



New South Wales

Residential Parks Act 1998 No 142

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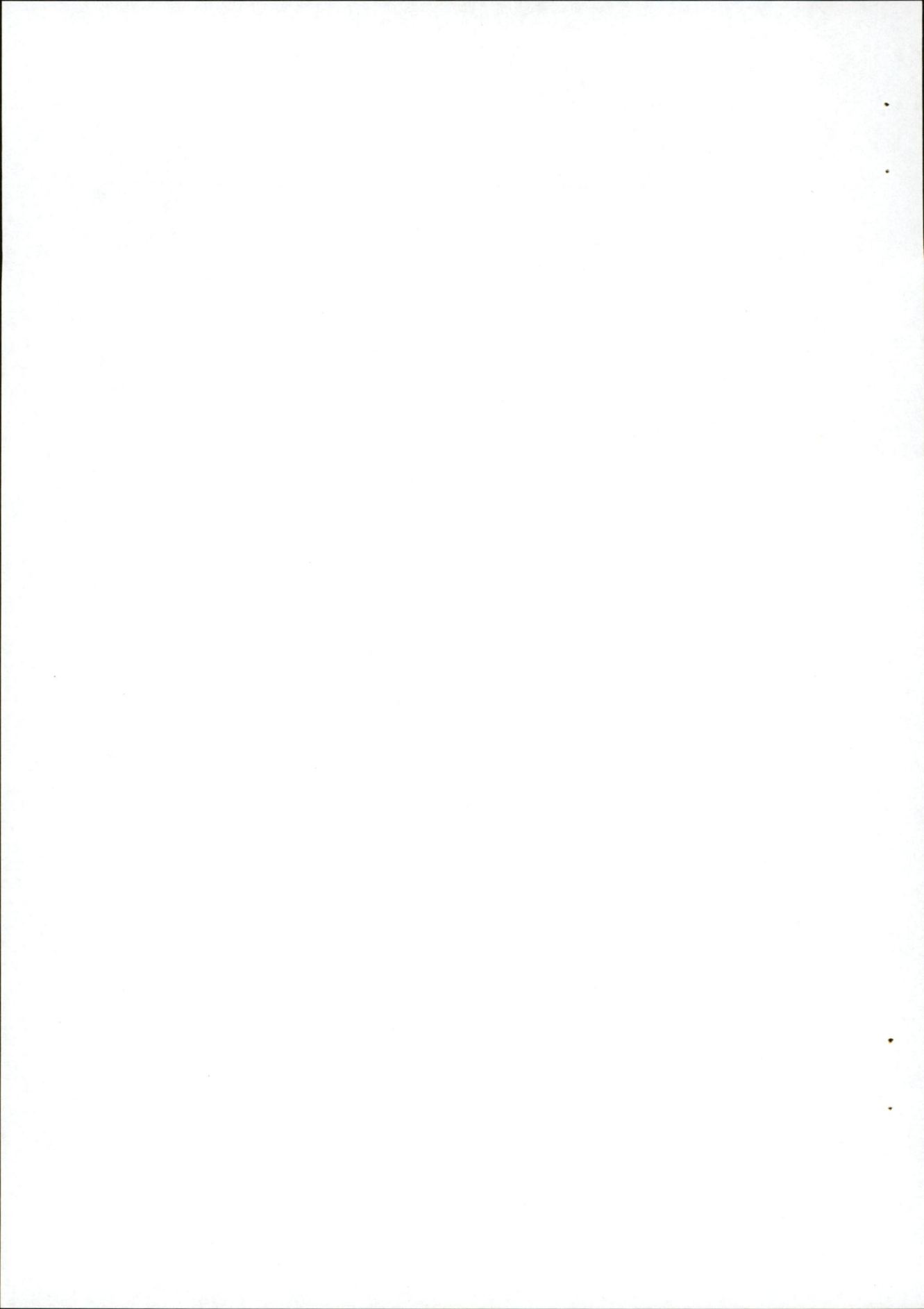
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New South Wales

Residential Parks Act 1998 No 142

Act No 142, 1998

An Act to set out the rights and obligations of residents and owners of residential parks, including rights and obligations that arise under residential tenancy agreements; and for other purposes. [Assented to 8 December 1998]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Residential Parks Act 1998*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Section 39 commences on 1 January 2000, but only if section 5 has commenced on or before that date.

3 Definitions

- (1) In this Act:

Crown reserve has the meaning given to *reserve* in section 78 of the *Crown Lands Act 1989*.

Director-General means the Director-General of the Department of Fair Trading.

exercise of a function includes performance of a duty.

function includes a power, authority or duty.

investigator means:

- (a) an officer appointed as an investigator by the Minister under section 139, or
- (b) an investigator appointed under the *Fair Trading Act 1987*.

manufactured home means a self-contained dwelling (that is, a dwelling that includes at least one kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities) that comprises one or more major sections, and is not a registrable moveable dwelling, and includes any associated structures that form part of the dwelling.

moveable dwelling means:

- (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, or

- (c) any conveyance, structure or thing of a class or description prescribed by the regulations for the purposes of this definition.

Park Disputes Committee, in relation to a residential park, means the Park Disputes Committee convened for the residential park under section 87.

Park Liaison Committee, in relation to a residential park, means the Park Liaison Committee convened for the residential park under section 66.

park manager, in relation to a residential park, means the person appointed under section 143.

park owner:

- (a) in relation to a residential tenancy agreement, means any person who grants the right to occupy residential premises under the residential tenancy agreement, and includes the person's heirs, executors, administrators and assigns, and
- (b) when used in section 30 or Parts 6–11, in relation to a residential park, means any person who jointly or severally, whether at law or in equity, is entitled to the land comprising the residential park for any estate of freehold in possession.

Park Disputes Committee, in relation to a residential park, means the Park Disputes Committee convened for the residential park under section 87.

park rules, in relation to a residential park, means the rules made under Part 6 in relation to that residential park.

registrable moveable dwelling means a moveable dwelling that is a registrable vehicle within the meaning of the *Road Transport (Vehicle Registration) Act 1997*.

relocatable home means a moveable dwelling that is not:

- (a) a registrable moveable dwelling, or
- (b) a moveable dwelling of a type prescribed by the regulations for the purposes of this paragraph.

rent means an amount payable by a resident under a residential tenancy agreement in respect of a period of the tenancy.

rental bond, in relation to a residential tenancy agreement or proposed residential tenancy agreement, has the same meaning as it has in the *Landlord and Tenant (Rental Bonds) Act 1977* in relation to a lease or proposed lease.

reservation fee means an amount paid or required to be paid to a person in consideration for not letting residential premises pending the making of a residential tenancy agreement.

resident 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 park means:

- (a) a caravan park (that is, land, including a camping ground, on which caravans, or caravans and other moveable dwellings, have been, are or are to be placed, installed or erected), or
- (b) a manufactured home estate (that is, land on which manufactured homes have been, are or are to be placed),

whether or not the caravan park or manufactured home estate is the subject of an approval under the *Local Government Act 1993*.

residential premises:

- (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 residential site), if the moveable dwelling is used or intended to be used as a place of residence.

residential site 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 means a residential tenancy agreement under which:

- (a) the park owner grants to the resident:
 - (i) 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

- (ii) a right to use the home or dwelling as a residence, and
- (b) the resident occupies the premises as the resident's principal place of residence, and
- (c) in the case of an agreement entered into after the commencement of section 5, the resident has the approval of the park owner or park manager to occupy the premises as the resident's principal place of residence,

but does not include such a residential tenancy agreement with respect to land:

- (d) that is within a Crown reserve, if the agreement was entered into after 16 December 1994, unless it is an agreement arising from a lease or licence under section 102 of the *Crown Lands Act 1989* to which the Minister administering that Act has granted consent, or
- (e) that is reserved or dedicated under the *National Parks and Wildlife Act 1974*.

residential tenancy agreement 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.

rigid annexe means an attachment to a moveable dwelling used as an extension of the habitable area of the dwelling, not being an extension that (apart from any rigid floor or support frame and any door, window or other securable opening constructed of non-flexible material) consists entirely of canvas or other flexible material.

tenancy means the right to occupy residential premises under a residential tenancy agreement.

Tribunal means the Residential Tenancies Tribunal of New South Wales constituted by the *Residential Tenancies Act 1987*.

(2) In this Act:

- (a) a reference to a resident includes a person to whom a resident has granted the right to occupy residential premises, and
- (b) a reference to a resident of a residential park is a reference to a person who is a resident under a residential tenancy agreement under which the residential premises consist of a residential site, or a moveable dwelling and a residential site, within the residential park and who occupies the residential premises as the person's principal place of residence, and
- (c) a reference to the giving of something by a person includes a reference to the causing of that thing to be given by the person.

(3) In Parts 2–5 (sections 30, 37, 38 and 39 excepted) and Part 12, a reference to a park owner includes a reference to a resident who has granted the right to occupy residential premises to another person (by sub-letting).

(4) For the purposes of determining whether an agreement is a residential tenancy agreement as defined in subsection (1), it does not matter that the person granted the right of occupation is a corporation if the premises are used (or intended for use) as a residence by a natural person.

4 Notes

Notes included in this Act are explanatory notes and do not form part of this Act.

Note. For the purposes of comparison, a number of provisions of this 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 to the *Caravan and Relocatable Home Park Industry Code of Practice* (abbreviated as "CRHPI Code").

Part 2 Application of Act

5 Application of Act (cf RT Act s 7)

- (1) This Act applies to residential tenancy agreements under which:
 - (a) the residential premises consist of a residential site, or a moveable dwelling on a residential site, and
 - (b) the resident occupies the residential premises as the resident's principal place of residence, and
 - (c) in the case of an agreement entered into after the commencement of this section, the resident has the approval of the park owner or park manager to occupy the premises as the resident's principal place of residence.
- (2) This Act applies whether the relevant residential tenancy agreement was entered into before or after the commencement of this section, unless a particular provision provides otherwise.
- (3) Where this Act applies to a residential tenancy agreement, it so applies despite the terms of any such residential tenancy agreement or any other contract, agreement or arrangement, whether made before or after the commencement of this section.

Note. Section 157 gives effect to certain savings and transitional provisions that are set out in Schedule 1.

6 Agreements and premises to which Act does not apply (cf RT Act s 6)

- (1) This Act does not apply to a residential tenancy agreement:
 - (a) if the resident is a party to an agreement made in good faith for the sale or purchase of the residential premises, or
 - (b) if the agreement arises under a mortgage created in good faith in respect of the residential premises, or
 - (c) if the agreement arises under a company title scheme under which:
 - (i) a group of adjoining or adjacent premises is owned by a corporation, and
 - (ii) the premises are let by the corporation to persons who jointly have a controlling interest in the corporation, or

- (d) if the resident is a boarder or a lodger, or
 - (e) if the agreement is made in good faith for the purpose of giving a person a right to occupy residential premises (not being premises ordinarily used for holiday purposes) for a period of not more than 2 months for the purpose of a holiday.
- (2) This Act does not apply to:
- (a) premises to which Parts 2, 3, 4 and 5 of the *Landlord and Tenant (Amendment) Act 1948* apply, or
 - (b) any part of a hotel or motel, or
 - (c) any premises ordinarily used for holiday purposes, or
 - (d) any part of an educational institution, hospital or nursing home, or
 - (e) any part of a club, or
 - (f) any premises used as an approved hostel within the meaning of the *Aged or Disabled Persons Care Act 1954* of the Commonwealth, or
 - (g) any premises, or part of premises, prescribed by the regulations for the purposes of this paragraph.
- (3) Nothing in subsection (2) applies to any part of premises referred to in subsection (2) (b), (c), (d), (e), (f) or (g) if the part is used solely as a place of residence by a person employed as a park manager for a residential park, or caretaker for the premises, or in any similar capacity.

7 Act to bind Crown (cf RT Act s 4)

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

Part 3 Residential tenancy agreements relating to residential parks

8 Standard form of residential tenancy agreement (cf RT Act s 8)

- (1) The regulations may prescribe a standard form of residential tenancy agreement.
- (2) The regulations may provide for:
 - (a) more than one standard form of residential tenancy agreement, or
 - (b) the addition of clauses in a separate and clearly labelled part of the standard form or forms, or
 - (c) the omission or variation of clauses contained in the standard form or forms,for use in relation to different classes of residential premises, agreements or parties.
- (3) A prescribed standard form of residential tenancy agreement:
 - (a) is taken to contain all terms included in the agreement by this Act, and
 - (b) may set out those terms or provisions to the same effect, and
 - (c) may contain other terms not inconsistent with this Act, which must be set out in a separate and clearly labelled part of the standard form.
- (4) A prescribed standard form of residential tenancy agreement must include a condition report relating to the condition of the residential premises, to be completed in accordance with the regulations.
- (5) A prescribed standard form of residential tenancy agreement may not exclude the operation or vary the effect of any of the terms referred to in subsection (3) (a).

9 Agreements to be in standard form (cf RT Act s 9)

- (1) If a standard form of residential tenancy agreement is prescribed by the regulations, a residential tenancy agreement for which a form is prescribed and that is entered into on or after the day the form is prescribed, or any later day prescribed by the regulations for the purpose, must be in or to the effect of the form.

- (2) Except as provided by section 10, a residential tenancy agreement for which a standard form is prescribed is void to the extent to which it is not in or to the effect of the form.
- (3) The terms contained in a prescribed standard form of residential tenancy agreement must not be varied by the parties to a residential tenancy agreement for which the form is prescribed and to the extent that they are so varied are taken not to have been varied.
- (4) Nothing in subsection (2) or (3) avoids a right to occupy residential premises that is granted by a residential tenancy agreement referred to in those subsections.

10 Additional terms (cf RT Act s 10)

- (1) The parties to a residential tenancy agreement for which a standard form is prescribed may insert additional terms in the standard form, but only if the terms:
 - (a) do not contravene this or any other Act, and
 - (b) are not inconsistent with the terms prescribed in the standard form, and
 - (c) are set out, in the manner prescribed by the regulations, in a separate and clearly labelled part of the residential tenancy agreement.
- (2) An additional term is void if the Tribunal so orders, on application by a resident or a park owner, on being satisfied that the additional term contravenes subsection (1).

11 Terms in Act to prevail (cf RT Act s 11)

A term of a residential tenancy agreement is void to the extent to which it is inconsistent with any term included in the agreement by this Act.

12 Costs of preparation of residential tenancy agreement and other costs (cf RT Act s 12)

- (1) The costs of preparation of a written residential tenancy agreement by or on behalf of a park owner are payable in equal shares by the park owner and the resident.

- (2) A park owner under a proposed written residential tenancy agreement must give to the resident under the proposed agreement, before the resident enters into the agreement, a written statement of any costs of preparation of the agreement and of any other charges (including any duty under a New South Wales Act and any registration fee under the *Real Property Act 1900*) payable by the resident in respect of the agreement.

Maximum penalty: 2 penalty units.

- (3) The regulations may prescribe a maximum amount payable by a resident for the costs of preparation of a written residential tenancy agreement and for any other charges (other than duty under a New South Wales Act and registration fees under the *Real Property Act 1900*) payable by a resident in respect of the agreement.
- (4) If the regulations prescribe a maximum amount payable by the resident for any such costs or charges, any difference between the costs or charges payable in respect of the agreement and the maximum amount prescribed is payable by the park owner.

13 Certain unexecuted residential tenancy agreements enforceable (cf RT Act s 13)

- (1) If a residential tenancy agreement has been signed by a resident and given to the park owner or a person on the park owner's behalf and has not been signed by the park owner:
- (a) acceptance of rent by or on behalf of the park owner without reservation, or
 - (b) any act of part performance of the agreement by or on behalf of the park owner,

gives to the document the same effect it would have if it had been signed by the park owner on the first day in respect of which rent was accepted or on the day on which such an act was first performed.

- (2) This section applies despite section 54A (which requires certain contracts in relation to land to be in writing) of the *Conveyancing Act 1919*.

(3) In this section:

signed includes executed by a corporation in any manner permitted by law.

14 Continuation of fixed term agreements (cf RT Act s 14)

- (1) If a residential site agreement (having no provision in its terms for continuation) that creates a tenancy for a fixed term continues after the day on which the term ends:
 - (a) the residential site agreement is to continue to apply on the same terms as last applying before that day, and
 - (b) the residential site agreement so continues on the basis that the resident is holding over under a periodic tenancy.
- (2) If a residential tenancy agreement other than a residential site agreement (having no provision in its terms for continuation) that creates a tenancy for a fixed term continues after the day on which the term ends and notice of termination has not been given before that day in accordance with this Act:
 - (a) the residential tenancy agreement is to continue to apply on the same terms (other than any term relating to termination of the agreement) as last applying before that day, and
 - (b) the residential tenancy agreement so continues on the basis that the resident is holding over under a periodic tenancy.
- (3) The Tribunal may, on application by a park owner or a resident, modify the terms (including terms contained in any standard form but not any terms implied in the agreement by this Act) of a residential site agreement or other residential tenancy agreement that are included in the agreement by this section as it considers appropriate for the continuation of the agreement.

15 Parties to minimise loss from breach of residential tenancy agreement (cf RT Act s 15)

- (1) The rules of law relating to mitigation of loss or damage on breach of a contract apply to a breach of a residential tenancy agreement.

- (2) Nothing in this section affects the operation of sections 118, 119 and 133 (which also deal with mitigation of loss).

