



New South Wales

Residential (Land Lease) Communities Act 2013 No 97

Contents

	Page
Part 1 Preliminary	
1 Name of Act	2
2 Commencement	2
3 Objects of Act	2
4 Definitions	2
Part 2 Application of Act	
5 Application of Act to communities	6
6 Application of Act to site agreements	6
7 Arrangements to which this Act does not apply	6
8 Places to which this Act does not apply	6
9 Declaration by Tribunal	7
10 Act to bind Crown	7
11 Exemptions from operation of Act	7
12 Contracting out prohibited	7
13 Relationship of Act with other laws	8
Part 3 Registration of communities	
14 Commissioner to keep Register	9
15 Information to be recorded in Register	9
16 Notifying particulars of community	9

	Page	
17	Notifying when a place ceases to be a community	10
18	False or misleading information	10
19	Publication of certain information for public access	10
20	Evidential provisions concerning Register	11
Part 4	Entering into site agreements	
	Division 1 Disclosure of information	
21	Disclosure statement required before entry into site agreement	12
22	Approved information for prospective home owners	12
23	Rescission during cooling-off period	12
24	No restrictions on obtaining advice	13
25	False, misleading or deceptive information	13
	Division 2 Site agreements	
26	Site agreements generally	13
27	Standard site agreements	14
28	Additional terms	15
29	Prohibited terms of site agreements	15
30	No fees or charges payable before entry	15
31	Duration of site agreement	16
32	Home owner to be given copy of site agreement	16
33	Certain unexecuted site agreements enforceable	16
34	Non-compliance not to affect validity or enforceability	16
Part 5	Rights and obligations	
	Division 1 Basic responsibilities	
35	What this Division is about	17
36	Home owner's responsibilities	17
37	Operator's responsibilities	17
38	Right to quiet enjoyment	18
39	Access to residential site by operator	19
40	Access to community by tradespersons and service providers	19
41	Access to community by emergency and home care service vehicles	20
42	Alterations and additions to, and replacement of, homes	20
43	Dilapidation	21
44	Additional occupants	21
45	Sub-letting residential site or assignment of site agreement	22
46	Right of home owner to appoint agent	22
47	Mail facilities	23
48	Maintenance of trees	23
49	Services, facilities and improvements	23
50	Special levy for community upgrade	24
51	Payment and use of special levy	24
52	Change of operator	25
53	Change of name or address of operator	25
	Division 2 Conduct and education of operators	
54	Rules of conduct for operators	25

	Page	
55	Mandatory education briefing for new operators	25
56	Retaliatory conduct by operators	26
Part 6	Site fees	
Division 1	Payment of site fees	
57	Site fees in advance	27
58	Receipt for site fees	27
59	Records of site fees paid	27
60	Accrual and apportionment of site fees	27
61	How and where site fees to be paid	28
62	Site becoming uninhabitable	28
Division 2	Reduction of site fees	
63	Reduction of site fees by agreement	28
64	Power of Tribunal to reduce site fees	28
Division 3	Increase of site fees	
65	How site fees may be increased	29
66	Increase of site fees by fixed method	29
67	Increase of site fees by notice	30
68	Refund of overpaid site fees if increase not compliant	31
Division 4	Compulsory mediation about increases in site fees by notice	
69	Mediation	31
Division 5	Applications to Tribunal about increases in site fees by notice	
70	Application of this Division	32
71	Application following failed mediation	32
72	Application based on comparable residential sites	32
73	Orders as to excessive increases in site fees	32
74	Matters to be considered about excessive increases	33
75	Interim order suspending increases in site fees	33
Part 7	Utility and other charges	
76	Limit on amounts payable by home owner	35
77	Utility charges payable to operator by home owner	35
78	Unpaid utility charges	35
79	Site fees cannot be used to pay utility charges	36
80	Separate measurement or metering of supply of utility	36
81	Utility cost in site fees	36
82	Tribunal review of utility cost and reduction in site fees	37
83	Access to information about utility charges	37
84	Receipt for utility charges	37
85	Recovery of amounts paid under a mistake of law or fact	38
Part 8	Community rules	
86	Subject-matter of community rules	39

