



New South Wales

Residential (Land Lease) Communities Bill 2013

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to improve the governance of residential communities (such as caravan parks and manufactured home estates),
- (b) to set out particular rights and obligations of operators of residential communities and home owners in residential communities,
- (c) to enable prospective home owners to make informed choices,
- (d) to establish procedures for resolving disputes between operators and home owners,
- (e) to protect home owners from bullying, intimidation and unfair business practices,
- (f) to encourage the continued growth and viability of residential communities in the State.

The Bill repeals and replaces the *Residential Parks Act 1998*.

Outline of provisions

Part 1 Preliminary

Part 1 (clauses 1–4) of the proposed Act provides for the following matters:

- (a) the name of the proposed Act,
- (b) the commencement of the proposed Act on a day or days to be appointed by proclamation,
- (c) the meaning of words and expressions used in the proposed Act, including the following.

The term *Commissioner* is defined to mean the Commissioner for Fair Trading, Department of Finance and Services, or if no such position exists, the Director-General of the Department of Finance and Services.

The term *community* or *residential community* is defined to mean an area of land that is comprised of or includes sites on which homes are, or can be, placed, installed or erected for use as residences by individuals, being land that is occupied or made available for occupation by those individuals under an agreement or arrangement in the nature of a tenancy, and includes any common areas made available for use by those individuals under that agreement or arrangement.

The term *home* is defined to mean:

- (a) any caravan or other van or other portable device (whether on wheels or not) other than a tent, used for human habitation, or
- (b) a manufactured home as defined in the *Local Government Act 1993*, or
- (c) any conveyance, structure or thing of a class or description prescribed by the regulations for the purposes of the definition.

The term *site agreement* is defined to mean an agreement under which the operator of a community grants to another person for value a right of occupation of a residential site in the community.

Part 2 Application of Act

Part 2 (clauses 5–13) of the proposed Act provides for the following matters:

- (a) the communities and site agreements to which the proposed Act is to apply,
- (b) the occupation agreements, arrangements and places to which the proposed Act does not apply,
- (c) that the proposed Act is to bind the Crown,
- (d) that the regulations may provide for provisions of the proposed Act not to apply to specified communities or agreements.

Part 3 Registration of communities

Part 3 (clauses 14–20) of the proposed Act provides for the following matters:

- (a) the Commissioner will be required to keep a Register of Communities (the *Register*),
- (b) the Commissioner will be required to record in the Register in relation to each community certain particulars, including the particulars notified to the Commissioner under the proposed Part and particulars of any enforcement action or disciplinary action taken in respect of the community, its operator or any of its staff,
- (c) the operator of a community will be required to notify the Commissioner of certain particulars for inclusion in the Register and will be guilty of an offence if the operator fails to do so,
- (d) the Commissioner will be required to arrange for certain limited information about communities recorded in the Register to be made available to the public.

Part 4 Entering into site agreements

Division 1 Disclosure of information

Division 1 of Part 4 (clauses 21–25) of the proposed Act provides for the following matters:

- (a) that the operator of a community will be required to provide a person with a disclosure statement approved by the Commissioner before the operator enters into a site agreement with that person,

- (b) the right of a person who enters into a site agreement with the operator of a community to rescind the agreement, and any collateral agreement, during a cooling-off period for the site agreement,
- (c) that it will be an offence for the operator of a community, or a person acting on behalf of the operator, to induce a person to enter into a site agreement by a statement, representation or promise that the operator or person acting on behalf of the operator knows is false, misleading or deceptive.

Division 2 Site agreements

Division 2 of Part 4 (clauses 26–34) of the proposed Act provides for the following matters:

- (a) that the operator of a community will be required to ensure that site agreements for a site in the community are in writing,
- (b) that the operator of a community will be required to ensure that the site agreement contains any terms required to be included by the proposed Act and does not contain any prohibited terms and will be guilty of an offence if the operator fails to do so,
- (c) that regulations may be made prescribing a standard form of site agreement and prohibiting specified terms in a site agreement,
- (d) the duration of site agreements.

