Outasite

Residential Land Lease Communities Magazine • Issue 8 • September 2022

Flooded homes at Tweed Shores land lease community, Chinderah

Also in this issue:

- The fixed-method site fee increases trend
- Fair market value in setting site fees
- Residents battle for clean water
- Wills and probate
- And more...

DEVASTATING IMPACT OF THE FLOODS ON RESIDENTS IN THE TWEED CHINDERAH AREA

By Sandy Gilbert (TRPHA) and Eloise Parrab (Tenants' Union NSW)

TENANTS' UNION OF NEW SOUTH WALES

Residential land lease communities in the Northern Rivers region of NSW were severely impacted by floods in early 2022.

Many land lease communities are located on low lying, flood-prone land which means that flooding events like the one earlier this year can cause severe destruction and devastation to the community.

Sandy Gilbert from the Tweed Residential Park Home owners Association (TRPHA) has been on the ground in the Tweed Chinderah area providing advice, advocacy, practical and emotional support to residents of the eight land lease communities that were severely impacted by the floods in February 2022.

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Acknowledgement of Country

We acknowledge that **Aboriginal and Torres Strait Islander Peoples** were the first sovereign Nations of the Australian continent and its adjacent islands, and that these lands were possessed under the laws and customs of those Nations. The lands were never ceded and always remain Aboriginal and Torres Strait Islander Country. Our office is on the Country of the Gadigal People of the Eora Nation.

***Outasite* magazine** Issue 8, September '22

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About the Tenants' Union

The Tenants' Union of NSW is the resourcing body for Tenants Advice & Advocacy Services (TAAS) and a community legal centre. We are an independent, secular not-for-profit membership-based co-operative. We receive principal funding from the TAAS Program administered by NSW Fair Trading, and the Community Legal Centres Program administered by Legal Aid NSW.

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WELCOME TO OUTASITE

Welcome to the eighth edition of *Outasite* magazine published by the Tenants' Union of NSW for residential land lease communities (RLLCs).

Our long-serving Residential Land Lease Communities Officer, Julie Lee, has moved on from her role (see article on page 24) to have a well-earned break and take on new adventures. Eloise Parrab has stepped into the role and is trying to fill the very big shoes left behind by Julie! Eloise has been in the Tenancy Network for the past 19 years in a number of different roles. She started out as a Tenant Advocate at the Illawarra and South Coast Tenants Advice Service under the excellent supervision of Julie Lee. The majority of her time in the Network has been spent working at the two tenancy services located at Marrickville Legal Centre as a Tenant Advocate and then Service Coordinator.

Eloise is passionate about housing justice and is looking forward to using her skills, experience and knowledge to fight for the rights of land lease community residents.

The other key member of our team is Paul Smyth, Residential Land Lease Communities Solicitor. Paul has been at the Tenants' Union since January 2010, working hard to support land lease community residents and advocates. Prior to this Paul worked as a lawyer for 10 years in private legal practice in both the Republic of Ireland and in Sydney. Paul has a strong committment to social justice and access to legal services and is proud to work in the community legal sector.

Paul Smyth and Eloise Parrab, Residential Land Lease Communities team at the Tenants' Union of NSW.

DEVASTATING IMPACT OF THE FLOODS ON RESIDENTS IN TWEED CHINDERAH AREA

Continued from front cover...

28 February 2022 will be forever etched into the minds of the residents from the communities affected. The SES put out a warning to residents to evacuate but were unable to provide assistance, as they were assisting with floods in Lismore at the time. This meant that residents had to swing into action to help each other. All the roads were flooded with the water up to people's waist, and boats and canoes were needed to evacuate the residents. At 1.30am residents were still being evacuated from communities with only the clothes they were wearing. There were many brave souls who risked their own lives to make sure everyone got out safely.

The floods have brought to light the inadequacy of planning from operators for these types of events. Many operators have no flood plan (emergency evacuation plan) in place. When the flood warnings were made two operators closed up their offices in the communities and the employees left with no guidance or assistance provided to the residents.

The day after the floods some of the members for TRPHA set up a sausage sizzle for the mud army and all the wonderful volunteers helping

Tweed Chinderah area community residents waiting to be rescued.

clean up and residents after the water subsided. Since then the Hub has grown and now has its base on the site of the old Cudgen Leagues Club. Thanks to Syliva Roylance from Tweed Council who worked hard to source shipping containers which have become the working space for the Hub. From the Hub, volunteers have been providing services for the residents impacted in those eight Residential Land Lease Communities for nearly five months. There are wonderful volunteers that have been at the Hub since day one and there is at least another 12 months work ahead.

Many residents are still living in terrible conditions in the shell of their homes. Walls are missing and they are living without kitchens and heating which is especially hard during winter. The Hub has provided yoga mats, blow up mattresses and blankets, also high framed beds for residents who are sleeping on the floor of their damaged homes. The conditions that some residents are living in are like that of a third world country. Others are couch surfing, some are sleeping in cars and a small number are still in emergency hotels. Many have lost all their possessions including their cars which were not insured in many cases.

The Hub has been supplying everything to the residents with the help of wonderful

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donations from the public including home cooking from some beautiful ladies out in the community. The Hub put in fridges and microwaves in each community amenities block and they stock the fridges twice a week so the residents can heat up a meal each day. The meals are being supplied from Anglicare and a local company. For a while the Hub was running without any support except from the wonderful donations of the public, but Anglicare Northern Rivers have come on board now to support the work of the Hub. A big thank you to Leon and the team at Anglicare.

The Hub will continue to highlight the situation for residents of land lease communities who were impacted by the floods to ensure they are not forgotten. Many of the residents are very vulnerable and have lost everything and need support and care while they rebuild their lives.

In these eight communities where homes were flooded only 25% of home owners were insured. After the floods in 2017 residents had trouble getting their homes insured and the cost of the premiums made it impossible for many to afford. Many of the residents are pensioners and could not afford the insurance with the premiums tripling in some cases. Home owners who were uninsured felt a glimmer of hope when the State government announced a $20,000 *Back to Home* grant to help rebuild for home owners that were impacted by the floods and uninsured. It was a big blow to home owners who applied to be told they were not eligible as they do not meet the grant's definition of home owner as they pay site fees. After a lot of lobbying there was good news on 1 June 2022 when the Minister for Emergency Services and Resilience and Minister for Flood Recovery announced changes to the *Back to Home* grant's guidelines to include all permanent residents who own their own homes in land lease communities in local government areas of Ballina, Byron, Clarence Valley, Hawkesbury, Kyogle, Lismore, Richmond Valley and Tweed.

For residents who were insured there have been delays in receiving payouts from their insurance company and for those that have received money there is a huge shortage of tradespeople and materials. This shortage will also make it difficult for home owners who receive the $20,000 government grant to rebuild their homes.

There are also ongoing drainage problems in communities and there is a feeling of dread when there is further forecast for more rains to hit the region as home owners are worried their homes will be inundated again. No one wants to fix the situation. Politicians came and walked through the communities to see the devastation but no one has heard from them since.