	Page	
87	Community rules to be consistent with other laws	39
88	Model community rules	39
89	How community rules are made	39
90	Amendment of community rules	39
91	Prohibited community rules	40
92	Compliance with community rules	40
93	Enforcement of community rules	40
94	Applications to Tribunal by residents for breaches	41
95	Applications to Tribunal about community rules	41
Part 9	Residents committees	
96	Establishment of residents committee	43
97	Functions of residents committee	43
98	Membership of residents committee	43
99	Office holders of residents committee	44
100	Procedure of residents committee	44
101	No more than one residents committee for a community	44
102	Residents' rights to membership of organisations	44
103	Relationship of operator with residents committee	45
Part 10	Sale of homes	
	Division 1 Introduction	
104	Application of this Part	46
	Division 2 Rights and obligations regarding sale of homes	
105	Right to sell home on residential site	46
106	"For sale" signage	46
107	Interference with right to sell home	46
108	Referral of prospective home owner to operator	47
109	Operator to enter new site agreement	47
110	Voluntary sharing arrangement	48
111	Restrictions on voluntary sharing arrangements	49
	Division 3 Selling agents	
112	Appointing a selling agent	49
113	Selling agency agreement	50
114	Operator to hold money in trust	51
	Division 4 Disputes	
115	Disputes relating to sale	51
Part 11	Termination of site agreements	
	Division 1 Termination generally	
116	Termination of site agreements	53
117	Termination by home owner	53
118	Termination by operator	53
119	Revocation of termination notices	53
120	Defects in termination notices	53

	Page
121 Disputes about termination notices	54
Division 2 Circumstances in which operator can initiate termination	
122 Termination by operator for breach of agreement	54
123 Termination by operator for repairs and upgrading	54
124 Termination by operator for closure	55
125 Termination by operator for change in use of residential site	55
126 Termination by operator for compulsory acquisition	56
127 Termination by operator for lack of authority for use of residential site	57
128 Termination by operator for non-use of residential site	57
129 Application by operator for termination for serious misconduct	57
Division 3 Termination orders and possession orders	
130 Termination orders	57
131 Possession orders	58
132 Prohibition on certain recovery proceedings in courts	58
133 Recovery of possession of residential site prohibited except by order	58
134 Enforcement of possession orders	58
Division 4 Termination and relocation	
135 Relocation of home owner by agreement	59
136 Relocation of home owner by operator's request	59
Division 5 Purchase of home by owner or operator of community	
137 Offer to buy home	59
138 Tribunal may value homes to facilitate sale	60
Division 6 Compensation for termination	
139 Application of this Division	60
140 Compensation for relocation	60
141 Compensation where home not relocated	61
Division 7 Abandoned residential site and goods	
142 Abandonment of residential site	62
143 Home or goods abandoned after site agreement is terminated	62
Part 12 Disputes	
Division 1 Resolving disputes by internal arrangements	
144 Internal arrangements for voluntary dispute resolution	64
Division 2 Mediation	
145 Operation of this Division	64
146 Home owner or operator may apply for mediation	64
147 Tribunal may refer matters for mediation	65
148 Appointment of mediators	65
149 Mediation is voluntary	65
150 Duties of mediators	65
151 Mediation procedure	65
152 Representation of parties in mediation	66