16 Applications relating to a breach of or dispute under residential tenancy agreement (cf RT Act s 16)

- (1) If a park owner or a resident under a residential tenancy agreement claims that a breach of a term of the agreement has occurred, the park owner or the resident may, not later than 30 days after becoming aware of the breach, apply to the Tribunal for an order in respect of the breach.
- (2) If a park owner or a resident under a residential tenancy agreement claims that a dispute has arisen under the agreement (being a dispute that does not involve a breach of a term of the agreement), the park owner or the resident may refer the dispute to the Director-General.
- (3) When a dispute is referred to the Director-General under this section, the Director-General may attempt to bring the park owner and the resident to a settlement acceptable to them.
- (4) If the park owner and the resident fail to make such a settlement, the park owner or the resident may, with the consent of the Director-General, apply to the Tribunal for an order in respect of the dispute.
- (5) If a person who has paid, or required or received payment of, a reservation fee pending the making of a residential tenancy agreement claims that a dispute has arisen in relation to the reservation fee, the person may apply to the Tribunal for an order in respect of the dispute.
- (6) The Tribunal may, on application by a person under this section, make one or more of the following orders:
- (a) an order that:
 - (i) restrains any action in breach of the residential tenancy agreement, or
 - (ii) requires an action in performance of the agreement,
 - (b) an order for the payment of an amount of money,
 - (c) an order that a party to the residential tenancy agreement perform such work or take such other steps as the order specifies to remedy a breach of the agreement,

- (d) an order as to compensation, including (without limiting the Tribunal's power to make such an order):
 - (i) compensation for loss of rent, and
 - (ii) compensation where a park owner withholds or refuses consent to the removal of a resident's fixture, and
 - (iii) compensation for any other breach of the residential tenancy agreement,
 - (e) an order that requires payment of part or all of the rent under the residential tenancy agreement into the Tribunal until the whole or part of the agreement has been performed or any application for compensation has been determined,
 - (f) an order that requires payment (out of rent paid into the Tribunal) towards the cost of remedying a breach of the residential tenancy agreement or towards the amount of any compensation.
- (7) An order under subsection (6) (a) may be made even though it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such a remedy would not otherwise be available.
- (8) An application under this section may be made during the currency of or after the termination of a residential tenancy agreement and may be made whether or not notice of termination has been given or an order for termination has been made by the Tribunal. In addition, an application under subsection (5) may be made whether or not the proposed residential tenancy agreement was executed.

Part 4 Rights and obligations of park owners and residents

Division 1 Rights and obligations

17 Park owner to give resident copy of residential tenancy agreement (cf RT Act s 17)

- (1) It is 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), at or before the time that the resident signs another copy of the agreement and gives it back to the park owner or park manager.
- (2) It is a term of every residential tenancy agreement that the park owner must give the resident a copy of the fully executed agreement, as soon as is reasonably practicable.
- (3) A park owner under a residential tenancy agreement must not contravene or fail to comply with subsection (1) or (2).

Maximum penalty: 5 penalty units.

18 Legal impediments to occupation as residence (cf RT Act s 20)

It is a term of every residential tenancy agreement that the park owner warrants that there is no legal impediment (of which the park owner had or ought reasonably to have had knowledge at the time of entering into the agreement) to occupation of the residential premises as a residence for the period of the tenancy.

19 Vacant possession (cf RT Act s 21)

- (1) It is a term of every residential tenancy agreement that the resident must have vacant possession of the residential premises on the day on which the resident is entitled to occupy those premises under the agreement.
- (2) This section does not apply to any part of residential premises to which the resident does not have a right of exclusive occupation.

20 Resident's right to quiet enjoyment (cf RT Act s 22)

- (1) It is a term of every residential tenancy agreement that:
- (a) the resident must have quiet enjoyment of the residential premises without interruption by the park owner or any person claiming by, through or under the park owner or having superior title to that of the park owner, and
 - (b) the park owner or the park manager must not interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of the resident in using the residential premises.
- (2) A park owner or a park manager under a residential tenancy agreement must not, during the currency of the agreement, contravene or fail to comply with subsection (1).

Maximum penalty: 5 penalty units.

21 Use of premises by resident (cf RT Act s 23 and cl 3 of Sch 3)

It is a term of every residential tenancy agreement that:

- (a) the resident must not use the residential premises, or cause or permit the premises to be used, for any illegal purpose, and
- (b) the resident must not cause or permit a nuisance, and
- (c) the resident must not interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of any neighbour of the resident or any other person lawfully in the residential park, and
- (d) the resident must not interfere, or cause or permit any interference, with the proper use and enjoyment of the residential park by the other residents of the residential park.

22 Park owner's access to residential premises that consist of a moveable dwelling installed on a residential site (cf RT Act s 24)

- (1) It is a term of every residential tenancy agreement under which the residential premises consist of a moveable dwelling that is not owned by the resident and that is installed on a residential site, that the park owner, the park manager or any person authorised by the park owner, during the currency of the agreement, may

enter the residential premises, but only in the following circumstances:

- (a) in an emergency (including entry for the purpose of carrying out urgent repairs),
 - (b) in a case where electricity, water or gas is supplied to the resident by the park owner, to inspect and read any electricity, water or gas meter situated on the residential site,
 - (c) to inspect the residential premises, on not more than 4 occasions in any period of 12 months, if the resident has been given not less than 7 days' notice on each occasion,
 - (d) to carry out necessary repairs (other than urgent repairs) to, or maintenance of, the residential premises, if the resident has been given not less than 2 days' notice on each occasion,
 - (e) to show the residential premises to prospective purchasers or mortgagees, on a reasonable number of occasions, if the resident has been given reasonable notice on each occasion,
 - (f) to show the residential premises to prospective residents, on a reasonable number of occasions during the period of 14 days preceding the termination of the agreement, if the resident has been given reasonable notice on each occasion,
 - (g) if the park owner forms a belief on reasonable grounds that the residential premises have been abandoned,
 - (h) at any time with the consent of the resident,
 - (i) in accordance with an order of the Tribunal.
- (2) It is a term of every residential tenancy agreement that a person must not enter the residential premises in the circumstances set out in subsection (1) (b), (c), (d), (e) or (f):
- (a) on a Sunday or a public holiday, unless the resident otherwise agrees, and
 - (b) except between the hours of 8.00 am and 8.00 pm, unless the resident otherwise agrees, and

- (c) in the case of a person other than the park owner or the park manager, except with the prior written consent of the park owner or the park manager.
- (3) It is a term of every residential tenancy agreement that a written consent referred to in subsection (2) (c) must be produced to the resident.
- (4) The Tribunal may, on application by a park owner under a residential tenancy agreement, make an order authorising the park owner or any other person to enter the residential premises.
- (5) Without limiting the generality of subsection (4), the Tribunal may make an order under that subsection authorising the park owner or any other person to enter the residential premises for the purpose of determining whether the resident has breached the term of the residential tenancy agreement set out in section 21.
- (6) A park owner under a residential tenancy agreement, the park manager or other person referred to in this section must not, during the currency of the agreement, enter the residential premises except as permitted by this section.

Maximum penalty: 5 penalty units.

23 Park owner's access to residential premises that consist of a residential site only (cf RT Act s 24)

- (1) It is a term of every residential tenancy agreement under which the residential premises consist of a residential site only that the park owner, the park manager or any person authorised by the park owner, during the currency of the agreement, may enter the residential site, but only in the following circumstances:
- (a) in an emergency (including entry for the purpose of carrying out urgent repairs),
- (b) in a case where electricity, water or gas is supplied to the resident by the park owner, to inspect and read any electricity, water or gas meter situated on the residential site,
- (c) to inspect the residential site, on not more than 4 occasions in any period of 12 months, if the resident has been given not less than 7 days' notice on each occasion,

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- (d) to carry out necessary repairs (other than urgent repairs) to, or maintenance of, the residential site, if the resident has been given not less than 2 days' notice on each occasion,
 - (e) to show the residential site to prospective purchasers or mortgagees, on a reasonable number of occasions, if the resident has been given reasonable notice on each occasion,
 - (f) to show the residential site to prospective residents, on a reasonable number of occasions during the period of 14 days preceding the termination of the agreement, if the resident has been given reasonable notice on each occasion,
 - (g) if the park owner forms a belief on reasonable grounds that the residential site has been abandoned,
 - (h) at any time with the consent of the resident,
 - (i) in accordance with an order of the Tribunal.
- (2) It is a term of every residential tenancy agreement that a person must not enter the residential site in the circumstances set out in subsection (1) (b), (c), (d), (e) or (f):
- (a) on a Sunday or a public holiday, unless the resident otherwise agrees, and
 - (b) except between the hours of 8.00 am and 8.00 pm, unless the resident otherwise agrees, and
 - (c) in the case of a person other than the park owner or the park manager, except with the prior written consent of the park owner or the park manager.
- (3) It is a term of every residential tenancy agreement that a written consent referred to in subsection (2) (c) must be produced to the resident.
- (4) The Tribunal may, on application by a park owner under a residential tenancy agreement, make an order authorising the park owner or any other person to enter the residential site.
- (5) Without limiting the generality of subsection (4), the Tribunal may make an order under that subsection authorising the park owner or any other person to enter the residential site for the purpose of determining whether the resident has breached the term of the residential tenancy agreement set out in section 21.

- (6) A park owner under a residential tenancy agreement, the park manager or other person referred to in this section must not, during the currency of the agreement, enter the residential site except as permitted by this section.

Maximum penalty: 5 penalty units.

24 Park owner's responsibility for cleanliness and repairs (cf RT Act s 25)

- (1) It is a term of every residential tenancy agreement that:
- (a) the park owner must provide the residential premises (for instance, the moveable dwelling and the residential site or the residential site only) and the common areas of the residential park in a reasonable state of cleanliness and fit for habitation by the resident, and
 - (b) the park owner must provide and maintain the residential premises in a reasonable state of repair, having regard to the age of, rent payable for and prospective life of the premises.
- (2) In this section:
- residential premises* includes everything provided with the premises, for use by the resident, under the residential tenancy agreement.

25 Cleanliness, notification of damage to residential premises and condition of premises (cf RT Act s 26)

- (1) It is a term of every residential tenancy agreement that:
- (a) having regard to the condition of the residential premises at the commencement of the tenancy, the resident must keep the residential premises (that is, the residential site and any moveable dwelling that is not owned by the resident) in a reasonable state of cleanliness, and
 - (b) the resident must, as soon as practicable, notify the park owner of any damage to the residential premises, and
 - (c) the resident must not intentionally or negligently cause or permit any damage to the residential premises, and
 - (d) at the termination of the tenancy, the resident must leave the residential 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.

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- (2) The obligations created by this section are in addition to the obligations that may be created under section 70 (Responsibility for preservation or landscaping of individual residential sites).

26 Alterations and additions to residential premises that belong to park owner (cf RT Act s 27)

- (1) It is a term of every residential tenancy agreement under which the residential premises consist of a moveable dwelling (that belongs to the park owner) installed on a residential site that:
- (a) the resident must not, except with the park owner's written consent or unless the agreement otherwise provides, affix any fixture or make any renovation, alteration or addition to the residential premises, and
 - (b) the resident must not, except with the park owner's written consent or unless the agreement otherwise provides, remove any fixture that the resident has affixed to the residential premises, and
 - (c) if the resident causes any damage to the residential premises by removing any fixture affixed by the resident, the resident must notify the park owner and, 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, and
 - (d) if the park owner withholds or refuses consent to the removal of a fixture affixed by the resident, the park owner must without delay compensate the resident for the value of the fixture.
- (2) Despite section 133B of the *Conveyancing Act 1919* or any other law, it is not a term of a residential tenancy agreement that the park owner must not unreasonably withhold or refuse consent to any proposed action by the resident referred to in subsection (1) (a) or (b).

27 Alterations and additions to moveable dwellings that belong to resident

- (1) It is a term of every residential tenancy agreement under which the residential premises consist of a residential site that the resident:

- (a) must not make any alteration to the moveable dwelling on the residential site that is visible from the outside of the moveable dwelling unless the park owner has agreed to the alteration, and
 - (b) must not make any addition to a residential site unless the park owner has agreed to the addition.
- (2) It is a term of every residential tenancy agreement that the park owner must not unreasonably withhold or refuse the consent referred to in subsection (1).
 - (3) A resident under a residential tenancy agreement may apply to the Tribunal for an order requiring a park owner to give consent to such an alteration or addition.
 - (4) The Tribunal may, if it considers that consent has been unreasonably refused, order the park owner to give consent.
 - (5) The Tribunal must not make an order under this section if the relevant alteration or addition is or would be designed, constructed or installed in breach of the *Local Government Act 1993*, or the *Environmental Planning and Assessment Act 1979*, any approval, consent or certificate under either or both of those Acts.

28 Urgent repairs (cf RT Act s 28)

- (1) It is a term of every residential tenancy agreement that the park owner must, not later than 14 days after receiving a written notice from the resident, reimburse the resident for any reasonable costs (up to but not exceeding, in each case, \$500 or such other amount as may be prescribed by the regulations) incurred by the resident in making urgent repairs to the residential premises, where:
 - (a) the state of disrepair arose otherwise than as a result of a breach of the agreement by the resident, and
 - (b) the resident has given or has made a reasonable attempt to give the park owner notice of the state of disrepair, and

- (c) if notice has been given, the resident has given the park owner a reasonable opportunity to make the repairs, and
- (d) if the park owner has, in the agreement, nominated a licensed or otherwise properly qualified person or persons to carry out repairs of the kind concerned, the resident has made a reasonable attempt to arrange for that person or one of those persons to carry out the repairs, and
- (e) the repairs were carried out, where appropriate, by licensed or otherwise properly qualified persons, and
- (f) the resident has, as soon as practicable, given or has made a reasonable attempt to give the park owner a written notice specifying details of the repairs and their cost, together with all receipts or copies of receipts for costs paid by the resident.

(2) In this section:

residential premises includes everything provided with the premises, for use by the resident, under the residential tenancy agreement.

urgent repairs means any work needed to repair any one or more of the following:

- (a) a burst water service,
- (b) a blocked or broken lavatory system,
- (c) a serious roof leak,
- (d) a gas leak,
- (e) a dangerous electrical fault,
- (f) flooding or serious flood damage,
- (g) serious storm or fire damage,
- (h) a failure or breakdown of the gas, electricity or water supply to the residential premises,
- (i) a failure or breakdown of any essential service provided with the residential premises for hot water, cooking, heating or laundering,
- (j) any fault or damage that causes the residential premises to be unsafe or insecure,

(k) any other damage prescribed by the regulations,
but does not include work needed to repair premises not owned by the park owner or a person having superior title to that of the park owner.

- (3) Nothing in this section prevents a resident, with the consent of the park owner, from:
- (a) making repairs to the residential premises, and
 - (b) being reimbursed for the costs of those repairs.

29 Locks and other security devices (cf RT Act s 29)

- (1) It is a term of every residential tenancy agreement that:
- (a) the park owner must provide and maintain such locks or other security devices as are necessary to ensure that the residential premises are reasonably secure, and
 - (b) neither the park owner nor the resident may, except with reasonable excuse or the consent of the other party, alter, remove or add or cause or permit the alteration, removal or addition of any lock or other security device, and
 - (c) a copy of the key or any other opening device or information required to open a lock or other security device that is altered, removed or added must be given to the other party, except where the other party consents to not being given a copy or the Tribunal authorises a refusal to give the copy.
- (2) A park owner or a resident under a residential tenancy agreement must not, except with reasonable excuse or the consent of the other party, alter, remove or add or cause or permit the alteration, removal or addition of any lock or other security device of the residential premises.

Maximum penalty: 2 penalty units.

- (3) Without limiting the operation of subsection (2), it is a reasonable excuse for altering, removing or adding any lock or other security device, or causing or permitting the alteration, removal or addition, that a lock or other security device was altered, removed or added:

- (a) in an emergency, or
 - (b) in accordance with an order of the Tribunal.
- (4) If a lock or other security device is altered, removed or added by the park owner or the resident, or is caused or permitted to be altered, removed or added, without the consent of the other party, it is presumed, in the absence of evidence to the contrary, that it was altered, removed or added without reasonable excuse.
- (5) The Tribunal may, on application by a park owner or a resident under a residential tenancy agreement:
- (a) make an order authorising the park owner or the resident to alter, remove or add any lock or other security device, or
 - (b) make an order authorising the park owner or the resident to refuse to give to the other party a copy of a key or any other opening device or information, or
 - (c) make an order requiring a copy of a key or any other opening device or information to be given to the park owner or the resident,
- if it is satisfied that it is reasonable in the circumstances to do so.
- (6) This section does not apply to residential tenancy agreements under which the residential premises consist only of a residential site on which a moveable dwelling is situated or intended to be situated.

30 Access to residential park

- (1) It is a term of every residential tenancy agreement in respect of residential premises in a residential park that, if the park owner has installed any locks or other security devices (such as boom gates) to restrict entry to the residential park, or some part of the residential park to which it is agreed that the resident may have access:
- (a) the park owner must give a copy of the key or any other opening device or information required to open the locks or other security devices to the resident at the commencement of the agreement, and
 - (b) the park owner must maintain those locks or security devices in working order.

- (2) It is a term of every residential tenancy agreement that, if the park owner installs or alters any locks or other security devices (such as boom gates) to restrict entry to the residential park, or some part of the residential park to which it is agreed that the resident may have access, during the term of the agreement:
- (a) the park owner must give a copy of the key or any other opening device or information required to open the locks or other security devices to the resident, and
 - (b) the park owner must maintain those locks or security devices in working order.
- (3) A park owner is entitled to require a resident to pay an amount no greater than the amount prescribed by the regulations to cover the cost of providing a key or other opening device, or a replacement key or opening device, to the resident.

31 Resident's liability for actions of others (cf RT Act s 30)

It is a term of every residential tenancy agreement that the resident is vicariously responsible to the park owner for any act or omission by:

- (a) any other person who is lawfully on the residential premises (other than a person who has a right of entry to the premises without the resident's consent), or
- (b) any other person who is in the residential park at the resident's invitation,

that would have been a breach of the agreement if it had been an act or omission by the resident.

32 Certain residents may appoint agent (cf RT Act s 31)

- (1) A resident under a residential tenancy agreement who because of:
- (a) intellectual impairment or physical impairment, or
 - (b) illiteracy or an inability to read or write English sufficiently well, or
 - (c) absence from the residential premises,

is unable to deal with notices or other documents given under the agreement or this Act may appoint a person as the resident's agent for the purpose of receiving those notices or other documents.

- (2) An appointment under this section:
 - (a) may be made in the residential tenancy agreement or at any time after the agreement commences, and
 - (b) may be revoked at any time by the resident,and any such appointment or revocation has no effect until it is notified to the park owner or the park manager.
- (3) A park owner, a park manager or the Tribunal, if notified of the appointment, must give to a person appointed by a resident, until such time as the appointment expires or is revoked, any notices or other documents required by the residential tenancy agreement or this Act to be given to the resident.
- (4) A notice or other document that is required by this section to be given to a person appointed by the resident and that is not so given is taken not to have been given to the resident.

