

[STATE ARMS]

New South Wales

Residential Parks Bill 1998

Explanatory note

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

Overview of Bill

The object of this Bill is to set out the basic rights and obligations of residents and owners of residential parks (that is, caravan parks and manufactured home estates).

This object is achieved:

- (a) by re-enacting most of the provisions of the *Residential Tenancies Act 1987* (which presently deals with all residential tenancies in relation to houses, flats and moveable dwellings and includes some provisions that apply only to residential parks) and applying them specifically to residential parks, and
- (b) by re-enacting some of the provisions of the *Caravan and Relocatable Home Park Industry Code of Practice* (a compulsory code of practice under the *Fair Trading Act 1987*), and
- (c) by including new provisions relating to various aspects of community living that are unique to residential parks.

For the purposes of comparison, a number of provisions of the proposed Act contain bracketed notes in headings drawing attention ("cf") to equivalent or comparable (though not necessarily identical) provisions of the *Residential Tenancies Act 1987* (abbreviated as "RT Act") and the *Caravan and Relocatable Home Park Industry Code of Practice* (abbreviated as "CRHPI Code"). Those provisions of the proposed Act that do not contain such bracketed notes will create new rights and obligations relevant to owners and residents of residential parks.

Outline of provisions

Part 1 Preliminary

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 (with the exception of clause 39) on a

day or days to be appointed by proclamation.

Clause 3 defines certain expressions for the purposes of the proposed Act. Important definitions include the following:

park owner, which:

- (a) in provisions of the Act that relate to obligations arising under a residential tenancy agreement, means a person who grants the right to occupy residential premises under a residential tenancy agreement, and includes the person's heirs, executors, administrators and assigns, or
 - (b) in provisions of the Act that impose general obligations, means the owner of a residential park.
- (Clause 3 (2) specifies the provisions of the Act in which the expression "park owner" includes a resident who has sub-let premises.)

resident, which means the person who has the right to occupy residential premises under a residential tenancy agreement, and includes the person's heirs, executors, administrators and assigns.

residential premises, which:

- (a) means any premises or part of premises (including any land occupied with the premises) used, or intended to be used, as a place of residence, and
- (b) includes a residential site on which a moveable dwelling is situated, or intended to be situated or both a moveable dwelling and a residential site, if the moveable dwelling is used or intended to be used as a place of residence.

residential site, which means a site within a residential park that is used, or is intended to be used, for the installation of a moveable dwelling.

residential site agreement, which means a particular type of residential tenancy agreement under which:

- (a) the park owner grants to the resident a right to install, on a residential site, a relocatable home, or a registrable moveable dwelling with a rigid annexe attached to it (being a relocatable home or registrable moveable dwelling owned by the resident), and a right to use the home or dwelling as a residence, and
- (b) the resident occupies the premises as the person's principal place of residence, and
- (c) in the case of an agreement entered into after the commencement of the proposed Act, the resident has the approval of the park owner or park manager to occupy the premises as the person's principal place of residence,

but does not include agreements in relation to certain land within a Crown reserve, or in relation to land reserved or dedicated under the *National Parks and Wildlife Act 1974*.

residential tenancy agreement, which means any agreement under which a person grants to another person for value a right of occupation of residential premises for the purpose of use as a residence:

- (a) whether or not the right is a right of exclusive occupation, and
- (b) whether the agreement is express or implied, and
- (c) whether the agreement is oral or in writing, or partly oral and partly in writing,

and includes such an agreement granting the right to occupy residential premises together with the letting of goods.

Clause 4 provides that the notes in the text of the Act do not form part of the Act.

Part 2 Application of Act

Clause 5 provides that the proposed Act applies to residential tenancy agreements under which the residential premises consist of a residential site, or a moveable dwelling on a residential site, where the resident occupies the premises on a permanent basis. The proposed Act applies to agreements made before or after the commencement of the clause. (Schedule 1 to the proposed Act specifically preserves certain arrangements in place under the *Residential Tenancies Act 1987*. Schedule 1 to the proposed Act also states that the Act applies, with the limitations set out in Parts 1 and 2 of Schedule 2 to the *Residential Tenancies Act 1987*, to oral, written and partly oral and partly written agreements made before the commencement of that Act.)

Clause 6 sets out certain residential tenancy agreements to which the proposed Act will not apply, including tenancies arising under a contract of sale or purchase or a mortgage or from the fact that a person is the owner of a company title property, or if the resident is a boarder or lodger, or agreements to let holiday premises. Certain kinds of premises are also excluded from the operation of the

proposed Act, including premises protected under the *Landlord and Tenant (Amendment) Act 1948*, hotels, motels, educational institutions, hospitals, nursing homes and clubs.

Clause 7 states that the proposed Act binds the Crown.

