



“In acting to support the more vulnerable members of her community, Pam has demonstrated extraordinary spirit.”

*– Jodie Harrison,
Member for Charlestown,
in the NSW Parliament*

Pam Meatheringham, The Sanctuary, Redhead

COMMUNITY RECOGNITION

Resident Advocate and Residential Land Lease Communities Forum Member Pam Meatheringham was recognised by Jodie Harrison, Member for Charlestown, in the NSW Parliament on 4 August 2020.

In the Community Recognition Statement Ms Jodie Harrison said “I recognise Mrs Pam Meatheringham, a hardworking local of the Charlestown electorate. Pam lives at The Sanctuary in Redhead and has been a tireless land lease community advocate for the residents. Pam serves as secretary and treasurer of the Residential Parks Homeowners Association NSW and works with three other land lease parks in the local area.

“Pam has represented residents faced with eviction and she works closely with the Tenants’ Union of New South Wales in

Newcastle and Sydney. Pam was commended to me by Anne Davy, who tells me that Pam has served as an advocate for about 12 years and has argued many times before the NSW Civil and Administrative Tribunal. In a time of growing housing uncertainty, Pam’s advocacy for tenants is increasingly important.

“Pam is passionate about residents’ rights and I thank her for her hard work. Pam, is one of many in the Charlestown electorate who work to improve our area. In acting to support the more vulnerable members of her community, Pam has demonstrated extraordinary spirit that makes me so proud to be the member for Charlestown.”

Congratulations to Pam from everyone at the Tenants’ Union and members of the Residential Land Lease Communities Forum. The recognition is well deserved.

APPEAL AFOOT



Bob Morris, Kincumber Nautical Village

In issue 6 of Outasite (August 2020) we wrote about fixed method site fee increases and mentioned three communities where those methods were being challenged by home owners. Home owners from the Palm Lake Resorts are still awaiting a hearing before the NSW Civil and Administrative Tribunal Appeal Panel, however the Tribunal handed down the decision in *Morris and Ors v Kincumber Nautical Village* on 3 September.

Kincumber Nautical Village

The fixed method used by the operator of Kincumber Nautical Village (KNV) comprises multiple components and is used in many communities across the State, sometimes with a slight variation in the components. Home owners at KNV challenged the method on the basis it does not comply with the *Residential (Land Lease) Communities Act 2013* (RLLC Act), that it is uncertain, and that it is an unfair term under Australian Consumer Law.

The RLLC Act provides that if site fees are to be increased by a fixed method there can be

only one method and it must be either fixed amounts or a fixed calculation (for example changes in the CPI or a percentage). The method at KNV is this:

Site fees shall be increased by the sum of:-

1. Any positive change in the CPI; plus
2. 3.75%; plus
3. A proportional share of any increase in costs incurred by the Operator since the calculation of the last site fee increase calculation for the following:-
 - electricity and water (net of any amount that has been recouped from Home Owners); plus
 - gas; plus
 - communications; plus
 - rates; plus
 - any other government (Federal, State or Local) charges or taxes other than company tax. Plus
4. The effect of any change in the rate of GST or similar tax that is included in the site fees

Rounded up to the nearest dollar.

The decision

At the hearing the operator argued the Tribunal did not have jurisdiction to hear the dispute because S66 (7) of the RLLC Act prevents a home owner from challenging the terms of a site agreement fixing the method of future increases. The applicants argued that the Tribunal did have jurisdiction because the method in their agreements was not a fixed method. The Tribunal agreed with the home owners.

The Tribunal went on to find that the method was more than one method and not a fixed method. The Tribunal determined that the method resulting in the lowest increase should apply and that may vary from year to year. The Tribunal said:

"I am satisfied that the site agreement, by providing a calculation which includes more than one fixed method of increasing the site fees, breaches the RLLC Act. The Operator must apply only one of the fixed methods in the site agreement, being the fixed method which produces the lowest increase. The Operator must not increase the site fees by more than one fixed method."

Uncertain term

In considering whether the term of the site agreement setting out the fixed method was uncertain under contract law the Tribunal said:

"I am satisfied that the element of the site fee increase term which requires the fees to be increased taking into account the effect of any changes in rate of GST is uncertain. There is no way of knowing what this means or how it would be calculated. The Operator says this component of the calculation does no more than pass on increased taxes and government charges, but those increases are already provided for in the proportional increases in the Operator's costs under the third component of the calculation."

I am not satisfied that this finding makes the whole of the term uncertain, as for the

most part, this part of the term simply will not apply."

Unfair term

In order to be able to make a finding that a term of a contract is an unfair term the Tribunal has to be satisfied about a number of factors including that the contract is a standard form contract. The Tribunal found that some terms of a site agreement are negotiable and a site agreement is therefore not a standard form contract.

However, the Tribunal went on to say *"If I am wrong, and the provisions do apply, I am satisfied that the clause is an unfair term."*

The outcome is a positive one for home owners at KNV and in other communities where this or a similar method is used. However, the operator has appealed the decision and is asking the Tribunal Appeal Panel to transfer the dispute (questions of law grounds) to the Supreme Court of NSW.

REVIEW UPDATE

The Government has advised that the Discussion Paper on the review of the *Residential (Land Lease) Communities Act 2013* is planned for release at the end of November 2020.

The TU has received a number of questions from home owners and resident committees interested in participating in the review. The Discussion Paper will include details of when, where and how to send your submissions.

Keep an eye on our website:
www.tenants.org.au/thenoticeboard for updates and information about the review.

And don't forget, if you haven't completed our survey on the RLLC Act there is still an opportunity to do so. You will find it here:
www.tenants.org.au/thenoticeboard/survey

HIGH COURT APPLICATION

In Outasite 6 we also reported on *Commissioner for Fair Trading v Jonval Builders Pty Ltd, Hacienda Caravan Park Pty Ltd and John Allan Willmott* [2019] NSWSC 1893. On 29 October 2020 Jonval Builders and Hacienda applied for special leave to appeal to the High Court of Australia.

ADVICE LINE EXTENSION

The TU operates an advice line every Monday to provide basic advice and information to renters, including land lease community residents. We have expanded that service to better assist people affected by bushfires and those impacted by the COVID-19 pandemic.

The advice line now operates Monday to Friday 10am – 1pm and 2pm – 5pm. Phone: **1800 251 101**.

Priority will be given to land lease community residents and other renters in bushfire impacted areas and those affected by COVID-19.

HOLIDAY PERIOD CLOSURE

The Tenants' Union will close for 12 days over the holiday period. Our last day will be Wednesday 23 December 2020 and we start up again on Tuesday 5 January. As usual, we will have the advice line operating during the closure period. It will operate 10am - 1pm and 2pm - 5pm on the following dates:

Thursday 24 December 2020
Tuesday 29 December 2020
Wednesday 30 December 2020
Thursday 31 December 2020
Monday 4 January 2021

Free advice from local services:

Tenants Advice and Advocacy Services

Eastern Sydney	9386 9147
Inner Sydney	9698 5975
Inner West Sydney	9559 2899
Northern Sydney	9559 2899
Southern Sydney	9787 4679
South Western Sydney	4628 1678
Western Sydney	8833 0933
Blue Mountains	4704 0201
Central Coast	4353 5515
Hunter	4969 7666
Illawarra South Coast	4274 3475
Mid Coast	6583 9866
Northern Rivers	6621 1022
North Western NSW	1800 836 268
South Western NSW	1300 483 786

Aboriginal Tenants Advice and Advocacy Services

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



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