33 Changes of name or address (cf RT Act s 32)

- (1) A park owner under a residential tenancy agreement must, at or before the time of entering into the agreement, give the resident notice in writing of:
 - (a) the names and residential addresses of the park owner and any person having superior title to that of the park owner and the name and business address of the park manager (if any), or
 - (b) if the park owner or park manager is a corporation, the name of the secretary (or, if there is no secretary, of another responsible officer of the corporation) and the address of the registered office of the corporation or, in the case of a statutory corporation, the business address of the corporation.

Maximum penalty: 2 penalty units.

- (2) A person who succeeds another person as the park owner under a residential tenancy agreement must, not later than 14 days after succeeding as park owner, give the resident notice in writing of:
- (a) the names and residential addresses of the new park owner and any other person having superior title to that of the new park owner and the name and business address of the new park manager (if any), or
 - (b) if the new park owner or park manager is a corporation, the name of the secretary (or, if there is no secretary, of another responsible officer of the corporation) and the address of the registered office of the corporation or, in the case of a statutory corporation, the business address of the corporation.

Maximum penalty: 2 penalty units.

- (3) A park owner is not required to give a resident notice of the park owner's residential address under this section if the park owner has given the resident notice in writing of the business address of the park manager.
- (4) If a name or an address of which a current park owner is required to give notice under this section changes, the current park owner must not fail to give the resident notice in writing of the changed name or address within 14 days of becoming aware of the change.

Maximum penalty: 2 penalty units.

- (5) It is a term of every residential tenancy agreement that a resident that is a corporation (other than a statutory corporation) must, if the address of the registered office of the corporation changes, give the park owner notice in writing of the changed address.

Division 2 Obligations to make certain payments

34 Definitions

In this Division:

excess water charge means those charges payable by a direct customer of a water supply authority for that part of water used in excess of that amount for which an annual rate or fixed charge is payable.

water consumption charge means a charge for water that is calculated only on the basis of how much water is used.

water supply authority means:

- (a) the Sydney Water Corporation Limited, the Hunter Water Corporation Limited or a water supply authority constituted under the *Water Supply Authorities Act 1987*, or
- (b) a council or county council exercising water supply, sewerage or stormwater drainage functions under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*, or
- (c) any authority prescribed by the regulations.

35 Payment of rent (cf RT Act s 18)

It is a term of every residential tenancy agreement that the resident must pay the rent on or before the day set out in the agreement.

36 Park owner to pay council rates, land tax and other charges
(cf RT Act s 19)

- (1) It is a term of every residential tenancy agreement that the resident will pay:
 - (a) all gas charges in connection with the residential premises that the regulations require the resident to pay, and
 - (b) all excess water charges payable in connection with the residential premises, but only if the residential site is individually metered by the relevant water supply authority in accordance with the regulations, and
 - (c) those charges, or those parts of charges, for electricity and water that are required to be paid by the resident under this Division (including any charges that the resident agrees to pay under the agreement), and
 - (d) any other charges prescribed by the regulations.
- (2) It is a term of every residential tenancy agreement that the park owner will pay all other rates, taxes or charges payable in connection with the residential premises.

37 Resident may agree to pay certain electricity charges

- (1) The park owner and resident under a residential tenancy agreement may agree that it is a term of the agreement that the resident will pay electricity charges (including availability charges, but not including installation costs) in connection with the residential premises, if:
 - (a) the residential premises are individually metered, in compliance with the Code, and
 - (b) any charges for the supply or resupply of electricity to the resident are calculated in accordance with the Code (whether by reference to a published domestic tariff or otherwise), and
 - (c) the resident is provided with a receipt for any amount paid to the park owner for electricity consumption or availability, and that receipt is separate from any rent receipt provided to the resident or is identified separately on the rent receipt, and
 - (d) the resident is issued with accounts that comply with this section, and with any relevant provisions of the Code that are not inconsistent with this section.
- (2) However, a resident who is required to pay the park owner an amount for electricity consumption or availability under such a term is not required to pay an amount that is greater than either:
 - (a) the amount calculated in accordance with the Code, having regard to the resident's electricity consumption, or
 - (b) any maximum amount prescribed by the regulations.
- (3) Any account issued to a resident in relation to electricity charges must contain details of the following:
 - (a) the name of the resident,
 - (b) the date of the account,
 - (c) the date of the second meter reading in respect of which the account is issued,
 - (d) the second meter reading in respect of which the account is issued (in kWh),
 - (e) the previous meter reading (in kWh),
 - (f) the number of days in the meter reading period.

- (g) the method by which the charge for electricity was calculated (showing total electricity consumption and appropriate rates),
 - (h) the total amount payable,
 - (i) any other matter required by the Code.
- (4) It is a term of every residential tenancy agreement that the park owner will pay all electricity charges in connection with the residential premises other than those that the resident agrees to pay, and is required to pay, under this section.
- (5) A resident who is required to pay any amount under this section is entitled to inspect any records of the park owner that relate to the payment of electricity charges by the resident.
- (6) In this section, *Code* means:
- (a) the *Code of Practice for Electricity Supply to Long-term Residents of Caravan Parks* prepared by the Department of Energy, as in force from time to time, or
 - (b) such other document as may be prescribed by the regulations for the purposes of this definition.

38 Resident may agree to pay certain water consumption charges other than for excess water (until 31 December 1999)

- (1) The park owner and resident under a residential tenancy agreement may agree that it is a term of the agreement that the resident will pay all water consumption charges (other than excess water charges) in connection with the residential premises, if the residential premises are individually metered in a manner that complies with the regulations and:
- (a) the resident is billed either:
 - (i) directly by the water supply authority, or
 - (ii) by the park owner in accordance with this section, and
 - (b) the resident is not liable to pay a minimum charge.

- (2) If the resident is billed by the park owner, the amount that the resident is required to pay under such a term is the lower of the following amounts:
- (a) the amount that the resident would have been required to pay for water consumed if the resident were a direct domestic customer of the relevant water supply authority,
 - (b) the amount prescribed by the regulations.
- (3) If a resident is billed by the park owner:
- (a) the resident must be billed at the same frequency as the park owner is billed by the relevant water supply authority, but may be billed more frequently if the parties so agree, and
 - (b) the bill provided by the park owner must include:
 - (i) the last meter reading taken before the bill was issued, and
 - (ii) the last meter reading before that (if any), and
 - (iii) the amount of water supplied during the billing period, and
 - (iv) the charge per unit of water.
- (4) It is a term of every residential tenancy agreement that the park owner will pay all water charges in connection with the residential premises other than those that the resident agrees to pay, and is required to pay, under this section.
- (5) The park owner must provide a resident who has paid any water consumption charges to the park owner with a receipt that is separate from any rent receipt provided to the resident or is identified separately on the rent receipt.
- (6) Nothing in this section affects a resident's obligation under section 36 (1) (b) to pay any charges for excess water consumption in connection with the residential premises, in circumstances where the residential site is individually metered by the relevant water supply authority.

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- (7) A resident who is required to pay any amount under this section is entitled to inspect any records of the park owner that relate to the payment of water charges by the resident.
- (8) This section does not apply to any water consumption charge incurred after 31 December 1999.

39 Resident to pay certain water consumption charges other than for excess water (from 1 January 2000)

- (1) It is a term of every residential tenancy agreement that the resident must pay all water consumption charges in connection with the residential premises, if the residential premises are individually metered in a manner that complies with the regulations and:
- (a) the resident is billed either:
- (i) directly by the water supply authority, or
- (ii) by the park owner in accordance with this section, and
- (b) the resident is not liable to pay a minimum charge.
- (2) If the resident is billed by the park owner, the amount that the resident is required to pay is the lower of the following amounts:
- (a) the amount that the resident would have been required to pay for water consumed if the resident were a direct domestic customer of the relevant water supply authority,
- (b) the amount prescribed by the regulations.
- (3) If a resident is billed by the park owner:
- (a) the resident must be billed at the same frequency as the park owner is billed by the relevant water supply authority, but may be billed more frequently if the parties so agree, and
- (b) the bill provided by the park owner must include:
- (i) the last meter reading taken before the bill was issued, and
- (ii) the last meter reading before that (if any), and

- (iii) the amount of water supplied during the billing period, and
 - (iv) the charge per unit of water.
- (4) The park owner must provide a resident who has paid any water consumption charges to the park owner with a receipt that is separate from any rent receipt provided to the resident or is identified separately on the rent receipt.
- (5) Nothing in this section affects a resident's obligation under section 36 (1) (b) to pay any charges for excess water consumption in connection with the residential premises, in circumstances where the residential site is individually metered by the relevant water supply authority.
- (6) A resident who is required to pay any amount under this section is entitled to inspect any records of the park owner that relate to the payment of water charges by the resident.

40 Obligation to pay service charges is separate from obligation to pay rent

- (1) It is a term of every residential tenancy agreement 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, unless the residential tenancy agreement specifically provides otherwise or the resident otherwise agrees.
- (2) Any failure by a resident to pay any charges that the resident is required, or agrees, to pay under this Division, or any failure to pay those charges promptly, is a breach of the residential tenancy agreement, but is not a breach of an agreement to pay rent.

Division 3 Change of park owner or resident

41 Right to assign rights and obligations or to sub-let (cf RT Act s 33 and cl 4 of Sch 3)

- (1) It is a term of every residential tenancy agreement that:
 - (a) the resident may, with the prior consent of the park owner, assign the whole or part of the resident's rights and obligations under the agreement or sub-let the residential premises, and

- (b) the park owner must not make any charge for giving such a consent, other than for the park owner's reasonable expenses in giving consent.
- (2) Despite section 133B of the *Conveyancing Act 1919* or any other law, it is not a term of a residential tenancy agreement that the park owner must not unreasonably withhold or refuse consent to an assignment or sub-letting referred to in subsection (1).
- (3) It is, however, a term of every residential site agreement that the park owner may not unreasonably withhold or refuse consent to an assignment or sub-letting referred to in subsection (1).
- (4) Without limiting the operation of subsection (3), it is not unreasonable for a park owner to withhold or refuse consent to the assignment of a residential site agreement or the sub-letting of a residential site under such an agreement:
- (a) on grounds that would allow the park owner to give a notice of termination of the agreement to the resident under section 101, or
- (b) on the ground that the residential site is within a Crown reserve and is to be used for a public purpose other than a residential site.
- (5) An instrument of assignment may be in the form prescribed by the regulations.

42 Attornment (ie acknowledgment of purchaser as park owner)
(cf RT Act s 34)

A notice of the sale of residential premises subject to a residential tenancy agreement, given to a resident by or on behalf of the park owner, that:

- (a) specifies the name of the purchaser, and
- (b) directs the resident to pay all future rent to the purchaser,

is taken to operate as an attornment as resident to the purchaser by the resident at the rent, and subject to the terms of the agreement, as at the date the notice is given.

43 Recognition of certain persons as residents (cf RT Act s 35)

- (1) A person who is occupying residential premises may:
 - (a) on the death of the resident under a residential tenancy agreement to which the premises are subject, or
 - (b) if the resident no longer occupies the premises,

apply to the Tribunal to be recognised as a resident under the agreement or to be joined as a party to any proceedings before the Tribunal relating to the premises, or both.
- (2) An application by a person to be recognised as a resident may be made at the same time as any other application or during proceedings before the Tribunal or independently of any such other application or proceedings.
- (3) The Tribunal may, on application by a person under this section:
 - (a) make an order recognising the person as a resident under a residential tenancy agreement and the person is taken, for the purposes of this or any other Act and of the agreement, to be a resident under the agreement, or
 - (b) make an order joining the person as a party to proceedings,

or both.
- (4) The Tribunal may, if a person has made an application to be recognised as a resident and if it thinks it appropriate to do so in the circumstances, make an order vesting a tenancy over the residential premises in the person on such of the terms and conditions that applied under the previous residential tenancy agreement for the premises as are in its opinion, having regard to the circumstances of the case, appropriate.

Part 5 Rents

Division 1 General matters

44 Reservation fees (cf RT Act s 36)

A person must not, except in such circumstances as may be prescribed by the regulations, require or receive from:

- (a) a resident or prospective resident, or
- (b) any person on behalf of a resident or prospective resident,

an amount in consideration for not letting residential premises pending the making of a residential tenancy agreement.

Maximum penalty: 5 penalty units.

45 Nature of amounts to be paid for agreement (cf RT Act s 37)

A person must not demand, require or receive from a resident or prospective resident any monetary consideration for or in relation to entering into, renewing, extending or continuing a residential tenancy agreement other than:

- (a) rent, and
- (b) a rental bond, and
- (c) such fees or other amounts as may be prescribed by the regulations.

Maximum penalty: 20 penalty units.

46 Rent in advance (cf RT Act s 38)

- (1) A person must not demand or require another person to pay, as rent in advance under the agreement:

- (a) more than 2 weeks' rent, if the rent under a proposed residential tenancy agreement does not exceed the prescribed rent, or
- (b) more than 1 month's rent, if the rent exceeds the prescribed rent.

Maximum penalty: 5 penalty units.

- (2) A person must not demand or require the payment of any rent (other than the first payment) under a residential tenancy agreement for a period of the tenancy to be made before the end of the previous period for which rent has been paid.

Maximum penalty: 5 penalty units.

- (3) In this section:

prescribed rent means rent of \$300 per week or such other amount as may be prescribed by the regulations.

47 Post-dated cheques (cf RT Act s 39)

A person must not, in payment of rent or any other amount under or in relation to a residential tenancy agreement, require a cheque or other negotiable instrument that is post-dated.

Maximum penalty: 5 penalty units.

48 Rent receipts (cf RT Act s 40)

- (1) If rent under a residential tenancy agreement is paid in person, any person who receives payment of the rent must, without delay, give to the person making the payment a receipt for the payment.

Maximum penalty: 5 penalty units.

- (2) If rent is not paid in person, the park owner or the park manager must, on receipt of the rent, prepare or cause to be prepared a receipt for the rent and make the receipt available for collection by the resident or post it to the resident.

Maximum penalty: 5 penalty units.

- (3) A receipt for rent is not a receipt for the purposes of this section unless it includes the following particulars:

- (a) the name and address of the residential park, and the number of the residential site,
- (b) whether the resident is in debit or credit as at the date of payment and by what amount,
- (c) the period for which the rent is paid,

- (d) the date on which the rent is received,
- (e) the amount of rent paid.

Maximum penalty: 5 penalty units.

- (4) This section does not apply to rent paid in accordance with an agreement between the park owner and the resident into an account at a bank, building society, credit union or other similar body nominated by the park owner.

49 Rent records (cf RT Act s 41)

- (1) A park owner under a residential tenancy agreement or the park manager must keep, or cause to be kept, a record showing rent received under the agreement.

Maximum penalty: 5 penalty units.

- (2) A record showing rent received and copies of all rent receipts issued by or on behalf of a park owner under a residential tenancy agreement must be kept by the park owner or the park manager for a period of not less than 12 months following the receipt of the rent.

Maximum penalty: 5 penalty units.

- (3) A person must not knowingly make an entry that is false in a material particular in a record kept under this section.

Maximum penalty: 5 penalty units.

50 Penalty rent terms (cf RT Act s 42)

A term of a residential tenancy agreement is void to the extent that it provides that, if the resident breaches the agreement or this or any other Act, the resident is liable to pay:

- (a) all or any part of the rent remaining payable under the agreement, or
- (b) increased rent, or
- (c) any amount as a penalty, or
- (d) any amount as liquidated damages.

51 Premium rent terms (cf RT Act s 43)

A term of a residential tenancy agreement that provides that, if the resident does not breach the agreement or this or any other Act:

- (a) the rent must or may be reduced, or
- (b) the resident must or may be granted or paid a rebate or refund of rent or other benefit,

is taken to have been varied from the commencement of the agreement or the commencement of the application of this section to the agreement (whichever is the later) so that the resident is immediately entitled to the reduction, rebate, refund or other benefit.

Division 2 Rent increases and excessive rents

52 Application of Division (cf RT Act s 44)

This Division applies to a rent increase even if the amount of the rent increase, or a method for calculating the amount of the increase, is set out in the residential tenancy agreement.

53 Increase of rent (cf RT Act s 45)

- (1) The rent payable by a resident under a residential tenancy agreement must not be increased except by notice in writing given to the resident specifying the amount of the increased rent and the day from which the increased rent is payable.
- (2) A day specified as the day from which increased rent is payable must not be earlier than 60 days after the day on which notice of the increase was given under this section.
- (3) A notice given under this section may be cancelled by a later notice or a later notice may provide for a lesser increase than that specified in the earlier notice.
- (4) A later notice has effect instead of the earlier notice and takes effect from the date on which the earlier notice was to take effect.

- (5) A notice of increase of rent given in accordance with this section (and not cancelled by a later notice or affected by any order of the Tribunal) varies the residential tenancy agreement so that the increased rent specified in the notice is payable under the agreement from the day specified in the notice.
- (6) The rent payable by a resident under a residential tenancy agreement that creates a tenancy for a fixed term must not be increased during the currency of the fixed term unless the amount of the increase, or a method for calculating the amount of the increase, is set out in the agreement.
- (7) A residential tenancy agreement must not set out more than one method of calculating the amount of any increase of rent payable by the resident under the agreement during the currency of the fixed term of the agreement. If more than one method is specified, the method that results in the lowest increase of rent is the applicable method.
- (8) A rent increase (including a rent increase permitted under subsection (6) or provided for in any other residential tenancy agreement) is not payable by a resident under a residential tenancy agreement unless the rent is increased in accordance with this section or by an order of the Tribunal.
- (9) A park owner must not contravene or fail to comply with this section.

Maximum penalty: 5 penalty units.

54 Tribunal may make orders for refund of overpaid rent where rent increase was not properly notified

- (1) A resident under a residential tenancy agreement may apply to the Tribunal for an order directing the refund of overpaid rent on the ground that the rent increase was not properly notified.
- (2) The Tribunal may make an order directing the refund.
- (3) An application under this section must be lodged no later than 12 months after the relevant notice was given to the resident.