Part 3 Residential tenancy agreements relating to residential parks

Clause 8 enables a standard form or forms of residential tenancy agreement to be prescribed by the regulations. The standard form may set out terms included in a residential tenancy agreement by the proposed Act and is to include a condition report.

Clause 9 requires every residential tenancy agreement to be in or to the effect of the standard form, if a form is prescribed by the regulations, and provides that the agreement is void to the extent to which it is not in the standard form. The terms contained in the standard form are not to be varied and, to the extent that they are so varied, are taken not to have been varied. The right to occupy residential premises is not removed by the clause even though some of the agreement may be void.

Clause 10 allows additional terms to be inserted in the standard form if they do not contravene the proposed Act or any other Act and do not affect the operation of the terms contained in the standard form. Those additional terms are required to be in a separate and clearly labelled part of the standard form.

Clause 11 makes a term of a residential tenancy agreement void to the extent to which the term is inconsistent with a term included in the agreement by the proposed Act.

Clause 12 makes the costs of preparation of a residential tenancy agreement payable in equal shares by the park owner and the resident. The clause also provides that a written statement of the costs of preparation of a residential tenancy agreement and any other charges is to be given to a prospective resident before he or she signs the residential tenancy agreement. If the written statement is not given, the park owner is guilty of an offence. Regulations may be made prescribing the maximum amount payable by a resident for the cost of preparation and other charges.

Clause 13 enables a residential tenancy agreement, signed by the resident but not by the park owner, to have effect as if the agreement had been signed by the park owner, where the park owner or a person on behalf of the park owner accepts rent without reservation or performs any act of part performance of the agreement.

Clause 14 provides for the continuation of a residential site agreement that creates a tenancy for a fixed term, that has continued after the time it should have terminated and that has no provision in its terms for continuation. The clause also provides for the continuation of a residential tenancy agreement that creates a tenancy for a fixed term, that has continued after the time it should have terminated (where notice of termination has not been given) and that has no provision in its terms for continuation. Each such agreement will continue as a periodic tenancy on the same terms.

Clause 15 applies the rules of law relating to mitigation of loss or damage on breach of a contract to a breach of a residential tenancy agreement. The intention of this clause is to resolve any doubt as to whether the rules apply to a residential tenancy agreement.

Clause 16 enables a park owner or a resident under a residential tenancy agreement to apply to the Residential Tenancies Tribunal, or the proposed Residential Tribunal, (the *Tribunal*) in the event of a breach of the agreement or a dispute under the agreement. The clause also enables the Tribunal to make orders (including orders to require the performance of the agreement or to restrain a breach of the agreement, orders to perform work, orders as to payment of rent to the Tribunal and orders as to compensation).

Part 4 Rights and obligations of park owners and residents

Division 1 Rights and obligations

Clause 17 makes it a term of every residential tenancy agreement that the park owner must give each resident a copy of the agreement at the time it is signed by the resident and a copy of the fully executed agreement as soon as is reasonably practicable.

Clause 18 makes it a term of every residential tenancy agreement that the park owner warrants that there is no legal impediment, of which the park owner is or ought to be aware, to occupation of the residential premises as a residence for the period of the tenancy.

Clause 19 makes it a term of every residential tenancy agreement that the resident must have vacant possession of the residential premises (other than premises to which the resident does not have a right of exclusive occupation) on the day on which the resident is entitled to occupy those premises

under the agreement.

Clause 20 sets out, as a term of every residential tenancy agreement, the rights of the resident to quiet enjoyment and occupation of the residential premises. The resident is entitled to quiet enjoyment of the residential premises and to occupation of the premises not interrupted by the park owner. The park owner's obligation is not to interfere or cause or permit any interference with the reasonable peace, comfort or privacy of the resident or with the proposed use and enjoyment of the residential park by the other residents of the park. The clause makes it an offence for a park owner or a park manager to contravene or fail to comply with the clause.

Clause 21 makes it a term of every residential tenancy agreement that the resident must not use the residential premises for any illegal purpose, must not cause or permit a nuisance and must not cause or permit any interference with the reasonable peace, comfort or privacy of neighbours and others lawfully in the residential park.

Clause 22 sets out, as a term of every residential tenancy agreement, the circumstances in which a park owner, the park manager or any other person authorised in writing by the park owner may enter residential premises that consist of a moveable dwelling (that is not owned by the resident) and a residential site. The circumstances include emergencies, inspection on 7 days' notice, inspection for the purpose of repairs on 2 days' notice, to show the premises to prospective purchasers, mortgagees or residents, or at any time with the resident's consent. Entry is to be between 8.00 am and 8.00 pm on days other than Sundays or public holidays. The clause makes it an offence for a person to enter residential premises except as permitted by the clause.

Clause 23 makes a similar provision in respect of residential premises that consist of a residential site only.