	Page	
153	Restriction on evidence of things said or done during mediation	66
154	Confidentiality of mediation	66
155	Exoneration from liability for mediators	66
Division 3 Powers of Tribunal		
156	Applications to Tribunal relating to disputes	66
157	Orders that may be made by Tribunal	67
158	Tribunal may make orders following mediation	68
Division 4 Powers of Commissioner in proceedings		
159	Commissioner may represent persons	68
160	Commissioner may take or defend proceedings	68
161	Conduct of proceedings by Commissioner	68
162	Intervention by Commissioner	68
Part 13 Administration and enforcement		
Division 1 Commissioner		
163	Functions of Commissioner	70
Division 2 Administrators, receivers and managers		
164	Application for order appointing administrator	70
165	Terms and conditions of appointment	71
166	Effect of appointment	71
167	Expenses of administration	71
168	Revocation of appointment	71
169	Receivers and managers	71
170	No personal liability of administrators, receivers or managers	71
Division 3 Complaints and disciplinary action		
171	Complaints and action under this Division	72
172	Grounds for disciplinary action	72
173	Show cause notice	72
174	Disciplinary action	73
175	Review of disciplinary action by ADT	73
Division 4 Offences and associated matters		
176	Proceedings for offences	73
177	Penalty notices	74
178	Accessories to the commission of offences	75
Division 5 Powers of investigators		
179	Powers of entry and other powers	75
180	Power to obtain information and other matters	76
181	Obstruction of investigator	76
182	Taking possession of documents to be used as evidence	77
183	Search warrants	77
Part 14 Miscellaneous		
184	Service of notices and documents	78

	Page
185 Regulations	78
186 Repeals	79
187 Review of Act	79
Schedule 1 Rules of conduct for operators	80
Schedule 2 Savings and transitional provisions	82
Schedule 3 Amendment of legislation	86



New South Wales

Residential (Land Lease) Communities Act 2013 No 97

Act No 97, 2013

An Act to provide for the governance and regulation of residential communities; to repeal the *Residential Parks Act 1998*; and for other purposes. [Assented to 20 November 2013]

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Residential (Land Lease) Communities Act 2013*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Objects of Act

The objects of this Act are as follows:

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

4 Definitions

(1) In this Act:

approved form means a form approved by the Commissioner.

close associate of an operator includes any of the following:

- (a) the spouse or relative of the operator,
- (b) an employee or agent of the operator,
- (c) a company of which the operator is a director, employee or agent,
- (d) a person who has a relationship with the operator that is of a kind prescribed by the regulations.

Commissioner means:

- (a) the Commissioner for Fair Trading, Department of Finance and Services, or
- (b) if no such position exists—the Director-General of the Department of Finance and Services.

common area means any amenities, building, facilities, open space, road or other area provided for common use.

community or ***residential community*** means an area of land that comprises or includes sites on which homes are, or can be, placed, installed or erected for use as residences by individuals, being land that is occupied or made available for occupation by those individuals under an agreement or arrangement in the nature of

a tenancy, and includes any common areas made available for use by those individuals under that agreement or arrangement.

Note. A community may be:

- (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 as defined in the *Local Government Act 1993* (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*.

community rules for a community means the rules made under Part 8 for the community.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

home 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 as defined in the *Local Government Act 1993*, or
- (c) any conveyance, structure or thing of a class or description prescribed by the regulations for the purposes of this definition.

home owner means:

- (a) a person who owns a home on a residential site in a community that is the subject of a site agreement (whether or not the person resides at the site), or
- (b) a person who obtains an interest in a site agreement as the personal representative, or a beneficiary of the estate, of a deceased individual who, immediately before the individual's death, was a person mentioned in paragraph (a), or
- (c) another successor in title of a person mentioned in paragraph (a),

but does not include any person, or any person of a class, excluded from this definition by the regulations.

investigator means an investigator appointed under section 18 of the *Fair Trading Act 1987*.

office holder means the chairperson or secretary of a residents committee (who is elected under Part 9).

operator of a community means a person who is:

- (a) the person who manages, controls or otherwise operates the community, including by granting rights of occupancy under site agreements or tenancy agreements, whether or not the person is an owner of the community, or
- (b) the personal representative, or a beneficiary of the estate, of a deceased individual who, immediately before the individual's death, was a person mentioned in paragraph (a), or
- (c) a mortgagee in possession of a community for which site agreements are in force, or
- (d) another successor in title of a person mentioned in paragraph (a),

other than a person, or a person of a class, excluded from this definition by the regulations.

owner of a community means:

- (a) the owner of land on which the community is located, or
- (b) the personal representative, or a beneficiary of the estate, of a deceased individual who, immediately before the individual's death, was a person mentioned in paragraph (a), or
- (c) a mortgagee in possession of a community for which site agreements are in force, or
- (d) another successor in title of a person mentioned in paragraph (a), other than a person, or a person of a class, excluded from this definition by the regulations.

prospective home owner means a person who indicates (or on whose behalf it is indicated) to the operator of a community that he or she is (or might be) interested in becoming a home owner in the community.

Register means the Register of Communities kept by the Commissioner under Part 3.

resident means a person who is a home owner or tenant in a community.

residential community—see the definition of **community**.

residential site means a site in a community for a home that is used, or is intended to be used, as a residence by an individual.

residents committee, in relation to a community, means the residents committee for that community under Part 9.

site agreement means an agreement under which the operator of a community grants to another person for value a right of occupation of a residential site in the community.

Note. A site agreement gives rise to a tenancy.

site fees means money paid or payable by a home owner to an operator on a periodic basis for occupation of a residential site under a site agreement.

tenancy agreement means a residential tenancy agreement within the meaning of the *Residential Tenancies Act 2010*.

tenant has the same meaning as in the *Residential Tenancies Act 2010*.

termination notice means a termination notice under Part 11 given by a party to a site agreement.

termination order means a termination order under Part 11 made by the Tribunal.

Tribunal means the Consumer, Trader and Tenancy Tribunal established by the *Consumer, Trader and Tenancy Tribunal Act 2001*.

utility means any of the following services:

- (a) electricity,
- (b) gas,
- (c) sewerage,
- (d) water,
- (e) another service prescribed by the regulations.

utility charge means a usage charge or service availability charge for the provision of a utility.

- (2) If there are 2 or more operators of a community:
 - (a) a reference (however expressed) in this Act to the operator is a reference to any one or more of them, and
 - (b) without limiting paragraph (a), it is sufficient compliance with the requirements of this Act and the regulations if any of them exercises the functions of the operator under this Act or the regulations.
- (3) If there are 2 or more owners of a community, subsection (2) applies to the owners in the same way as it applies to 2 or more operators of a community.
- (4) Notes included in this Act do not form part of this Act.

Part 2 Application of Act

5 Application of Act to communities

This Act applies to all communities:

- (a) whether existing immediately before or coming into existence after the commencement of this section, and
- (b) whether described as residential parks, caravan parks, manufactured home estates, communities or otherwise, and
- (c) whether or not any relevant approval for them has been obtained under the *Local Government Act 1993*, and
- (d) whether or not they are included in the Register, unless a provision of or under this Act provides otherwise.

Note. Section 11 provides for exemptions under the regulations.

6 Application of Act to site agreements

- (1) This Act applies to all site agreements, whether existing immediately before or coming into existence after the commencement of this section, unless a provision of or under this Act provides otherwise.
- (2) Where this Act applies to a site agreement, it so applies despite the terms of the agreement or any other contract, agreement or arrangement, whether made before or after the commencement of this section.
- (3) This Act applies to a site agreement until it is terminated in accordance with this Act.

7 Arrangements to which this Act does not apply

- (1) This Act does not apply to the following arrangements made in good faith:
 - (a) an occupation agreement to which the *Holiday Parks (Long-term Casual Occupation) Act 2002* applies,
 - (b) an arrangement for occupation of a residential site for holiday purposes,
 - (c) an arrangement for occupation of a residential site or home by an itinerant worker, unless the parties to the arrangement agree to enter into a site agreement or tenancy agreement,
 - (d) an arrangement for accommodation in a community for a full-time employee of the operator or owner,
 - (e) any other arrangements prescribed by the regulations.
- (2) The operator of a community who enters into an arrangement of the kind referred to in subsection (1) and who knows at the time or ought reasonably to know at the time that it is not made in good faith commits an offence.