55 Resident may apply for an order that a rent increase is excessive (cf RT Act s 46)

A resident under a residential tenancy agreement may apply to the Tribunal for an order declaring that a rent increase is excessive not later than 30 days:

- (a) after being given notice of the rent increase, or
- (b) after being given notice of a rent increase payable under a proposed residential tenancy agreement for residential premises already occupied by the resident.

56 Resident may apply for an order that rent is excessive (cf RT Act s 47)

- (1) A resident under a residential tenancy agreement may, at any time, apply to the Tribunal for an order declaring that the rent payable under a residential tenancy agreement or a proposed residential tenancy agreement for residential premises already occupied by the resident is excessive, having regard to the reduction or withdrawal by the park owner of any goods, services or facilities provided with the premises.
- (2) This section applies whether or not the goods, services or facilities are provided under the agreement or a separate contract, agreement or arrangement or were provided under a previous contract, agreement or arrangement.
- (3) For the purposes of subsection (1), the introduction of metering arrangements for the supply of and charging for water or electricity, where such charges had previously not been paid separately by the resident, is taken to involve the withdrawal by the park owner of services provided with the premises. However, such withdrawal of services does not mean, of itself, that rent has become excessive, for the purposes of this section.

57 Matters to be considered in determining rent applications
(cf RT Act s 48)

The Tribunal may, in determining whether or not a rent increase or rent payable under a residential tenancy agreement or a proposed residential tenancy agreement for residential premises is excessive, have regard to each of the following factors:

-
- (a) the general market level of rents for comparable premises in the same residential park and in other residential parks in the locality or a similar locality,
 - (b) the value of the residential premises,
 - (c) the frequency and amount of past rent increases under the residential tenancy agreement or previous residential tenancy agreements between the same park owner and resident,
 - (d) a general price index (such as the Consumer Price Index),
 - (e) the conduct of the parties,
 - (f) the amount of any outgoings in respect of the residential premises required to be borne by the park owner under the residential tenancy agreement or proposed agreement,
 - (g) the estimated cost of any services provided by the park owner or the resident under the residential tenancy agreement or proposed agreement,
 - (h) the value and nature of any fittings, appliances or other goods, services or facilities provided with the residential premises,
 - (i) the accommodation and amenities provided in the residential premises and the state of repair and general condition of the premises,
 - (j) any work done to the premises by or on behalf of the resident, to which the park owner has consented,
 - (k) any other relevant matter.

58 Orders as to excessive rent increases or rents (cf RT Act s 49)

- (1) The Tribunal may, on application by a resident under section 55 or 56, and after considering any matters it considers appropriate under section 57, determine that a rent increase or rent is excessive.
- (2) If the Tribunal determines that a rent increase is excessive, the Tribunal may order that from a day specified by the Tribunal, not being earlier than the day from which the increased rent was payable, the rent must not exceed an amount specified by the Tribunal and may make such other orders as it thinks fit.

- (3) If the Tribunal determines that a rent is excessive having regard to the reduction or withdrawal by the park owner of any goods, services or facilities provided with the residential premises, the Tribunal may order that from a day specified by the Tribunal, not being earlier than the date of that reduction or withdrawal, the rent must not exceed an amount specified by the Tribunal and may make such other orders as it thinks fit.
- (4) An order made by the Tribunal specifying a maximum amount of rent:
 - (a) has effect for such period, not exceeding 12 months, as is specified in the order, and
 - (b) binds only the parties to the residential tenancy agreement or the proposed residential tenancy agreement under which the rent is payable.

59 Payments under separate agreements (cf RT Act s 50)

- (1) This section applies if the residential premises occupied by a resident are held under a residential tenancy agreement, and goods or fittings in, or connected with the resident's occupation of, the premises are let to the resident by a separate agreement.
- (2) If this section applies, the Tribunal may, in making any order under section 58, declare the separate agreement to be part of the residential tenancy agreement and may make orders under that section in respect of that agreement as if any amounts payable under it were payable under the residential tenancy agreement.

60 Interim orders suspending rent increases or rent (cf RT Act s 51)

If an application is made to the Tribunal for an order that a rent increase or rent is excessive, the Tribunal may, if it is of the opinion that the circumstances so require, make an order that has the effect of suspending payment of the whole or part of the rent increase or the rent until such time as the Tribunal finally determines the application.

61 Contravention of rent order (cf RT Act s 52)

- (1) A park owner must not wilfully contravene or fail to comply with an order that rent must not exceed an amount specified by the Tribunal.

Maximum penalty: 50 penalty units.

- (2) A person (other than a park owner) must not demand, require or receive any rent from a resident of an amount exceeding an amount specified by the Tribunal.

Maximum penalty: 50 penalty units.

- (3) A court before which proceedings for an offence under subsection (1) or (2) have been brought or the Tribunal, on application by a resident, may (in addition to any other penalty) order the person who committed the offence or any person on whose behalf that person acted to pay to the resident against whom the offence was committed an amount equal to the amount of any rent unlawfully received from the resident and that has not already been repaid to the resident.

Part 6 Park rules for residential parks

62 Park rules (cf CRHPI Code)

- (1) A park owner may make written park rules relating to the use, enjoyment, control and management of the residential park.
- (2) The park rules may relate to any or all of the following:
 - (a) the making of noise,
 - (b) motor vehicle speed limits,
 - (c) the parking of motor vehicles,
 - (d) the disposal of refuse,
 - (e) the keeping of pets,
 - (f) the playing of games and other sports activities,
 - (g) the use and operation of communal facilities,
 - (h) maintenance standards for moveable dwellings, as they affect the general amenity of the residential park,
 - (i) the imposition of reasonable requirements regarding the landscaping and maintenance of any residential site on which any moveable dwelling is located,
 - (j) any other matter prescribed by the regulations.
- (3) A park rule must not be inconsistent with this or any other Act or law.

63 Park rules form part of residential tenancy agreements

- (1) The park rules for a residential park, as in force from time to time, are terms of every residential tenancy agreement in respect of residential premises in the residential park.
- (2) However, a park rule that is inconsistent with a term of a residential tenancy agreement that is not also a park rule is not a term of that agreement, to the extent of the inconsistency.
- (3) A park owner must give each resident or prospective resident of a residential park a copy of any park rules that are in force for the residential park, before or at the time they enter into the residential tenancy agreement.

Maximum penalty: 2 penalty units.

- (4) It is a term of every residential tenancy agreement that the park owner must not breach subsection (3).

64 Amendment of park rules (cf CRHPI Code)

- (1) A park owner may make written amendments to any park rules made in relation to a residential park.
- (2) An amendment does not have effect unless each resident of the residential park has been given written notice of the amendment.
- (3) Except as provided by subsection (4), notice must be given at least 60 days before the day on which the amendment is to have effect.
- (4) If the proposed amendment affects the use of recreational facilities in the residential park, notice must be given at least 7 days before the day on which the amendment is to have effect.
- (5) On the day that an amendment to the park rules takes effect, the park rules are amended in accordance with the amendment.
- (6) For the purposes of this Part, an amendment of park rules includes:
- (a) a variation of a park rule, or
 - (b) the addition to the park rules of a new rule, or
 - (c) the repeal of an existing park rule.

65 Obligation to promote compliance with park rules

It is a term of every residential tenancy agreement that the park owner must take all reasonable steps to ensure that the residents of the residential park (other than the resident under the agreement) comply with their obligations under the park rules.

Part 7 Community aspects of residential park living

66 Park Liaison Committee

- (1) A park owner of a residential park that has 20 or more sites occupied by residents under residential tenancy agreements must convene and maintain a Park Liaison Committee for the park.
- (2) A Park Liaison Committee is to consist of:
 - (a) one or more residents of the residential park, chosen by the other residents of the park (in a manner agreed by the majority of residents) to represent their interests, and
 - (b) the management of the residential park (that is, the owner or owners of the residential park, or the park manager, or both).
- (3) A majority of members of a Park Liaison Committee must be representatives of the residential park's residents.
- (4) The principal objective of a Park Liaison Committee is to improve the lifestyle and well-being of the residents of the residential park.
- (5) The functions of a Park Liaison Committee are:
 - (a) to assist the park owner in the preparation of park rules for the residential park and amendments to the park rules, and
 - (b) to assist in the observance of park rules, and
 - (c) to assist in the resolution of disputes about facilities within the residential park for the payment of rent, and
 - (d) to assist in the development of proposals for individual mail facilities, and
 - (e) to assist in the development of standards of behaviour applicable in the residential park, and
 - (f) to assist in the development of a tree maintenance policy, and
 - (g) to consider any matter referred to the Committee by the Tribunal under section 91, and
 - (h) such other functions as may be prescribed by the regulations.
- (6) A park owner who fails to convene and maintain a Park Liaison Committee in accordance with this section is guilty of an offence.
Maximum penalty: 2 penalty units.

- (7) It is a defence to a prosecution under subsection (6) that the park owner took all reasonable steps to convene and maintain a Park Liaison Committee.
- (8) The Director-General may make and publish guidelines for or with respect to the choosing of persons to represent residents' interests and the procedures of Park Liaison Committees.

67 Residents' rights to membership of organisations (cf CRHPI Code)

- (1) A resident of a residential park has a right to participate in any organisation of residents of that residential park or of residential parks generally.
- (2) A park owner or park manager must not unreasonably interfere with a resident's rights under this section.

Maximum penalty: 2 penalty units.

68 Notice boards

- (1) A park owner must provide and maintain a notice board in a location in the residential park that is accessible to all residents.
- (2) A park owner must not unreasonably interfere with the right of a resident of the residential park to read the notice board, or to place notices on the notice board.

Maximum penalty: 2 penalty units.

69 Right of entry of tradespersons and service providers
(cf CRHPI Code)

- (1) A park owner or park manager of a residential park must not restrict the right of a resident of that park to purchase goods or services from a person of his or her choice.
- (2) However, particular tradespersons and service providers may be prohibited from entry or further entry to the residential park if they have:

Maximum penalty: 2 penalty units.

- (a) unduly disturbed the peace and quiet of the park, or

- (b) failed to observe reasonable rules of conduct established by the park owner, or
- (c) violated any park rules for the residential park, concerning motor vehicle traffic, that are displayed in or outside the residential park.

70 Responsibility for preservation or landscaping of individual residential sites (cf CRHPI Code)

- (1) Any standard of residential site preservation or residential site landscaping for residential premises in a residential park must be set out in the residential tenancy agreement in respect of those residential premises or, to the extent provided for in subsection (3), in the park rules for the residential park.
- (2) Without limiting subsection (1) or section 25 (1) (d), a residential tenancy agreement may impose obligations on either party regarding the condition of the residential site at the end of the agreement.
- (3) A park owner must not charge a fee for residential site preservation as a condition of residence, but reasonable residential site landscaping and maintenance requirements applicable to residents may be included in the park rules for the residential park.
- (4) Any other requirement that the park owner purports to impose in relation to residential site preservation, residential site landscaping or maintenance is void.
- (5) The owner or manager of a residential park must not demand or require a resident or prospective resident to purchase, rent or lease goods or services for residential site preservation or landscaping from any particular person, company or corporation.

Maximum penalty: 2 penalty units.

- (6) Any term of a residential tenancy agreement, or any park rule, that relates to the preservation or landscaping by the resident of any part of the residential park that is not part of the residential premises applicable to the resident is void.

71 Responsibility for maintenance of trees in residential parks

- (1) A park owner must ensure that trees in a residential park are maintained so as to protect the safety of residents, moveable dwellings and other property in the residential park.
- (2) However, a park owner is not required under this section to take any action that is prohibited by law.
- (3) The Tribunal may, on application by a resident of a residential park, make an order resolving a dispute concerning a park owner's compliance with this section.

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

72 Prospective residents have a right to seek independent advice

A park owner or park manager of a residential park must not restrict any person's right to seek independent advice before entering into a residential tenancy agreement in relation to residential premises in the residential park.

Maximum penalty: 2 penalty units.

73 Prospective residents have a right to certain information (cf CRHPI Code)

- (1) This section applies to proposed residential tenancy agreements under which a person will be a resident, or a resident of a class prescribed by the regulations, of a residential park.
- (2) A park owner who proposes to enter into a residential tenancy agreement to which this section applies must prepare, or arrange for the preparation of, a document that includes the following questions, and such other questions as may be prescribed by the regulations, and correct written answers to those questions:
 - (a) What restrictions are there on a resident in the use of his or her premises and the park facilities about:
 - (i) having someone else live in the premises, and
 - (ii) having visitors, including overnight or short-stay guests, and
 - (iii) car parking, and
 - (iv) pets, and
 - (v) any other matter?
 - (b) Is there any restriction on the type of moveable dwelling allowed at the park?

- (c) What can the resident put on the residential site besides the moveable dwelling (such as a carport or garden shed)? The answer to this should take into account:
- (i) what the park owner will permit, and
 - (ii) what the local council will permit, and
 - (iii) what regulations made under the *Local Government Act 1993* will permit.
- (d) If the park is sold, what protection does a resident have against a loss of rights?
- (e) Are residents liable for any additional or extraordinary charges (other than rent) and, if so, for what purposes?
- (f) Are there any restrictions on the resident regarding the sale of the resident's moveable dwelling?
- (g) Is the park currently authorised under the *Local Government Act 1993* and, if so, are there any restrictions?
- (h) What facilities are there available for delivery of mail to the park residents?
- (i) Are there restrictions on the use of common facilities? If so, what hours are the facilities available and who may use the facilities? Are there any other restrictions on the use of these facilities?
- (j) Is the park owner aware of any arrangement or restriction on the resident's, or the park owner's, use of the residential site or the residential park, now or in the future?
- (k) What is the size of the relevant residential site?
- (3) The park owner must not enter into a residential tenancy agreement in relation to a residential park unless the prospective resident under that agreement has first been provided with a copy of the document referred to in subsection (2).

Maximum penalty: 2 penalty units.

74 Park owner must inform residents of certain arrangements and future restrictions

- (1) A park owner of a residential park must inform every resident of the residential park of any current or proposed arrangements or restrictions, of which the park owner is aware, that are applicable to a resident's occupation of the residential park, or to the resident's or park owner's use of a residential site in the residential park.
- (2) A resident under a residential tenancy agreement that was in force when this section commenced:
 - (a) must be informed of any such arrangement or restriction of which the park owner was aware at the time of commencement, as soon as practicable after that commencement, and
 - (b) must be informed of any such arrangement or restriction of which the park owner subsequently becomes aware as soon as practicable after the park owner becomes aware of the arrangement or restriction.

Maximum penalty: 2 penalty units.

- (3) A resident under a residential tenancy agreement that was not in force when this section commenced must be informed of any arrangement or restriction of which the park owner becomes aware after the residential tenancy agreement was entered into.

Maximum penalty: 2 penalty units.

- (4) This section does not affect the operation of section 18.

Part 9 Mail facilities

75 Installation of individual mail facilities

- (1) The Director-General may make and publish guidelines regarding the procedure by which the residents of a residential park may request the installation of individual mail facilities.
- (2) If a majority of residents of a residential park, under residential tenancy agreements, request that individual mail facilities be installed at the residential park (whether in accordance with those guidelines or otherwise) the park owner must:
 - (a) install separate mail facilities for each residential site in a location in the residential park that is accessible to all residents, or in an area adjoining the residential park, and
 - (b) maintain those mail facilities in good order.

Maximum penalty: 2 penalty units.

- (3) Mail facilities installed under this section must be installed and maintained in compliance with any applicable requirements or guidelines of Australia Post, or in accordance with any requirements that are prescribed by the regulations.

Maximum penalty: 2 penalty units.

76 Payment for use of individual mail facilities

- (1) If a park owner installs individual mail facilities in response to a request under section 75, the owner may demand a reasonable amount to cover the cost of obtaining and installing such facilities:
 - (a) from each resident of the residential park who is provided with individual mail facilities, and
 - (b) if mail facilities are provided for a site that is not yet occupied, from the first resident to occupy the site.
- (2) A park owner has no right to demand or receive any further amounts in relation to mail facilities from:
 - (a) any resident of the residential park occupying a residential site in existence immediately before the installation of the mail facilities, or
 - (b) any later resident occupying such a residential site, or
 - (c) any second or subsequent resident occupying a residential site referred to in subsection (1) (b).

- (3) However, if a new residential site is added to a residential park for letting under a residential tenancy agreement to which this Act applies, and the park owner installs additional individual mail facilities to service that residential site, the owner may demand an amount from the resident under that agreement to cover the cost of obtaining and installing the facilities.

77 Use of mail facilities

If individual mail facilities are installed, and paid for, in accordance with this Part, it is a term of every current and future residential tenancy agreement under which the residential premises consist of the residential site to which those facilities relate, that those facilities will be available to the resident under that agreement.

78 Security of mail facilities

- (1) Individual mail facilities constructed or installed in accordance with this Part must be constructed in such a way as to permit the attachment of separate locking devices to each mail facility.
- (2) It is a term of every residential tenancy agreement that a resident may install a lock on any individual mail facilities available for use by the tenant.
- (3) A park owner must not access or interfere with individual mail facilities provided to a resident of the residential park, except with the prior consent of the resident.

Maximum penalty: 5 penalty units.

79 Tribunal may make orders relating to mail facilities at residential parks

The Tribunal may, on application by the park owner or a resident of a residential park, make an order:

- (a) relating to individual mail facilities provided at the residential park, or
- (b) relating to the reasonableness of charges imposed for the provision of individual mail facilities, including mail boxes, replacement keys and the replacement or repair of locks.

Part 10 Sale of moveable dwellings and manufactured homes

Division 1 Sale of moveable dwellings in residential parks

80 Sale of moveable dwellings on-site in residential parks (cf CRHPI Code)

- (1) It is a term of every residential tenancy agreement under which the residential premises consist of a residential site only that the resident is entitled to sell the relocatable home or other moveable dwelling installed on the residential site to which the agreement relates while the dwelling is in place on the residential site, unless the residential tenancy agreement expressly provides that on-site sales are prohibited.
- (2) This section does not apply to a residential tenancy agreement with respect to land that is within a Crown reserve or that is reserved or dedicated under the *National Parks and Wildlife Act 1974*.