Clause 24 makes it a term of every residential tenancy agreement that the park owner must provide residential premises, and everything provided with the premises, in a reasonable state of cleanliness, and fit for habitation and must provide and maintain the residential premises in a reasonable state of repair.

Clause 25 sets out, as a term of every residential tenancy agreement, the resident's obligations with respect to the maintenance of the residential premises. The resident is to keep the premises in a reasonable state of cleanliness, is to notify the park owner of any damage, is not intentionally or negligently to cause any damage to the premises and, at the termination of the tenancy, is to leave the premises as nearly as possible in the same condition, fair wear and tear excepted, as set out in any condition report forming part of the residential tenancy agreement.

Clause 26 sets out, as a term of every residential tenancy agreement, the resident's obligations with respect to the affixing of fixtures and the making of other alterations to the residential premises. A resident must not affix or remove a fixture or make any renovation, alteration or addition to premises except with the park owner's written consent, which must not be unreasonably withheld or refused. If damage is caused by removing a fixture, the resident must, at the park owner's request, repair the damage or compensate the park owner for the park owner's reasonable expenses in repairing the damage. A park owner who does not consent to the removal of a resident's fixture must compensate the resident for its value.

Clause 27 makes it a term of every residential tenancy agreement under which the residential premises consist of a residential site on which the resident has installed his or her own moveable dwelling that the resident will not make any alteration or addition to the moveable dwelling that is visible from the outside of the moveable dwelling without first obtaining the consent of the park owner. The park owner may not unreasonably refuse consent. The clause makes provision for the Tribunal to consider the reasonableness of a park owner's refusal of consent.

Clause 28 makes it a term of every residential tenancy agreement that the park owner must reimburse the resident for any reasonable costs (up to \$500 or such other amount as may be prescribed by the regulations) incurred by the resident in making urgent repairs to the residential premises. This term is subject, among other things, to the need for repairs having arisen otherwise than as a result of a breach of the agreement by the resident and the repairs being carried out, where appropriate, by licensed or properly qualified persons.

Clause 29 makes it a term of every residential tenancy agreement under which the residential premises consist of a moveable dwelling and a residential site that the park owner must provide and

maintain locks or other security devices necessary to ensure that the residential premises are reasonably secure and that neither the park owner nor the resident must alter, remove or add any lock or other security device, except with reasonable excuse or the consent of the other party. It is also a term that a copy of the key or any other opening device or information required to open a lock or other security device altered, removed or added by a park owner or resident is to be given to the other party unless the party consents to not being given a copy or the Tribunal authorises a copy not to be given. The clause makes it an offence to alter, remove or add any lock or other security device without consent or reasonable excuse. The clause enables the Tribunal to make certain orders with respect to locks and other security devices.

Clause 30 requires a park owner to give each resident of the park any keys or security pass necessary to access the premises.

Clause 31 makes the resident vicariously responsible for any act or omission by a person who is lawfully on the residential premises, or who is in the residential park at the resident's invitation, that would have been a breach of the residential tenancy agreement if it had been an act or omission by the resident.

Clause 32 provides that a resident under a residential tenancy agreement who is unable to deal with notices or other documents may appoint an agent for the purpose of receiving those notices or documents. The Tribunal or a park owner or park manager notified of such an appointment is required to give notices or documents to the agent and any notices or documents not given to the agent are taken not to have been given to the resident.

Clause 33 imposes an obligation on a park owner and a new park owner to give the resident notice in writing of the name and residential address of the park owner or the new park owner. Notice of a change of name or address must be given to the resident not later than 14 days after a current park owner becomes aware of the change. The clause makes it a term of every residential tenancy agreement that a corporate resident must give notice of any change in its registered office.

Division 2 Obligations to make certain payments

Clause 34 defines terms used in the proposed Division.

Clause 35 makes it a term of every residential tenancy agreement that the resident must pay the rent on or before the day set out in the agreement.

Clause 36 makes it a term of every residential tenancy agreement that the park owner must pay certain statutory charges and costs relating to the residential premises.

Clause 37 provides for the resident under a residential tenancy agreement to agree to pay all electricity charges in connection with the residential premises if the metering of sites, and the charging and billing for electricity, is conducted in accordance with the *Code of Practice for Electricity Supply to Long-term Residents of Caravan Parks* prepared by the Department of Energy or any other document prescribed by the regulations.

Clause 38 provides for the resident under a residential tenancy agreement to agree to pay certain water consumption charges. The proposed clause will cease to have effect on 1 January 2000.

Clause 39 requires the resident under a residential tenancy agreement to pay certain water consumption charges in connection with the residential premises. The proposed clause will commence on 1 January 2000.

