

Residential Parks Amendment (Statutory Review) Bill 2005

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Residential Parks Act 1998* (***the principal Act***) as a result of a review that has been completed under section 156 of that Act. The amendments made by this Bill deal with the following matters:

- (a) a statement of the objects of the principal Act,
- (b) the content of residential tenancy agreements,
- (c) the effect of unwritten residential tenancy agreements,
- (d) obligations as to advertising to be complied with by park owners,
- (e) disclosure of information to prospective and incoming residents,
- (f) payment of charges for gas, electricity and water,
- (g) the on-site sale of moveable dwellings,
- (h) orders by the Consumer, Trader and Tenancy Tribunal as to excessive rent increases,
- (i) access to residential parks by emergency and home care services,
- (j) termination of residential tenancy agreements because of a proposed change of use of land,
- (k) compensation for termination of residential tenancy agreements and relocation of residents,
- (l) the protection of residents who are absent for long periods while in care,
- (m) Park Liaison Committees and residents committees,
- (n) disputes concerning park rules,
- (o) the status of moveable dwellings in connection with the law as to fixtures,
- (p) the appointment and functions of investigators,
- (q) the appointment and functions of administrators, receivers and managers of residential parks,
- (r) penalties for non-compliance with the principal Act,
- (s) matters of a savings or transitional nature,
- (t) other matters of a minor, consequential or ancillary nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Residential Parks Act 1998* set out in Schedule 1.

Schedule 1 Amendments

Objects of the principal Act

Schedule 1 [6] inserts a new section 4A. The proposed section states that the objects of the principal Act are to set out the respective rights and obligations of park owners and residents, including their rights and obligations under residential tenancy agreements (which includes residential site agreements), to establish legislative protection for residents and to establish procedures for resolving disputes between park owners and residents.

Content of residential tenancy agreements

Schedule 1 [8] amends section 10 so as to enable the regulations to regulate or prohibit the use of additional terms of residential tenancy agreements with respect to such matters as may be prescribed. That is, park owners and residents will continue to be able to add additional terms to a residential tenancy agreement, subject to some terms being prohibited or regulated by the regulations.

Schedule 1 [9] makes a consequential amendment to section 10 (2).

Effect of unwritten residential tenancy agreements

Schedule 1 [11] inserts a new section 16A. The proposed section gives effect to residential tenancy agreements that are not in writing. Such a residential tenancy agreement is taken to include the standard terms prescribed by the regulations and any permissible and consistent additional terms agreed between the parties. The park owner who enters into a wholly or partly unwritten agreement is guilty of an offence, despite the fact that the agreement has force.

Advertising by park owners

Schedule 1 [65] provides that a park owner must not advertise the availability of residential premises in any way unless the advertisement includes a statement that a resident's right to occupy the premises under a residential tenancy agreement is a leasehold right only, and not a freehold right or other right of an unlimited perpetual nature and may, in certain circumstances, be terminated.

Disclosure of information to prospective and incoming residents

Schedule 1 [12] amends section 17 so as to make it a term of every residential tenancy agreement that the park owner must give the resident a copy of the agreement (for the resident to keep) together with a list of those clauses of the agreement that are additional to the standard terms. At present, that agreement is required to be provided at or before the time that the resident signs another copy of the agreement and gives it back to the park owner. As a result of the amendment the park owner will be required to provide a copy at that time and also at or before the time that the resident enters into occupation of the residential premises to which the agreement relates.

Schedule 1 [32] amends section 73 so as to require a park owner to disclose to every prospective resident any prohibition on the sale of the resident's moveable dwelling while it is on-site.

Schedule 1 [33] amends section 73 so as to require a park owner to disclose to every prospective resident whether any development application has been made for the redevelopment of the park or for a change of use of the land on which the park is situated, whether any notices of termination have been given to any residents in connection with any proposed redevelopment of the park or any proposed change of use of the land on which the park is situated, whether the park owner would be prepared to buy the resident's moveable dwelling if the resident were to decide to live elsewhere, if the park is situated within a Crown reserve or a National Parks and Wildlife reserve, and what arrangements exist for the supply of energy to the residential site and at what cost to the resident the energy will be supplied.