Maximum penalty: 100 penalty units.

- (3) In this section:

arrangement includes a contract or agreement.

itinerant worker means a person who lives elsewhere but stays in a community due to seasonal work in the area (for example, fruit picking).

Note. If an arrangement of the kind referred to in this section is not entered into in good faith, orders could be sought from the Tribunal under section 9.

8 Places to which this Act does not apply

- (1) This Act does not apply to the following places:
 - (a) a place owned or managed by a co-operative,

- (b) a place that is wholly subject to a strata scheme or community scheme,
 - (c) a place owned by a company title corporation occupied by shareholders of the corporation,
 - (d) any other place prescribed by the regulations.
- (2) In this section:

community scheme means a scheme (other than a strata scheme) within the meaning of the *Community Land Management Act 1989*.

company title corporation means a company registered under the *Corporations Act 2001* of the Commonwealth that is the owner of land if ownership of a share or shares in that company entitles the owner of the share or shares to the exclusive use and occupation of residential premises on that land.

co-operative has the same meaning as it has in the *Co-operatives Act 1992*.

strata scheme has the same meaning as it has in the *Strata Schemes Management Act 1996*.

9 Declaration by Tribunal

The Tribunal may, on application by any person, make an order declaring that:

- (a) a specified place is or is not a community to which this Act or a specified provision of this Act or the regulations applies, or
- (b) a specified agreement is or is not a site agreement to which this Act or a specified provision of this Act or the regulations applies, or
- (c) a specified contract, agreement or arrangement of a kind referred to in section 7 was or was not made in good faith.

10 Act to bind Crown

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.

11 Exemptions from operation of Act

- (1) The regulations may exempt from the operation of this Act or the regulations or any specified provision of this Act or the regulations:
 - (a) any specified community or other place or any specified class of communities or other places, or
 - (b) any specified agreement or any specified class of agreements.
- (2) An exemption may be unconditional or subject to conditions.

12 Contracting out prohibited

- (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 agreement, contract or arrangement operates to annul, vary or exclude any of the provisions of this Act or the regulations.
- (2) Subsection (1) applies in relation to an agreement, contract or arrangement (including a collateral agreement between the parties to a site agreement), and so applies in relation to the agreement, contract or arrangement:
 - (a) whether or not it is a site agreement, and
 - (b) whether or not it is a tenancy agreement, and
 - (c) whether it is oral or wholly or partly in writing, and

- (d) whether it is or was made or entered into before or after the commencement of this section.
- (3) Without limiting subsection (1), a term of an agreement, contract or arrangement referred to in that subsection, including but not limited to a purported waiver (however expressed) of a right under this Act or the regulations, is void to the extent it is inconsistent with this Act or the regulations.
- (4) A person must not enter into any agreement, contract or arrangement after the commencement of this section with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act or the regulations.
Maximum penalty: 100 penalty units.

13 Relationship of Act with other laws

- (1) This Act does not apply to tenancy agreements, except to the extent this Act provides otherwise.
- (2) The *Retirement Villages Act 1999* does not apply to communities occupied by retired persons or predominantly by retired persons (that is, persons who have reached the age of 55 years or have retired from full-time employment).
- (3) Nothing in this Act limits any requirement imposed by or under the *Local Government Act 1993* or the *Environmental Planning and Assessment Act 1979*.

