Residential Land Lease Communities Magazine • Issue 12 • September 2024

Outasite

In this issue:

- Residential land lease community laws get updated
- Improved rights for tenants
- Operator ethics under scrutiny

"Together we are a stronger force."

– Noleen Robinson, resident advocate

TENANTS' UNION OF NEW SOUTH WALES

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 12, September 2024

Contents:

***Outasite* editor:** Leo Patterson Ross
Authors: Eloise Parrab and Paul Smyth
Design and typesetting: Jeremy Kerbel

Printed on recycled paper by **Indigi-Print** – Indigenous owned, full-service print management, Australia-wide.
ISSN 2209-105X

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.

Phone: 02 8117 3700
Email: contact@tenantsunion.org.au
Web: tenants.org.au/thenoticeboard
Office: Lvl 5, 257 Clarence St, Sydney NSW 2000

SPOTLIGHT

Eloise Parrab, Land Lease Communities Officer at the Tenants' Union of NSW

Noleen Robinson has been living in a land lease community in Lake Macquarie for over 24 years and has been a resident advocate for nearly the same amount of time. Noleen is a long term member of the Residential Land Lease Communities Forum and we thought it was high time we did a spotlight on her.

What attracted you to living in a land lease community?

I was living in Perth and moved to Sydney for a fresh start after being the victim of a serious crime. I had some friends in Morisset so moved north of Sydney to look for a home to buy. Accidentally stumbled across the community where I ended up buying a home. I liked the fact the community was quiet and I felt I would be safe and secure with neighbours around me.

How long have you been an advocate and how did you get involved?

I have been an advocate for 21 years. It started with a group of residents from other communities in the area meeting to talk about issues we were experiencing in our communities. Through that group I met Jim Clarke who was very keen to get all the residents groups around NSW to combine. Together we are a stronger force. We have a greater chance in having politicians hear our concerns. This can lead to changes in the law.

With Jim's help I started my local residents group called Lake Macquarie West Park Residents Association. We travelled to Sydney for meetings with other residents groups. One visit was arranged by Sylvia Hale who was a Greens MP at the time.

ON NOLEEN ROBINSON

She arranged for residents across NSW to come to NSW Parliament and talk about our concerns. At this forum I spoke about the need to have unlimited access to communities for emergency service vehicles 24 hours of the day every day of the year. I was aware that in one neighbouring community a resident had died after an ambulance could not get into the community. Sylvia Hale made it her business to ensure that this change was made to the legislation at the time, the *Residential Parks Act 1998*.

In 2003/04 I helped set up the Southlakes interagency meetings. At these monthly meetings I would represent all the local residential parks

Continued on page 4...

"Together we are a stronger force. We have a greater chance in having politicians hear our concerns. This can lead to changes in the law."

– Noleen Robinson, resident advocate.
Photography by Riley Michelmore.

"With the rise of technology I now feel that residents in land lease communities are more connected and aware of what's happening in other communities. We don't feel so alone."

Continued from page 3...

in my area covering Tarro, Gillieston Heights, Toronto, Lake Munmorah, Wyee and Morisset. At the meeting there were representatives from many different organisations including the Local Council and local MP Greg Piper. At my suggestion the organisations involved in the interagency organised a free lunch on Christmas Day for the local community. I had noticed many of our residents within our villages had lonely Christmas days because their families would either come to see them before Christmas or in the New Year, which left them home alone on the actual day. Our first Christmas Day lunch was held in 2010, and Greg Piper MP dropped in to say hi to everyone. We had Santa distributing gifts for everyone, with the gifts being donated by the many businesses who really wanted to get involved. It was a huge success and it carried on every year until COVID stopped it in 2020.

I was also involved in setting up the Independent Parks Residents Action Group in

2013 after the Parks and Village Service (PAVS) was defunded. PAVS had been convening the Residential Parks Forum 4 times a year and I would travel to Sydney for these meetings and meet with resident advocates across NSW to talk about our concerns. Myself and other resident advocates wanted to ensure we maintained the network as it was very valuable as a support mechanism and also for lobbying the NSW Government.

In my role in my local residents association I would help residents in other communities. I remember going to Palm Lake Village where the residents wanted help setting up a residents committee. The operator turned up for the meeting and when I asked him to leave he refused. He sat at the back and fumed as I outlined to residents their rights. They had lots of issues around access to their home for emergency service vehicles as the roads were very narrow and lots of dead roads.