Despite homes being destroyed by the floods one operator has been continuing to charge home owners full site fees. The *Residential Land Lease Communities Act 2013* (RLLC Act) states that where the site becomes wholly uninhabitable the site fees abate. In other communities operators have done the right thing and where homes are still uninhabitable, residents are not paying site fees. In some communities residents were also given free water and electricity. The RLLC Act says site fees should abate until the site becomes wholly habitable again. Residents who have not been given an abatement will now need to pursue a claim at NSW Civil and Administrative Tribunal (NCAT) against the operator – given the financial and emotional stress currently on home owners this is an unnecessary further stress placed on them.

There has been a lot of false information from operators to residents on what they can and can't do to their homes that have been damaged. Potential buyers who are looking at buying damaged homes to repair or replace have also been given incorrect information. This has been compounded by some early factsheets distributed by the Local Council which contained some incorrect information. This has been corrected by the Council but the old factsheets are still being circulated.

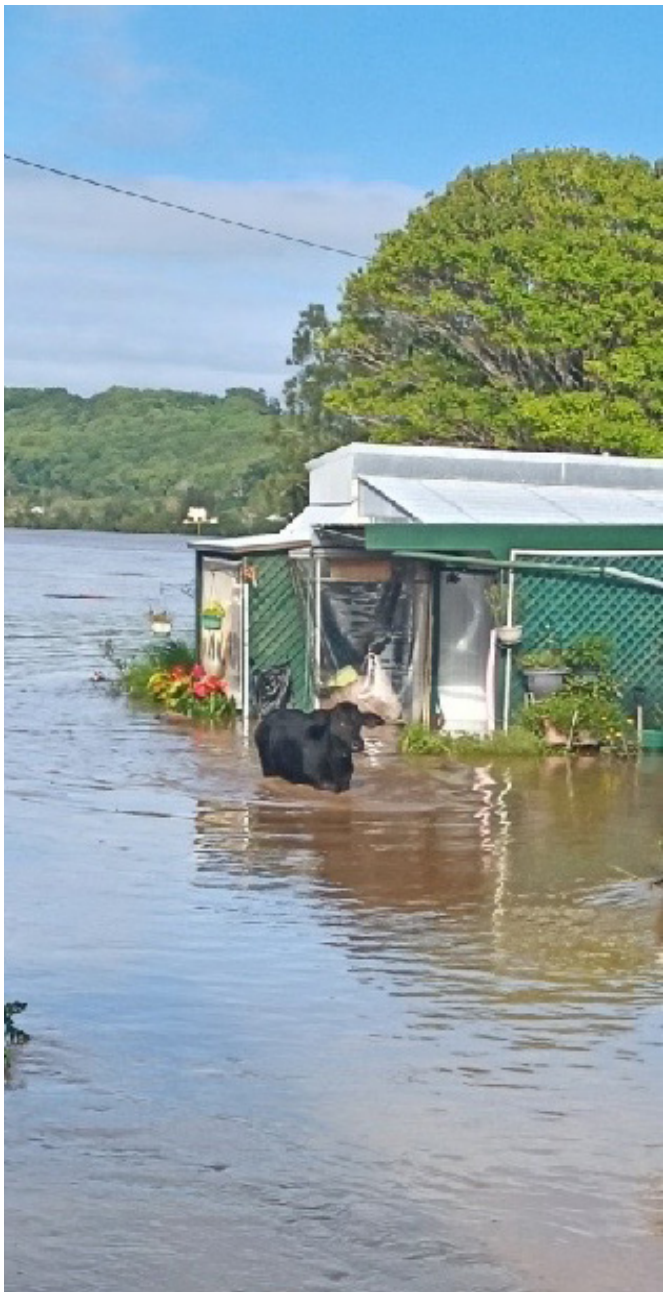
False information!

Examples of the false information we heard from residents are:

- Flood impacted homes would be demolished by the operator and new homes brought in and residents could have the first option to buy them. These homes are between $200,000 – $300,000 to buy.
- You are not allowed to raise your home to 1.2m despite Council approval.
- You are not permitted to repair your home if you received a payout from insurance company.
- Residents may demolish their home if it is not repairable but it can only be replaced with a caravan with a soft annex.
- You are allowed to do repairs but the home cannot be raised above the ground to mitigate from further flooding.
- You cannot repair manufactured homes. Only homes on wheels can be repaired.

One operator was offering home owners $5,000 – $10,000 to walk away from their damaged homes. Home owners need to understand their site agreements are valuable rights and should not be coerced into agreeing to things before they have received independent advice on the next steps they should take after this disaster. There are huge profits to be made by operators if they can acquire a site for $5,000.

If you have been flood-impacted and need advice on what your rights are in relation to repairing or replacing your home then we would encourage you to seek advice to ensure you are not acting on incorrect information. Details for your local Tenants Advice and Advocacy Service are on the back page. The customer service centre at your local Council will be able to direct you to the correct person at Council and the forms that will need to be completed for work that requires Council approval.



A cow wading past a flooded home in a Tweed Chinderah land lease community.

Some key points to consider:

1. A home owner is entitled to repair damage to their own home and does not need consent from the operator to do the repairs.
2. If you want to make significant changes to your home you will need consent from the operator and you will also need to check with your Local Council to ensure you comply with Local Government regulations.

FIXED METHOD SITE FEE INCREASES BECOMING THE TREND

By Eloise Parrab

The Tenants' Union have noticed a trend towards operators preferring to use the fixed method for site fee increases. This trend has many implications for home owners and will ultimately lead to higher site fee increases, well above actual costs incurred in operating and maintaining residential land lease communities by the operator.

There are two methods for site fee increases for home owners in residential land lease communities in NSW. The method for a site fee increase that applies to a home owner will be listed in the site agreement. The site fee increase method that is more common in communities is increase by notice. Under the increase by notice method operators are required to send a notice to all home owners to notify them of the amount of the increase, provide an explanation for the increase, and the date the increase will start (they must be given 60 days notice). It is very common for there to be little detail provided by the operator to explain the need for the increase to site fees and this can make the notice invalid. The good thing is that home owners can challenge this type of site fee increase if they believe it is excessive. They must apply for mediation with NSW Fair Trading first and if this fails can lodge an application at the NSW Civil and Administrative Tribunal (NCAT). During these processes home owners can argue that the increase is excessive and dispute the reasoning provided by operators for the increase. Operators are required to justify the increase and importantly provide information to the Tribunal on why they think the increase is necessary, which includes showing how costs have increased in operating the community. The Tribunal will look at evidence provided by the home owners and operator and decide on the amount of the site fee increase.

The second method for increasing site fees is the fixed method. This method does not receive the same level of scrutiny as increase by notice. In the site agreement it will state the fixed method that will be used to determine the increase to the site fees. This could be for a specified number of years or the duration of time that the home owner lives in the community. There can only be one fixed method for determining the amount of the increase. If there is more than one method in the site agreement the one that results in the lower or lowest increase applies. The troubling aspect of this method is there is no oversight by the Tribunal. There is no mechanism for a home owner to challenge a fixed method site fee increase as excessive. A home owner can challenge whether the method is actually a fixed method (i.e. fixed amounts or a fixed calculation) at the Tribunal but not argue it is excessive.