Schedule 1 [34] amends section 73 so as to require a park owner to provide every prospective resident who intends to enter into a residential tenancy agreement with a copy of the park rules for the residential park and a document that clearly states that a resident's right to occupy residential premises under the agreement is a leasehold right only, and not a freehold right or other right of an unlimited or perpetual nature and that such a right may be terminated in certain circumstances. The resident must also be provided with any other documents prescribed by the regulations (which might include any publications of the Office of Fair Trading concerning residential park living). This requirement is in addition to the documents referred to in section 73 (2) of the principal Act (as amended by Schedule 1 [33]), which park owners are currently required to be provided to a prospective resident. However, the maximum penalty for failure to disclose the necessary information to prospective residents is increased from 2 penalty units (currently \$220) to 20 penalty units (currently \$2,200).

Schedule 1 [35] inserts a new section 74A. The proposed section makes it an offence for a park owner to give information to a resident or prospective resident knowing that the information is false or misleading in a material particular. The maximum

penalty for a contravention of the proposed section is 20 penalty units (currently \$2,200).

Payment of charges for gas, electricity and water

Schedule 1 [15]–[21] amend sections 36 and 37 so as to ensure that residents whose energy requirements are met through gas resupplied by the park owner are entitled to the same details of amounts payable, and to the same details on a receipt, as apply to the provision of water and electricity.

Schedule 1 [22] amends section 37 so as to enable the regulations to prescribe a code of practice with respect to the supply of gas to residents of residential parks.

Schedule 1 [23] omits section 38, which is a spent provision.

Schedule 1 [24]–[27] amend section 39 so as to make residents liable for the payment of both their proportion of the water availability charge (if the park owner has been charged a water availability charge by the water supply authority) and the water consumption charge in respect of water resupplied to their site by the park owner, but only if the site is individually metered. At present, residents can only be asked to pay water consumption charges and not water availability charges when they receive their water from the park owner.

On-site sale of moveable dwellings

Schedule 1 [36]–[40] amend section 81 so as to provide that residential tenancy agreements may restrict the display of “for sale” signs by residents in relation to the location of the signs on the site, but will no longer be able to restrict the use of signs attached to the moveable dwelling itself.

Schedule 1 [41] amends section 82 so as to provide that a restriction on the on-site sale of a moveable dwelling is unenforceable unless notice of the restriction has been duly given as required by the amendment to section 73 that is to be effected by Schedule 1 [32].

Orders by the Consumer, Trader and Tenancy Tribunal as to excessive rent increases

Schedule 1 [28] amends section 58 so as to provide that the Consumer, Trader and Tenancy Tribunal may not determine that a rent increase that does not exceed any increase in the CPI is excessive unless there has been a reduction or withdrawal by the park owner of any goods, services or facilities provided with the residential premises.

Access to residential parks by emergency and home care services

Schedule 1 [31] inserts new section 71A. The proposed section makes it a term of every residential tenancy agreement that the park owner will take all reasonable steps to ensure that emergency and home care service personnel have unimpeded vehicular access to the residential premises at all times.

Termination of residential tenancy agreements because of proposed change of use of land

Schedule 1 [54] amends section 102 so as to provide that a notice of termination may not be given under that section on the ground that the residential site is to be used (whether by the park owner or some other person) for a purpose other than that of a residential site where the change of use requires development consent under the *Environmental Planning and Assessment Act 1979* unless development consent for the proposed use has been obtained under that Act. It also provides that notice of termination may not be given on the ground of a change of use that does not require development consent unless consent for the proposed use has been approved by the Consumer, Trader and Tenancy Tribunal under proposed section 102AA. The amendment also requires the Department of Housing to be notified of every notice of termination under section 102, that is, of the proposed change of use of the park and the intention to seek vacant possession of the sites occupied by residents.