81 Provisions relating to on-site sale of moveable dwellings (cf CRHPI Code)

- (1) It is a term of every residential tenancy agreement under which the residential premises consist of a residential site only that the resident will inform the park owner of the resident's intention to offer a relocatable home or other moveable dwelling for sale while on the residential site to which the agreement relates before displaying a "for sale" sign in or on the moveable dwelling.
- (2) The residential tenancy agreement may make provision regarding whether or not "for sale" signs may be displayed in or on the moveable dwelling while it is installed on the residential site.
- (3) Without limiting subsection (2), a residential tenancy agreement may set out any restrictions on the size of any "for sale" sign that may be displayed in or on the moveable dwelling while installed on the residential site.

- (4) The Park Liaison Committee may negotiate restrictions on the size of any "for sale" sign that may be displayed in or on the moveable dwelling while installed on a residential site. Any such restrictions apply to those residential premises in the residential park for which the particular residential tenancy agreement does not provide restrictions on "for sale" signs.
- (5) A park owner who has been informed of a resident's intention to offer a moveable dwelling for sale while installed on the residential site must not restrict the resident's right to display a "for sale" sign in or on the moveable dwelling otherwise than in the manner set out in the residential tenancy agreement, or as determined by the Park Liaison Committee.

Maximum penalty: 2 penalty units.

82 Restrictions on sale on-site (cf CRHPI Code)

- (1) A residential tenancy agreement under which the residential premises consist of a residential site only may set out any restrictions on the sale of a relocatable home or other moveable dwelling while it is installed on the residential site. Any other such restriction that the park owner purports to impose is unenforceable.
- (2) A park owner must not interfere with the sale, by a resident of the residential park, of a moveable dwelling while it is installed on a residential site.

Maximum penalty: 2 penalty units.

- (3) However, it is not unlawful for a park owner to interfere with the sale of a moveable dwelling if such interference is permitted under a residential tenancy agreement.
- (4) Without limiting the operation of this section, a park owner interferes with the sale of a moveable dwelling if the park owner unreasonably restricts potential buyers from inspecting the dwelling.

83 Park owner may act as agent in sale on-site (cf CRHPI Code)

- (1) A park owner may act as a selling agent at the request of a resident or former resident of a residential park who wishes to sell a moveable dwelling that is installed on a residential site if the owner and the resident or former resident have made an agreement in writing for the park owner to do so.
- (2) A park owner who acts as such a selling agent is entitled to be paid a reasonable commission by the resident or former resident when the moveable dwelling is sold.
- (3) The amount of the commission, or the method of calculating the commission, is to be specified in the written agreement made between the owner and the resident or former resident before the sale.
- (4) However, no commission is payable if the moveable dwelling is sold otherwise than as a result of the park owner acting as selling agent.

84 No premium for keeping a sold dwelling on-site (cf CRHPI Code)

- (1) A park owner and a resident may agree that a moveable dwelling will remain installed on the residential site after the residential tenancy agreement ends.
- (2) A purchaser of the moveable dwelling or the former resident cannot be made liable for the payment of a premium for the making of such an agreement.

85 Disputes relating to sale

- (1) A park owner or a resident of a residential park may apply to the Tribunal for the resolution of any dispute concerning the sale of a moveable dwelling while it is installed in a residential park, in particular:
 - (a) any dispute about whether a commission or any other cost is payable to the park owner in relation to the sale of the moveable dwelling, and
 - (b) any dispute about the amount of commission or any other cost payable or paid to the park owner in relation to the sale of the moveable dwelling, and
 - (c) any dispute about interference by the park owner or other person with the sale of the moveable dwelling.

- (2) The Tribunal may make the following orders:
- (a) an order that the resident pay commission or any other cost of a specified amount to the park owner,
 - (b) an order that the park owner refund any commission or cost paid by the resident, or any part of such a commission or cost,
 - (c) any order preventing interference with the sale of the moveable dwelling.

Division 2 Sale of manufactured homes off-site

86 Cooling-off period for prospective purchaser of manufactured home

- (1) This section applies to a contract for the sale of a manufactured home that is not installed on a residential site which includes a provision relating to the installation of that manufactured home on a residential site under a residential site agreement.
- (2) A purchaser under such a contract is entitled, within 5 days after entering into the contract, to serve a signed written notice on the seller to the effect that the purchaser rescinds the contract.
- (3) For this purpose, a contract is taken to have been entered into at midnight on the day that it was entered into. The cooling-off period ends at midnight 5 days after that day.
- (4) On service of a notice of rescission under this section, the contract is taken to be rescinded from the beginning of the contract.
- (5) The rescission of the contract does not entitle any person to compensation of any kind.
- (6) A notice of rescission under this section is of no effect if, at the time that the notice is sent:
 - (a) the purchaser has installed the manufactured home on the residential site to which the contract relates, or
 - (b) the vendor has made any modifications to the manufactured home at the purchaser's request.

Part 11 Dispute resolution

87 Park Disputes Committee (cf CRHPI Code)

- (1) A park owner must convene a Park Disputes Committee for the residential park if:
 - (a) a dispute arises about an amendment to the park rules for the residential park or about the introduction of new park rules and an application is made under section 88, or
 - (b) any other dispute arises in the residential park that the parties agree should be resolved by a Committee, or
 - (c) a matter is referred to such a Committee by the Tribunal under section 91.
- (2) A Park Disputes Committee must be convened within 30 days of the application or agreement being made or of the matter being referred.
- (3) A Park Disputes Committee is to consist of the following 3 persons:
 - (a) a person chosen by the residents of the residential park to represent their interests,
 - (b) a person appointed by the park owner to represent the owner's interests,
 - (c) a person agreed to by both the person chosen by the residents and the park owner's representative.
- (4) The functions of a Park Disputes Committee are:
 - (a) to hear or otherwise consider and mediate disputes arising in the residential park about amendments to park rules for the residential park or about the introduction of new park rules, and
 - (b) to consider any dispute that the parties have agreed should be considered by the Committee, and
 - (c) to consider any matter referred to the Committee by the Tribunal under section 91.
- (5) A Park Disputes Committee may not hear or otherwise consider a dispute or other matter involving an application for possession of residential premises under a residential tenancy agreement.

- (6) A park owner who fails to convene a Park Disputes Committee in accordance with this section is guilty of an offence.

Maximum penalty: 2 penalty units.

- (7) It is a defence to a prosecution under subsection (6) that the park owner took all reasonable steps to convene a Park Disputes Committee.
- (8) The Director-General may make and publish guidelines for or with respect to the choosing of a representative of residents, and the procedures of Park Disputes Committees.

88 Applications to Park Disputes Committee about park rules (cf CRHPI Code)

- (1) If a dispute arises about an amendment to the park rules for a residential park or about the introduction of new park rules, an application to have the dispute heard may be made to the Park Disputes Committee of the park or, if no Parks Disputes Committee has been convened, to the park owner, for the purposes of convening a Committee.
- (2) An application may only be made by:
- (a) at least 5 residents of the residential park, each of whom is from a different residential site at the park, or
 - (b) in the case of a residential park that has fewer than 10 residential sites, a majority of residents of the park.
- (3) An application to the Park Disputes Committee or park owner must be made within 30 days of notice of the amendment to the park rules or the introduction of a new park rule that gives rise to the dispute.
- (4) The Park Disputes Committee may declare the park rule to be unfair.
- (5) The Park Disputes Committee must give written notice of its decision in relation to a dispute within 30 days of receiving an application in relation to a dispute.
- (6) That notice must be given to the residents who made the application and the park owner.

- (7) If a park rule is declared to be unfair, that rule is invalidated 30 days after notice is given of the declaration, unless an application under section 88 is made within that time.

89 Application to Tribunal to reconsider certain disputes relating to park rules in residential parks (cf CRHPI Code)

- (1) This section applies if a Park Disputes Committee has an obligation to consider a dispute about an amendment to the park rules for a residential park or about the introduction of new park rules (because an application has been made under section 88 or a matter has been referred under section 91).
- (2) A park owner, park manager or a group of residents of a residential park who made an application under section 88 (1), may make an application to the Tribunal to reconsider a dispute to which this section applies if:
- (a) the park owner, park manager or group of residents is dissatisfied with any decision made by the Committee in relation to the dispute, or
 - (b) the Committee has not given written notice of its decision in relation to the dispute within 30 days of receiving any application in relation to the dispute.
- (3) An application must be made:
- (a) if the application relates to a decision of the Committee, within 30 days of receipt by the applicant of written notice of the decision, or
 - (b) if the application relates to a failure by the Committee to make a decision, within 60 days of the making of the application to the Committee or park owner.
- (4) If an application is made under this section, the Tribunal may make an order:
- (a) setting aside the park rule, or
 - (b) modifying the operation of the rule in its application to some or all of the residents of the residential park, or
 - (c) upholding the rule.

90 Application to Tribunal regarding certain disputes relating to existing park rules

- (1) A park owner, park manager or a group of residents of a residential park, may make an application to the Tribunal regarding any dispute relating to the legal validity of a park rule that is in force for the residential park.
- (2) An application made by a group of residents of the residential park must be made by:
 - (a) at least 5 residents of the residential park, each of whom is from a different site at the park, or
 - (b) in the case of a residential park that has fewer than 10 sites, a majority of residents of the park.
- (3) The Tribunal may make an order:
 - (a) setting aside the park rule, or
 - (b) modifying the operation of the park rule in its application to some or all of the residents of the residential park, or
 - (c) upholding the park rule.

91 Tribunal may refer certain matters for alternative dispute resolution

- (1) The Tribunal may, with the consent of the parties, refer a matter arising in proceedings before it relating to a residential park for alternative dispute resolution if the Tribunal considers the circumstances appropriate.
- (2) The Tribunal's reference must specify one of the following persons or bodies as the person or body to whom the matter is referred, being a person or body that the Tribunal considers to be suitable:
 - (a) the Park Disputes Committee for the residential park concerned (whether or not a Committee has been convened at the time of the referral),
 - (b) the Park Liaison Committee for the residential park concerned,
 - (c) the Department of Fair Trading's Mediation Unit,
 - (d) a community justice centre under the *Community Justice Centres Act 1983*,
 - (e) any other person or body with experience in dispute resolution.

- (3) Attendance at, and participation in, alternative dispute resolution sessions is voluntary. Any party to such proceedings may, at any time, withdraw from alternative dispute resolution and request that the matter be remitted to the Tribunal.
- (4) The Tribunal may make orders that it is empowered to make under the *Residential Tenancies Act 1987* or any other Act to give effect to any agreement or arrangement arising out of alternative dispute resolution.
- (5) This section does not prevent the parties to proceedings from agreeing to and arranging for alternative dispute resolution of any matter otherwise than as referred to in this Part.
- (6) For the purposes of this section, *alternative dispute resolution* includes:
 - (a) mediation, that is, a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute, and
 - (b) neutral evaluation, that is, a process of evaluation of a dispute in which the neutral evaluator seeks to identify and reduce the issues of fact and law that are in dispute. The neutral evaluator's role includes assessing the relative strengths and weaknesses of each party's case and offering an opinion as to the likely outcome of the proceedings.

92 Privilege

- (1) Subject to subsection (2), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:
 - (a) alternative dispute resolution undertaken in accordance with section 91, or
 - (b) a document or other material sent to or produced to the body undertaking such alternative dispute resolution, or sent to or produced at the Tribunal or the office of the Registrar of the Tribunal, for the purpose of enabling alternative dispute resolution to be arranged.

- (2) The privilege only extends to a publication made:
 - (a) at a mediation session, or
 - (b) as provided by subsection (1) (b), or
 - (c) as provided by section 93.
- (3) Evidence of any thing said or of any admission made in alternative dispute resolution undertaken under section 91 is not admissible in any proceedings before any court, tribunal or body.
- (4) A document prepared for the purposes of, or in the course of, or as a result of, alternative dispute resolution undertaken under section 91, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.
- (5) Subsections (3) and (4) do not apply with respect to any evidence or document:
 - (a) if the persons in attendance at, or identified during, alternative dispute resolution undertaken under section 91 and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or
 - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under section 93 (c).

93 Secrecy

A person or body undertaking alternative dispute resolution under section 91, or a member of such a body, may disclose information obtained in connection with the administration or execution of that section only in any one or more of the following circumstances:

- (a) with the consent of the person to whom the information relates,
- (b) in connection with the administration or execution of that section,
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,

- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to alternative dispute resolution undertaken under that section to any person or other body and the disclosure is made with the consent of the parties to alternative dispute resolution undertaken under that section for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner,
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

94 Exoneration from liability for mediators

No matter or thing done or omitted to be done by a person or body undertaking alternative dispute resolution under this Part subjects the person or body to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of alternative dispute resolution under section 91.

Part 12 Termination of residential tenancy agreements

Division 1 Termination generally

95 Termination of residential tenancy agreements (cf RT Act s 53)

A residential tenancy agreement terminates only in one or more of the following circumstances:

- (a) if the park owner or the resident gives notice of termination under this Part and:
 - (i) the resident delivers up vacant possession of the residential premises on or after the day specified in the notice, or
 - (ii) the Tribunal makes an order under section 113 (which relates to applications to the Tribunal by the park owner for termination) terminating the agreement,
- (b) if the Tribunal otherwise makes an order terminating the agreement,
- (c) if a person having superior title to that of the park owner becomes entitled to possession of the residential premises,
- (d) if a person succeeding to the title of the park owner (for example, a purchaser) becomes entitled to possession of the residential premises to the exclusion of the resident,
- (e) if a mortgagee in respect of the residential premises becomes entitled to possession of the premises to the exclusion of the resident,
- (f) if the resident abandons the residential premises,
- (g) if the resident delivers up vacant possession of the residential premises with the prior consent of the park owner, whether or not that consent is subsequently withdrawn,
- (h) by merger (that is, where the interests of the park owner and the resident become vested in the one person),

- (i) by disclaimer (for example, on repudiation by the resident accepted by the park owner).

96 Apportionment and recovery of rent on termination (cf RT Act s 54)

The rent payable under a residential tenancy agreement accrues from day to day and on termination the appropriate amount is payable.

97 Breach or notice of termination not waived by acceptance of rent (cf RT Act s 55)

A demand for, any proceedings for the recovery of, or acceptance of, rent payable under a residential tenancy agreement by a park owner:

- (a) does not operate as a waiver of:
 - (i) any breach of the agreement, or
 - (ii) any notice of termination on the ground of breach of the agreement given by the park owner, and
- (b) is not evidence of the creation of a new tenancy.

Division 2 Grounds for termination of a residential site agreement

98 Termination by park owner for non-payment of rent (cf RT Act cl 6 of Sch 3)

- (1) A park owner may give notice of termination of a residential site agreement to the resident on the ground that the resident is in breach of the agreement for non-payment of rent.
- (2) A notice of termination must not specify a date for vacating the residential site earlier than 14 days after the day on which the notice is given.
- (3) For the purposes of this section, a resident is not in breach of a residential site agreement for non-payment of rent unless the rent has remained unpaid for at least 14 days.

99 Termination by park owner because dwelling is dilapidated (cf RT Act cl 7 of Sch 3)

- (1) A park owner may give notice of termination of a residential site agreement to the resident 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.
- (2) A notice of termination may not be given unless:
 - (a) the breach is serious, and
 - (b) the park owner has given the resident a direction requiring the condition of the dwelling to be rectified, and
 - (c) the resident has failed to comply with the direction within 90 days after it was given, and
 - (d) the park owner has (after the expiry of the 90-day period referred to in paragraph (c)) given the resident a further direction requiring the condition of the dwelling to be rectified, and
 - (e) the resident has failed to comply with the further direction within 30 days after it was given.
- (3) A notice of termination must not specify a date for vacating the residential site earlier than 60 days after the day on which the notice is given.
- (4) A resident to whom a notice of termination is given may, within 60 days after receiving the notice, apply to the Tribunal for an order rescinding the notice or postponing the date for vacating the residential site.
- (5) In this section:

dwelling means a relocatable home or a registrable moveable dwelling with a rigid annexe attached to it.

100 Termination by park owner for serious or persistent breach of agreement (cf RT Act cl 8 of Sch 3)

- (1) A park owner may give notice of termination of a residential site agreement to the resident on the ground that the resident is in breach of the agreement otherwise than:

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- (a) for non-payment of rent, or
 - (b) because of the dilapidated condition of the dwelling installed on the site.
- (2) A notice of termination may not be given unless the alleged breach is either serious or persistent.
 - (3) A notice of termination must not specify a date for vacating the residential site earlier than 14 days after the day on which the notice is given.
 - (4) In this section:

dwelling means a relocatable home or a registrable moveable dwelling with a rigid annexe attached to it.

101 Termination by park owner for repairs and upgrading (cf RT Act cl 9 of Sch 3)

- (1) A park owner may give notice of termination of a residential site agreement to the resident on the ground that the park owner requires vacant possession of the residential site in order to comply with an obligation imposed by or under an Act to carry out works (including works in the nature of repairs or upgrading) within the residential site or the residential park.
- (2) A notice of termination must not specify a date for vacating the residential site earlier than:
 - (a) 90 days after the day on which the notice is given, or
 - (b) in the case of an agreement that creates a tenancy for a fixed term, the day following the date on which the fixed term ends,whichever is the later.
- (3) A resident whose residential site agreement is terminated under this section is entitled to be paid compensation by the park owner in accordance with section 128.