When we consulted with home owners and resident organisations in 2020 on the Statutory review of the *Residential Land Lease Communities Act 2013* (RLLC Act) we received concerns that the fixed method increases are now commonly 3.5% or above and are presented by operators as 'not negotiable.' The Tenants' Union has recently seen fixed method increases coming in quite high at 5%. With the move of operators to the fixed method there is no analysis about whether the operator's costs have actually increased to the same extent as the increase in site fees. The operator is

not required to provide any evidence of increase in costs and there is also no incentive for operators to maintain the community and communal facilities. While site fees increase steadily under the fixed method the communities facilities and services can be left to run down by operators.

As the fixed method for site fee increases that applies is set at the time the home owner is signing their site agreement with the operator, it is very difficult for the prospective purchaser to negotiate the terms of the agreement. They generally have no knowledge of the fixed method that applies to other home owners in the community. There is an unequal bargaining position of home owners and operators, if they don't agree on the method or amount they have to walk away from buying the home. (Unless an assignment of the existing site agreement is made).

A much fairer approach would be for home owners to be given a choice on which method of site fee increase applies to their site agreement. This would then allow a home owner to make an informed choice weighing up the pros and cons on which method they want to have applied to their agreement. In a key recommendation of the RLLC Act Review, Fair Trading identifies making site fee increases simpler to understand and easier to predict.

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Charles Dalgleish is Chairperson of Teraglin Lakeshore Resident Committee and a member of the NSW Residential Land Lease Communities Forum.

He has done the sums for site fee increases in his community. The operator's proposal of an annual increase of 3.25% for the next 10 years will result in a 42% increase in the site fees over this period due to the interest compounding each year. In comparison, the site fee by notice increases over the past 9 years in his community have always been less than 3.25%.

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In the meantime as part of the trend towards fixed method site fee increases, operators are encouraging home owners who are on site fee increase by notice method to sign new site agreements with fixed site fee increases for 10 years. One resident advocate Charles Dalgleish who is the Chairperson of Teraglin Lakeshore Resident Committee and a member of the NSW Residential Land Lease Communities Forum has done the sums for his community. All home owners in the community on increase by notice received a letter offering to lock in an annual fixed method site fee increase of 3.25% for the next 10 years. The proposal by the operator will mean that in 10 years time, a home owner currently paying site fees of $364.90 per fortnight will be paying $518.75. This is an increase of $153.85 per fortnight which is a 42.16% increase in the site fee over the 10 years due to the interest compounding each year. Charles has compared this to the site fee by notice increases (which have an explanation for the increase) that have been negotiated through mediation for the previous 9 years. In the past 9 years the site fee increase for those on the by notice method apart from one year has always been less (sometimes considerably less) than 3.25%. Moving to fixed increases for site fees might give the home owners certainty but going on the experience of this community it will lead to home owners paying very high site fees which may become unaffordable for many and importantly cannot be challenged and require no explanation from the operator.

Ideally we would like home owners to have the right to apply to the Tribunal regarding a fixed method increase in some circumstances. Particularly if other home owners in the community have received a lower increase by notice or the Tribunal has ordered a lower increase for other home owners after looking at the evidence from both parties. This would help to try and ensure that the fixed method increases are consistent with the operator's increase in costs and the condition of the community. This would help to better balance the rights of home owners and operators.

Understandably many home owners do prefer the fixed method as it gives them certainty and they often do not have the desire, skills or confidence to challenge an excessive site fee increase. This needs to be balanced against the real risk that if fixed term method increases are left to continue to rise without any scrutiny many home owners will find their site fees become unaffordable in the not too distant future.

Charles Dalgleish, resident advocate and Chairperson of the Resident Committee at Teraglin Lakeshore

FAIR MARKET VALUE

A win in one case and an anomaly uncovered in another

An anomaly has been exposed in the safeguards for fair market value when setting site fees in new site agreements, when the operator owns the home that is being sold.

A recent case at the NSW Civil and Administrative Tribunal (NCAT) Appeal Panel, uncovered the anomaly in the safeguards for application of fair market value in the *Residential (Land Lease) Communities Act 2013* (RLLC Act).

In this matter, the operator, Hometown Australia, purchased a home from a former home owner and undertook refurbishments to the home prior to selling it on a few months later. The new home owner, Ms Jones (name changed for privacy), signed a site agreement with the operator and agreed to pay site fees of $192 per week. After living in the community, Ms Jones discovered that her site fee was a lot higher than others and the principle of fair market value had not been followed by the operator. An application was lodged at the Tribunal and Ms Jones sought orders for the site fee to be set at fair market value and compensation for the difference between site fees charged and fair market value since she moved into the community.

Ms Jones was successful at the Tribunal with the assistance of Kim Wright, a resident advocate (see also article on page 20). Orders were made that the current site fees exceeded fair market value and for the site fee to be set at $164.40 per week. Hometown Australia lodged an appeal of this decision and the Tenants' Union represented the respondent Ms Jones in the appeal matter.

Hometown's argument at the original Tribunal hearing and before the Appeal Panel hearing centred around arguing that Part 10 of the RLLC Act did not apply if they were the vendor of a home to an incoming home owner. They argued Part 10, section 104 RLLC Act only applied when a home owner was selling their home on site to another owner and was not applicable when an operator was selling a home. Section 109 of the RLLC Act requires that the site fees in the new agreement with the prospective purchaser do not exceed fair market value. The legislation outlines that fair market value is the higher of the site fees currently paid by the home owner who is selling the home and the site fees paid for other homes in the community of similar size and location. The Appeal Panel stated s109 could only apply to Hometown if they met the definition of a home owner under the RLLC Act at the time they sold the home.

The Tenants' Union, representing Ms Jones, argued that Hometown was captured by the definition of home owner as a successor in title to the previous home owner at the time they sold the home. The Appeal Panel did not agree as they found that to be a successor in title for the purposes of the definition of home owner in s4 of the RLLC Act the successor must be someone that owns a home that is the subject of a site agreement. Hometown owned the home but at the time it was selling the home there was no site agreement that it was subject to and therefore they are not required to comply with s109 in setting the new site fee in the agreement with Ms Jones. Hometown was successful in their appeal and the orders made in the original Tribunal application were set aside.

The Tribunal member who made the initial decision made this important statement in the reason for their decision:

> *"I have taken into account the parties' submissions about statutory construction and the second Reading speech of the Bill. In that regard there is no doubt the legislation is socially beneficial. It seeks to protect an often aged and impecunious population from potentially vulnerable*

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situations regarding a matter of great importance, namely secure housing. The level of rents home owners are required to pay is a main area of concern, as evidenced by the numerous provisions relating to the control of that issue. It would be an unlikely, if not absurd result, if the legislation were to be interpreted so that a significant control on the level of rents was able to be removed by an operator, simply by buying and reselling 1 home in a community. As can be seen here, by buying and selling the home on site 4, the applicant has been able to justify, whether rightly or not, significant increases in rents (up to 15%) on at least 5 other sites.…"

The Appeal Panel in allowing the appeal by Hometown Australia did say:

"We are conscious that our decision highlights a potential anomaly in the application of the safeguards in, for example, s 109 of the Act. That is, that those provisions do not apply when the vendor of a home in a community is the operator itself with the consequence that an operator is not subject to the same restrictions in setting site fees for a new site agreement as it would be if requested by a purchaser or prospective purchaser from an owner who is not also the operator. It is for the legislature to consider if there be an anomaly and, if so, whether and in what manner it may need to be addressed by legislative amendment". [paragraph 37]

We hope that this loophole will be closed during the current review of the RLLC Act. The Tenants' Union has suggested to the Government that the fair market value provisions move out of Part 10 RLLC Act and into Part 4, which is about entering into site agreements and would close this anomaly.