Clause 40 provides that any amount paid by a resident by way of rent is to be applied to rent arrears or rent in advance and not to any other outstanding charges payable by the resident. The clause also makes it clear that any obligation to pay a charge under the proposed Act is separate from the obligation to pay rent under the residential tenancy agreement.

Division 3 Change of park owner or resident

Clause 41 makes it a term of every residential tenancy agreement that the resident may, with the park owner's consent, assign the resident's interest or sub-let the residential premises. The consent of the park owner in respect of certain residential site agreements must not be unreasonably withheld or refused and the park owner may not make any charge for giving such consent, other than for reasonable expenses.

Clause 42 provides for attornment on the sale of residential premises. Attornment is an acknowledgment by the resident of the purchaser as park owner.

Clause 43 enables a person who is not a resident under a residential tenancy agreement to apply to

the Tribunal to be recognised as a resident under a residential tenancy agreement in the event of the death or absence of the resident. Such a person may also apply to be joined as a party to proceedings. The Tribunal may recognise the person as a resident under the agreement or may vest a tenancy in the person on the terms and conditions that applied under the previous residential tenancy agreement and are appropriate.

Part 5 Rents

Division 1 General matters

Clause 44 makes it an offence to require or receive from a resident or a prospective resident a reservation fee, except in accordance with the regulations.

Clause 45 makes it an offence for a person to require or receive any consideration in relation to entering into, renewing, extending or continuing a residential tenancy agreement, other than rent, a rental bond and such fees or other amounts as may be prescribed by the regulations.

Clause 46 makes it an offence to require rent in advance of more than 2 weeks (if the rent is \$300 per week or less) or 4 weeks (if the rent is more than \$300 per week) under a residential tenancy agreement. The clause also makes it an offence to require rent to be paid before the end of any period for which rent is paid up to.

Clause 47 makes it an offence to require a post-dated cheque or other post-dated negotiable instrument in payment of rent or any other amount under a residential tenancy agreement.

Clause 48 provides that rent receipts containing certain particulars must be issued. A receipt is not required if rent is paid into an account at a bank, building society, credit union or other similar body.

Clause 49 requires the park owner or the park manager to keep a record of rent received for a period of not less than 12 months after receipt of the rent. It also makes it an offence knowingly to make a false entry in such a record.

Clause 50 renders void terms of residential tenancy agreements that operate to increase the rent, make all rent payable or impose a penalty in the event of a breach of the agreement or of any Act by a resident.

Clause 51 nullifies the effect of any term of a residential tenancy agreement that purports to charge a higher rent, to be reduced on compliance with the agreement, than is actually intended to be paid by the resident.

Division 2 Rent increases and excessive rents

Clause 52 provides that the Division applies to a rent increase even if it is provided for in a residential tenancy agreement.

Clause 53 provides that the rent payable under a residential tenancy agreement must not be increased without 60 days' notice. A park owner may not increase rent under a fixed term residential tenancy agreement during the currency of the term unless provision for the increase is made in the agreement. An agreement may only include one method of calculating such an increase. The effect of giving a notice is to vary the agreement as from the day the rent increase takes effect. The proposed clause makes it an offence to contravene or fail to comply with the clause.

Clause 54 empowers the Tribunal to make orders refunding overpaid rent when a rent increase was not properly notified to the resident.

Clause 55 gives a resident the right to apply to the Tribunal, not later than 30 days after being given notice of a rent increase, for an order declaring that the rent increase is excessive.

Clause 56 gives a resident the right to apply to the Tribunal for an order declaring that rent is excessive where goods, services or facilities provided with the residential premises have been reduced or withdrawn. Applications under this clause and clause 55 may be made in relation to a residential tenancy agreement or a proposed residential tenancy agreement for residential premises already occupied by the resident.

Clause 57 sets out the matters that the Tribunal may have regard to in determining whether a rent increase or rent is excessive, including the general market level of rents for comparable premises, the value of the residential premises, outgoings, work done by the resident and other matters.

Clause 58 provides that, if the Tribunal determines that a rent increase or rent is excessive, it may make an order that the rent not exceed a specified amount. Such an order has effect for one year or any shorter period specified in the order and binds only the parties to the residential tenancy agreement or proposed residential tenancy agreement.

Clause 59 enables the Tribunal to declare agreements that let fittings or goods in connection with residential premises to be part of the residential tenancy agreement for the purposes of making a rent order.

Clause 60 enables the Tribunal to make an interim order having the effect of suspending payment of a rent increase or rent where an application is made to the Tribunal for an order that a rent increase or rent is excessive.

Clause 61 makes it an offence to demand, require or receive any rent in excess of the amount specified in an order made by the Tribunal.

Part 6 Park rules for residential parks

Clause 62 empowers a park owner to make park rules relating to the use, enjoyment, control and management of the residential park.