102 Termination by park owner for change of use (cf RT Act cl 10 of Sch 3)

- (1) A park owner may give notice of termination of a residential site agreement to the resident 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.
- (2) A notice of termination in respect of a residential site (other than a residential site within a Crown reserve the subject of a residential site agreement entered into after 16 December 1994) must not specify a date for vacating the residential site earlier than:
 - (a) 180 days after the day on which the notice is given, or
 - (b) in the case of an agreement that creates a tenancy for a fixed term, the day following the date on which the fixed term ends,whichever is the later.
- (3) A resident to whom a notice of termination referred to in subsection (2) is given may, within 60 days after receiving the notice, apply to the Tribunal for an order postponing the date for vacating the residential site.
- (4) A notice of termination in respect of a residential site within a Crown reserve the subject of a residential site agreement entered into after 16 December 1994 must not specify a date for vacating the residential site earlier than:
 - (a) 12 months after the day on which the notice is given, or
 - (b) in the case of an agreement that creates a tenancy for a fixed term, the day following the date on which the fixed term ends,whichever is the later.
- (5) A resident whose residential site agreement is terminated under this section is entitled to be paid compensation by the park owner in accordance with section 128.

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- (6) Compensation is not payable in respect of a residential site agreement for a residential site situated within a Crown reserve (being an agreement entered into after 16 December 1994) if:
- (a) the resident is informed (when the agreement is entered into) that there is no right of compensation in the event that the agreement is terminated under this section, and
 - (b) the purpose for which the agreement is terminated is for the residential site to be used for a public purpose other than that of a residential site.

103 Notice of termination by resident without any ground (otherwise than during any fixed term) (cf RT Act s 59)

- (1) A resident may give notice of termination of a residential site agreement without specifying any ground for the termination.
- (2) A notice of termination given under this section must not specify a day earlier than 30 days after the day on which notice is given as the day on which vacant possession of the residential premises will be delivered up to the park owner, unless it specifies an earlier day to which the park owner has consented.
- (3) This section does not apply to a residential site agreement that creates a tenancy for a fixed term during the currency of the term.

104 Notice of termination where residential site agreement frustrated (cf RT Act cl 11 of Sch 3)

- (1) If residential premises under a residential site agreement are, otherwise than as a result of a breach of the agreement, destroyed or rendered wholly or partly uninhabitable or cease to be lawfully usable for the purpose of a residence or are appropriated or acquired by any authority by compulsory process:
 - (a) the rent abates accordingly, and
 - (b) the park owner or the resident may give immediate notice of termination to the other party.
- (2) A notice of termination may specify any date as the date for vacating the residential site.
- (3) A resident whose residential site agreement is terminated under this section is entitled to be paid compensation by the park owner in accordance with section 128 but only if:

- (a) the agreement is terminated on the ground that the residential site is not lawfully useable for the purposes of a residential site, and
- (b) unknown to the resident, the residential site was not lawfully useable for the purposes of a residential site when the agreement was entered into.

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

105 Notice of termination on ground that premises are being sold (cf RT Act s 56)

- (1) A park owner may give notice of termination of a residential tenancy agreement (other than a residential site agreement) to the resident on the ground that the park owner has (after entering into the agreement) entered into a contract for the sale of the residential premises under which the park owner is required to give vacant possession of the premises.
- (2) A notice of termination given under this section must not specify a day earlier than 30 days after the day on which the notice is given as the day on which vacant possession of the residential premises is to be delivered up to the park owner.
- (3) This section does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term.

106 Notice of termination on ground of breach of agreement (cf RT Act s 57)

- (1) A park owner or a resident may give notice of termination of a residential tenancy agreement (other than a residential site agreement) to the other party on the ground that the other party has breached a term of the agreement.

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- (2) A notice of termination given under this section must not specify a day earlier than 14 days after the day on which the notice is given as the day on which vacant possession of the residential premises is to be or will be delivered up to the park owner.
 - (3) A notice of termination given by a park owner on the ground of a breach of the agreement to pay rent has no effect unless the rent has remained unpaid in breach of the agreement for not less than 14 days before the notice is given.
 - (4) A notice of termination given by a park owner on the ground of a breach of the agreement to pay rent is not ineffective because of any failure of the park owner or the park manager to make a prior formal demand for payment of the rent.
 - (5) A notice of termination of a residential tenancy agreement that creates a tenancy for a fixed term given under this section is not ineffective because the day specified as the day on which vacant possession of the residential premises is to be or will be delivered up to the park owner is earlier than the day the term ends.

107 Notice of termination by park owner without any ground (cf RT Act s 58)

- (1) A park owner may give notice of termination of a residential tenancy agreement (other than a residential site agreement) without specifying any ground for the termination.
- (2) A notice of termination given under this section must not specify a day earlier than 60 days after the day on which the notice is given as the day on which vacant possession of the residential premises is to be delivered up to the park owner.
- (3) This section does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term.

108 Notice of termination by resident without any ground (otherwise than during any fixed term) (cf RT Act s 59)

- (1) A resident may give notice of termination of a residential tenancy agreement (other than a residential site agreement) without specifying any ground for the termination.

- (2) A notice of termination given under this section must not specify a day earlier than 21 days after the day on which notice is given as the day on which vacant possession of the residential premises will be delivered up to the park owner, unless it specifies an earlier day to which the park owner has consented.
- (3) This section does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term.

109 Notice of termination of fixed term agreement without any ground (cf RT Act s 60)

- (1) A park owner or a resident may give notice of termination of a residential tenancy agreement (other than a residential site agreement) that creates a tenancy for a fixed term during the currency of the term without specifying any ground for the termination.
- (2) A notice of termination given under this section must not specify a day earlier than 14 days after the day on which the notice is given or the day the term of the residential tenancy agreement ends, whichever is the later, as the day on which vacant possession of the residential premises is to be or will be delivered up.

110 Notice of termination where agreement frustrated (cf RT Act s 61)

- (1) If residential premises under a residential tenancy agreement are, otherwise than as a result of a breach of the agreement, destroyed or rendered wholly or partly uninhabitable or cease to be lawfully usable for the purpose of a residence or are appropriated or acquired by any authority by compulsory process:
 - (a) the rent abates accordingly, and
 - (b) the park owner or the resident may give immediate notice of termination to the other party.

- (2) A notice of termination may specify any date as the date for vacating the residential premises.

Division 4 Notices of termination

111 Effect of notice of termination of periodic tenancy (cf RT Act s 62)

A notice of termination of a residential tenancy agreement that creates a periodic tenancy given under this Act is not ineffective because the day for delivering up vacant possession of the residential premises is not:

- (a) the last day of a period of the tenancy, or
- (b) any other day on which the tenancy would (for breach or any other reason) have ended if this Act had not been enacted.

112 Form of notice of termination (cf RT Act s 63)

- (1) A notice of termination of a residential tenancy agreement given to a resident by a park owner must:
- (a) be in writing, and
 - (b) be signed by the park owner or the park manager, and
 - (c) identify the residential premises the subject of the agreement, and
 - (d) specify the day on which vacant possession of the residential premises is to be delivered up to the park owner, and
 - (e) specify and give particulars of the ground (where applicable) on which the notice is given, and
 - (f) include a statement that indicates that information regarding tenancy rights and obligations is contained in the residential tenancy agreement.

- (2) A notice of termination of a residential tenancy agreement given to a park owner by a resident must:
- (a) be in writing, and
 - (b) be signed by the resident or the agent of the resident (if any) appointed under section 32, and
 - (c) identify the residential premises the subject of the agreement, and
 - (d) specify the day on which vacant possession of the residential premises will be delivered up to the park owner, and
 - (e) specify and give particulars of the ground (where applicable) on which the notice is given.

Division 5 Termination of residential tenancy agreements by Tribunal

113 Application to Tribunal by park owner for termination and order for possession (cf RT Act s 64)

- (1) If:
- (a) a park owner or a resident gives notice of termination of a residential tenancy agreement under this Part, and
 - (b) the resident fails to deliver up vacant possession of the residential premises on the day specified,
- the park owner may, not later than 30 days after that day, apply to the Tribunal for an order terminating the agreement and an order for possession of the premises.
- (2) The Tribunal must, on application by a park owner under this section, make an order terminating the agreement if it is satisfied:
- (a) in the case of a notice given by the park owner on a ground referred to in section 98, 99, 100, 101, 102, 104, 105, 106 or 110:
 - (i) that the park owner has established the ground, and
 - (ii) if the ground is a breach of the residential tenancy agreement, that the breach, in the circumstances of the case, is such as to justify termination of the agreement, or

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- (b) that the resident has seriously or persistently breached the residential tenancy agreement, or
 - (c) that, having considered the circumstances of the case, it is appropriate to do so.
- (3) Except as provided by section 115, the Tribunal must not make an order terminating a residential tenancy agreement under this section unless it is satisfied that notice of termination was given and that it was given in accordance with this Part.
- (4) If the Tribunal makes an order under this section terminating a residential tenancy agreement:
- (a) the Tribunal must also make an order for possession of the residential premises specifying the day on which the order takes effect, and
 - (b) the Tribunal may, if the circumstances of the case so justify, also make an order that the resident not be a resident under any other residential site agreement in relation to the park and not be a resident of any other residential premises in the residential park.

114 Suspension or refusal of orders for termination (cf RT Act s 65)

- (1) The Tribunal may suspend the operation of an order for possession of residential premises (other than premises that are part of the park owner's principal place of residence) for a specified period if it is satisfied that it is desirable to do so, having regard to the relative hardship likely to be caused to the park owner and the resident by the suspension.
- (2) The Tribunal may, as a condition of the suspension of the operation of an order for possession, require the resident to pay to the park owner an occupation fee specified by the Tribunal for the period for which the order for possession is suspended.
- (3) Despite section 113, the Tribunal may refuse to make an order terminating an agreement and an order for possession under that section if it is satisfied:
 - (a) that the park owner was wholly or partly motivated to give notice of termination by the fact that:
 - (i) the resident had applied or proposed to apply to the Tribunal for an order,

- (ii) the resident had complained to a governmental authority or had taken some other action to secure or enforce his or her rights as a resident, or
 - (iii) an order of the Tribunal was in force in relation to the park owner and the resident,
- (b) that in the case of a notice given by the park owner on the ground of a breach of the residential tenancy agreement by the resident—the resident has remedied the breach, or
- (c) that in the case of a notice given by the park owner on the ground that the park owner has entered into a contract for the sale of the residential premises—the sale is not proceeding.
- (4) In this section, a reference to a resident includes a reference to a person who has applied to the Tribunal for an order under section 43 (which relates to the recognition of certain persons as residents).

115 Tribunal may waive defect in notice of termination (cf RT Act s 66)

The Tribunal may, if it thinks it appropriate to do so in the special circumstances of the case, make an order terminating a residential tenancy agreement and an order for possession of residential premises even though there is a defect in any notice of termination of the agreement.

116 Notice of termination not required in certain cases (cf RT Act s 67)

An application under section 117, 118, 119 or 120 may be made whether or not notice of termination has been given.

117 Tribunal may terminate residential tenancy agreement where resident causes serious damage or injury (cf RT Act s 68)

- (1) The Tribunal may, on application by a park owner under a residential tenancy agreement, make an order terminating the agreement if it is satisfied that the resident has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit:
- (a) serious damage to the residential premises, or
 - (b) injury to the park owner, the park manager or any person lawfully within the residential park.

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- (2) If the Tribunal makes an order terminating a residential tenancy agreement under this section, the Tribunal:
- (a) must also make an order for possession of the residential premises taking effect immediately, and
 - (b) the Tribunal may, if the circumstances of the case so justify, also make an order that the resident not be a resident under any other residential site agreement in relation to the park and not be a resident of any other residential premises in the residential park.

118 Tribunal may terminate residential tenancy agreement where park owner would otherwise suffer undue hardship (cf RT Act s 69 and cl 12 of Sch 3)

- (1) The Tribunal may, on application by a park owner under a residential tenancy agreement, make an order terminating the agreement if it is satisfied that the park owner would, in the special circumstances of the case, suffer undue hardship if the agreement were not terminated.
- (2) If the Tribunal makes an order terminating a residential tenancy agreement under this section, the Tribunal:
 - (a) must also make an order for possession of the residential premises specifying the day on which the order takes effect, and
 - (b) may make such other orders (including an order that the park owner pay to the resident compensation for the resident's loss of the tenancy) as it thinks fit.
- (3) An application under this section may be made whether or not notice of termination has been given.
- (4) The resident must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by taking those steps.
- (5) A resident whose residential site agreement is terminated under this section is entitled to be paid compensation by the park owner in accordance with section 128.

119 Tribunal may terminate residential tenancy agreement where resident would otherwise suffer undue hardship (cf RT Act s 69A)

- (1) The Tribunal may, on application by a resident under a residential tenancy agreement, make an order terminating the agreement if it is satisfied that the resident would, in the special circumstances of the case, suffer undue hardship if the agreement were not terminated.
- (2) If the Tribunal makes an order terminating a residential tenancy agreement under this section, the Tribunal:
 - (a) is also to make an order for the repossession by the park owner of the residential premises specifying the day on which the order takes effect, and
 - (b) may make such other orders as it thinks fit (including an order that the resident pay to the park owner compensation for the park owner's loss of the tenancy).
- (3) The park owner must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by taking those steps.

120 Tribunal may terminate residential tenancy agreement for breach by park owner (cf RT Act s 70)

The Tribunal may, on application by a resident under a residential tenancy agreement, make an order terminating the agreement if it is satisfied:

- (a) that the park owner has breached the agreement, and
- (b) that the breach, in the special circumstances of the case, is such as to justify termination of the agreement under this section.

Division 6 Recovery of possession of residential premises

121 Prohibition on certain recovery proceedings in courts (cf RT Act s 71)

No proceedings in the Supreme Court, the District Court or a Local Court to obtain recovery of possession of residential premises subject to a residential tenancy agreement are to be commenced by a park owner against a resident or former resident of the park owner under a residential tenancy agreement.

122 Recovery of possession of residential premises prohibited except by order (cf RT Act s 72)

- (1) A person must not, except in accordance with a judgment, warrant or order of a court or an order of the Tribunal, enter residential premises or any part of such premises of which another person has possession:
- (a) under a residential tenancy agreement, or
 - (b) as a former resident holding over after termination of a residential tenancy agreement,

for the purpose of recovering possession of the premises or part of the premises.

- (2) This section applies to a person who enters residential premises or any part of such premises, whether on his or her own behalf or on behalf of another person.
- (3) A court before which proceedings for an offence under this section are brought may (in addition to any other penalty) order the person who committed the offence or any person on whose behalf that person acted to pay to the person against whom the offence was committed such compensation as it thinks fit.

Maximum penalty: 200 penalty units.

123 Enforcement of orders for possession (cf RT Act s 73)

- (1) If an order for possession of residential premises is made by the Tribunal, then the Chairperson of the Tribunal, any other member of the Tribunal, the Registrar of the Tribunal or a Deputy Registrar of the Tribunal may:
- (a) on the application of the person in whose favour the order was made, and
 - (b) if satisfied that the order for possession or a condition of suspension of the order has not been complied with,

issue a warrant, in or to the effect of the form prescribed by the regulations, authorising a sheriff's officer to enter the residential premises and to give possession to the person in whose favour the order was made.

- (2) A sheriff's officer enforcing an order for possession of residential premises may enter the premises and take all such steps as are reasonably necessary to enforce the order and must produce the warrant authorising the enforcement.
- (3) A member of the police force may, at the request of a sheriff's officer, assist the sheriff's officer to enforce the order for possession.
- (4) A sheriff's officer enforcing an order for possession may use such force as is reasonably necessary for that purpose.
- (5) A person must not hinder or obstruct a sheriff's officer in the exercise of the functions conferred by this section.
- (6) No matter or thing done by a sheriff's officer or member of the police force, in the exercise or purported exercise of functions conferred by this section, must, if the matter or thing was done in good faith for the purposes of enforcing an order for possession, subject a sheriff's officer or member of the police force so doing personally to any action, liability, claim or demand.

124 Liability of resident remaining in possession (cf RT Act s 74)

- (1) If a resident fails to comply with an order for possession of residential premises made by the Tribunal, the resident is liable:
 - (a) to pay compensation to the park owner for any loss caused to the park owner by that failure, and
 - (b) to pay an occupation fee to the park owner equal to the amount of rent that would have been payable by the resident for the residential premises for the period the resident remains in possession after termination of the residential tenancy agreement.
- (2) The Tribunal may, on application by a park owner under this section made not later than 30 days after the day on which the order for possession took effect, order a resident to pay to the park owner such compensation or an amount equal to an occupation fee, or both, as it thinks fit.

125 Notice of proposed recovery of premises by person with superior title (cf RT Act s 75)

- (1) This section applies where a person (*the plaintiff*) brings proceedings in a court or the Tribunal (whether under this Act or otherwise) for the recovery of possession of residential premises.
- (2) The court or Tribunal must not give judgment or make an order for possession, unless it is satisfied:
 - (a) as to whether or not there is a person in possession of the residential premises as:
 - (i) a resident under a residential tenancy agreement, or
 - (ii) a former resident holding over after termination of a residential tenancy agreement, and
 - (b) if there is such a person in possession of the residential premises and the plaintiff is not the park owner, or was not the park owner, under the residential tenancy agreement—that the person has had reasonable notice of the proceedings brought by the plaintiff.
- (3) Failure to comply with this section does not invalidate or otherwise affect the judgment or order.

126 Order for tenancy against person with superior title (cf RT Act s 76)

- (1) This section applies to a person who is or was in possession of residential premises as:
 - (a) a resident under a residential tenancy agreement, or
 - (b) a former resident holding over after termination of a residential tenancy agreement,

at a time when proceedings for the recovery of possession of the premises had been commenced before a court or the Tribunal (whether under this Act or otherwise) by a person (*the plaintiff*) who is not the park owner, or was not the park owner, under the agreement.

- (2) A person to whom this section applies may apply for an order under this section and such an application may be made to:
- (a) the court or Tribunal before which the proceedings are pending, or
 - (b) if the proceedings have been completed or possession has been recovered, the Tribunal,

and must be made within a reasonable time after the applicant was given notice of the proceedings or (if no notice was given) within a reasonable time after the recovery of possession of the residential premises.

- (3) The court or Tribunal may, on such an application, and if it thinks it appropriate to do so in the special circumstances of the case, make an order vesting a tenancy over the residential premises in the applicant.
- (4) The tenancy is to be held from the plaintiff, and on such terms and conditions as the court or Tribunal thinks fit, having regard to the circumstances of the case.
- (5) Such an application or order may be made, even though:
- (a) notice was not given to the applicant of the proceedings brought by the plaintiff, or
 - (b) the proceedings brought by the plaintiff have been completed or possession of the residential premises has been recovered by the plaintiff.