A win

In another recent decision Kim Wright, resident advocate, assisted Ms Smith (name changed for privacy) to lodge an application at the Tribunal in relation to her site fees and misleading and deceptive information in the disclosure statement.

Ms Smith purchased a home in the community in 2019 from the previous home owner. The operator provided Ms Smith with a disclosure statement at the time of entering into a contract to purchase the home which states the current site fees were $170.10. After moving in Ms Smith discovered that the former home owners site fees had been $162.55. She also found out that similar sites to hers in size and location had much lower site fees than what she was paying.

During the Tribunal hearing the operator only provided one comparison site in outlining how they determined fair market value. Ms Smith provided a number of comparisons and the average site fee for those sites was $159.10.

The Tribunal stated in the written decision that the fair market value for the site at the time of signing the agreement was $162.55. Ms Smith was awarded a refund in the difference between fair market value and the sites fees she was charged since she signed the site agreement. She was also awarded $1,000 non-economic loss compensation for the distress caused by the operator providing her with a disclosure statement that contained false and misleading information.

The 'N CAT' – a visual pun by David St Quintin

The operator paid Ms Smith the amounts ordered by the Tribunal but to date have refused to acknowledge that Ms Smith's site fee should have been $162.55. There have been two increases in the site fee since the agreement commenced, which means, based on the decision of the Tribunal, Ms Smith's site fees should now be $173.85 but the operator is continuing to charge $181.40. Ms Smith has written to the Tribunal asking the Member to correct the orders to make it clear the current site fee that she should be charged.

THE NON-COMPLIANT MEDIATION FORM

A NSW Civil & Administrative Tribunal (NCAT) matter, *Davis v Seachange Living NSW Pty Ltd [2022] NSWCATAP 142*, between Mr Davis and Seachange Living began as a collective application to the Tribunal disputing a site fee increase at Milton Valley Holiday Park. The operator issued a site fee increase by notice in March 2021 to the 12 permanent home owners in the community.

Mr Davis, acting on behalf of the other residents, completed the standard form for compulsory mediation of NSW Fair Trading and ticked the box on the form to indicate he is the home owners representative. The mediation was unsuccessful and Mr Davis then lodged an application at the Tribunal on behalf of himself and the 11 other residents to dispute the site fee increase. Mr Davis attached to the Tribunal application a document that listed details for the 12 applicants and signatures from seven.

At formal hearing the Member decided the Tribunal did not have jurisdiction on a collective application challenging a site fee as excessive because the mediation application was not accompanied by a schedule of at least 25% of home owners. The Fair Trading compulsory mediation application form doesn't have a place for this schedule and does not provide any information that this is a requirement. (The form stipulates 'Please do not attach anything else to this application form.') Mr Davis and the other home owners were not aware that their application for mediation was not compliant. The Tribunal Member decided to proceed in the hearing to look at the substantive part of the application; in case it was wrong to say they didn't have jurisdiction and found that the home owners had not made their case that the proposed site fee increase was excessive. The home owners appealed the Tribunal's decision.

The Appeal Panel found that the Tribunal Member was wrong in finding they did not have jurisdiction to determine the site fee increase challenge on the basis that 25% of home owners had not signed the application for mediation.

Section 69 of the *Residential (Land Lease) Communities Act 2013* (RLLC Act) outlines the process for applying for mediation in site fee increase disputes and specifically refers to the requirement for the mediation form to be signed by at least 25% of the home owners who received the site fee increase. Section 71 of the RLLC Act then outlines what the next steps are if mediation fails and it specifically refers to the need for the mediation application form to comply with section 69 as a requirement before proceeding to the Tribunal.

The Appeal Panel found that failing to comply with the requirements in section 71(1b) does not result in the Tribunal not having jurisdiction to hear the matter. This is a good result and ensures that other home owners who have not attached the schedule of home owners to the mediation application will not have their Tribunal application dismissed on this basis.

The important issue does remain: Fair Trading needs to change their compulsory mediation form so that it's not confusing or misleading for parties and doesn't give wriggle room for mischief by operators wanting to question the 25% threshold. The Tenants' Union (and others) have raised the issue with Fair Trading and look forward to a resolution.

One of the home owners is legally represented by the Tenants' Union and has filed a Summons commencing an appeal to the Supreme Court of NSW from part of the decision of the Tribunal Appeal Panel.

RESIDENTS BATTLE FOR CLEAN WATER

By Paul Smyth

Residents of a land lease community in western metropolitan Sydney have been forced to do battle over the quality of their drinking water. They have been concerned for a considerable period of time about the quality of the water supplied by their community operator.

There is no issue with the quality of the drinking water supplied by Sydney Water to the meter at the perimeter of the land lease community. However, residents in certain parts of the community are very concerned about the water supplied to them through the land lease community's own water pipe network. The network contains many old water pipes and pipe dead-legs as well as connections to disused rainwater tanks. Dead-legs are sections in pipes that do not allow water to circulate, i.e sections of pipe that are supposed to be capped.

In May 2019, some residents noticed significant amounts of black sludge and biofilm from their water taps and sludge depositing in their sinks, washing machines, shower heads and toilet bowls, particularly around the rim.

Disappointed by the response of their community operator over a number of months from mid 2019 to 2020, the residents approached the Local Health District, Sydney Water, their local MP, and the NSW Minister for Health and reported their experiences of cloudy and discoloured water coming from their taps and sludge build up in their shower heads and washing machines. One home owner engaged a technician from Australian Laboratory Services (ALS) to test samples of the drinking water and sludge in their home. The home owner obtained a written report on water quality testing results. The home owners were all concerned with certain high bacterial count readings in the ALS reports.

In August 2020 the home owners made contact with their local Tenancy Service (TAAS). During November 2020, the home owners filed applications against the community operator in the NSW Civil and Administrative Tribunal (NCAT). The dispute before the Tribunal was about the quality of drinking water in homes in parts of the residential community.

An environmental scientist and academic was engaged by the home owners and the TAAS and they reported results using a water turbidity meter that the chlorine levels were low.

> *"...these levels were considerably lower (approximately 25 to 33%) than the free chlorine concentration of water from the tap in the common BBQ area (0.53 mg/L). I was advised that the tap in the BBQ common area is located close to the boundary of the park and is a relatively short distance to the connection point to Sydney Water's reticulated water system."*

The significance of low chlorine levels in any land lease communities drinking water supply can potentially cause illnesses like hepatitis, giardia or cryptosporidium. Drinking water systems commonly add chlorine (a process known as "chlorination") to their water supply for the purpose of disinfection and making water safe to drink. Disinfection kills or inactivates harmful micro-organisms which can cause illness.