One Sunday I was asked to come to a community in Gillieston Heights as there was a gas leak. I called the operator and he said he wouldn't send out a plumber as he didn't want to pay the extra call out cost due to it being a Sunday. I explained that I didn't care if it was a Sunday and if someone with a cigarette walks past we are going to have a huge explosion and a lot of dead residents. Within 15 minutes the plumber showed up and the elderly residents were very relieved.

It was a big surprise when in 2010 I was awarded a community service award from the NSW Premier for my contribution to the community.

What were the key issues people wanted assistance with in the early days?

In the early days the operator at the time in our community was doing development in the village. Over the time I have lived here there have been two big developments in the community which caused issues for existing residents.

Site fee increases were not an issue in the early days, with increases being around $2.50 a week and this was reasonable so residents didn't need help in disputing site fee increases.

What is the biggest change you have seen over time in the sector?

With the rise of technology I now feel that residents in land lease communities are more connected and aware of what's happening in other communities. We don't feel so alone. It also helps to put your own community issues in perspective when you hear what's happening in other communities.

What are the most rewarding aspects of being a resident advocate and living in a land lease community?

Being able to help people in their hour of need and where possible to ease their worries.

What are three things you would change to improve life for home owners in residential land lease communities in NSW?

1. Site fee increases need to be limited as site fees are not affordable in many communities
2. Onsite managers in all villages so if there are emergencies there is someone who can help the residents
3. Get rid of the large industrial garbage bins that have replaced the small bins in many communities. Elderly residents including myself cannot lift these lids to put in our rubbish and it also means large heavy garbage trucks are coming in to collect rubbish using our narrow roads.

RESIDENTIAL LAND LEASE COMMUNITY LAWS GET UPDATED

By Eloise Parrab, Land Lease Communities Officer at the Tenants' Union of NSW

On 25th September 2024 the laws governing residential land lease communities changed. These changes are the first phase of the 48 recommendations that came out of the 5 year statutory review of the *Residential (Land Lease) Communities Act 2013* (RLLC Act). These reforms are the result of many years of advocacy and law reform engagement by residents and supporters. We hope to see positive impacts unfold as a result of these reforms.

There will be other changes to the law on utility billing provisions which will commence on 11th December 2024.

The changes that commence this year account for 21 of the 48 recommendations. We will have to wait until 2025 for progress on the other important 27 recommendations.

This article summarises the changes and how residents will be impacted. We have also updated the factsheets on our website to reflect the new provisions: tenants.org.au/thenoticeboard/factsheets. We encourage you to read the factsheets to ensure you understand all the new provisions. If you have any questions please get in touch with your local Tenants Advice & Advocacy Service – contact details on our website and back cover of this magazine.

What changed on 25th September?

- Home owners are now allowed to make certain minor alterations to their homes without operator consent.
- New voluntary sharing agreements cannot include entry and exit fees.
- Residents must be given a choice between a rent-only agreement or a voluntary sharing agreement, and be given information on cost implications of each.
- Operators will need emergency evacuation procedures in place and they must be tested once a year and keep records of the tests.
- Limits are now in place on when an operator can enter a home owner's home without permission.
- Operators can only issue a dilapidation notice to a home owner if the dilapidation has been caused by the home owner.
- Operators must give 30 days written notice to residents if they are intending to lodge a development application or a planning proposal that may impact on the community.
- Increase from 90 to 120 days to the notice period for vacating a residential site, where a termination notice is given on the ground that the site is not lawfully usable for the purposes of a residential site.
- Home owners are now entitled to compensation if their site becomes unlawful after they have occupied the site, due to an action of the operator.
- Operators are no longer allowed to end site agreements if a residential site has not been used for at least 3 years as the place of residence of the home owner or another person permitted to reside at the site.
- Home owners on the By Notice increase method will have clearer insights into the reasons for the site fee increase when they get their notice.
- The value of the land is no longer a relevant provision for the NSW Civil and Administrative Tribunal (NCAT) when determining if a site fee increase is excessive.
- The Fixed Method site fee increase method is now limited to one single element.
- A 12 month transition period has started for those existing Fixed Method site fee increases that contain more than one element.

