

Outasite Lite



Residential Parks Forum members (left to right) Charles Dalgleish, Don Rose, Julie Lee, Mary Preston, Sandy Gilbert, Jean MacLean, Di Evans, Ian Finlayson, Jock Plimmer, Graham Byrne, Peter Reberger (see page 3)

A BRIGHTER FUTURE?

We are approaching the end of another year and have reached the third anniversary of the commencement of the *Residential (Land Lease) Communities Act 2013* (the Act). Looking back over 2018 it is difficult to see past electricity usage charges because without doubt that has been the biggest issue of the year.

When we entered 2018 the Tenants' Union of NSW (TU) had been working on electricity usage charges for 18 months however this year we saw the biggest developments. Electricity usage charges are not fully settled but as we approach 2019 we are hopeful that

home owners on embedded networks are in for a brighter future.

When we published 'Outasite' in July 2018 the decision of the NCAT Appeal Panel in *Reckless v Silva Portfolios Pty Ltd* (Reckless) had been appealed to the Supreme Court of NSW. The case was heard on 17 August and the decision handed down on 4 September. Justice Davies dismissed the operator's appeal and agreed with the Appeal Panel that section 77(3) of the *Residential (Land Lease) Communities Act* means an operator cannot charge more for the use of electricity than their supplier charges them.

This time the operator did not appeal and the meaning of section 77(3) is therefore settled. What is not settled is how a home owner's usage charges should be calculated.

USAGE CHARGES

The calculation of charges remains an issue for two reasons: the first is that most operators have smart, or time of use meters, and most home owners do not. Secondly, the commercial bill received by an operator contains charges that are not usage charges, for example, environmental, regulated and network charges.

Operators argue that all of the charges on their bill are related to usage and can be passed on to home owners as a usage charge. The Tenants' Union disagrees. Our view is that only 'energy charges' are usage charges and any calculation should be derived from those charges alone. To date NCAT has handed down four decisions on this point and all are in line with our view.

In *Marsh v The Pines Resort Management Pty Ltd t/as Gateway Lifestyle The Pines* [2018] NCAT found that the amounts set out under the heading energy charges were the only amounts the operator could recover from the applicant for usage charges. The other charges, although some were calculated by reference to consumption, were shown not to be for "the quantity of the service supplied to, or used at the residential site".

In *Bavin and Raczkowski v Parklea Operations Pty Ltd t/as Gateway Lifestyle Stanhope Gardens* [2018], *Myles v Holiday Retreats Australia Pty Ltd t/as Rivergum Holiday Park* [2018] and another unreported decision NCAT also determined that only energy charges are usage charges. In *Myles* NCAT found the other charges on the operator's account "are charges covered by the daily service availability charge".

In *Marsh*, NCAT found that the most appropriate way to calculate the charges was an averaging method. In *Myles* the finding was that the peak rate was "most favourable to the operator".

RECKLESS

A number of operators have told home owners that they cannot change the way they charge for electricity usage until the case involving Margaret Reckless and Silva Portfolios Pty Ltd has been finalised. That is untrue.

The Supreme Court decision has made it very clear that operators cannot charge more than they are charged for electricity usage and operators who have continued to charge the standing offer rate are in breach of the Act.

Further, when *Reckless* is decided it will be no more binding on other Tribunal members than *Marsh*, *Bavin* or *Myles*. Operators who are claiming *Reckless* has to be finalised before they can change the way they charge either do not understand the law or are intentionally misleading home owners.

Reckless is set down for hearing on 6 December but it's likely disputes about electricity usage charges will continue into 2019. The TU will continue to work with and for home owners to achieve an equitable outcome and we hope to get there sooner rather than later.

SITE FEES AND SITE FEE INCREASES

These two issues are always on our radar and 2018 has been no exception. The two major concerns home owners have raised are the complexity and apparent unfairness of fixed method increases in new site agreements and site fees in new site agreements being in excess of fair market value. We are working with home owners and residents groups to try to improve outcomes for home owners in both areas.