Part 5 Rights and obligations

Division 1 Basic responsibilities

Division 1 of Part 5 (clauses 35–53) of the proposed Act provides for the following matters:

- (a) the basic responsibilities of home owners, including the responsibility to use the residential site only as a place of residence except so far as the operator of a community consents to its use for another or additional purpose,
- (b) the specific responsibilities of home owners, including the following:
 - (i) not to make any alterations to the exterior of the home (other than painting or minor repairs) or add a fixture to the residential site or to replace the home with another home,
 - (ii) not to allow, except with the written consent of the operator of a community or unless the agreement otherwise provides, additional persons to occupy the residential site,
- (c) the basic responsibilities of the operator of a community, including the responsibility to ensure that the community is reasonably safe and secure and to take reasonable steps to ensure that the home owners always have access to their residential sites and have reasonable access to the community's common areas,
- (d) the specific responsibilities of the operators of a community, including the following:
 - (i) not to unreasonably restrict or interfere with a home owner's right to quiet enjoyment of the residential site and the community's common areas,
 - (ii) to take all reasonable steps to ensure that tradespersons and service providers have access to a home in the community to provide goods and services arranged by a resident of the home,
 - (iii) to take all reasonable steps to ensure that emergency and home care service vehicles have access to homes in the community at all times,
 - (iv) not to unreasonably withhold or refuse a home owner consent to allow additional persons to occupy the residential site,
 - (v) to establish and maintain at the community reasonably accessible and reasonably secure mail facilities for the home owners,

- (vi) to maintain all facilities and services required by the development consent for the community to be available for the life of the community,
- (e) the specific rights of home owners, including the following:
 - (i) to enter into a tenancy agreement for, or otherwise sub-let, the residential site or the home located on it or assign the site agreement if it is for a fixed term that has not expired,
 - (ii) to appoint a person as the home owner's agent for the purpose of receiving notices or other documents to be given to the home owner under a site agreement or under the proposed Act,
- (f) the right of home owners to agree to pay a special levy to enable the operator of a community to provide a specified new facility or service for the community or to make a specified improvement to the community, and the recovery and use of that special levy by the operator.

Division 2 Conduct and education of operators

Division 2 of Part 5 (clauses 54–56) of the proposed Act provides for the following matters:

- (a) the rules of conduct to be observed by the operator of a community in the course of the carrying on of business or the exercise of functions as operator,
- (b) that the operator of a community will be required to undertake an education briefing approved by the Commissioner,
- (c) that the operator of a community or a close associate of the operator must not engage in retaliatory conduct against a home owner if the conduct reasonably appears to have taken place wholly or partly in consequence of certain actions taken by the home owner.

Part 6 Site fees

Division 1 Payment of site fees

Division 1 of Part 6 (clauses 57–62) of the proposed Act provides for the following matters:

- (a) the manner in which site fees are to be paid by home owners under site agreements,
- (b) that any person who receives payment of site fees in person must give the person making the payment a receipt of the payment,
- (c) that the operator of a community must keep, or cause to be kept, a record showing site fees received under site agreements for each community,
- (d) the accrual and apportionment of site fees.

Division 2 Reduction of site fees

Division 2 of Part 6 (clauses 63 and 64) of the proposed Act provides for the following matters:

- (a) the manner in which site fees under a site agreement may be reduced,
- (b) that a home owner may apply to the Consumer, Trader and Tenancy Tribunal (the *Tribunal*) for an order that the site fees payable under the agreement be reduced by an amount the Tribunal considers appropriate.

Division 3 Increase of site fees

Division 3 of Part 6 (clauses 65–68) of the proposed Act provides for the following matters:

- (a) that site fees under a site agreement may be increased either according to a fixed method or by notice otherwise than by a fixed method,
- (b) that a home owner may apply to the Tribunal for an order directing the refund of overpaid site fees on the ground that the increase of site fees did not comply with a requirement of the proposed Division.

Division 4 Compulsory mediation about increases in site fees by notice

Division 4 of Part 6 (clause 69) of the proposed Act provides for the following matters:

- (a) that home owners may collectively object to an increase of site fees by notice (otherwise than by fixed method), other than an increase of site fees objected to solely on the ground that the increase is substantially excessive when compared with increases for similar residential sites in the community, by lodging an application for mediation under Division 2 of Part 12 of the proposed Act,
- (b) that parties to such a mediation must use reasonable endeavours to participate in and finalise mediation before the day on and from which the increased site fees are payable.