- There is a new maximum price for electricity for all residents in embedded networks, including those residents who are supplied and/or billed by an external retailer such as Humenergy.
- There is now more transparency around operator electricity costs and their supply contracts.
- Low amp discounts return for residents on their daily supply charge.

What is changing on 11th December?

- New requirements for billing for electricity and other utilities.
- New requirements for utility receipts.

Electricity pricing overhaul for embedded network residents

One of the most significant changes in this initial phase is electricity pricing within embedded networks. As residents who live in embedded networks are well aware there have been lots of problems with charging for electricity since the RLLC Act commenced. We have provided updates on the many NCAT cases that were taken by residents in 2018-2020 to try and recover some of the amounts they were overcharged by their operators. We then ended up with the famous Reckless method for how operators were to charge home owners. Some home owners have found this method difficult as the per kw charge changes every billing cycle so it's hard to budget. The Reckless method also did not apply to tenants and those residents supplied electricity by a third party. There was also no discount for residents when they were receiving low amps under the Reckless method.

The changes that commenced on the 25th September 2024 ensure that tenants and residents supplied electricity by third parties, such as Humenergy, benefit from clearer provisions and have the same rights as home owners in their community.

Separate electricity daily supply and usage charges have returned and operators are no longer using the Reckless method for calculating a residents bill.

Operators and third-party suppliers are not allowed to charge for electricity above the maximum utility charge. The maximum utility charge is the median retail market offer in each distribution district as determined by the Independent Pricing and Regulatory Tribunal (IPART) on a yearly basis.

This may result in some residents paying more for their electricity than under the Reckless method. Other residents will be paying less.

IPART has made its first determination of the median retail market offer in each distribution district (see below) and this information can be found at fairtrading.nsw.gov.au/media-releases-news-updates/notices/new-laws-for-electricity-pricing-in-communities-with-embedded-networks

Continued on page 8...

IPART's determination of the median retail market offer

The table below lists the determined median market offer for residential customers in each distribution district in NSW (including GST, nominal).

Distribution district (network)	Supply charge (cents/day)	Usage charge (cents/kWh)
Ausgrid	94.91	34.72
Endeavour Energy	87.92	36.52
Essential Energy	143.00	41.65

One of the biggest reforms is that from 25th September 2024 all new Fixed Method site fee increases are limited to a fixed calculation that contains only one element.

This will simplify calculations for site fee increases and give more certainty to home owners.

An example of a fixed calculation that is one element is a dollar amount or increase in CPI since the last site fee increase or a % amount. It can only be one of these elements.

Continued from page 7...

Discounts on daily supply charges are re-introduced for residents (and for the first time apply to tenants and residents supplied by a third party) receiving low amps. If supplied less than 30 amps, a resident will receive a 60% discount; and if supplied between 30 and 60 amps they will receive a 30% discount.

For utilities other than electricity (water for example) the operator cannot charge a resident an amount for the use of the utility that is more than the amount charged by the utility service provider for the quantity of the service supplied to or used by the resident.

Under the amendments to the RLLC Act residents will have better access to information about the costs the operator or a third party supplier is paying for the electricity being supplied to the community. This information will need to be provided to residents at least once a year.

There will also be an obligation on operators and third party suppliers to review their supply contract at least once every 2 years or if the contract is longer than 2 years they must review before they enter into the next supply contract. In this review process they must compare with one other comparable offer from another retailer and the outcome of the review provided to each resident.

When the utility billing provisions commence on the 11th December 2024 residents will only be obligated to pay for separately metered utilities if they receive itemised bills meeting specific requirements. The bills will need to comply with relevant National Energy Rules that apply to the particular supplier for gas and electricity. For other utilities (for example water) the RLLC Act will list what information must be included in the bill. Our electricity factsheet and water and sewerage factsheets on our website will be updated with all these details when these changes commence on the 11th December 2024.

From the 11th December 2024 if a resident pays for utility charges in person then they must immediately be given a receipt for the payment. The receipt must contain their name, the name and address of the community, site number, date payment received, billing period for the utility charges paid , total paid and any credit or debit as at the date payment was made by the resident. If a resident pays utility charges in another way they can ask for a receipt and it must be provided as soon as practicable after the payment has been received and include the same information detailed above.