Schedule 1 [55] amends section 102 so as to provide that a notice of termination in respect of a change of use of a residential site must not specify a date for vacating the

residential site earlier than 12 months (rather than the current 180 days) after the day on which the notice is given.

Schedule 1 [56] amends section 102 so as to require every notice of termination under section 102 to include a statement to the effect that the resident is not required to deliver up vacant possession of the residential premises until ordered to do so by the Consumer, Trader and Tenancy Tribunal, a statement to the effect that the resident may be entitled to be paid compensation under section 128, which must be paid in full before the resident is required to vacate, and such other statements as may be prescribed by the regulations.

Schedule 1 [57] inserts a new section 102AA. The proposed section enables a park owner to apply to the Consumer, Trader and Tenancy Tribunal for consent to the issue of a notice of termination on the ground of a change of use, to a purpose other than that of a residential park, of land on which a residential park is situated, being a use for which development consent is not required.

Compensation for termination of residential tenancy agreements and relocation of residents

Schedule 1 [58] amends section 128 so as to provide for compensation for termination or relocation to be agreed between the resident and the park owner, as well as being able to be fixed by the Consumer, Trader and Tenancy Tribunal.

Schedule 1 [59] amends section 128 so as to provide for an application for a further order to be made by the Consumer, Trader and Tenancy Tribunal on the basis that the compensation fixed by an earlier order or orders is inadequate. Therefore residents will be entitled to make more than one application to the Tribunal over the payment of compensation for relocation, so as to ensure that there is a remedy for situations where the original calculation of compensation by the Tribunal, or by the parties if it is a negotiated payment, proves to be inaccurate.

Schedule 1 [60] amends section 128 so as to provide that compensation is not payable under section 128 (4) (b) or (c) for a distance of travel of more than 500 kilometres (rather than the current maximum of 300 kilometres).

Schedule 1 [61] inserts a new section 128A. The proposed section requires compensation to which a resident is entitled (being compensation arising from the resident giving up possession of residential premises, as referred to in section 102, or relocating to a different residential site) to be paid in advance.

Schedule 1 [62] inserts a new section 130A. The proposed section provides for the Consumer, Trader and Tenancy Tribunal to value a dwelling to facilitate its sale.

Protection of residents who are absent for long periods while in care

Schedule 1 [7] amends section 5 so as to make it clear that a person does not cease to occupy residential premises as the person's principal place of residence by reason only that the person is absent from the premises for the purpose of receiving medical, nursing or domestic care. Accordingly, a resident who leaves his or her home in a residential park for the purposes of receiving such care continues to be covered by the principal Act (as a resident who occupies residential premises as the resident's principal place of residence).

Park Liaison Committees and residents committees

Schedule 1 [29] amends section 66 so as to require a Park Liaison Committee to be convened only if a majority of the residents so request.

Schedule 1 [30] inserts new sections 66A and 66B:

Proposed section 66A makes provision for the establishment of a residents committee of a residential park.

Proposed section 66B specifies that the regulations may make provision for or with respect to the election, functions and procedure of residents committees.

Disputes concerning park rules

Schedule 1 [44] omits section 87. That section provided for the establishment of Park Disputes Committees to resolve disputes over park rules.

Schedule 1 [45] amends section 88 so as to provide for all disputes with respect to new park rules or amendments to existing park rules to be determined by the Consumer, Trader and Tenancy Tribunal on the application of any resident.

Schedule 1 [46]–[52] further amend sections 88, 90 and 91, and repeal section 89, as a consequence of the amendments made by Schedule 1 [44] and [45].