Division 5 Applications to Tribunal about increases in site fees by notice

Division 5 of Part 6 (clauses 70–75) of the proposed Act provides for the following matters:

- (a) that one or more home owners affected by increases in site fees by notice (otherwise than by fixed method) may apply to the Tribunal if the home owners object to an increase in site fees and if mediation was unsuccessful,
- (b) that a home owner may apply to the Tribunal if the home owner objects to an increase of site fees on the ground that the increase is substantially excessive when compared with increases for similar residential sites in the community,
- (c) the factors that the Tribunal may have regard to when deciding whether to make an order under this Division.

Part 7 Utility and other charges

Part 7 (clauses 76–85) of the proposed Act provides for the following matters:

- (a) the fees, charges and deposits that may be required or received by the operator of a community from a home owner in connection with the occupation of a residential site, or the use of any of the facilities of a community,
- (b) the utility charges payable to the operator of a community for the use by the home owner of a utility at the residential site,
- (c) that the operator of a community may charge fees for late payment or a dishonoured payment and may apply to the Tribunal for an order requiring a home owner to pay the unpaid charge or fee (or a specified part of it) within a specified period,
- (d) that the operator of a community must give a home owner a utility costs notice in certain circumstances,
- (e) that a home owner may apply to the Tribunal for a review of the utility costs notice.

Part 8 Community rules

Part 8 (clauses 86–95) of the proposed Act provides for the following matters:

- (a) community rules, being written rules relating to the use, enjoyment, control and management of a community,
- (b) the procedure for making or amending community rules,
- (c) prohibited types of community rules,
- (d) that the operator of a community may apply to the Tribunal for an order requiring compliance with a community rule within a specified period or terminating the resident's site agreement or tenancy agreement,
- (e) that a resident of a community may apply to the Tribunal for an order requiring compliance with a community rule within a specified period,

- (f) that a resident or operator of a community may apply to the Tribunal if there is a dispute about whether a community rule complies with the proposed Part or the procedure for making a community rule has been correctly followed.

Part 9 Residents committees

Part 9 (clauses 96–103) of the proposed Act provides for the following matters:

- (a) the establishment of a residents committee,
- (b) the functions, constitution and procedure of a residents committee for a community.

Part 10 Sale of homes

Division 1 Introduction

Division 1 of Part 10 (clause 104) of the proposed Act applies the proposed Part to a home owned by a home owner or former home owner that is located on a residential site in a community.

Division 2 Rights and obligations regarding sale of homes

Division 2 of Part 10 (clauses 105–111) of the proposed Act provides for the following matters:

- (a) that a home owner is entitled to sell the home while the home is located on the residential site and display a “for sale” sign in or on the home without interference caused or permitted by the operator of a community,
- (b) that an operator must not interfere with a home owner’s right to sell the home,
- (c) that a home owner is required to ensure that a genuine prospective home owner of the home is advised to contact the operator of the community about the proposed sale before a contract for the sale of the home is entered into, unless the home owner is aware that contact has already been made,
- (d) the circumstances in and terms on which the operator of a community is required to enter into a new site agreement if a purchaser or prospective home owner under a sale contract requests the operator of a community to do so,
- (e) voluntary sharing arrangements between a home owner and operator.

Division 3 Selling agents

Division 3 of Part 10 (clauses 112–114) of the proposed Act provides for the following matters:

- (a) that a home owner may appoint the operator of a community or another person as a selling agent to sell, or to negotiate the sale of, the home,
- (b) the circumstances in which a sale commission or incidental expenses are payable in connection with the sale of a home.

Division 4 Disputes

Division 4 of Part 10 (clause 115) of the proposed Act provides that a home owner, prospective home owner, operator of a community or selling agent may apply to the Tribunal for the resolution of any dispute concerning the sale of the home, the terms of the proposed site agreement or the proposed site fees.

Part 11 Termination of site agreements

Division 1 Termination generally

Division 1 of Part 11 (clauses 116–121) of the proposed Act provides for the following matters:

- (a) the circumstances in which a site agreement terminates,

- (b) the requirements for termination notices given by the home owner under a site agreement,
- (c) the requirements for termination notices given by the operator of a community under a site agreement,
- (d) the revocation of termination notices by a party,
- (e) the circumstances in which the Tribunal may make a termination notice for a site agreement even though there is a defect in the notice or the manner of service of the notice,
- (f) that a party may apply to the Tribunal to make an order resolving a dispute about a termination notice or declaring that a termination notice was or was not given in accordance with the proposed Part.