Clause 63 provides that park rules in force in relation to a residential park form part of every residential tenancy agreement in relation to premises in that park.

Clause 64 provides for the amendment of park rules.

Clause 65 makes it a term of every residential tenancy agreement that the park owner must take all reasonable steps to ensure that the other residents comply with their obligations under the park rules.

Part 7 Community aspects of residential park living

Clause 66 requires certain park owners to convene a Park Liaison Committee, the functions of which include assisting in the preparation and observance of park rules, assisting in the resolution of disputes about facilities within the residential park for the payment of rent, assisting in the development of proposals for individual mail facilities and assisting in the development of standards of behaviour expected from the owner and manager of the residential park and from residents.

Clause 67 prevents the owner or manager of a residential park from restricting the right of a resident of the park to participate in organisations of residents.

Clause 68 imposes an obligation on a park owner to install a notice board in the park and to refrain from interfering with the rights of residents to read the notices on the board or to place notices on the board.

Clause 69 protects the right of a resident of a residential park to purchase goods and services from any person, including any tradesperson, of his or her choice.

Clause 70 provides that a residential tenancy agreement may create standards of residential site preservation or residential site landscaping.

Part 8 Rights of prospective and other residents of residential parks to be provided with information

Clause 71 prohibits the owner or manager of a residential park from restricting a person's right to seek independent advice before entering into a residential tenancy agreement.

Clause 72 imposes an obligation on a park owner to provide a prospective resident with a list of questions set out in the proposed section, that relate to the rights and obligations of the resident, and with answers to those questions.

Clause 73 imposes an obligation on a park owner to inform a resident of any arrangements applicable to the resident's occupation of the park, and of any restrictions of which the park owner is aware that apply or may apply to the resident's or park owner's use of the residential site or the residential park.

Part 9 Mail facilities

Clause 74 imposes an obligation on a park owner to install and maintain separate mail facilities for each residential site, if a majority of residents request such facilities.

Clause 75 provides for residents to pay for the cost of installing mail facilities for their sites, but prevents the park owner from demanding further money to cover those costs from residents who later occupy the same sites.

Clause 76 establishes the right of a resident to use mail facilities installed for the site occupied by the resident.

Clause 77 provides for the security of mail facilities.

Clause 78 empowers the Tribunal to make orders relating to mail facilities.

Part 10 Sale of moveable dwellings and manufactured homes

Division 1 Sale of moveable dwellings in residential parks

Clause 79 provides that it is a term of every residential tenancy agreement that the resident is entitled

to sell the moveable dwelling installed on the residential site to which the agreement relates while the dwelling is in place on the site, unless the park owner and the resident agree in the residential tenancy agreement that on-site sales are prohibited. (The clause does not apply to residential tenancy agreements that relate to land within a Crown reserve, or land reserved or dedicated under the *National Parks and Wildlife Act 1974*.)

Clause 80 makes provision relating to the on-site sale of moveable dwellings, including requiring the resident to inform the park owner before displaying any "for sale" sign.

Clause 81 prevents a park owner from interfering with the on-site sale of a moveable dwelling otherwise than by enforcing restrictions that the resident has agreed to.

Clause 82 provides that a park owner may act as an agent in an on-site sale, and may receive a commission if the moveable dwelling is sold.

Clause 83 prohibits the charging of any premium for an agreement that a moveable dwelling will remain on a residential site after it is sold.

Clause 84 empowers the Tribunal to make orders to resolve disputes concerning on-site sales of moveable dwellings, including disputes relating to any commission payable to the park owner.

Division 2 Sale of manufactured homes off-site

Clause 85 creates a cooling-off period during which the purchaser can rescind any contract for the sale of a manufactured home that includes a provision relating to the installation of that manufactured home on a residential site under a residential tenancy agreement.

Part 11 Dispute resolution

Clause 86 requires a park owner to convene a Park Disputes Committee for the residential park, the functions of which are to hear and mediate disputes arising in the residential park and to consider any matters referred by the Tribunal for alternative dispute resolution.

Clause 87 provides for the making of applications to a Park Disputes Committee relating to certain disputes concerning park rules.

Clause 88 provides for the making of an application to the Tribunal to reconsider certain disputes relating to park rules that the Park Disputes Committee has considered or failed to consider.

Clause 89 empowers the Tribunal to refer certain matters concerning residential parks for alternative dispute resolution.

Clause 90 applies a privilege with respect to defamation to alternative dispute resolution and documents or other material relating to alternative dispute resolution under the proposed Part.

Clause 91 imposes obligations of secrecy with respect to alternative dispute resolution under the proposed Part.

Clause 92 exonerates persons and bodies involved in alternative dispute resolution under the proposed Part from liability in respect of any matter or thing done or omitted to be done by the person or body.