The home owners were also concerned about high zinc readings. Such metallic elements can be toxic or even poisonous when ingested. In Australia there are non mandatory Australian Drinking Water Guidelines developed by the Federal National Health and Medical Research Council (NHMRC) which can be found on-line: **https://www.nhmrc.gov.au/sites/default/files/documents/reports/aust-drinking-water-guidelines.pdf**

Specimen jars showing the cloudy water, sludge and debris, which was coming out of the taps at the community.

The community operator's own water consultant stated in their report that much of the original water infrastructure currently used in the land lease community was inherited from the previous much older caravan park that operated from the site. The operator was clearly concerned about the adverse publicity the home owners applications to the Tribunal might bring and additionally were aware of the potentially significant impact on their profits of having to dig up and replace water pipes in their community.

After numerous Tribunal directions hearings, the parties were permitted legal representation and expert reports, lay evidence and written submissions of the parties were filed and finally in early December 2021 the home owners and operator settled their matters in the Tribunal. This occurred on the day of the formal hearing, by way of written consent orders and a Heads of Agreement document. The community operator did not admit any liability. However, they agreed to consent orders where the home owners would receive:

- a site fee free period of six months,
- compensation paid for the economic loss incurred,
- an agreement that the operator carry out a program of works and monitoring of the water supply, and
- a testing program put in place to test the water supplied over a six month period.

Part of the agreed works included regular flushing of the water pipes and maintaining chlorination levels. However the operator has not complied with one order, namely, to test a sample of the sludge to be taken from the water taps in the home of one applicant home owner.

The matter has been the subject of further meetings since March 2022 between the home owners, their advocates, the community operator and their legal representatives.

The fight to be provided with good quality, uncontaminated drinking water is one that this group of home owners is not prepared to give up on.

EMERGENCY SERVICES VEHICLE ACCESS

By Paul Smyth (Tenants' Union of NSW), and
Trevor Sullivan (Port Stephens & Affiliates Park Residents Association)

This article highlights the importance of operator compliance with all requirements under the *Residential Land Lease Communities Act 2013* (RLLC Act).

Operators are required under the RLLC Act to ensure that there is 24 hour unimpeded emergency vehicle access to the community. An operator is required to consult with residents and all relevant emergency and home care services regarding access arrangements in the community. If there are any changes to these arrangements all parties must be informed.

All roads and sites within the community must be clearly signposted, or an accurate, easy to follow map be placed at each entrance to the community. These measures are in place to enable emergency and home care personnel to locate the home they are seeking in the community.

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An operator is required to consult with residents and all relevant emergency and home care services regarding access arrangements in the community.

All roads and sites within the community must be clearly signposted, or an accurate, easy to follow map be placed at each entrance to the community.

When these measures are not followed it can have dire consequences for the residents. This was the case in Sweetwater Grove earlier this year. Sweetwater Grove is part of the Aspen Group and a new land lease community at Tomago NSW and is advertised as "a relaxed over 50s lifestyle community located in Tomago, a stone's throw from Port Stephens and Newcastle." It was previously the Tomago Village Van Park and was renamed and expanded with 26 new homes brought in over the past 18 months.

The death of a resident of this community occurred during April 2022 in circumstances where

The entrance to Sweetwater Grove. No community map is visibly displayed that would identify the location of residential sites. However, there is a large sign advertising homes for sale!
(Photos sourced from Google Street View, dated May 2021.)

the ambulance service responding to a 000 call could not locate the patient's residential site or get to the person in time.

We understand the key issue for the ambulance service when they attended at the community was the absence of any community map at the front entrance; also the residential site numbers were not clearly marked. The streets in the community are very higgledy-piggledy and streets go in many directions. This makes it very difficult to navigate and find homes in the community.

The operator was advised of the problems encountered by the ambulance service and on three occasions have promised to install a community map at the entrance. A temporary A4 sized map in a plastic sleeve has been taped at the entrance and the community is still waiting for a permanent community map to be installed.

If your community is missing a community map at the front entrance then we strongly encourage you to make a request to the operator to comply with their requirements. There are penalty units attached to not complying with this important section of the RLLC Act and we encourage residents to bring non compliance issues like this one to the attention of NSW Fair Trading as the Regulator and Registrar of residential land lease communities.

WILLS AND PROBATE

By Julie Lee and Eloise Parrab

In a recent decision of the NSW Civil and Administrative Tribunal (NCAT) Appeal Panel the question of whether a home can be sold (onsite in a community) without a grant of probate has been answered.

When a home owner in a residential land lease community passes away ownership of the home is usually / often transferred to another person through a Will. Probate is the name of a court order granted by the Supreme Court of NSW. Being granted probate confirms that the Will is valid and the named executor (legal personal representative) has permission to distribute the estate of the deceased according to the provisions in the Will.

Probate is a court order which confirms that the Will of the deceased is valid and gives permission to the executor to distribute the estate. A grant of probate can only be obtained if there is a valid Will and a named executor. The executor is responsible for applying for the grant of probate. The executor cannot distribute the deceased person's property until they apply for and are granted probate by the Supreme Court of NSW.

Following the death of Alvin Jenkins in March 2019, a dispute arose between the sole beneficiary and executor of the estate regarding interference by the operator with the proposed sale of the home. The late Alvin Jenkins was a home owner at Surfrider Caravan Park on the NSW south coast at the time of his death. He had occupied the home on site 4 under a site agreement. Alvin's final Will named his son Lee Jenkins as sole beneficiary and executor of the estate.

Lee asked the operator of Surfrider if they could advertise and sell the home on his behalf. The operator responded by saying they couldn't list the home for sale, or enter into a site agreement with a purchaser until a grant of probate had been obtained.

Probate is a court order which confirms that the Will of the deceased is valid and gives permission to the executor to distribute the estate. A grant of probate can only be obtained if there is a valid Will and a named executor. The executor is responsible for applying for the grant of probate. The executor cannot distribute the deceased person's property until they apply for and are granted probate by the Supreme Court of NSW.

For various reasons Lee did not obtain a grant of probate until 4 August 2020 and by this time a considerable amount of site fees were owing on the site.

Mr Jenkins applied to the Tribunal for compensation for the site fees paid on the basis that the operator had interfered with the sale of the home. The Tribunal found there had been interference and awarded Mr Jenkins compensation of $2,845.80 for site fees between March 2019 and 4 August 2019 (which the Tribunal erroneously recorded as the date probate was granted). Neither party was happy with this outcome and both lodged appeals against the decision.

The Appeals

The operator appealed on six grounds including that the Tribunal had failed to properly interpret the definition of "home owner" in the *Residential (Land Lease) Communities*

A home at Surfrider Caravan Park

Act 2013 (RLLC Act) and had failed to properly consider the operator's decision to require Lee to obtain a grant of probate.

Mr Jenkins appealed on the basis the Tribunal erred in determining the date of probate and in calculating the damages he was awarded.

The decisions

The Appeal Panel determined the Tribunal was correct to find that Mr Jenkins was a "home owner" within the meaning of the RLLC Act. It said:

> *"The RC Act confers rights under that Act on those defined as a home owner. In the present case they are a "personal representative or a beneficiary of the estate". In either case, Mr Jenkins fits within the definition and is therefore a home owner for the purpose of the RC Act...*
>
> *At the point in time when Mr Alvis Jenkins died, Mr Jenkins became a beneficiary of the estate. This status as a beneficiary was not dependent upon the grant of probate. Rather, it was dependent upon the death of the testator and a valid Will."*

Regarding whether the operator interfered with Mr Lee Jenkins' right to sell the home, the Appeal Panel found that statements made (to Mr Jenkins) by the operator could constitute interference. Additionally, declining to advertise the property and/or act as agent was also conduct that could amount to interference within the meaning of s107 (RLLC Act).