Status of moveable dwelling in connection with the law as to fixtures

Schedule 1 [43] inserts a new section 85A. The proposed section makes it clear that a moveable dwelling situated on a residential site is not, for any purpose, to be regarded as a fixture, regardless of the manner in which it is attached to the land in the residential park. As a result, if a park owner grants a mortgage over land on which a residential park is located, the moveable dwellings of residents will not be regarded as improvements that increase the value of the land.

Appointment and functions of investigators

Schedule 1 [63] inserts a new Division 1 into Part 13. The proposed Division contains the following provisions concerning investigators:

Proposed section 136A provides for the appointment and identification of investigators.

Proposed section 136B gives powers of entry and inspection to investigators.

Proposed section 136C sets out the power of investigators to obtain information, records and evidence.

Proposed section 136D creates offences involving the obstruction of investigators.

Proposed section 136E provides for an investigator to take possession of records to be used as evidence.

Schedule 1 [64] repeals sections 139 and 140 as a consequence of the enactment of proposed sections 136A–136E.

Appointment and functions of administrators, receivers and managers of residential parks

Schedule 1 [63] also inserts a new Division 2 into Part 13. The proposed Division contains the following provisions concerning the enforcement of the principal Act:

Proposed section 136F provides for the Director-General to apply to the Supreme Court for an order appointing a specified person as an administrator of a residential park. Such a person would take over the day-to-day operation of a park. The Director-General may apply for an order only if the Director-General is of the opinion that the well-being or financial security of the residents of the residential park concerned is at risk or that the park owner has contravened an order of the Consumer, Trader and Tenancy Tribunal.

Proposed section 136G requires the Director-General to obtain the consent of a person whom the Director-General applies to be appointed as administrator.

Proposed section 136H provides for the terms and conditions of appointment.

Proposed section 136I provides for the effect of the appointment of an administrator.

Proposed section 136J provides for the revocation of an appointment.

Proposed section 136K provides that if a receiver, or a receiver and manager, is appointed in respect of a park owner of a residential park, the person so appointed must comply with the park owner's obligations under the principal Act as if the person were the park owner.

Proposed section 136L removes personal liability for any matter or thing done or omitted to be done in certain circumstances by an administrator, receiver or receiver/manager.

Schedule 1 [63] also inserts a new Division heading before existing section 137.

Penalties for non-compliance with the principal Act

Schedule 1 [10] increases the penalties under the principal Act for certain offences from a maximum of 2 penalty units (currently \$220) to a maximum of 5 penalty units (currently \$550).

Schedule 1 [13] increases the penalties under the principal Act for certain offences

from a maximum of 5 penalty units (currently \$550) to a maximum of 10 penalty units (currently \$1,100).

Schedule 1 [42] amends section 82 (which prohibits a park owner from interfering with the sale, by a resident, of a moveable dwelling installed on a residential site) so as to increase the penalty for a contravention of that section from a maximum of 2 penalty units (currently \$220) to a maximum of 20 penalty units (currently \$2,200).

Matters of a savings or transitional nature

Schedule 1 [66] amends clause 1 of Schedule 1 so as to enable regulations of a savings or transitional nature to be made in connection with the proposed Act.

Schedule 1 [67] inserts a new Part into Schedule 1. The proposed Part contains various provisions of a savings or transitional nature in connection with the proposed Act.

Other matters of a minor, consequential or ancillary nature

Schedule 1 [1]–[5] amend section 3:

Schedule 1 [1] inserts a definition of *Department*.

Schedule 1 [2] amends a definition as a consequence of that amendment.

Schedule 1 [3] updates the definition of *investigator*.

Schedule 1 [4] omits a definition that is redundant as a result of the repeal effected by Schedule 1 [44].

Schedule 1 [5] inserts a definition of *residents committee*.

Schedule 1 [14] clarifies the operation of section 27 in relation to alterations and additions to, and the replacement of, moveable dwellings on a residential site.

Schedule 1 [53] amends section 91 as a consequence of the amendment to the definition of *Department* in section 3 that is to be effected by Schedule 1 [1].