Part 12 Termination of residential tenancy agreements

Division 1 Termination generally

Clause 93 sets out the only circumstances in which a residential tenancy agreement terminates. These include the giving of a notice of termination followed by the delivery up of vacant possession of the residential premises or an order by the Tribunal terminating the agreement, the making of any other order by the Tribunal terminating the agreement, entitlement to possession of a person having superior title to that of the park owner, the taking of possession by a mortgagee, the abandonment of the premises by the resident and the delivering up of vacant possession of the premises by the resident, with the prior consent of the park owner.

Clause 94 states that rent accrues from day to day and on termination the appropriate amount is payable.

Clause 95 states that a demand for or acceptance of rent by a park owner does not operate as a waiver of a breach of the residential tenancy agreement or notice of termination given by the park owner.

Division 2 Grounds for termination of a residential site agreement

Clause 96 enables a park owner to give notice of termination of a residential site agreement on the ground that the resident is in breach of the agreement for non-payment of rent.

Clause 97 enables a park owner to give notice of termination of a residential site agreement on the

ground that the resident is in breach of the agreement because of the dilapidated condition of the dwelling installed on the residential site.

Clause 98 enables a park owner to give notice of termination of a residential site agreement on the ground that the resident is in serious or persistent breach of some other aspect of the agreement.

Clause 99 enables a park owner to give notice of termination of a residential site agreement on the ground that the park owner requires vacant possession to carry out repairs or upgrading that are required under another Act (such as the *Local Government Act 1993*).

Clause 100 enables a park owner to give notice of termination of a residential site agreement on the ground that the residential site is to be used for a purpose other than that of a residential site.

Clause 101 enables a resident to give notice of termination of a residential site agreement without specifying any ground for the termination. The period of notice is not to be less than 30 days unless the park owner otherwise consents. The clause does not apply to a residential site agreement that creates a tenancy for a fixed term during the currency of the term.

Clause 102 provides that, in the event of the residential premises being destroyed, rendered wholly or partly uninhabitable or ceasing to be lawfully usable, the rent is to abate and the park owner or the resident may give immediate notice of termination to the other party. A notice of termination of a residential site agreement that creates a tenancy for a fixed term may be given under the clause even though the term has not ended.

Division 3 Grounds for termination of a residential tenancy agreement that is not a residential site agreement

The proposed Division provides for the termination of residential tenancy agreements other than residential site agreements.

Clause 103 enables a park owner to give notice of termination of a residential tenancy agreement on the ground that the park owner has (after entering into the agreement) entered into a contract for the sale of the residential premises. The period of notice is not to be less than 30 days. The clause does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term. The Tribunal is empowered under clause 112 to refuse to terminate an agreement if such a sale is not proceeding.

Clause 104 enables a park owner or a resident to give notice of termination of a residential tenancy agreement on the ground that the other party has breached a term of the agreement. The period of notice is not to be less than 14 days. If the breach is a failure to pay rent, the rent must be unpaid for not less than 14 days before the notice is given.

Clause 105 enables a park owner to give notice of termination of a residential tenancy agreement without specifying any ground for the termination. The period of notice is not to be less than 60 days. The clause does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term.

Clause 106 enables a resident to give notice of termination of a residential tenancy agreement without specifying any ground for the termination. The period of notice is not to be less than 21 days unless the park owner otherwise consents. The clause does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term.

Clause 107 enables a park owner or a resident to give notice of termination of a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term without specifying any ground for the termination. The period of notice is not to be less than 14 days or the period remaining until the end of the term, whichever results in the later day of termination.

Clause 108 provides that, in the event of the residential premises being destroyed, rendered wholly or partly uninhabitable or ceasing to be lawfully usable, the rent is to abate and the park owner or the resident may give immediate notice of termination to the other party. A notice of termination of a residential tenancy agreement that creates a tenancy for a fixed term may be given under the clause even though the term has not ended.

Division 4 Notices of termination

Clause 109 saves a notice of termination of a residential tenancy agreement that creates a periodic tenancy from being ineffective because the day for delivering up of vacant possession of the residential premises is earlier than would otherwise have been required by law or is not the last day of a period of the tenancy.

Clause 110 provides for the form of a notice of termination given by a park owner or a resident.

Division 5 Termination of residential tenancy agreements by Tribunal

Clause 111 provides that a park owner may, not later than 30 days after notice of termination has been given and if vacant possession has not been delivered up, apply to the Tribunal for an order terminating the residential tenancy agreement. The Tribunal must make the order if the notice is given in accordance with the proposed Act, if any ground for the notice is established and, in the case of a breach of the agreement, if the breach is sufficient to justify termination or if the Tribunal is satisfied that the resident has seriously or persistently breached the agreement or that it is appropriate to make the order. If the Tribunal makes an order terminating the agreement, the Tribunal must also make an order for possession of the residential premises.