However, on the issue of whether the operator's actions caused Mr Lee Jenkins to suffer a loss the Appeal Panel differed from the Tribunal. It found the operator was entitled to insist upon a grant of probate prior to signing a transfer of the existing site agreement to a prospective purchaser or entering into a new site agreement with a prospective purchaser.

> *"because without such a grant the operator would be at risk of dealing with the estate property inappropriately. Similarly, acting as agent and promoting a sale on behalf of Mr Lee Jenkins prior to the grant of probate may also have placed the operator at risk of liability to prospective purchasers concerning statements made."*

The Appeal Panel said:

> *"it seems to us that the identified conduct, although constituting interference, did not relevantly cause the loss and damage in question to be suffered. Rather, it remained for Mr Jenkins, who had independent legal advice, to appoint his own selling agent and obtain probate and thereby facilitate a sale at an earlier point in time."*

The Appeal Panel found the Tribunal had erred at first instance on 2 June 2021 in awarding compensation to Mr Jenkins. It set aside the order for compensation and dismissed Mr Jenkins appeal.

What this decision means for deceased estates

This decision has important implications for deceased estates in RLLCs.

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Operators are entitled to refuse to:

- act as an agent and promote the sale of a home and
- transfer an existing site agreement or enter into a new agreement with a prospective purchaser; if there has been no grant of probate obtained where there is a valid Will.

(The Appeal Panel decision did not address circumstances of where a Grant of Letters of Administration would be required where a home owner died intestate i.e where there was no valid Will. Under Part 4 *Succession Act 2006 (NSW)* the order in which eligible relatives will inherit the estate of a deceased person is set out.)

For home owners in similar circumstances to Mr Lee Jenkins the safest course of action is to apply for a grant of probate before starting the process of selling the home. Even if a private agent is appointed to sell the home before probate there may be problems when asking the operator to either (i) assign the existing site agreement under a Deed of Assignment or (ii) enter into a new site agreement with a prospective purchaser which could ultimately result in the sale of a home falling through.

If the deceased person's Will does not name an executor, one of the beneficiaries can apply for letters of administration to enable them to deal with the estate.

The steps to obtain probate:

1. Publish a probate notice on the NSW Online Registry website. There is specific information that is required to be included in this notice
2. After 14 days from when the notice is published an application for probate can be lodged in the Supreme Court. There are a number of documents which must be included in the application
3. If there is any information that is missing or incorrect there may be a requirement to re file the form or file an affidavit and this could cause delays
4. There is usually no need to attend court to obtain probate and the application will be processed by the court Registrar in Chambers

The Tenants' Union of NSW strongly encourages people to obtain legal advice before they commence the process of applying for probate because if it is not followed correctly there can be lengthy delays and additional costs incurred which, in Mr Jenkins' case, also led to a large amount of unpaid site fees accruing.

The full decisions can be found in *Barrack Point Holdings Pty Ltd v Jenkins (No 2);* and *Jenkins v Barrack Point Holdings Pty Ltd [2022] NSWCATAP 10.*

If you don't have a Will you may wish to consider making one – information on getting started can be found at: **https://www.service.nsw.gov.au/transaction/get-started-making-will**

Some of the content of this article appeared in a recent Outasite Lite.

QUICK UPDATES

KNV APPEAL
THE 'FIXED' METHOD OF SITE FEE INCREASES

We reported previously (in *Outasite 7** and *Outasite Lite 40**) on the case *KNV v Morris & Ors.* The case relates to fixed method site fee increase terms in site agreements, and in particular, whether a formula for calculating site fee increases, made up of a number of components, falls within the meaning of a 'fixed method.'

The home owners' appeal to the Supreme Court of NSW in *Rowe v Kincumber Nautical Village* was heard before Justice P Garling on 22 July 2022 and the decision was reserved – the judgement has not been handed down yet.

The home owner was successful in earlier interlocutory proceedings *Rowe v Kincumber Nautical Village Pty Ltd [2022] NSWSC 533* in having the matter heard as representative proceedings under the *Civil Procedure Act* and the residents now anxiously await the Supreme Court of NSW judgement in the case.

5 YEAR REVIEW
OF THE RESIDENTIAL LAND LEASE COMMUNITIES ACT

In *Outasite 7** we reported extensively on the 5 year Review of the *Residential (Land Lease) Communities Act 2013.* Sadly we do not have anything further to pass on about the Review, as yet.

The government tabled the *Statutory Review Report* in November 2021 in NSW Parliament. We reported on the key recommendations in *Outasite Lite 41*.*

On 3 August 2022 Victor Dominello MP was appointed the new Minister for Fair Trading and we are hopeful that once he has settled into the new role we can get an indication from his department or office of when a Bill will be introduced to the NSW Parliament.

* All our previous issues of *Outasite* and *Outasite Lite* are available online at: **tenants.org.au/thenoticeboard/outasite-archive**

GET ALL THE UPDATES...

For further updates on these stories and more, please sign up to our email newsletter, *Outasite Lite*, delivered to your inbox 3-4 times per year. Subscribe at **http://eepurl.com/bYu-9D** or scan the QR code to the right. Then enter your email address. Please make sure to tick 'Outasite Lite for Land Lease Communities' and then tap 'Subscribe.' Voila!

WORKING WITH RESIDENT ADVOCATES

By Julie Lee

Resident advocates are volunteers who usually live, or have lived, in land lease communities. They may be members of a resident organisation, or a residents committee, or just someone with a commitment to social justice. The thing they all have in common is that they dedicate their time to supporting residents, helping them assert their rights, negotiating with operators and, if necessary, taking disputes to the NSW Civil and Administrative Tribunal (NCAT).

Resident advocates are an invaluable resource for land lease community residents. They live and work in communities, they understand the issues faced by residents, and they have a network of contacts throughout those communities. They are operating at the coalface and often dealing with very difficult problems. The Tenants' Union supports resident advocates by providing advice, resources and training. Our role is to enable resident advocates to do what they do.

Earlier this year we were finally able to provide face to face training with resident advocates (it had been postponed twice due to the pandemic). The purpose of the training was to equip advocates with the knowledge and understanding necessary for them to carry out their role as advocates. We spent time discussing the meaning of advocacy, skills and ethical practice, the importance of obtaining and following instructions (from the person being assisted), and how all of these relate to their day to day role as advocates.

The training also covered the key steps in identifying and resolving disputes between residents and operators including negotiation, mediation, conciliation and Tribunal applications. Advocates were able to share their experiences, learn tips and approaches and gain an understanding of how the law can be used in each situation.

In our work with resident advocates the Tenants' Union has become aware that communicating with the Tribunal is not always as straightforward as it appears, so we also had a session on when and how to communicate with the Tribunal and the operator, when a dispute has progressed to the Tribunal.