Importantly the amendments to the utility provisions must be reviewed by the Minister for Better Regulation and Fair Trading within 3 years after

they commence and a report tabled in NSW Parliament within 4 years of the commencement date. The review will look at whether the policy objectives relating to utility provisions remain valid and whether the provisions are appropriate for achieving those objectives.

In addition, as we have reported in previous issues of *Outasite*, IPART conducted a review into pricing in embedded networks at the request of the NSW Government. Recommendations have been provided to NSW Government from that review which suggest a maximum charge that is lower than the median retail market offer. If the IPART recommendation is accepted then there may need to be further amendments to the RLLC Act to ensure that residents in embedded networks are not paying more than embedded network customers living outside of land lease communities.

Improvements in site fee increases

One of the biggest reforms is that from 25th September 2024 all new Fixed Method site fee increases are limited to a fixed calculation that contains only one element. This will simplify calculations for site fee increases and give more certainty to home owners. An example of a fixed calculation that is one element is a dollar amount or increase in CPI since the last site fee increase or a % amount. It can only be one of these elements.

There can also only be one fixed method increase a year unless the increase is tied to an increase in the age pension.

Unfortunately those home owners who already have more than one element in their fixed increase method (for example CPI plus %) will need to wait 12 months before their operator must negotiate a new single element fixed method or they can choose to go on by notice method at the end of the 12 month transition period. The 12 month transition period will end on the 25th September 2025.

We would encourage home owners to do the calculations on any offers made by the operator for a new fixed method. If they are offering a % amount it's worth doing the sums to see what your site fee will look like in 5 or 10 years as the increase compounds. In the table below we have an example which shows the impact of a 3% and a 5% annual site fee increase over a 5 year period – more than $1,000 a year by the end of the 5th year!

Importantly no home owner needs to sign a new site agreement if the method for their site fee increase changes. The operator can prepare a document for home owners to sign which outlines the new compliant fixed method increase. The existing site agreement continues and the parties have signed a document which contains the terms of the new fixed method increase.

If a home owner elects to go onto the By Notice method at the end of the 12 month transition period then you have the option to apply to NSW Fair Trading for mediation to dispute a site fee increase as excessive. You will need at least 25% of all home owners on the By Notice method to agree to apply for mediation. Our factsheet on site fee increases provides further information on how to dispute a by notice site fee increase as excessive.

Additional changes to site fee increases will improve the rights of home owners on the By Notice method. Home owners on the By Notice

Continued on page 10...

	Weekly site fee after 3% increase on $200	Weekly site fee after 5% increase on $200	Difference over the year
Year 1	$206	$210	$208.56
Year 2	$212.18	$220.50	$433.80
Year 3	$218.55	$231.75	$676.76
Year 4	$225.10	$243.34	$938.49
Year 5	$231.85	$255.50	$1,220.15

Continued from page 9...

method will have clearer insights into the reasons for increases in operators' expenses when they get their site fee increase notice. If the increase is wholly or partially due to an increase in costs of specific items the operator will need to provide details about the item, the increase in the costs of the item and how the operator has apportioned the costs for this item when calculating the increase. This will be required for a site fee increase notice to be valid.

The value of the community land will no longer be a relevant factor in the Tribunal's determination of whether a site fee increase is excessive.

Freedom for home owners to make minor alterations

Home owners are now allowed to make some minor alterations to their home without seeking consent from the operator.

The alterations that do not require consent are:

- installing door screens,
- window locks,
- window screens and
- window shutters on your home.

Any other alterations will still require a home owner to write to the operator and seek consent. We have a sample letter to use when seeking consent which can be found on our website.

Voluntary sharing arrangements

Voluntary sharing arrangements (VSA) do not appear to have been taken up by many home owners. This is good news as the provisions in the RLLC Act since they were introduced in 2013 are seriously flawed and only provide a benefit to the operator. The Tenants' Union is pleased to see they have been amended and entry and exit fees are no longer allowed. One of the VSAs that we were contacted about a few years ago concerned an entry fee of $3,000 paid on the basis the home owner would get a discount on their weekly site fees. They had lived in the community for several years when they discovered their site fee was the same as many of their neighbours and they haven't received anything in return for the $3,000 entry fee they paid! It's important that there will now be better transparency for prospective home owners under the amendments made to the RLLC Act.

