

Outasite Lite



Image: Illawarra land lease community

2017 IN REVIEW

With Christmas fast-approaching 2017 is coming to an end. The Residential (Land Lease) Communities Act has been operating for two years and continues to throw up familiar disputes and surprises.

The review of the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005 is still on hold. The regulation is now scheduled for automatic repeal on 1 September 2018.

In this issue of Outasite Lite we look back over the year and report on the emerging

and continuing issues for home owners in land lease communities.

SITE FEE INCREASES

It appears the mediation process is still largely succeeding with very few disputes proceeding to NCAT (NSW Civil and Administrative Tribunal). We have heard reports of one operator going against the spirit of an agreement reached in mediation but other reports have been positive.

On the negative side we are still seeing operators increasing site fees above fair

market value in new site agreements, which is disappointing. We became aware of a case recently where the site fees were over \$30 a week higher than other home owners in the community were paying.

UTILITY CHARGES

There is still a great deal of confusion, denial and misunderstanding around utility charges, in particular electricity usage charges. The Tenants' Union (TU) has seen a large number of disputes about these charges. We know of home owners who are preparing to lodge applications with NCAT, home owners who are already in the NCAT process and others whose disputes have been heard.

In the first instance these disputes are mainly about access to the operators electricity accounts. NCAT has already determined a case where the operator was ordered to provide copies of their bills to the home owner, but some operators are still unwilling to provide access.

The second part of the dispute, once the bills have been provided, is for orders regarding overcharging and the refund of overpaid amounts. NCAT recently determined two cases on this point and at least one of those is now under appeal. Once this case has been decided by the NCAT Appeal Panel we will have greater clarity about electricity usage charges, which will hopefully lead to fewer disputes.

SALE OF HOMES

The TU has heard fewer reports this year about interference by operators in the sale of homes, which is positive. We hope this continues into the coming years.

AGREEMENTS

We are continuing to see home owners without written agreements being told that they are casual occupants when they are living in the community, and in some cases have done so for a number of years. Disputes

about agreements are often protracted and ultimately tend to be determined by NCAT.

REPAIRS AND MAINTENANCE

As we recently reported in Outasite, site maintenance has become a big issue this year. The disputes have risen mainly due to the lack of clarity in the Act regarding responsibility for maintaining the site. It is our view that the operator is responsible, but some operators have seized on this lack of clarity and attempted to pass on significant costs to home owners.

We also recently became aware of a situation where the operator owns a structure on a site that the home owner has exclusive use of. The structure is in need of repair but the Act does not have a provision regarding repairs, except to common areas. The home owner has requested repairs but if the operator refuses, we are concerned that NCAT may not have the power to make orders.

LOCAL GOVERNMENT REGULATIONS

Compliance, or non-compliance with local government regulations continues to be an area of dispute between home owners and operators. Most commonly disputes arise when a home is to be sold and the operator raises compliance issues. This year we have also seen alleged non-compliance used in an attempt to terminate several site agreements in a community.

These cases went to NCAT and all were decided in favour of the home owners. The operators who were interfering in the sale of homes were ordered to stop and the applications for termination were dismissed.

Moving forward into 2018 the Tenants' Union will be working with resident representatives to raise our concerns with the Government. We will be seeking solutions to the issues we have identified so that the rights of home owners are not undermined by omissions from, or a lack of clarity in the Act.

ADVOCATE TOOLKIT

At the request of members of the Residential Parks Forum the Tenants' Union has produced a Toolkit for advocates. The Toolkit is designed for resident advocates who assist residents in disputes with their operator.

The Toolkit provides guidance on the role of an advocate, the law, resources, and support. It also contains guides to the NSW Civil and Administrative Tribunal (NCAT), searching law websites and useful forms such as a client agreement.

The Advocate Toolkit is in plain language and easy to follow. If you advocate for residents in your community or communities in your area and would like a copy of the Toolkit call or email Julie.

Phone: 8117 3700

Email: julie.lee@tenantsunion.org.au

NEW FACTSHEET

We have also recently developed a new factsheet on deceased estates. This factsheet covers the rights of a person who inherits a home in a land lease community, proof of ownership issues and probate.

We know that this is a sensitive but important subject because people who are dealing with loss also have to deal with property and in land lease communities this can be confusing. The factsheet provides valuable guidance. It will shortly be available to view and download from our website: thenoticeboard.org.au.

**The Tenants' Union wishes you all a safe festive season.
We look forward to engaging with you again next year.**

Get advice from your local service:

NSW Tenants Advice and Advocacy Services

Eastern Sydney	9386 9147
Inner Sydney	9698 5975
Inner West Sydney	9559 2899
Northern Sydney	8198 8650
Southern Sydney	9787 4679
South Western Sydney	4628 1678
Western Sydney	8833 0933
Blue Mountains	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	1800 642 609

Aboriginal services

Greater Sydney	9833 3314
Western NSW	6884 0969
Southern NSW	1800 672 185
Northern NSW	1800 248 913



The Tenants' Union of NSW is:

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

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We also invite contributions.

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