Feedback from the training participants was very positive and they are all looking forward to next time!

Kim Wright, Chair of the resident committee at The Sanctuary Lennox Head said:

> *"I found the training to be extremely helpful, in identifying issues within our communities and how best to assist, correct processes and language. The ability to connect with other advocates and the hardworking members of the Tenants' Union was invaluable. It would be wonderful if it could be extended further and open to more people who are currently isolated in their work for residents."*

John McCabe from Myrtle Glen at Stanhope Gardens NSW:

> *"A few months ago I accepted an invitation from Mary Preston (Resident Advocate at Myrtle Glen) to step up and assist her in helping our community.*
>
> *I attended training and information seminars and other zoom sessions. Being new to all of this it was a real eye opener and I was truly amazed at the commitment and dedication of seasoned advocates in helping their communities at great personal expense and time. I felt it*

was all beyond me but was encouraged by Julie Lee to persevere and give it a go. She said we are here to help.

I was amazed at the breadth of knowledge course presenters had with complex and legal issues and were of great assistance to tenant advocates around NSW."

In addition to the training provided, the Tenants' Union has developed a Toolkit for resident advocates, which is intended to reinforce the training but also provide practical information and tips about how to conduct legal research.

On a day to day basis the Tenants' Union provides legal advice and assistance to resident advocates regarding the disputes they are dealing with. This can be anything from advice on the application of the Act to preparing submissions for a Tribunal hearing. This work is important because, not only does it mean residents are getting the best assistance possible from their advocate, it means the Tenants' Union is able to assist many more people than if we were working on an individual level.

Many resident advocates are also involved in systemic advocacy and again, the Tenants' Union is proud to support and work with advocates on law and policy reform issues. Recently we came together regarding the Review of the *Residential (Land Lease) Communities Act 2013*. We discussed our concerns, ideas, and hopes for reform which resulted in a united and cohesive message to the Government regarding the outcomes we want from the Review.

We at the Tenants' Union feel lucky to have such great connections with both residents and resident advocates in land lease communities. We value the contribution of resident advocates to the work we do, and to residents of the communities they work in. Together we are stronger, and we very much look forward to continuing our collaborations.

"I found the training to be extremely helpful, in identifying issues within our communities and how best to assist, correct processes and language. The ability to connect with other advocates and the hardworking members of the Tenants' Union was invaluable. It would be wonderful if it could be extended further and open to more people who are currently isolated in their work for residents."

– Kim Wright, Chair of the Resident Committee, Sanctuary Lennox Head

REBECCA BRYANT

Advocate from VERTO, south-western NSW TAAS

Rebecca Bryant works as a Tenant Advocate at VERTO, South West NSW Tenants Advice and Advocacy Service (TAAS). We asked Rebecca some questions about her experience of advising and advocating for land lease community residents.

Rebecca Bryant, Tenant Advocate at VERTO

When and how did you start working in land lease communities?

I began working in Land Lease Communities in July 2020 when I joined VERTO – South West Tenants Advice Service. Right in the peak of the Covid-19 pandemic, as a regional border resident for the first three months of my employment I was forced to work from home and I was unable to cross the border into NSW. Since then, I have hit the ground running in Albury assisting as many land lease communities clients in our region as I can.

What do you enjoy the most about working in land lease communities?

Without a doubt, my clients. I have been extremely lucky to work with some incredible people along the Murray Riverina region. My clients have taught me a lot, we

have worked through some challenging situations and had some great wins at the Tribunal.

What has been challenging and surprising for you about this work?

The most challenging thing for me has been Covid-19. Tribunal hearings transitioned from face to face where we would be located at the Tribunal to pick up clients, to online where many clients may not have been aware of our service, or even had enough phone credit on the day to complete the hearing. We have also been very limited in the community education we can provide, and in visiting land lease communities in person – due to the pandemic. We work in very regional areas with some very vulnerable clients, and it worries me how many clients are now aware of the support we are able to provide.

The most surprising thing for me working in residential land lease communities is the audacity and lack of education of operators. From illegal lockouts to threats of violence, we have unfortunately seen it all in our area. Nothing surprises me any more in terms of what operators are capable of. It is so disappointing that residents are not better protected from rogue operators. I believe one of the ways we can resolve this is to apply a penalty offence for operators or employees of operators who have been seen breaching the rules of conduct – and for NSW Fair Trading to follow up with the penalty!

If you could change two things to improve the lives of land lease community residents, what would they be?

An amendment to the *Residential (Land Lease) Communities Act 2013* giving more clarity that operators are responsible for the maintenance of essential site infrastructure. We are receiving more and more calls where vulnerable clients are being advised by their operator that they are required to pay for retaining walls or pre-existing fences on their properties. Operators under the legislation are required to provide a residential site in reasonable condition. Operators should not be allowed to burden home owners with the responsibility of maintaining site infrastructure.

Also needed is an amendment to the Act in regard to site fees in new site agreements. I personally feel that if site fees were transferable between owners during the sale process, it would provide more certainty to purchasers and reduce the amount of fair market value disputes. I know this is quite an issue for many residents in land lease communities across NSW.

"The most surprising thing for me working in residential land lease communities is the audacity and lack of education of operators. From illegal lockouts to threats of violence, we have unfortunately seen it all in our area. Nothing surprises me any more in terms of what operators are capable of. It is so disappointing that residents are not better protected from rogue operators. I believe one of the ways we can resolve this is to apply a penalty offence for operators or employees of operators who have been seen breaching the rules of conduct – and for NSW Fair Trading to follow up with the penalty!"

REFLECTING ON 21 YEARS OF ADVOCACY

For renters and land lease community residents

Julie Lee, long-serving Tenants' Union Land Lease Communities Officer

After more than two decades' work as a dedicated advocate for tenants and then land lease community residents, Julie Lee is moving on to new pursuits. We took the opportunity to ask for her reflections on her work and particularly the issues faced by land lease community residents in New South Wales.

When did you start working as an Advocate for tenants and land lease community residents? What led you to take on the job?

I started work as a Tenant Advocate in April 2001, shortly after I moved to Australia from the UK. I had wanted to become an advocate for a long time and I had experience working in the housing field so becoming a Tenant Advocate seemed like a really good fit.

Initially I was mainly providing advice and assistance to

tenants however, John MacKenzie was the Residential Parks Officer at the same Tenants Service, and he lured me into residential parks.

What has changed and what has stayed the same in the time you have been an Advocate?

Since I became an advocate, the biggest changes have been in residential parks/land lease communities – even the name has changed. When I first started specialising in this area the majority of parks were owned and operated by park owners who had only one or two parks. There were still a lot of homes that were caravans with an annex and rents were pretty low. All of that, and more, has changed.

Over the last eight to ten years there have been huge changes in land lease communities, sparked in part by changes in the law. In 2015 the *Residential Parks Act 1998* was repealed and the *Residential (Land Lease) Communities Act 2013* commenced. Corporate operators began buying up communities and that brought change to those communities. Older homes were bought by operators at every opportunity and new homes installed, new community rules were introduced, and access to the operator became more difficult.

We have also seen the creation of new, purpose-built communities, which had not occurred for many, many years. These new communities have extensive community facilities including bowling greens, cinemas, libraries and computer rooms, and in some cases a bar and restaurant.