Before operators can enter into this type of agreement with a home owner they must first offer a rent-only site agreement and provide home owner with details of the costs under each option so they can make a fully informed decision.

Entry and exit fees will still be allowed where there was already a VSA in place before the 25th September 2024.

Access to your home

An operator's rights to access your home have been limited under the changes that commenced on the 25th September 2024. Previously, access to the site and a home owner's home were allowed under the same circumstances.

Now an operator of a community, or a person acting on the operator's behalf, may enter your home only in the following circumstances:

(a) with your consent which is given at the time of entry,

(b) in an emergency if necessary to avert danger to life,

(c) to comply with an obligation under another Act or law,

(d) in accordance with an order of the Tribunal.

The operator can still access the residential site under the same circumstances as before. For further information please have a look at our factsheet on access.

All the factsheets on our website have been updated to reflect the changes that took effect on 25th September 2024. Our factsheets on utilities will be further updated when the utility billing provisions take effect on 11th December 2024. See **tenants.org.au/thenoticeboard/factsheets**

IMPROVED RIGHTS FOR TENANTS

Tenants across New South Wales, including those living in land lease communities, will soon have greater security of tenure. The NSW Labor Government announced in August 2024 that they will end 'no grounds' eviction notices for all tenants with residential tenancy agreements.

The reforms mean that all tenants will be provided with a genuine reason if they are being evicted. This change is the result of decades of campaigning by renters, community supporters, and housing policy experts. It will make life fairer and more stable for renters.

It is expected a Bill will be introduced into NSW Parliament in 2024 and the reforms will take effect in early 2025.

The Government proposes to adopt a model of reform applying to tenants on both fixed-term and periodic tenancy agreements. This means the changes will provide all tenants with greater stability and protection, and allow them to do basic

Continued on page 12...

Lauren and Jason are renters from the Make Renting Fair campaign, who spoke about the need to end 'no grounds' evictions. They told their story of receiving two 'no grounds' evictions in two years, being misled by unscrupulous real estate agents, and the impacts they suffered: financial costs, time spent, mental health strain, and loss of community ties. See: rentingfair.org.au/laurens-story-0

Photo courtesy of the office of the Premier.

Continued from page 11...

things like ask for repairs from the operator/ landlord, and negotiate a rent increase without fear of eviction.

The Government is proposing that under the new laws, valid reasons for eviction will include:

- Significant repairs or renovations that necessitate vacant possession, with a restriction on relisting the property for at least four weeks.
- A change in the use of the property, such as converting it from a rental home to another type of accommodation or from residential to commercial use.
- The owner or their family intends to move into the property.
- The property is being sold or offered for sale with vacant possession.

These reasons are in addition to existing eviction provisions that allow operator/landlords to end an agreement for breach for non payment of rent, other breaches, hardship, death of tenant, and uninhabitability.

The success of the reforms will hinge on good implementation. One critical aspect of this is the notice periods provided for the proposed new reasons. Another is the evidence requirements for operator/ landlords seeking to terminate. There must be robust mechanisms for compliance and enforcement. The NSW Civil and Administrative Tribunal (NCAT) should be given the discretion to decide whether eviction is fair and reasonable in each case.

For the latest on these reforms subscribe to our email newsletters, *Tenant News* and *Outasite Lite* and see our online information at **tenants.org.au/resource/law-change**

"No-grounds evictions result in housing insecurity, financial strain, and emotional distress. Ending no-grounds evictions is a critical step in ensuring that renters can feel secure in their homes without the constant fear of eviction. This is a win for renters' rights in NSW."

– Leo Patterson Ross, Tenants' Union CEO, speaking to media and supporters outside NSW Parliament on the announcement of the eviction reforms.

OPERATOR ETHICS UNDER SCRUTINY

By Eloise Parrab, Land Lease Communities Officer at the Tenants' Union of NSW

An ABC 7.30 program report which aired in July has generated quite a lot of interest from residents. The program focused on Lifestyle Communities, a residential land lease community (RLLC) operator in Victoria, but residents in communities in NSW also know all too well the power imbalance between operators and residents in RLLC. You can read more about the report at https://www.abc.net.au/news/2024-07-15/lifestyle-communities-faces-challenge-over-land-lease-exit-fees/104091890

The impact of the media coverage highlighting the practices of Lifestyle Communities has had a significant impact on the company's share market value – losing $200 billion in the days after the report. This should be a salient lesson for other operators working in this industry.

