can and they do and that is one reason some home owners do not support age restrictions in residential communities. But, there are others.

The idea that someone aged 51 is suitable for an over 50s lifestyle village but someone aged 49 is not is a strange one. It does not take into account the personality, maturity or lifestyle of either person and instead assumes that someone who is over 50 will fit into the community whereas someone who is 49 will not. There are many people out there over the age of 50 who still lead wild lives and many under that age who do not and for this reason age restrictions are no guarantee of a quiet and harmonious community.

Age restrictions can not only lead to communities missing out on home owners who are entirely suitable (except for their age) but also people who would be valuable members of the community. People should not be judged on age alone.

Ultimately though it is the law that decides, and the only reference we currently have is the case mentioned earlier from 2001 that found age restrictions in residential parks are a breach of the *Anti Discrimination Act 1977 (NSW)*.



# SAVE THE DATE!

The Tenants' Union of NSW is holding a forum and party to mark our 40th anniversary.

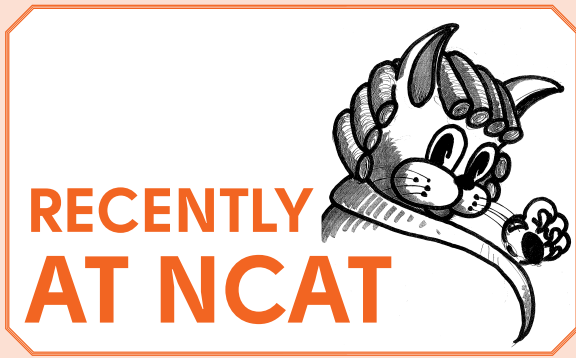
**When and where?**

**Monday 15 August 2016, Redfern Town Hall**

The forum will be from 12 noon to 4.30pm, including lunch, then we'll have a party from 5-7pm.

Minister Responsible for Fair Trading, Victor Dominello, will open the event and we will have a keynote speaker, Professor Keith Jacobs from the University of Tasmania. There will also be skits, stories and a TU movie. **We hope to see you there!**

RSVP to [contact@tenantsunion.org.au](mailto:contact@tenantsunion.org.au) so we can keep you up to date about the event.



to the purchaser. The operator refused this request and offered the purchaser a new site agreement in which the site fees were set at \$320 a fortnight – the current home owner was paying \$253.

The terms of the new agreement were not agreeable to the purchaser.

### THE DECISION

The current home owner made an application to NCAT seeking an order that the operator consent to the assignment.

The Member found that operator's refusal to assign the agreement was unreasonable.

Orders were made requiring the operator to effect the assignment within seven days and that the assignment would be deemed to be executed if the operator failed to do or comply with the first order.

*Our thanks to David St Quintin for creating the 'NCAT' cat illustration for use by the Tenants' Union in Outasite Lite.*

Since the commencement of the *Residential (Land Lease) Communities Act 2013* on 1 November 2015 we have been keeping an eye on decisions coming out of NSW Civil and Administrative Tribunal (NCAT) to see how the various provisions are being interpreted. In this issue of *Outasite Lite* we report on an unpublished decision concerning assignment.

### WHAT IS ASSIGNMENT?

When you sell your home assignment allows you to transfer (or assign) your site agreement to the buyer.

### THE ISSUE

The home owner sold the home and requested that the site agreement be assigned

## PARK RESIDENT ADVOCATE ANNOUNCED LOCAL WOMAN OF THE YEAR

Residential park resident advocate Christina Steel was recently announced as Port Stephens 'Local Woman of the Year' by the Port Stephens MP Kate Washington.

Christina is the president of the Port Stephens Park Residents Association and a long term and valued member of the Tenants' Union Residential Parks Forum. She has lived in a residential park for over 14 years, and loves the sense of community in parks and the security that comes with this.

At an event celebrating International Women's Day in March, Christina was recognised for her outstanding achievements supporting and advocating for the 3000+ park residents in the Port Stephens area.



*Christina Steel was recently announced Port Stephen's 'local woman of the year'.*

*Congratulations Christina!*



# A WIN FOR PARK RESIDENTS IN COURT

Two permanent residents of Homestead Holiday Park (Gennacker Pty Ltd) on the Tweed River have finally won a lengthy court battle against their park owner.

The park owner had given them a no-grounds notice of termination in 2012, and claimed the residents were not covered by the *Residential Parks Act 1998* (then in force). The park owner argued instead that they were covered by the *Holiday Parks (Long Term Casual Occupation) Act 2002*. This would have left the residents facing immediate eviction.

Paul Smyth, the Tenants' Union Residential Parks Legal Officer, has been assisting these residents with the matter on an ongoing basis since April 2013.

In a decision by the NSW Court of Appeal on 29 April 2016, the Court found the occupation agreement was not void, and that the home owners have protection under the *Residential (Land Lease) Communities Act 2013* (the R(LL)C Act).

This means the residents can stay in their home without restriction. In addition the Court of Appeal ordered the park owner pay the full legal costs of the home owners.

This decision is a significant win for the residents at Homestead, and will have wider impact. If you'd like to read the decision you can find it here: <http://www.austlii.edu.au/au/cases/nsw/NSWCA/2016/89.html>. Look out for our full summary in the next edition of *Outasite Lite*.

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	1800 642 609

### Aboriginal services

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



#### The Tenants' Union of NSW is:

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

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