Land lease communities are now marketed as lifestyle villages and arguably they can no longer be described as affordable housing. Not only have house prices increased, so have site fees. In residential parks, homes were commonly available for less than $100,000 and site fees were less than $100 a week. Homes are now selling for anywhere between $300,000 to $1 million and that includes some pre-loved homes. Site fees have also increased massively and in some communities residents pay more than $300 a week.

What has stayed the same, thankfully, is the passion residents have for their fellow residents and communities. Over the years I have met and had the pleasure of working with the most wonderful people who live, or have lived, in parks and communities. It is the residents who make the communities – operators would do well to remember this.

What are some of the most memorable stories – the best and the worst experiences?

The thing I have enjoyed most about being an advocate, particularly in my role at the Tenants' Union, is being able to work directly with tenants and land lease community residents. I have travelled throughout the State visiting communities, delivering community education and meeting with residents.

As a Tenant Advocate, one of the best and most rewarding outcomes is saving a tenancy. One I remember in particular was a long-term public housing tenant with three teenage children. The family had become involved in a dispute with neighbours and been issued with a termination notice. The mother had not had an easy life but she had raised three kids and maintained her tenancy for 23 years prior to this dispute. I advocated for her at the Tribunal and she was given a Specific Performance Order. Over the following years I continued to see her around the community – she was still living in the same home.

Unfortunately, the worst stories are from land lease communities. Some operators are just unscrupulous and don't seem to care about residents – always seeking to take advantage of someone with fewer resources and less power.

A few years ago, I assisted a resident advocate who was representing a home owner at the Tribunal. The operator had taken her to the Tribunal seeking orders for her to pay around $6,000 to replace a retaining wall on her site. This wall had been installed by the operator around 20 years prior and, because it was made from wood, it had

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deteriorated. The wall was in place when the home owner bought her home on site and in my view, it was clearly the operator's responsibility to repair or replace it. Instead, the operator pursued the 84-year-old home owner, putting her through Tribunal proceedings, which caused her a great deal of distress. The operator's application was dismissed, however the stress was too much for the home owner and, rather than face further Tribunal proceedings, she paid for the wall to be replaced.

More recently I assisted another resident advocate who is representing home owners in her community on the issue of fair market value site fees in new agreements. The Tribunal has found in favour of the home owners, reduced their site fees to fair market value, and ordered refunds of overpaid amounts. The operator is now disregarding the Tribunal's findings and again trying to charge these home owners higher site fees! The blatant disregard of Tribunal findings and orders by some operators is a serious concern. If home owners can't rely on the decision of the Tribunal where does that leave them?

What have been the particular challenges that you have seen in your work in land lease communities?

The most challenging part of my work in land lease communities is, without doubt, dealing with operator conduct. The *Residential (Land Lease) Communities Act* has various provisions to protect home owners from bad behaviour, but the provisions are ineffective. Conversely, if a home owner contravenes a term of their site agreement, or a community rule, they can face termination of their site agreement.

There is a genuine need for better regulation of land lease communities and operators, but an apparent unwillingness on the part of government to acknowledge and address this. Individual home owners and advocates are trying to tackle this problem but they don't have the tools or resources. As mentioned above, even when home owners succeed at the Tribunal and get a fair outcome, operators ignore the decision. There needs to be a fundamental change in the approach to regulating the land lease community industry.

What would you like to see change for land lease community residents in New South Wales?

The Act is currently under review and I hope that amendments will be made that bring more balance into the legislation. Land lease communities are still described as affordable housing, but I don't think that description will continue to apply unless site fees and site fee increases are addressed. The Act currently requires site fees in new agreements to be set at fair market value but I am not aware of a single operator who complies. This is one of the most significant issues in land lease communities yet the government regulator has taken no interest and it is left to individuals to take applications to the Tribunal.

Site fee increases are also affecting affordability, particularly for long term residents on fixed incomes. The process for challenging an increase as excessive is difficult and burdensome for home owners. The operator holds all the information about why an increase may be necessary yet home owners bear the onus of proving to the Tribunal that the increase is excessive. This should be reversed – operators should be required to satisfy the Tribunal, or another independent body, why an increase is necessary.

Fixed method increases in site fees should be phased out. A fixed method increase cannot be challenged no matter how excessive and an operator does not have to provide any justification for the increase. This leads to increases not commensurate with the increase in outgoings and operating costs of the community, or with the services and facilities provided.

Finally, the government regulator needs to step up and start doing its job. If it cannot, government needs to find

another way to deal with poor operator conduct. Residents should not have to endure bullying and harassment or have to deal with operators who ignore the legislation and Tribunal orders – they should be able to make a referral to a body that will investigate, resolve complaints, and take action against those operators who believe they are above the law.

What are some of the 'top tips' you would give to land lease community residents?

My top tip for land lease community residents is to get independent advice as early as possible about your rights, or a dispute, and to put everything in writing when dealing with an operator. Find the details for your local Tenants Advice and Advocacy Service, along with factsheets and other information at **tenants.org.au/thenoticeboard**

Also, use the complaints process – you probably won't get the outcome you are seeking but unless residents make complaints, the government is not made aware of the problems.

And don't be afraid to go to the Tribunal – it is there to resolve disputes and residents should use it.

You have helped a lot of people understand their rights around their homes and communities over the years, what does 'home' mean to you?

To me a home is a place where you can feel safe and secure. It is somewhere you feel comfortable, where you can sleep, relax, spend time with family and friends, and where you can keep your personal and treasured possessions.

Any other reflections?

I feel very privileged to have been part of the Tenants' Advice and Advocacy Services Network for 21 years. I have worked with passionate, committed and creative advocates – all striving for a better system for people who rent their homes. Even though I am leaving my role, my heart will always stay with the Network.

Likewise, the residents and resident advocates I have talked with, laughed, cried and worked with. Their dedication to fighting for the rights of residents inspired me to do the best job I could every day. I will miss them.

"The most challenging part of my work in land lease communities is, without doubt, dealing with operator conduct... There is a genuine need for better regulation of land lease communities and operators, but an apparent unwillingness on the part of the government to acknowledge and address this. Individual home owners and advocates are trying to tackle the problem but they don't have the tools or resources. Even when home owners succeed at the Tribunal and get a fair outcome, operators ignore the decision. There needs to be a fundamental change in the approach to regulating the land lease community industry."

STAY IN TOUCH

We hope you will stay in touch – please fill in this form and return to the address below. We would also love you to spread the word among fellow land lease community residents. We welcome anyone to subscribe to our email bulletins online via our website or at: **eepurl.com/bYu-9D**

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We welcome donations, but please note that you do not need to make a donation, or be a member to access advice. All permanent residents of land lease communities are entitled to free advice (and may get Tribunal appearance assistance) from your local Tenants Advice & Advocacy Service (see contact details at right).

Please return this form to:

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Haymarket
NSW 1240

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Greater Sydney	9833 3314
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The Noticeboard
for land lease community residents

We regularly update *The Noticeboard* – our website for land lease communities. You can find over 20 factsheets, back issues of *Outasite* magazine, and *Outasite Lite* email newsletter. The address is:

tenants.org.au/thenoticeboard