The land lease communities industry across Australia is estimated to be valued at $12 billion. This industry is likely to only increase its rapid growth driven by increasing housing unaffordability and our ageing population.

The Tenants' Union hears stories every week from residents who are being bullied and intimidated by operators in NSW. Excessive site fee increases are also a common thread across the state.

The main concern highlighted in the ABC 7.30 program was the very high exit fees charged by Lifestyle Communities when a home owner sells their home and moves out of the community. In NSW one of the amendments to the *Residential (Land Lease) Communities Act 2013* (RLLC Act) prohibits entry and exit fees in any new site agreements signed after 24th September 2024. Site agreements that currently have entry and exit fees are still valid. These fees do not appear to be a popular business practice in NSW, although entry and exit fees are one of the options under voluntary sharing arrangements (VSA) in NSW. The 5 year Statutory Review of the RLLC Act report noted when looking at the current provisions around VSA: *"the review accepts that some of the current provisions, if applied in certain ways, could risk harm to new residents entering the sector, or act as a barrier to entry."*

The Victorian Government has announced a review into the legislation governing land lease communities in their State and we hope that they might also come to the same conclusion as NSW in seeing these exit fees as a risk of harm to residents.

The exit fees charged by Lifestyle Communities generate $13 million a year. Which must make these fees a very attractive practice to the company's Board of Directors. This will now need to be weighed up with the reputation damage that has occurred as a result of the

Continued on page 14...

The Tenants' Union hears stories every week from residents who are being bullied and intimidated by operators in NSW. Excessive site fee increases are also a common thread across the state.

Continued from page 13...

spotlight being shone on their business practices. The 7.30 report also looked at one of Lifestyle Communities institutional investors AustralianSuper who also have a seat on the companies Board. They asked a very important question: how does their responsible investment policy sit with a company who has now been accused of gouging their residents?

Lifestyle Communities do not operate any RLLC in NSW. In our state we have an industry that is increasingly dominated by large companies including Ingenia, Hometown, Stockland, Mirvac, Hometown and Hampshire just to name a few.

In our last *Outasite* we outlined the problems facing some residents of Sunnylake Shores, an Ingenia community in NSW (available at **tenants.org.au/thenoticeboard/news/sunnylake-non-compliant-homes**) Since that edition we have been particularly contacted by residents in other Ingenia communities who are facing similar issues and are equally dismayed at the response they have received from Ingenia when they have raised their concerns.

The ABC 7.30 investigation really highlights the need for ethical decision-making within these companies. Ingenia refers to their environmental, social and governance (ESG) strategy on their website and states it *"is the driving force behind our efforts to nurture communities that positively impact the quality of life and lifestyle of thousands of people every day. Through a holistic approach, we address environmental risks, engage with social responsibilities and uphold robust governance practices."* The residents who have contacted the Tenants' Union raising concerns about the practices of Ingenia might be scratching their heads reading this statement.

Ingenia Lifestyle is primarily owned by institutional owners, at least one of whom refers to signing up to the United Nations supported Principles for Responsible Investment (PRI). The PRI focus is on sustainable investment by incorporating environmental, social and governance issues when making investment decisions and influencing companies.

The current Chairman of the Ingenia Communities Board (part of the Ingenia Lifestyle group) is particularly well placed to have a very thorough understanding of issues faced by and the needs of residents of RLLC as he also holds the position of a current director of COTA Australia. COTA is the peak policy development and advocacy organisation for older Australians. It is important to note that older Australians make up the majority of residents living in RLLC and are directly impacted by operator business practices in how they operate their communities. We hope that in his role as Chairman of Ingenia he can ensure that the needs of residents are a key factor in the decisions being made in the boardroom.