Division 2 Circumstances in which operator can initiate termination

Division 2 of Part 11 (clauses 122–129) of the proposed Act provides that the operator of a community may give a termination order to a home owner on the ground of serious misconduct, without the need for a termination notice to be given, or a termination notice to a home owner on the following grounds:

- (a) the home owner has seriously or persistently breached the site agreement,
- (b) the operator requires vacant possession of the residential site in order to comply with an obligation imposed by or under an Act to carry out works within the residential site or the community,
- (c) the community is to be closed and used by the operator or another person for a purpose other than a residential community,
- (d) there is to be a change in use of the site,
- (e) the residential site is appropriated or acquired by compulsory process,
- (f) the residential site is not lawfully useable for the purposes of a residential site,
- (g) the home owner's residential site has not been used for the past 3 years (and a further period not exceeding 3 years agreed to by the operator and the home owner) as the home owner's place of residence or another person's place of residence (but with the prior consent of the operator).

Division 3 Termination orders and possession orders

Division 3 of Part 11 (clauses 130–134) of the proposed Act provides for the following matters:

- (a) that the operator of a community may apply to the Tribunal for a termination order if vacant possession of a residential site is not given by the specified date as required by a termination notice or if an application for the order can be made under the proposed Part without the need for a termination notice,
- (b) if the Tribunal makes a termination order, it must also make an order for possession of the residential site specifying the day on which the possession order takes or took effect,
- (c) that the owner or operator of a community must not commence proceedings against a home owner in the Supreme Court, the District Court or the Local Court to obtain recovery of possession of a residential site subject to a site agreement,
- (d) that a person must not enter a residential site, or a home on a residential site, for the purposes of taking possession of the site or home before or after the end of a site agreement unless the person is acting in accordance with a warrant arising out of a possession order of the Tribunal or a writ or warrant arising out of a judgment or order of a court, the home owner has given vacant possession of the residential site or the Tribunal has made an order declaring that the home owner has abandoned the residential site,
- (e) that the operator of a community in whose favour a possession order was made may apply to the Registrar of the Tribunal to issue a warrant for possession of the residential site

concerned if the Registrar is satisfied that the order or a condition of suspension of the order has not been complied with.

Division 4 Termination and relocation

Division 4 of Part 11 (clauses 135 and 136) of the proposed Act provides for the following matters:

- (a) the relocation of a home owner under a site agreement to a different residential site by agreement between the operator of a community and the home owner,
- (b) the relocation of a home owner under a site agreement to a different residential site at the request of the operator of a community as an alternative to issuing a termination notice under this Part.

Division 5 Purchase of home by owner or operator of community

Division 5 of Part 11 (clauses 137 and 138) of the proposed Act provides for the Tribunal to assist an owner or operator of a community and a home owner to come to an agreement as to the value of the home owner's home where there is a proposed sale of the home from the home owner to the owner or operator of the community.

Division 6 Compensation for termination

Division 6 of Part 11 (clauses 139–141) of the proposed Act provides for the following matters:

- (a) the compensation payable to a home owner (in certain circumstances) if the operator of a community gives a termination notice to the home owner and the home owner decides to relocate to another community operated by a different operator,
- (b) the compensation payable to a home owner (in certain circumstances) if the operator of a community gives a termination notice to the home owner and the home owner does not want to relocate to another community or is unable to relocate to another community.

Division 7 Abandoned residential site and goods

Division 7 of Part 11 (clauses 142 and 143) of the proposed Act provides for the following matters:

- (a) that the operator of a community may apply to the Tribunal for an order declaring that a home owner abandoned a residential site on a day stated in the declaration or for possession of the residential site,
- (b) if a site agreement for a residential site is terminated, the operator of a community must apply to the Tribunal for an order giving directions as to how the home is to be dealt with if the operator reasonably believes a home on the residential site is abandoned.

Part 12 Disputes

Division 1 Resolving disputes by internal arrangements

Division 1 of Part 12 (clause 144) of the proposed Act provides that the operator of a community may establish and vary arrangements for resolving disputes arising in connection with the community.

Division 2 Mediation

Division 2 of Part 12 (clauses 145–155) of the proposed Act provides for the following matters:

- (a) that a home owner, former home owner or operator of a community may apply to the Commissioner for mediation of a matter,
- (b) that the parties may agree to the Tribunal referring a matter arising in proceedings before it relating to a community for mediation,

- (c) the procedure in relation to mediation, including the appointment and duties of mediators, representation in mediation and confidentiality,
- (d) the removal of personal liability for any matter or thing done or omitted to be done by a mediator.