Division 7 Compensation for termination of a residential site agreement

127 Relocation of resident (cf RT Act cl 13 of Sch 3)

- (1) Instead of issuing a notice of termination under section 101, 102, 104 or 118, the park owner under a residential site agreement may, by notice in writing, require the resident to relocate to a different residential site, whether within the same residential park or some other residential park within a reasonable distance operated by the same park owner.

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- (2) A notice to relocate must specify the date by which the resident must relocate, being a date not earlier than:
- (a) 90 days after the notice is given, or
 - (b) in the case of a residential site agreement that creates a tenancy for a fixed term, the day following the date on which the fixed term ends,
- whichever is the later.
- (3) A resident who relocates in accordance with the requirements of a notice under this section is entitled to be paid compensation by the park owner in accordance with section 128.
- (4) The period of notice that must be given under section 101 (2) (a) or 102 (2) (a) or (4) (a) is reduced by the period of notice given under this section in the event that a notice of termination is given under section 101 or 102 as a result of the resident failing to relocate as required by the notice.

128 Compensation for termination or relocation (cf RT Act cl 14 of Sch 3)

- (1) The amount of compensation that a resident is entitled to be paid by a park owner under this Division is to be fixed by an order of the Tribunal.
- (2) An application for such an order may be made, by the park owner or by the resident:
 - (a) in any proceedings on an application under section 113, being an application made on a ground referred to in section 101, 102 or 104, or
 - (b) in any proceedings on an application referred to in section 118 in respect of a residential site agreement, or
 - (c) in any proceedings commenced within 6 months after the resident vacates a residential site in compliance with a notice or order referred to in section 101, 102, 104, 118 or 127.
- (3) In fixing the amount of compensation to which a resident is entitled in connection with the relocation of a dwelling to a new residential site, whether in accordance with the requirements of a

notice under section 127 or otherwise, the Tribunal must have regard to the following matters:

- (a) the reasonable costs of removing the dwelling from the old residential site (including the costs of disconnecting any services),
 - (b) the reasonable costs of transporting the dwelling, and the possessions of its residents, to the new residential site,
 - (c) the reasonable costs of installing the dwelling at the new residential site (including the costs of connecting to the available services),
 - (d) the reasonable costs of repairing any damage to the dwelling arising from its relocation,
 - (e) the reasonable costs of landscaping the new residential site so as to bring it up to the condition of the old residential site,
 - (f) the value of any financial or other assistance that the park owner has given to the resident in connection with the relocation.
- (4) In fixing the amount of compensation to which a resident is entitled otherwise than in connection with the relocation of a dwelling to a new residential site, the Tribunal must have regard to the following matters:
- (a) the reasonable costs of removing the dwelling from the old residential site (including the costs of disconnecting any services),
 - (b) the reasonable costs of transporting the dwelling to its new location or disposing of the dwelling,
 - (c) the reasonable costs of transporting the possessions of the residents of the dwelling to their new place of residence (whether at the dwelling's new location or some other location),
 - (d) the reasonable costs of repairing any damage to the dwelling arising from its relocation,
 - (e) the value of any financial or other assistance that the park owner has given to the resident in connection with the relocation.

- (5) Compensation is not payable under subsection (3) (d) or (4) (d) for an amount in excess of the value of the dwelling.
- (6) Compensation is not payable under subsection (4) (b) or (c) for a distance of travel of more than 300 kilometres.
- (7) This section operates to the exclusion of any provision of any Act (such as section 85 (3) of the *Residential Tenancies Act 1987*) that limits the amount for which the Tribunal can make an order.
- (8) In this section:
dwelling means a relocatable home or a registrable moveable dwelling with a rigid annexe attached to it.

129 Relocation of resident by agreement (cf RT Act cl 15 of Sch 3)

The park owner and resident under a residential site agreement may agree to the relocation of the resident to a different residential site, whether within the same residential park or some other residential park operated by the same park owner.

130 Effect of relocation generally (cf RT Act cl 16 of Sch 3)

- (1) If a resident relocates:
 - (a) in accordance with a notice to relocate, as referred to in section 127, or
 - (b) by agreement, as referred to in section 129,the residential site agreement is taken to be varied by substituting the new residential site for the old residential site.
- (2) The rent payable under a residential site agreement that is varied may be reduced, but (in the case of a relocation resulting from a notice to relocate under section 127) may not be increased, by reason of the relocation.

Division 8 Abandoned premises and goods

131 Meaning of "goods"

In this Part:

goods includes a relocatable home or other moveable dwelling owned by a resident.

132 Abandoned premises (cf RT Act s 77)

- (1) The Tribunal may, on application by a park owner under a residential tenancy agreement, make an order that declares that the residential premises were abandoned by the resident on a day specified by the Tribunal.
- (2) The resident is taken for the purposes of this Act to have abandoned the residential premises on that day.

133 Right of park owner to compensation where resident abandons premises (cf RT Act s 78)

- (1) If a resident under a residential tenancy agreement abandons the residential premises, the resident is liable to pay compensation to the park owner for any loss (including loss of rent) caused by the abandonment.
- (2) The park owner must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by taking those steps.
- (3) The Tribunal may, on application by the park owner, order a resident to pay to the park owner such compensation (including compensation for loss of rent) as it thinks fit.

134 Goods abandoned by resident after residential tenancy agreement is terminated (cf RT Act s 79)

- (1) If a residential tenancy agreement is terminated and goods are left by the resident on the residential premises, the person who was the park owner under that agreement may:
 - (a) apply to the Tribunal for an order under this section, or
 - (b) dispose of the goods in accordance with any provision made by the regulations,or both.
- (2) The Tribunal may, on application under this section by the person who was the park owner under a residential tenancy agreement, make any one or more of the following orders:
 - (a) an order authorising the removal, destruction or disposal of abandoned goods,
 - (b) an order authorising the sale of abandoned goods,

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- (c) an order directing that notice of any action or proposed action in relation to abandoned goods be given to the former resident or any other person,
 - (d) an order as to the manner of sale of abandoned goods,
 - (e) an order as to the proceeds of sale of abandoned goods,
 - (f) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (3) A purchaser of abandoned goods sold by a park owner in accordance with an order of the Tribunal or the regulations acquires a good title to the goods in defeasance of the interest of the former resident or any other person who has an interest in the goods.
 - (4) A person who was the park owner under a residential tenancy agreement does not incur any liability in respect of the removal, destruction, disposal or sale of goods in accordance with an order of the Tribunal or the regulations.

135 Goods left by resident, but not abandoned, after residential tenancy agreement is terminated (cf RT Act s 79A)

- (1) If a residential tenancy agreement is terminated and goods are left by the resident on the residential premises:
 - (a) the resident, or
 - (b) any other person having an interest in the goods,may apply to the Tribunal for an order for the delivery of the goods into the resident's or other person's possession.
- (2) The Tribunal may, on application under this section, make any one or more of the following orders:
 - (a) an order for the delivery of the goods into the resident's or other person's possession,
 - (b) an order requiring the resident or other person to pay any reasonable costs incurred by the park owner in connection with the removal, storage or delivery of the goods,
 - (c) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (3) A person who was a park owner under a residential tenancy agreement does not incur any liability in respect of the disposal of goods in accordance with an order of the Tribunal under this section.

136 Time within which application to be made (cf RT Act s 79B)

An application under section 134 or 135 may not be made more than 28 days after the date on which the park owner gains possession of the residential premises concerned, whether as a result of the resident delivering up vacant possession of the premises to the park owner, the resident abandoning the premises, the park owner recovering possession of the premises under an order for possession or otherwise.

Part 13 Administration

137 Functions of Director-General (cf RT Act s 118)

The Director-General has, in addition to any other functions conferred or imposed by this or any other Act, the following functions:

- (a) to investigate and carry out research into matters relating to or affecting the relationship between park owners and residents,
- (b) to investigate and attempt to resolve complaints by park owners and residents and to take such action, including prosecution, as the Director-General thinks appropriate,
- (c) to distribute information about this Act and the services provided by the Director-General and the Tribunal in relation to park owners and residents,
- (d) to investigate and report on any matters, or make inquiries in relation to any matters, referred to the Director-General by the Minister in connection with this Act or by the Tribunal,
- (e) to work, consult, co-operate and exchange information with, and provide financial help to, government departments, public authorities and any other bodies that or persons who:
 - (i) advise park owners and residents with respect to residential tenancy agreements, or
 - (ii) distribute information about residential tenancy agreements, or
 - (iii) investigate or carry out research into matters relating to or affecting the relationship between park owners and residents.

138 Delegation by Director-General (cf RT Act s 119)

The Director-General may delegate to a person the exercise of any of the Director-General's functions under this Act other than this power of delegation.

139 Investigators (cf RT Act s 119A)

- (1) The Minister may appoint an officer as an investigator for the purposes of this Act.
- (2) The Minister may provide an investigator with a certificate of identification as an investigator.
- (3) An investigator may not exercise in any premises a function conferred by section 140 unless the investigator produces his or her certificate of identification if requested to do so by a person apparently in charge of those premises or apparently in charge of any work being performed on those premises.
- (4) A person is not required to give to an investigator information or evidence, or to produce a document, in compliance with a notice under section 140 unless the investigator produces, if requested to do so, his or her certificate of identification.
- (5) In this section:

officer means the Director-General or any person employed for the purposes of, or whose services are used under, section 117B of the *Residential Tenancies Act 1987*.

140 Power of investigator to obtain information, documents and evidence (cf RT Act s 119B)

- (1) If the Director-General believes on reasonable grounds that a person is capable of giving information, producing documents or giving evidence in relation to a matter that constitutes, or may constitute, an offence against this Act or the regulations, an investigator may, by notice in writing given to the person, require the person:
 - (a) to provide an investigator, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and given to the investigator within the time and in the manner specified in the notice, with any such information, or
 - (b) to produce to an investigator, in accordance with the notice, any such documents, or
 - (c) to appear before an investigator at a time and place specified in the notice and give any such evidence, either orally or in writing, and produce any such documents.

- (2) If the Director-General believes on reasonable grounds that a person has engaged, or is engaging, in conduct that constitutes, or may constitute, an offence against this Act or the regulations, an investigator may, for the purpose of ascertaining by the examination of documents in the possession or under the control of the person whether the person has engaged, or is engaging, in that conduct:
- (a) enter any residential park, residential premises or other premises, and
 - (b) inspect any documents in the possession or under the control of the person, and
 - (c) make copies of, or take extracts from, those documents.
- (3) A person must not:
- (a) without reasonable excuse, refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it, or
 - (b) in purported compliance with such a notice, provide information, or give evidence, that the person knows is false or misleading, or
 - (c) hinder or obstruct an investigator exercising his or her functions under subsection (2).
- (4) A person is excused from providing information, giving evidence or producing or permitting the inspection of a document in accordance with this section on the ground that the information, evidence or document may tend to incriminate the person.
- (5) This section does not authorise any person to enter a part of any premises that is being used for residential purposes without the consent of the occupier of that part of the premises.

141 Inspection of documents by Director-General and others (cf RT Act s 119C)

- (1) The Director-General, a person authorised by the Director-General or an investigator may inspect a document produced in accordance with a notice under section 140 and may make copies of, or take extracts from, the document.

- (2) For the purposes of this Act or the regulations, the Director-General or an investigator may:
- (a) take possession, and
 - (b) retain possession for as long as is necessary for those purposes,

of a document produced in accordance with a notice under section 140.

- (3) A person who is otherwise entitled to possession of a document retained under this section is entitled to be supplied, as soon as practicable, with a copy certified by an authorised officer to be a true copy and the certified copy is admissible as evidence in all courts as if it were the original document.

- (4) In this section:

authorised officer means a person authorised in writing by the Director-General as an authorised officer for the purposes of this section.

142 Exclusion of personal liability (cf RT Act s 119D)

No matter or thing done or omitted to be done by the Director-General, an investigator or any other authorised officer subjects the Director-General, investigator or other officer to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of administering this Act or the regulations.

Part 14 Miscellaneous

143 Park owner may appoint park manager

- (1) A park owner may appoint a person as the park manager of the residential park, with responsibility for the day to day management of the residential park, including the letting of residential premises.
- (2) An appointment under this section may be revoked at any time by the park owner.
- (3) A resident, or the Tribunal, may give to a park manager, until such time as the appointment expires or is revoked, any notices or other documents required by the residential tenancy agreement or this Act to be given to the park owner who appointed the park manager.
- (4) A notice or other document that is permitted by this section to be given to a person appointed as park manager and that is so given is taken to have been given to the park owner who appointed the park manager.

144 Contracting out prohibited (cf RT Act s 120)

- (1) The provisions of this Act and the regulations have effect despite any stipulation to the contrary in any agreement, contract or arrangement and 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 this section, operates to annul, vary or exclude any of the provisions of this Act or the regulations.
- (2) A person must not enter into any agreement, contract or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act or the regulations.

Maximum penalty: 20 penalty units.

145 Costs in court proceedings (cf RT Act s 120A)

If a court in any proceedings is of the opinion that, having regard to the subject-matter of the proceedings, the taking of the proceedings was not warranted in the circumstances of the case because this Act makes adequate provision for the enforcement

by the Tribunal of the rights concerned, the court is to order the plaintiff to pay the defendant's costs in such amount as the court determines.

146 Disclosure of information (cf RT Act s 121)

- (1) A person must not disclose any information obtained in connection with the administration or execution of this Act or the regulations, unless that disclosure is made:
 - (a) with the consent of the person from whom the information was obtained, or
 - (b) in connection with the administration or execution of this Act or the regulations, or
 - (c) for the purposes of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings, or
 - (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
 - (e) with other lawful excuse.

Maximum penalty: 5 penalty units.

- (2) To avoid doubt, this section does not apply to a person or body undertaking alternative dispute resolution under section 91.

147 Offences and penalties (cf RT Act s 125)

A contravention or failure to comply with a provision of this Act for the breach of which a penalty is not specified does not give rise to an offence.

148 Proceedings for offences (cf RT Act s 124)

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.
- (2) However, proceedings for an offence against section 122 are to be dealt with by:
 - (a) a Local Court constituted by a Magistrate sitting alone, or
 - (b) the Supreme Court in its summary jurisdiction.

- (3) Proceedings for an offence against section 122 are not to be instituted in the Supreme Court in its summary jurisdiction without the consent of the Minister.
- (4) The maximum penalty that may be imposed by a Local Court in proceedings for an offence against this Act is 50 penalty units or such other amount as may be prescribed by the regulations.
- (5) Proceedings for an offence against this Act or the regulations may be brought within the period of 3 years that next succeeds the commission of the offence or, only with the consent of the Attorney General, at any time.

149 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if:
 - (a) it appears to the officer that the person has committed an offence against this Act or the regulations, and
 - (b) the regulations prescribe the offence as being one for which a penalty notice may be issued.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty for an offence if dealt with under this section, and
 - (c) prescribe different amounts of penalty for different offences or classes of offences.

- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.
- (9) In this section:
authorised officer means:
 - (a) the Director-General, or
 - (b) a person authorised in writing by the Director-General as an authorised officer for the purposes of this section, or
 - (c) an investigator appointed under the *Fair Trading Act 1987*.

150 Offences by corporations (cf RT Act s 127)

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.
- (4) This section does not apply to or in respect of a person who is a director, or who is concerned in the management, of a statutory corporation.

151 Offences against this Act (cf RT Act s 128)

A person who:

- (a) aids, abets, counsels or procures a person to contravene, or
- (b) induces, or attempts to induce, a person, whether by threats or promises or otherwise, to contravene, or

- (c) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of, or
- (d) conspires with others to contravene,

a provision of this Act or the regulations the breach of which is an offence is guilty of an offence against this Act and liable to the same penalty as a person who contravenes the provision.

152 Contracts Review Act 1980 (cf RT Act s 126)

Nothing in this Act limits the operation of the *Contracts Review Act 1980*.

153 Service of documents (cf RT Act s 130)

- (1) A notice or other document (other than a notice of termination or penalty notice) required to be given to a resident under this Act may be given:
 - (a) by delivering it personally to the resident or a person apparently of or above the age of 16 years by whom the rent payable by the resident is ordinarily paid, or
 - (b) by delivering it to the residential premises occupied by the resident and by leaving it there with some person apparently of or above the age of 16 years for the resident, or
 - (c) by sending it by post to the residential premises occupied by the resident, or
 - (d) in such other manner as may be prescribed by the regulations for the purposes of this section or approved by the Tribunal.
- (2) A notice or other document (other than a notice of termination) required to be given to a park owner under this Act may be given:
 - (a) by delivering it personally to the park owner, the park manager or a person apparently of or above the age of 16 years to whom the rent payable to the park owner is ordinarily paid, or
 - (b) by sending it by post to the park owner's, or park manager's, usual place of residence or business or employment, or

- (c) by sending it by facsimile transmission to the park owner's, or park manager's, usual place of residence or business or employment, or
 - (d) in such other manner as may be prescribed by the regulations for the purposes of this section or approved by the Tribunal.
- (3) A document given or an application made to the Tribunal may be given or made to the Tribunal or lodged with the Registrar of the Tribunal by leaving it at, by sending it by facsimile transmission or by sending it by post to:
- (a) the office of the Tribunal, or
 - (b) if it has more than one office, any one of its offices, or
 - (c) any other place prescribed by the regulations.
- (4) A notice of termination given under this Act may be given in such manner as may be prescribed by the regulations for the purposes of this section.
- (5) Nothing in subsection (3) affects the operation of any provision of a law or of the rules of a court authorising a document to be given to or lodged with the Tribunal in a manner not provided for by subsection (3).
- (6) In subsection (1), a reference to a resident is to be read as a reference to a person appointed by a resident under section 32 (which relates to the appointment of agents).

154 Extension of time (cf RT Act s 99)

- (1) The Tribunal may, of its own motion or on application by any person, extend the period of time for the doing of anything under this Act or the regulations (including any period of time specified in any other provision of this Act or the regulations).
- (2) Such an application may be made even though the relevant period of time has expired.

