

Outasite Lite



Some of the successful home owners from Gateway Lifestyle Stanhope Gardens

A YEAR TO REVIEW

Yes, it has been four years since the *Residential (Land Lease) Communities Act 2013* (RLLC Act) commenced and that means the statutory review is due next year.

The Tenants' Union (TU) has already started working with Tenants Advice and Advocacy Services, Resident Groups and Resident Committees to identify areas of the law we think could be improved.

We have undertaken a thorough analysis of the RLLC Act closely examining each section and sub-section. This research will assist the TU and our key stakeholders to prepare for the upcoming

review. We will be in a position to provide a comprehensive report to Government on what is working and where change is necessary. As always, our focus will be improving the rights and lives of home owners in land lease communities.

Electricity

Looking back over the past year electricity overcharging by operators has once again dominated the land lease community landscape. NCAT has determined a number of disputes and other groups of home owners have reached agreements regarding charges and refunds with their operators.

In July this year the TU successfully represented 93 home owners from Gateway Lifestyle Stanhope Gardens in the Tribunal regarding electricity charges. Home owners were awarded refunds totalling approximately \$80,000 for incorrect charges in their embedded electricity network dating from November 2015.

Home owners worked through the residents committee in making their Tribunal applications and preparing evidence. Voluminous data was entered into spreadsheets to demonstrate and calculate the refunds due to home owners.

The Tribunal heard from two Expert Witnesses with differing views about how home owners should be charged for electricity. The Tribunal determined the 'Reckless No 2' method should be applied and this decision was appealed by 15 home owners, who say the Tribunal erred in law.

The 'Reckless No 2' method means a home owner's charges are calculated by taking the total dollar (\$) amount charged to the operator and dividing it by the total number of kilowatt hours (kWh) used in the community. This calculation provides a rate per kWh that home owners are charged for their usage. Home owners do not pay a separate service availability charge under this method.

Electricity charge disputes will continue into 2020 with some home owners only recently approaching their operators, a number of operators refusing to offer refunds and other operators refusing to grant access to their electricity accounts.

Law change?

The NSW Government has been considering whether an amendment to the RLLC Act is necessary to clarify electricity charges. However, the Australian Energy Market Commission recently published its final report 'Updating the Regulatory Frameworks for Embedded Networks' and if the Government adopts the recommendations from this report there will be an impact on embedded networks in land lease communities. So, for the time being at least, the RLLC Act will remain unchanged.

Site fee increases

We have written in Outasite about our concerns regarding multiple component fixed method site fee increases on a number of occasions and we can now report that the legality of such increases is being challenged at NCAT. Three separate disputes involving home owners from three different communities are currently before the Tribunal. We will report on the outcomes when they are available, which is likely to be early next year.

In other positive news the NCAT Appeal Panel handed down a decision on 10 October 2019 confirming that if an operator chooses not to tender evidence to the Tribunal to corroborate a claim of increased costs or outgoings it is within the Tribunal's power to find the increase is excessive.

In *Sunrise Property Holdings Pty Ltd v Gregg* [2019] NSWCATAP 253 the operator appealed a decision of the Tribunal declaring that a proposed site fee increase was excessive. The operator was seeking an increase of around 5.32% per week but the Tribunal fixed the increase at 2%.

The operator sought leave to appeal on the basis that the decision of the Tribunal was not fair and equitable. The operator claimed a substantial miscarriage of justice in the way the case was conducted and determined. The operator cited a number of reasons for this claim including:

- that the Tribunal rejected a document by the operator's accountant setting out total expenses because there was no supporting documentation. The operator had supporting documentation at the hearing but chose not to tender it in evidence
- the finding that the pool was enjoyed more by tourists than home owners and home owners should therefore not bear the cost of maintenance
- the Tribunal was given incorrect information regarding the number of home owners which escalated the number of tourist sites (affecting the way costs could be apportioned)
- the Tribunal dismissed the fact that two thirds of home owners agreed to the site fee increase

In the appeal the operator was seeking to provide evidence they had failed to provide to the Tribunal at first instance. The Appeal Panel found the operator had not suffered a substantial miscarriage of justice because all the evidence they were seeking to tender was reasonably available at the first hearing. The operator chose not to tender the evidence and was bound by that choice.

Leave to appeal was refused and the appeal dismissed.

Into 2020

Other key areas of work for the TU this year have been interference with the sale of homes, the right of home owners to be provided with a site agreement, fair market value (site fees in new site agreements), operator conduct and local government regulations. We anticipate all of these issues will continue into 2020.

Annual report

If you would like to read more about the work of the Tenants' Union the 2018-19 annual report is now available at: tenants.org.au/tu/annual-reports

Christmas closure

The TU will close on Friday 20 December 2019 and reopen on Monday 6 January 2020. Telephone advice is available to land lease community residents and tenants during business hours Monday to Friday (excluding public holidays) throughout the closure.

For advice call 1800 251 101

The TU staff wish you all a safe and enjoyable Christmas and a very happy New Year. The Parks team looks forward to working with you again in 2020.



Free advice from local services:

Tenants Advice and Advocacy Services

Eastern Sydney	9386 9147
Inner Sydney	9698 5975
Inner West Sydney	9559 2899
Northern Sydney	9559 2899
Southern Sydney	9787 4679
South Western Sydney	4628 1678
Western Sydney	8833 0933
Blue Mountains	4704 0201
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 Tenants Advice and Advocacy Services

Greater Sydney	9833 3314
Western NSW	6881 5700
Southern NSW	1800 672 185
Northern NSW	1800 248 913



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