

OutasiteLite



CHANGES ARE COMING

COVID-19 Update

When we last published *Outasite Lite* at the beginning of April the COVID-19 pandemic was in its early stages and the NSW Government had just issued the first Public Health Order restricting the gathering and movement of people. In May and June those restrictions were eased slightly and from 1 July they will be eased further.

In land lease communities the restrictions meant community facilities had to be closed and social activities cancelled. Some operators removed staff completely and required all contact to be through email or phone and all payments to be made electronically.

The Tenants' Union is aware that some operators have approached the COVID-19 issue with sensitivity. They have kept home owners informed and maintained normal services as far as possible. We acknowledge and applaud those operators who have decided not to increase site fees this year. We also acknowledge those operators who have postponed increases to a later date.

We note with disappointment that some operators adopted a business as usual attitude and increased site fees as scheduled despite the reduction in facilities and the possibility that home owners may be experiencing a reduction in income. We encourage home owners who are able, to challenge these increases as excessive given the prospect there has been no increase, or even a decrease in operating costs.

Moving forward

From 1 July all community facilities should be open again but numbers in community centres, halls and swimming pools will be limited to one person per 4 square metres. Organised events such as social activities cannot have more than 20 participants and it is a good idea to develop a COVID-19 safety plan for the premises (in some cases this is required).

Caravan parks can open fully with no limit on the number of tourists allowed on the grounds. However, all premises within the caravan park must have a COVID-19 safety plan in place.

Home owners can now have up to 20 visitors to their home but caution should still be exercised, particularly where a member of the household is a vulnerable person.

And outside the community, places of worship, galleries and museums, cafes and restaurants, pubs and clubs are all open with restrictions.

For full details of restrictions and requirements go to the website <https://www.nsw.gov.au/>

News from the TU



Many of you also receive our print publication *Outasite* and we are pleased to announce it will be published as usual this year. We anticipate the 2020 issue hitting your mailboxes in August so if you need to subscribe, or update your details, now is a good time to do so. You can do this by clicking the link in the Outasite Lite email or visiting <http://eepurl.com/JBMVb>.

Remember, you can elect to receive extra copies to pass on to your family and friends – just let us know how many copies you want. You don't need to be a member of the TU to receive our publications and they are all free.

Website

Our website for land lease community residents, thenoticeboard.org.au is currently undergoing a revamp and the new-look site will be launched in a couple of months.

The noticeboard contains lots of information about land lease community law, how local government regulations apply to land lease communities, the work of the Tenants' Union and all current and past issues of *Outasite* and *Outasite Lite*.

More details about the new site will be available in *Outasite*.



Recently at NCAT



Getting back to site fee increases, the NSW Civil and Administrative Tribunal has recently heard and determined an interesting case where the operator issued two notices of increase, claiming the second notice cancelled the first.

The *Residential (Land Lease) Communities Act* (RLLC Act) does allow for such a situation at section 67(9):

A later notice may provide for a lesser increase than that specified in an earlier notice under this section. A later notice has effect instead of the earlier notice and takes effect from the date on which the earlier notice was to take effect.

However, in this case home owners challenged the first increase as being excessive and the second increase notice was for a higher amount. Here is how the case unfolded.

The operator issued a site fee increase notice on 30 September 2019 seeking an increase of \$6.00 per week, effective from 5 December 2019. Mediation failed and home owners applied to the Tribunal. On 20 December the Tribunal made an interim order suspending the requirement to pay the increase.

On 4 January 2020 the operator advised home owners the notice of increase would be cancelled and home owners withdrew the Tribunal application on that basis.

However, on 30 January the operator issued new notices to home owners, this time seeking to increase site fees by \$10.00 a week.

The home owners sought advice and received assistance from both the Tenants' Union and Mid Coast Tenants Advice and Advocacy Service regarding a fresh application to the Tribunal challenging the validity of the second notice of increase. The argument put to the Tribunal was that the 2019 notice had taken effect on 5 December and varied the site fees; the notice could not be withdrawn once it had taken effect; and, the RLLC Act allows for only one site fee increase in a 12 month period under the increase by notice method.

The Tribunal agreed and found that:

"Whilst the Park Operator purported to withdraw the 2019 Notice on 4 January 2019, it had taken effect on 5 December 2019. The site agreements, having been varied to increase the site fees, were again varied by removing the increase and returning the site fees to the pre increase amount.

Section 67 (8) permits the cancellation of a notice and says that the notice may be replaced by a notice seeking a lower amount. There is no power in the Act to replace a notice with a notice seeking a higher amount.

In any event, by the time the notice was purportedly cancelled, there was no longer a notice but rather a variation of the site agreement which had taken effect pursuant to s 67 (10)."

The notice was ruled invalid on the basis it sought to increase site fees in breach of section 67 (6) which prevents site fees being increased more than once in a 12 month period.

We think this was a well-reasoned and sound decision but the Tribunal covered all bases by going on to consider the actual increase.

The operator put forward figures regarding some increased costs but failed to provide any evidence to support those claims. The Tribunal found the operator had failed to establish an entitlement to the increase and disallowed any increase in excess of CPI. The Tribunal noted the increase would only be effective if the finding that the 2020 notice was invalid is appealed by the operator, and overturned on appeal by the Appeal Panel.

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



Phone: 02 8117 3700

Email: contact@tenantsunion.org.au

Websites: thenoticeboard.org.au and tenants.org.au

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Subscriptions: *Outasite Lite* is a free publication published by the Tenants' Union of NSW. To update your details or add someone to the mailing list please call or email.

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