155 Regulations (cf RT Act s 133)

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to any or all of the following:
 - (a) the completion by or on behalf of a park owner and a resident of condition reports in relation to the condition of residential premises before the commencement, or after the termination, or both, of a tenancy,
 - (b) the provision of information to the resident by the park owner at the time of entering into a residential tenancy agreement,
 - (c) the maximum charge by a park owner or the park manager for preparation of a residential tenancy agreement or any other matter connected with the preparation of a residential tenancy agreement,
 - (d) the execution of a residential tenancy agreement by a resident or prospective resident suffering under a disability,
 - (e) the service of notices or other documents under this Act,
 - (f) a standard form or forms of residential tenancy agreement,
 - (g) water metering arrangements,
 - (h) goods or moveable dwellings abandoned or left by a resident,
 - (i) fees to be paid under this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.
- (3) A provision of a regulation may exempt from the operation of this Act or any specified provision of this Act any specified person, residential tenancy agreement or premises or any specified class of persons, residential tenancy agreements or residential premises, either unconditionally or subject to conditions.

156 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

157 Savings and transitional provisions

Schedule 1 has effect.

Part 15 Amendment of Acts and statutory instruments

158 Amendment of Residential Tenancies Act 1987 No 26

The Residential Tenancies Act 1987 is amended as set out in Schedule 2.

159 Amendment of other Acts

Each Act specified in Schedule 3 is amended as set out in the Schedule.

160 Repeal of Caravan and Relocatable Home Park Industry Code of Practice Regulation 1992

The Caravan and Relocatable Home Park Industry Code of Practice Regulation 1992 is repealed.

Schedule 1 Savings and transitional provisions

(Section 157)

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Application of Act to residential tenancy agreements existing when Residential Tenancies Act 1987 commenced

2 Application of Act to agreements existing when the Residential Tenancies Act 1987 commenced

- (1) This Act (except as provided by clause 3) extends to oral residential tenancy agreements, of the kind referred to in section 5 (1), that were made before 30 October 1989 (the date of commencement of section 5 of the *Residential Tenancies Act 1987*).

- (2) This Act (except as provided by clause 4 (1)) extends to:
- (a) written residential tenancy agreements, and
 - (b) partly written and partly oral residential tenancy agreements,
- of the kind referred to in section 5 (1), that were made before 30 October 1989.
- (3) Where this Act applies to such a residential tenancy agreement, it so applies despite the terms of any such residential tenancy agreement or any other contract, agreement or arrangement, whether made before or after the commencement of this clause.

3 Application of Act to oral residential tenancy agreements existing when 1987 Act commenced

- (1) Sections 12, 17, 18, 19 and 24 (1) (a) do not apply to an oral residential tenancy agreement, of the kind referred to in section 5 (1), that was made before 30 October 1989.
- (2) An application may not be made under section 16, 106 or 120 in respect of a dispute or breach of such an oral residential tenancy agreement that occurred before 30 October 1989.
- (3) Division 2 of Part 4 does not apply to or affect charges paid or payable before 30 October 1989 by a park owner or resident under such an oral residential tenancy agreement.
- (4) In its application to such an oral residential tenancy agreement, section 25 (1) (d) is to be read as if the words "as set out in any condition report forming part of the residential tenancy agreement" were omitted and the words "as they were in at the commencement of the tenancy" were inserted instead.
- (5) Section 28 does not confer on a resident under such an oral residential tenancy agreement any right to seek reimbursement for costs incurred before 30 October 1989.
- (6) Section 33 (1), and section 33 (3) to the extent that it relates to a breach of section 33 (1), do not apply to such an oral residential tenancy agreement made before 30 October 1989.

- (7) Sections 125 and 126 do not apply:
 - (a) to proceedings for recovery of residential premises subject to such an oral residential tenancy agreement if the proceedings were commenced before 30 October 1989, or
 - (b) if possession of residential premises was recovered before 30 October 1989.
- (8) Nothing in this Act affects:
 - (a) the validity of any action done or payment made before 30 October 1989 in pursuance of a term of an oral residential tenancy agreement that contravenes, is ineffective or is void because of this Act, or
 - (b) any right or remedy that a park owner or a resident under an oral residential tenancy agreement would have had but for this Act in relation to such an action or payment or any breach of the agreement that occurred before 30 October 1989.

4 Application of Act to written and partly written residential tenancy agreements existing when 1987 Act commenced

- (1) Part 3 and sections 17–36 and 41, 95–97, 103, 105–112, 115–120, 124–126 and 131–136 extend to written and partly written and partly oral residential tenancy agreements, of the kind referred to in section 5 (1), that were made before 30 October 1989:
 - (a) from a day prescribed by the regulations for the purposes of this clause, and
 - (b) only in the manner and to the extent specified by the regulations.
- (2) Division 2 of Part 4 does not apply to or affect charges paid or payable before 30 October 1989 by a park owner or resident under such a residential tenancy agreement.
- (3) If:
 - (a) a park owner or a resident gives notice of termination of a written or partly written and partly oral residential tenancy agreement made before 30 October 1989, and
 - (b) the resident fails to deliver up vacant possession of the residential premises on the day specified,

the park owner may, not later than 30 days after that day, apply to the Tribunal for an order terminating the agreement and an order for possession of the premises.

- (4) The Tribunal may, on application by a park owner under subclause (3), make an order terminating the agreement if it is satisfied that the park owner is entitled to terminate the agreement.
- (5) The Tribunal may suspend the operation of an order for possession of residential premises made under subclause (3) (other than premises which are part of the park owner's principal place of residence) for a specified period if it is satisfied that it is desirable to do so, having regard to the relative hardship likely to be caused to the park owner and resident by the suspension.
- (6) Despite subclauses (4) and (5), the Tribunal may refuse to make an order terminating an agreement and an order for possession under those subclauses if it is satisfied that the park owner was wholly or partly motivated to give notice of termination by the fact that:
 - (a) the resident had applied or proposed to apply to the Tribunal for an order, or
 - (b) the resident had complained to a governmental authority or had taken some other action to secure or enforce his or her rights as a resident, or
 - (c) an order of the Tribunal was in force in relation to the park owner and resident.
- (7) In this clause, a reference to a resident includes a reference to a person who has applied to the Tribunal for an order under section 43.

Part 3 Provisions consequent on enactment of this Act

5 Definitions

In this Part:

existing residential tenancy agreement means a residential tenancy agreement to which this Act applies that was made under the *Residential Tenancies Act 1987* and that was in force immediately before the commencement of section 5 of this Act.

6 General saving

Except as specifically provided by this Act, nothing in this Act affects:

- (a) the validity of any action done or payment made before the commencement of section 5 in pursuance of a term of a residential tenancy agreement that contravenes, is ineffective or is void because of this Act, or
- (b) any right or remedy that a park owner or a resident under a residential tenancy agreement would have had but for this Act in relation to such an action or payment or any breach of the agreement that occurred before the date of commencement of section 5.

7 Valid existing residential tenancy agreements taken to be in standard form

- (1) An existing residential tenancy agreement that was made in the standard form prescribed under section 8 of the *Residential Tenancies Act 1987*, and any term of such an agreement, is not invalid by reason only that the agreement was not made in accordance with the form prescribed under section 8 of this Act.
- (2) However, a term of such an agreement is invalid to the extent that it is inconsistent with this Act or the regulations or with a term implied in the agreement by this Act.

8 Provision of access keys to existing residents

- (1) It is a term of every existing residential tenancy agreement that if the park owner had, before the date of commencement of section 30, installed any locks or other security devices to restrict entry to the residential park, or some part of the residential park to which it is agreed that the resident may have access:
 - (a) the park owner must give a copy of the key or any other opening device or information required to open the locks or other security devices to the resident as soon as possible after the commencement of this Act (if the park owner has not already done so), and
 - (b) the park owner must maintain those locks or security devices in working order.

- (2) A park owner is entitled to require a resident to pay an amount no greater than the amount prescribed by the regulations to cover the cost of providing a key or other opening device, or a replacement key or opening device, to the resident in compliance with the term implied by this clause.

9 Existing agreements relating to water consumption charges continue in force

If under an existing residential tenancy agreement a tenant agreed to pay for water consumption charges relating to the residential premises, the terms of that agreement, and of the *Residential Tenancies Act 1987* and the *Residential Tenancies (Moveable Dwellings) Regulation 1995*, continue to apply during the currency of the agreement as if Division 2 of Part 4 of this Act had not been enacted.

10 Recovery of money paid for water consumption

- (1) This clause applies to an application made to the Tribunal by a resident for recovery of any money paid before the commencement of this Act for water consumption in respect of residential premises to which this Act applies.
- (2) The Tribunal must not make an order granting an application to which this clause applies if the Tribunal is satisfied that:
- (a) during the period for which that money was paid the residential premises were individually metered by the park owner in a manner that would have been consistent with Division 2 of Part 4 if that Division had been in force during that period, and
 - (b) the amount paid would have been payable if that Division had been in force during that period.

11 Rent increases and excessive rent

Sections 55–60 apply to a rent increase of which notice was given before the commencement of those sections in the same way that they apply to a rent increase notice of which is given after that commencement.

12 Continuation of existing park rules

A park rule for a residential park that was in force under the *Caravan and Relocatable Home Park Industry Code of Practice* immediately before the repeal of the *Caravan and Relocatable Home Park Industry Code of Practice Regulation 1992* (which prescribed that Code of Practice) by this Act is taken to have been made under this Act.

13 Obligation to give existing residents a copy of park rules

It is a term of every existing residential tenancy agreement that the park owner must give the resident a copy of any park rules for the relevant residential park in force immediately before the repeal of the *Caravan and Relocatable Home Park Industry Code of Practice Regulation 1992* by this Act as soon as practicable after that repeal.

14 Continuation of Park Disputes Committees

A Park Disputes Committee constituted under the *Caravan and Relocatable Home Park Industry Code of Practice* and in operation immediately before the repeal of the *Caravan and Relocatable Home Park Industry Code of Practice Regulation 1992* by this Act is taken to be a Park Disputes Committee convened under section 87.

15 Application of cooling-off provision to certain contracts

Section 86 does not apply to a contract entered into before the date of commencement of the section.

16 Status as Schedule 3 resident unaffected

- (1) To avoid doubt, a person who, immediately before the commencement of section 5, was a tenant under a residential site agreement to which Schedule 3 of the *Residential Tenancies Act 1987* applied, is taken, on the commencement of section 5, to be a resident under a residential site agreement within the meaning of this Act.

-
- (2) A person who, immediately before the commencement of section 5, was not a tenant under a residential site agreement to which Schedule 3 of the *Residential Tenancies Act 1987* applied does not become a resident under a residential site agreement within the meaning of this Act merely because of the commencement of section 5 of this Act.

17 Recovery of possession of premises

- (1) Nothing in this Act (including section 121) affects or prevents from being taken:
- (a) any proceedings for the recovery of possession of land subject to a residential tenancy agreement, if the proceedings were commenced before the commencement of section 5, or
 - (b) the recovery of possession of that land in pursuance of any judgment, order or direction made in any such proceedings.
- (2) In this clause, a reference to proceedings for recovery of possession of land includes a reference to the giving of a notice to quit.

18 Continuation of 1987 Act in certain circumstances

Part 12 (Termination of residential tenancy agreements) does not apply to any action taken under the *Residential Tenancies Act 1987* in relation to a residential site agreement that was in force immediately before the commencement of section 5 of this Act and any such action may be continued or completed as if this Act had not been enacted.

19 Goods abandoned or left before commencement of Act

Division 8 of Part 12 applies to goods (within the meaning of Part 12) left or abandoned on residential premises by a tenant under a residential tenancy agreement terminated before the commencement of section 5, and not finally dealt with before that commencement, in the same way as it applies to goods left or abandoned on residential premises by a tenant under a residential tenancy agreement terminated after that commencement.

Schedule 2 Amendment of Residential Tenancies Act 1987

(Section 158)

[1] Section 3 Definitions

Omit the definitions of *registrable moveable dwelling*, *relevant code of practice*, *relocatable home* and *rigid annexe* from section 3 (1).

[2] Section 6 Agreements and premises to which Act does not apply

Omit section 6 (2) (f) and (g). Insert instead:

- (f) any premises used as an approved hostel within the meaning of the *Aged or Disabled Persons Care Act 1954* of the Commonwealth.

[3] Section 7

Omit the section. Insert instead:

7 Application of Act to moveable dwellings and residential parks

- (1) This Act does not apply to residential tenancy agreements to which the *Residential Parks Act 1998* applies.
- (2) This Act applies to any other residential tenancy agreements under which the residential premises consist of a moveable dwelling, but only in the manner and to the extent specified by the regulations.
- (3) To avoid doubt, Part 6 (The Residential Tenancies Tribunal of New South Wales) applies to matters that arise by virtue of jurisdiction conferred on the Tribunal by the *Residential Parks Act 1998*.
- (4) Nothing in this section limits the operation of section 133 (3) (which enables exemptions from the operation of this Act).

- [4] **Section 16 Applications relating to a breach of residential tenancy agreement**
Omit the note to the section.
- [5] **Part 3 Landlords and tenants**
Omit the note after the heading to Division 1.
- [6] **Part 3, Division 2 Change of landlord or tenant**
Omit the note after the heading to the Division.
- [7] **Section 33 Right to assign rights or sub-let**
Omit section 33 (3).
- [8] **Section 33, note**
Omit the note to the section.
- [9] **Part 3, Division 3 Caravan parks**
Omit the Division.
- [10] **Section 53 Termination of residential tenancy agreements**
Omit "(or Part 3 of Schedule 3)" from section 53 (a).
- [11] **Part 5, Division 2 Notices of termination**
Omit the note after the heading to the Division.
- [12] **Section 56 Notice of termination on ground that premises are being sold**
Omit the note to the section.
- [13] **Section 57 Notice of termination on ground of breach of agreement**
Omit the note to the section.

- [14] Section 58 Notice of termination by landlord without any ground**
Omit section 58 (2A).
- [15] Section 58, note**
Omit the note to the section.
- [16] Section 59 Notice of termination by tenant without any ground**
Omit section 59 (2A).
- [17] Section 60 Notice of termination of fixed term agreement without any ground**
Omit section 60 (3).
- [18] Section 60, note**
Omit the note to the section.
- [19] Section 61 Notice of termination where agreement frustrated**
Omit the note to the section.
- [20] Section 64 Application to Tribunal by landlord for termination and order for possession**
Omit “(or Part 3 of Schedule 3)” wherever occurring in section 64 (1) (a) and (3).
- [21] Section 64 (2) (a)**
Omit “or clause 6, 7, 8, 9, 10 or 11 of Schedule 3”.
- [22] Section 69 Tribunal may terminate residential tenancy agreement where landlord would otherwise suffer undue hardship**
Omit the note to the section.
- [23] Section 85 Orders of the Tribunal**
Omit the note to the section.

[24] Section 115 Contravention of orders of Tribunal

Insert "of this Act or section 61 of the *Residential Parks Act 1998*" after "section 52".

[25] Section 119E Annual report

Insert "under this or any other Act" after "Commissioner" where secondly occurring in section 119E (1).

[26] Section 129 Costs of administration

Insert "or the *Residential Parks Act 1998*" after "Act" in section 129 (1).

[27] Schedule 3 Application of Act to certain moveable dwellings

Omit the Schedule.

Schedule 3 Amendment of other Acts

(Section 159)

3.1 Fair Trading Act 1987 No 68

[1] Section 4 Definitions

Omit “or” from paragraph (c) of the definition of *services* in section 4 (1).

[2] Section 4 (1), definition of “services”

Insert after paragraph (d) of the definition:

, or

- (e) a residential tenancy agreement (within the meaning of the *Residential Parks Act 1998*) under which the residential premises consist of a residential site in a residential park or a moveable dwelling on such a residential site (within the meaning of that Act),

[3] Section 44 False representations (TPA s 53)

Omit “or” where thirdly occurring in section 44 (j).

[4] Section 44 (l)

Insert after section 44 (k):

, or

- (l) make a false or misleading representation concerning a person’s rights or obligations under a residential tenancy agreement (within the meaning of the *Residential Parks Act 1998*) under which the residential premises consist of a residential site in a residential park or a moveable dwelling on such a residential site (within the meaning of that Act).

3.2 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order:

Residential Parks Act 1998, section 149

3.3 Landlord and Tenant (Rental Bonds) Act 1977 No 44

[1] Section 4 Definitions

Omit paragraph (c) of the definition of *residential premises* in section 4 (1).

Insert instead:

- (c) a residential site within the meaning of the *Residential Parks Act 1998* that is a person's principal place of residence, or
- (d) a relocatable home or any other moveable dwelling on a residential site, within the meaning of the *Residential Parks Act 1998*, that is a person's principal place of residence,

[2] Section 4 (1), definition of "residential premises"

Omit ", those premises or that caravan".

Insert instead "or those premises".

3.4 Residential Tribunal Act 1998

[1] Section 6 Residential Tribunal

Insert in alphabetical order of Acts listed in the note to the section:

Residential Parks Act 1998

[2] Schedule 4 Amendment of certain Acts

Insert after Schedule 4.4:

4.4A Residential Parks Act 1998

[1] Section 3 Definitions

Omit the definition of *Tribunal* from section 3 (1).

Insert instead:

Tribunal means the Residential Tribunal constituted by the *Residential Tribunal Act 1998*.

[2] Section 91 Tribunal may refer certain matters for alternative dispute resolution

Omit "*Residential Tenancies Act 1987*" from section 91 (3).

Insert instead "*Residential Tribunal Act 1998*".

[3] Section 128 Compensation for termination or relocation

Omit "(such as section 85 (3) of the *Residential Tenancies Act 1987*)" from section 128 (7).

[4] Schedule 2 Amendment of Residential Tenancies Act 1987

Omit section 7 (2) of the *Residential Tenancies Act 1987*, as proposed to be inserted by Schedule 2 [3].

[5] Schedule 2 [23] and [24]

Omit the items.

[Minister's second reading speech made in—
Legislative Assembly on 28 October 1998
Legislative Council on 19 November 1998]

BY AUTHORITY