OPERATOR CONDUCT

Another key issue for the TU this year has been operator conduct. Many home owners have contacted us complaining about operators not understanding the law, not enforcing community rules fairly, interfering

in home sales, harassing and abusing home owners and generally flouting the law. It is a very frustrating problem for home owners and the TU because there doesn't appear to be a remedy.

It is true that the RLLC Act prohibits certain behaviour, for example interference with the sale of a home. The Act also provides rules of conduct for operators however enforcement is the problem. When an operator breaches the rules a complaint can be made to NSW Fair Trading but there is little they can do unless there is clear evidence and the Act provides for a penalty. The TU would like to see both better enforcement options in the legislation and regulatory action that will lead to improved operator conduct.

LOCAL GOVERNMENT REGULATIONS

Issues around compliance with the Local Government Regulations come up regularly but 2018 has been a very busy year. Compliance issues are complex because they involve local councils and disputes cannot generally be resolved at NCAT. The current Regulation was due for review in 2015 but the NSW Government has once again postponed it and allowed the current regulation to carry over. In our view it is something that needs to occur urgently to provide operators and home owners with a modern regulation that is easy to understand, and provides councils with clear enforcement options and obligations.

OMBUDSMAN

To finish our review of 2018 on what may be apposite note, in October NSW Labor promised to establish an ombudsman to protect the 56,000 retirement village and 35,000 land lease community residents if it wins the next election. As well as resolving disputes the ombudsman will have a role in identifying systemic problems and reporting those to the NSW Parliament.

Many home owners and residents groups have been calling for an ombudsman for some time – will 2019 bring them their wish? We will have to wait and see.

FORUM TURNS 20!

On 20 November members of the Residential Parks Forum came together to celebrate the Forum's 20th anniversary. This is a significant milestone for the Forum, a model of cooperation and collaboration that has stood the test of time.

Di Evans is a founding and current member and she was able to join in the November celebrations and provide a historical background about the creation of the Forum.

Back in the early 90s the NSW Government funded the first residential parks resource service as part of the Tenants Advice and Advocacy Program. The Park Occupants Information Service (POIS) was based at Toukley with a brief to provide a state wide service for park residents. However, because of the number of parks in the area the workers became overwhelmed by local issues and they were unable to assist residents in other areas.

To overcome the problems at Toukley the government decided the residential parks service should move to Sydney where it would be better able to service the whole state. In 1996 POIS was relocated to the city and renamed the Park and Village Service (PAVS). Two new workers were employed and one of them was Di Evans.

The new workers set about producing resources and reaching out to park residents across the state. They were concerned about being properly representative and that is when they came up with the idea of a forum to bring people together from different areas. The Residential Parks Forum was established and the first meeting was held in 1998.

PAVS continued to convene the Forum until 2013 when the government decided not to continue funding a specialist resource service for parks. In 2014, the Tenants' Union received some additional funding for residential parks work and took over responsibility for ensuring the continuance of the Forum.

The strength of the Forum comes from the members and many of the founders are still active members. This speaks not only to the exceptional commitment of those advocates but also to the relevance and importance of the Forum in the residential park/land lease community landscape. Members freely share information and work collectively towards outcomes that benefit all land lease community residents.

As well as specialist staff from the TU Forum members are generally drawn from Tenants Advice and Advocacy Services, state wide or regional residents groups and residents committees. The various members bring a range of experience and expertise about land lease community living and the law.

The TU recognises the importance of being directly connected to land lease community residents and of supporting the valuable work of volunteer advocates. Through Forum meetings and members we receive regular updates about what is happening in communities and this informs our policy and law reform work. In return we are able to provide volunteers with resources and support to assist them with their advocacy work on behalf of residents.

As we move into 2019 we are very pleased to see Forum membership on the increase, which revitalises those of us who have been around for while! We look forward to continuing our collaboration with members old and new and to a very productive year ahead.



Free advice from local services:

Tenants Advice and Advocacy Services

Eastern Sydney	9386 9147
Inner Sydney	9698 5975
Inner West Sydney	9559 2899
Northern Sydney	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	1300 483 786

Aboriginal Tenants Advice and Advocacy Services

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



Phone: 02 8117 3700

Email: contact@tenantsunion.org.au

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

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