Part 3 Registration of communities

14 Commissioner to keep Register

- (1) The Commissioner is to keep a Register of Communities.
- (2) The Register may be kept in such form as the Commissioner considers appropriate.
- (3) The Commissioner is to ensure that information on the Register is kept up to date. In particular, the Commissioner may remove any information from the Register that appears to the Commissioner to be out of date.
- (4) The Commissioner may correct any error in or omission from the Register.
- (5) A community is registered if the particulars of the community are currently included in the Register.

15 Information to be recorded in Register

- (1) The Commissioner is to record in the Register in relation to each community:
 - (a) particulars about the community notified under Part 13A of the *Residential Parks Act 1998* (before its repeal) that appear to the Commissioner to be up to date, and
 - (b) particulars about the community notified to the Commissioner under this Part.
- (2) The Commissioner may also record in the Register in relation to a community:
 - (a) particulars of any enforcement action or disciplinary action taken in respect of the community, its operator or any of its staff, and
 - (b) any other particulars or information that the Commissioner considers appropriate or that may be prescribed by the regulations.

16 Notifying particulars of community

- (1) The operator of a community must notify the Commissioner, in accordance with this section, of the following particulars so as to enable the Commissioner to include information about the community in the Register:
 - (a) the trading name, address and contact details of the community,
 - (b) the name and contact details of the operator and the owner of the community (if different from the operator),
 - (c) information relating to any relevant training, qualifications or experience of the operator or other persons involved in the management of the community,
 - (d) whether the community has a residents committee and, if so, the name and site number of an office holder of the committee or (if there is no office holder) of at least one member of the residents committee (if nominated by the committee),
 - (e) information relating to the occupation and use of residential sites located in the community,
 - (f) information relating to the commencement of operation of the community,
 - (g) information relating to the community's membership of a relevant industry association,
 - (h) such other particulars as may be approved by the Commissioner or prescribed by the regulations.
- (2) Particulars do not need to be notified again if the community was operating as a residential park immediately before the commencement of this section and the

particulars were notified before that commencement under Part 13A of the *Residential Parks Act 1998* (before its repeal).

- (3) The operator of a community must notify the Commissioner of the particulars referred to in subsection (1):
 - (a) if the community was operating as a community on the commencement of this section and the particulars had not been previously notified under Part 13A of the *Residential Parks Act 1998*—within 30 days after that commencement, or
 - (b) if the community begins operating as a community after the commencement of this section—within 30 days after it begins operating as a community.
- (4) The operator of a community must notify the Commissioner within 30 days of any change to the particulars previously notified.
- (5) An operator of a community who contravenes this section is guilty of an offence.
Maximum penalty:
 - (a) in the case of a corporation—100 penalty units, or
 - (b) in any other case—50 penalty units.
- (6) An operator is not excused from a requirement under this section to notify particulars concerning a community on the ground that the notification of those particulars may incriminate the operator or make the operator liable to a penalty.
- (7) Any notification given to the Commissioner under this section is to be in the approved form. Information is not duly provided unless all particulars required by the form are provided.

17 Notifying when a place ceases to be a community

If a place ceases to be a community, the person who was the operator immediately before the cessation must notify the Commissioner of that cessation, and of the date when it occurred, within 30 days of the cessation.

Maximum penalty:

- (a) in the case of a corporation—20 penalty units, or
- (b) in any other case—10 penalty units.

18 False or misleading information

A person must not, in purported compliance with any requirement under this Part, provide to the Commissioner any information that the person ought reasonably to know is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in any other case—50 penalty units.

19 Publication of certain information for public access

- (1) The Commissioner is to arrange for the following information about a community contained in the Register to be published on the internet for public access:
 - (a) the trading name, address and contact details of the community,
 - (b) the name of the operator,
 - (c) particulars of enforcement action or disciplinary action taken in respect of the community, its operator or any of its staff that are currently authorised or required by the regulations to be included for publication,
 - (d) such other information as may be prescribed by the regulations.