Division 3 Powers of Tribunal

Division 3 of Part 12 (clauses 156–158) of the proposed Act makes provision for the following matters:

- (a) applications to the Tribunal by home owners, former home owners or operators of communities for the determination of certain disputes,
- (b) the power of the Tribunal to make certain orders in relation to such applications,
- (c) the power of the Tribunal to make certain orders to give effect to any agreement or arrangement arising out of mediation under the proposed Act.

Division 4 Powers of Commissioner in proceedings

Division 4 of Part 12 (clauses 159–162) of the proposed Act makes provision for the circumstances and manner in which the Commissioner may represent a person in any proceedings before the Tribunal under the proposed Act.

Part 13 Administration and enforcement

Division 1 Commissioner

Division 1 of Part 13 (clause 163) of the proposed Act confers certain functions on the Commissioner, including for the purpose of ascertaining whether the proposed Act and any regulations are being complied with.

Division 2 Administrators, receivers and managers

Division 2 of Part 13 (clauses 164–170) of the proposed Act provides for the following matters:

- (a) that the Commissioner may apply to the Supreme Court for an order appointing a specified person to take over the day-to-day operation of a community as an administrator of the community if the Commissioner is of the opinion that the well-being or financial security of the residents of the community concerned is at risk or that the operator of the community has contravened an order of the Tribunal or a court or a direction of the Commissioner,
- (b) the terms and conditions, effect and the revocation of the appointment of an administrator,
- (c) that the expenses incurred by an administrator are payable from site fees and other money that would be available to the operator for such expenses if the administrator had not been appointed,
- (d) if a receiver, or a receiver and manager, is appointed in respect of a community, the person so appointed must comply with the operator's obligations under the proposed Act as if the person were the operator,
- (e) the removal of personal liability for any matter or thing done or omitted to be done in certain circumstances by an administrator, a receiver or a receiver and manager.

Division 3 Complaints and disciplinary action

Division 3 of Part 13 (clauses 171–175) of the proposed Act provides for the following matters:

- (a) that the Commissioner may serve a show cause notice on a person if the Commissioner is of the opinion that there is reasonable cause to believe that there are grounds for taking disciplinary action against the person,

- (b) if the Commissioner is satisfied that there are grounds for taking disciplinary action against a person on whom a show cause notice has been served, the Commissioner may take such disciplinary action against the person as the Commissioner thinks is warranted,
- (c) that a person against whom disciplinary action is taken may apply to the Administrative Decisions Tribunal under the *Administrative Decisions Tribunal Act 1997* for a review of the decision on the disciplinary action or on a review of the disciplinary action.

Division 4 Offences and associated matters

Division 4 of Part 13 (clauses 176–178) of the proposed Act provides for the following matters:

- (a) that offences under the proposed Act and the regulations to be dealt with summarily before the Local Court,
- (b) the service of penalty notices by investigators for offences against the proposed Act and the regulations if those offences have been prescribed for that purpose under the regulations made under the proposed Act,
- (c) that an individual (including an individual who is a director of a corporation or who is involved in the management of the corporation) who aids or abets another person to commit an offence under the proposed Act or the regulations is guilty of the same offence and liable to be punished accordingly.

Division 5 Powers of investigators

Division 5 of Part 13 (clauses 179–183) of the proposed Act provides for the following matters:

- (a) the powers of entry and inspection of investigators,
- (b) the power of investigators to obtain information, documents and evidence,
- (c) offences involving the obstruction of investigators,
- (d) an investigator taking possession of documents to be used as evidence,
- (e) the issue of search warrants for premises to investigators.

Part 14 Miscellaneous

Part 14 (clauses 184–187) of the proposed Act provides for the following matters:

- (a) the service of notices and documents under the proposed Act,
- (b) that the Governor may make regulations for the purposes of the proposed Act,
- (c) the repeal of the *Residential Parks Act 1998* and the *Residential Parks Regulation 2006*,
- (d) the review of the proposed Act in 5 years.

Schedule 1 Rules of conduct for operators

Schedule 1 sets out the rules of conduct to be observed by the operator of a community in the course of the carrying on of business or the exercise of functions as operator.

Schedule 2 Savings and transitional provisions

Schedule 2 contains savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 3 Amendment of legislation

Schedule 3 amends the legislation specified in the Schedule as a consequence of the enactment of the proposed Act.