Clause 112 enables the Tribunal to suspend the operation of an order if it is satisfied that it is desirable to do so, after considering the relative hardship likely to be caused to the park owner and the resident. The clause also sets out the circumstances in which the Tribunal may refuse to make an order under clause 111 terminating a residential tenancy agreement and an order for possession of the residential premises.

Clause 113 enables the Tribunal to disregard a defect in a notice of termination given under the proposed Act.

Clause 114 provides that an application for termination under clause 115, 116, 117 or 118 may be made whether or not notice of termination has been given.

Clause 115 enables the Tribunal, on application by a park owner, to make an order terminating a residential tenancy agreement and an order for possession of the residential premises if it is satisfied that the resident has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit, serious damage to the premises or injury to the park owner, the park manager or any person lawfully within the residential park.

Clause 116 enables the Tribunal, on application by a park owner, to make an order terminating a residential tenancy agreement and an order for possession of the residential premises if it is satisfied that the park owner would suffer undue hardship if the agreement were not terminated. The Tribunal may also order compensation to be paid to the resident for loss of the tenancy.

Clause 117 enables the Tribunal, on application by a resident, to make an order terminating a residential tenancy agreement if it is satisfied that the resident would suffer undue hardship if the agreement were not terminated.

Clause 118 enables the Tribunal, on application by a resident, to make an order terminating a residential tenancy agreement and an order for possession of the residential premises if it is satisfied that the park owner has breached the agreement and the breach is such as to justify termination of the agreement.

Division 6 Recovery of possession of residential premises

Clause 119 prohibits a park owner from taking proceedings to recover possession of residential premises other than before the Tribunal. The clause does not prevent a person who is not a park owner from taking proceedings for the recovery of possession of residential premises in a court.

Clause 120 prohibits entry for the purpose of recovery of possession of residential premises otherwise than in accordance with an order of a court or the Tribunal. In proceedings for an offence against the clause, a court may order compensation to be paid to the person against whom the offence was committed.

Clause 121 provides for the enforcement of orders for possession of residential premises to be carried out by sheriff's officers after a warrant has been issued by the Chairperson or other member of the Tribunal. A sheriff's officer enforcing an order for possession is empowered to seek the assistance of a member of the police force and to take all reasonably necessary steps to enforce the order. The clause makes it an offence to hinder or obstruct a sheriff's officer in the exercise of functions conferred by the clause.

Clause 122 makes a resident remaining in possession of residential premises after termination of an agreement contrary to an order for possession liable to pay compensation for loss caused by failure to comply with the order and to pay an occupation fee.

Clause 123 prevents an order for possession of residential premises from being made by a court or the Tribunal unless it is satisfied that any person in possession of the premises (not being the

immediate or former resident of the person applying for the order) has been given reasonable notice of the proceedings.

Clause 124 enables a court or the Tribunal, on application by the person in possession of the residential premises (not being the immediate or former resident of the person applying for the order for possession), to vest a tenancy in that person, either before or after an order for possession is made.

Division 7 Compensation for termination of a residential site agreement

Clause 125 provides for a park owner to issue a notice to a resident under a residential site agreement requiring the resident to relocate to a different residential site, but only in circumstances where the park owner could otherwise have issued a notice of termination for repairs and upgrading, for change of use or where the agreement has been frustrated.

Clause 126 provides for the payment of compensation to a resident who has had his or her residential site agreement terminated, or has been ordered to relocate, because of repairs and upgrading, the proposed use of the residential site for a purpose other than that of a residential site or the frustration of the agreement or where the landlord would otherwise suffer undue hardship.

Clause 127 provides for a park owner and resident to agree to the relocation of the resident.

Clause 128 provides for the variation of a residential site agreement where the resident has been relocated by agreement or in accordance with a notice to relocate.

Division 8 Abandoned premises and goods

Clause 129 makes it clear that a reference in the proposed Division to goods abandoned by a resident includes any moveable dwelling owned by the resident and abandoned on the residential site in relation to which a residential tenancy agreement was entered into.

Clause 130 enables the Tribunal to make an order, on application by a park owner, declaring that residential premises were abandoned by a resident on a specified day.

Clause 131 entitles a park owner to apply to the Tribunal for compensation from the resident for any loss caused to the park owner by the resident's abandonment of the residential premises.

Clause 132 enables a park owner to apply to the Tribunal for orders as to goods abandoned by a resident. A purchaser of the goods acquires a good title to the goods and the park owner is not liable in respect of the removal, destruction, disposal or sale of the goods, if done in accordance with the clause.

Clause 133 enables a resident to apply to the Tribunal for orders for the delivery of goods left behind by the resident, but not abandoned, after a residential tenancy agreement is terminated.