All operators of RLLC and their boards should be mindful that it is the residents of their communities who buy the homes they sell and pay the weekly site fees which enable them to return a profit to their investors. Whether it's ESG, PRI or any other route, incorporating ethics into the decision-making of operators is important to ensure that the interests and needs of residents are not forgotten in the drive to return bigger profits. The Ethics Centre in their Ethics in the Boardroom guide for Directors makes the point *"Ethics both informs the law and goes beyond its limits. For the most part, law sets boundaries for what may or must be done. Ethics concerns what should be done – even if not required or prohibited by law…Whether or not to approach or cross the limits of the legal 'envelope' of possibilities is an ethical question. The fact that something can be done does not mean that it should be done."*

"Whether or not to approach or cross the limits of the legal 'envelope' of possibilities is an ethical question. The fact that something can be done does not mean that it should be done."

GUBU – GROTESQUE, UNBELIEVABLE, BIZARRE & UNPRECEDENTED

By Paul Smyth, Land Lease Communities Solicitor at the Tenants' Union of NSW

In this column we invite you to share grotesque, unbelievable, bizarre and unprecedented (GUBU) goings-on in land lease communities in NSW.

Unconscionable operator conduct

This story concerns an elderly couple who are existing permanent residents and home owners living in their home in a residential land lease community located on the far south coast of NSW. The home owners raised some concerns with the operator after receiving a notice of site fee increase that made reference to their annual holiday van... they do not have a holiday van on site. The home owners became even more concerned with the response they later received from the operator and community manager.

By way of background, it's important to note that there was no written agreement between the parties. The home owners had asked the previous operator for a written agreement during December 2015 when they purchased their home on site from the operator who was also the vendor of the dwelling. The operator promised to enter into a written agreement but ultimately no written agreement was ever signed by the home owners and the operator.
The residential site is clearly designated under a Bega Valley Shire Council s68 *Local Government Act 1993* approval to operate as a long-term site not a short term site. So there's no legal impediment to the nature of their occupation in the home i.e. as permanent residents.

The current operator purchased the community about two years ago. To alleviate the home owners' concerns the operator offered them security of tenure. However, the operator drew up a Sale Agreement and, in a cover letter with the proposed Deed of Sale, the operator asserted that the home owners had purchased an 'annual dwelling' and accordingly claimed the home owners were covered under the *Holiday Parks (Long-term Casual Occupation) Act 2002*.

The operator offered less than 25% of the original purchase price to the home owners for their home. The Sale Agreement said that, if the purchase was completed, "in return the park owner agrees to provide you with security of tenure by entering into a standard lease agreement to rent out the dwelling and occupy the dwelling as your residence". The initial rent proposed represented an increase of more than 110% per week. The operator also said in correspondence that it *"..hopes this offer provides some certainty to your situation"*. A residential tenancy agreement provides no such security of tenure. We at the Tenants' Union are unfortunately not as astonished as the home owners to see such brazen behaviour by the operator – effectively trying to asset strip vulnerable elderly people and leave them in a detrimental legal position regarding their security of tenure.

Thankfully the home owners obtained legal advice and commenced Tribunal proceedings. The good news is the operator finally provided a compliant written site agreement to the home owners.

STAY IN TOUCH

We hope you will stay in touch – just scan the QR code to the right with your phone, then enter your email address, and **please make sure to tick 'Outasite Lite for Land Lease Communities,'** then tap Subscribe. Alternatively, you can visit our website, or fill in the form below, or call us on 02 8117 3700. We would also love you to spread the word among fellow land lease community residents.

Subscribe – it's free!

- ☐ Send me *Outasite* print magazine (1-2 times per year). If yes, how many copies (please circle): 1 3 5 10 20 50 100 more
- ☐ Send me *Outasite Lite* email news (sent once every few months)
- ☐ Send me the general *Tenant News* email (once every two months)

Name:	
Address:	
Park or organisation:	
Email:	
Phone:	

Please tick all that apply to you:

- ☐ Land lease community home owner
- ☐ Land lease community tenant
- ☐ I would like to make a donation. Please contact me.

We welcome donations, but please note that you do not need to make a donation, nor 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:

Tenants' Union of New South Wales
PO Q961
QVB Market Street
NSW 1230

GET FREE ADVICE:

Tenants' Advice & 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 & Advocacy Services

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

We regularly update *The Noticeboard* – our website for land lease communities. You can find over 20 factsheets, plus sample letters, and previous newsletters:

tenants.org.au/thenoticeboard

The Noticeboard
for land lease community residents

TENANTS' UNION
OF NEW SOUTH WALES