Clause 134 specifies the time within which an application for an order in relation to abandoned goods, or goods left by the resident, can be made.

Part 13 Administration

Clause 135 confers certain functions on the Director-General of the Department of Fair Trading. These include investigating and carrying out research into matters relating to or affecting the relationship between park owners and residents and investigating and attempting to resolve complaints by park owners and residents.

Clause 136 enables the Director-General to delegate the exercise of any of the Director-General's functions under the proposed Act.

Clause 137 provides for the appointment of investigators.

Clause 138 sets out the powers of investigators, including powers to obtain information and require the production of documents or other evidence.

Clause 139 provides for the inspection of documents produced in accordance with a notice under the proposed Act.

Clause 140 exonerates the Director-General, investigators and certain other officers from personal liability incurred in respect of any act done or omitted in good faith for the purposes of the Act.

Part 14 Miscellaneous

Clause 141 provides for a park owner to appoint a park manager who has responsibility for the day to day management of the park.

Clause 142 provides that no residential tenancy agreement, contract or other agreement or arrangement, whether oral or wholly or partly in writing, and whether made or entered into before or after the commencement of the clause, operates to annul, vary or exclude any of the provisions of the

proposed Act. It makes it an offence to enter into an agreement, contract or arrangement with the intention of defeating, evading or preventing the operation of the proposed Act.

Clause 143 empowers a court in any proceeding that could have been taken under the proposed Act to order the plaintiff to pay the defendant's costs in such amount as the court determines.

Clause 144 makes it an offence, except in certain circumstances, to disclose any information obtained in connection with the administration or execution of the proposed Act.

Clause 145 makes it clear that a breach of the Act constitutes an offence only if a penalty is specified in relation to the breach.

Clause 146 provides that proceedings for an offence against the proposed Act must be dealt with summarily before a Local Court constituted by a Magistrate sitting alone. Proceedings for an offence against clause 120 (Recovery of possession of residential premises prohibited except by order) may also be dealt with, with the consent of the Minister, by the Supreme Court.

Clause 147 provides for the issue of penalty notices in relation to offences under the proposed Act.

Clause 148 makes directors and managers of corporations liable for contraventions of the proposed Act by those corporations, if they knowingly authorised or permitted the contraventions, but does not affect the liability of the corporations. The clause does not apply to directors and managers of statutory corporations.

Clause 149 makes it an offence to aid, abet, counsel or procure, induce or attempt to induce a person to contravene a provision of the proposed Act for which a penalty is specified or to be in any way a party to such a contravention by a person or to conspire with others to contravene a provision of the proposed Act.

Clause 150 provides that nothing in the proposed Act limits the operation of the *Contracts Review Act 1980*.

Clause 151 sets out the manner of service of documents on residents and park owners and the Tribunal under the proposed Act.

Clause 152 provides for the Tribunal to extend the period of time for making an application, or for doing any other thing under the proposed Act.

Clause 153 sets out the regulation-making power under the proposed Act. The regulations may create an offence, may impose a penalty not exceeding 5 penalty units (\$550) and may be general or specific in application and may exempt persons, agreements or premises from the operation of part or all of the proposed Act.

Clause 154 provides for the Ministerial review of the proposed Act.

Clause 155 gives effect to the Schedule of savings, transitional and other provisions.

Part 15 Amendment of Acts and statutory instruments

Clause 156 gives effect to the Schedule of consequential amendments to the *Residential Tenancies Act 1987*.

Clause 157 gives effect to the Schedule of amendments to other Acts.

Clause 158 provides for the repeal of a regulation. Many of the provisions of the *Caravan and Relocatable Home Park Industry Code of Practice* prescribed under that regulation have been incorporated in the proposed Act (and are indicated by bracketed notes to the heading of the relevant provisions marked as "CRHPI Code").

Schedules

Schedule 1 makes savings and transitional provisions consequent on the enactment of the proposed Act.

Schedule 2 amends the *Residential Tenancies Act 1987* as a consequence of the enactment of the proposed Act. In particular, the Schedule omits from the 1987 Act all provisions relating specifically to residential parks.

Schedule 3 amends the following Acts:

The *Fair Trading Act 1987* is amended so as to make it clear that tenancies in residential parks are "services" within the meaning of the Act. One consequence of the amendment is that the prohibition on making false and misleading representations in relation to services applies to representations made about tenancies in residential parks.

The *Fines Act 1996* is amended so as to apply the scheme relating to penalty notices, set out in that

Act, to penalty notices issued under the proposed Act.

The *Landlord and Tenant (Rental Bonds) Act 1977* is amended so as to ensure that bonds paid in relation to residential premises in residential parks are covered by the Act.

The proposed *Residential Tribunal Act 1998* (which abolishes the Residential Tenancies Tribunal and establishes a Residential Tribunal) is amended consequentially.