- (2) No other information contained in the Register may be made available to the public.
- (3) The operator of a community may advise the Commissioner that the community has ceased accepting new residents. The Commissioner may (if he or she considers it appropriate to do so) include in the published information a note to that effect.
- (4) The information referred to in subsection (1), and any note referred to in subsection (3), may also be provided to members of the public in any other manner approved by the Commissioner.

20 Evidential provisions concerning Register

- (1) The Register is evidence of any particulars or information recorded in it.
- (2) A certificate signed or purporting to be signed by the Commissioner, or an officer or employee of the Department of Finance and Services authorised in writing by the Commissioner, and stating:
 - (a) that a place named in the certificate was or was not registered at a specified time, or
 - (b) any other particulars or information recorded in the Register at a specified time,is admissible in any legal proceedings and is evidence of the matters stated in the certificate.

Part 4 Entering into site agreements

Division 1 Disclosure of information

21 Disclosure statement required before entry into site agreement

- (1) The operator of a community must not enter into a site agreement with a person unless the operator has provided the person (or another person acting on behalf of that person) with a disclosure statement relating to the particular residential site at least 14 days before entering into the agreement.

Maximum penalty: 100 penalty units.

Note. This requirement extends to a case where the operator is entering into a new site agreement with an existing home owner.

- (2) The disclosure statement is to be in the approved form and is to include:
 - (a) details of the fees and charges that will be payable under the proposed site agreement for the particular residential site, and
 - (b) details of the current range of site fees paid in the community, and
 - (c) details of the services and facilities available in the community, and
 - (d) details of compliance with statutory requirements applying to the community.
- (3) A disclosure statement is to be signed and dated by the operator.
- (4) The Tribunal may, on application by a prospective home owner, make an order requiring the operator of a community to provide a disclosure statement if:
 - (a) a residential site in the community is available for occupation by the prospective home owner, and
 - (b) the operator fails to provide a disclosure statement in relation to the residential site to the prospective home owner within 14 days after a request for the statement is made.

22 Approved information for prospective home owners

- (1) The Commissioner may approve the content and form of information that the operator of a community must provide to a prospective home owner or a person acting on behalf of a prospective home owner.
- (2) The operator of a community must not, without reasonable excuse, fail to provide the information in the approved form at or before the time the disclosure statement is provided in accordance with section 21.

Maximum penalty: 10 penalty units.
- (3) Without limiting subsection (1), the approved information may relate to any of the following:
 - (a) residential communities generally,
 - (b) the rights and responsibilities of home owners in residential communities,
 - (c) a checklist for prospective home owners to consider before buying a home,
 - (d) contact details to obtain information and advice.

23 Rescission during cooling-off period

- (1) A person who enters into a site agreement with the operator of a community is entitled, during the cooling-off period for the agreement, to rescind the site agreement by serving a notice in writing to that effect on the operator.

Note. This entitlement extends to a case where an existing home owner enters into a new site agreement with an operator.

- (2) The *cooling-off period* for the agreement is the period:
 - (a) commencing on the date when the site agreement is entered into by the person, and
 - (b) ending at midnight on the day that is 14 days after the date the site agreement is entered into by the person.
- (3) On service of the notice of rescission, the site agreement is taken to be rescinded from the commencement of the agreement.
- (4) A person who rescinds a site agreement with an operator of a community under this section may also, during the cooling-off period for the site agreement, rescind any collateral agreement with the operator. The rescission is to be effected in the same way as, and has the same effect as, rescission of the site agreement.
- (5) The rescission of a site agreement, or any collateral agreement, under this section does not entitle any person to compensation of any kind.
- (6) A person who enters into a site agreement with the operator of a community ceases to be entitled to rescind an agreement under this section if the person starts to reside in a home located on the residential site, or causes a home to be placed, installed or erected on the residential site, before the end of the cooling-off period.
- (7) Subsection (6) does not apply to a person who is an existing home owner when the site agreement is entered into (being a person who is currently, or has previously been, a party to a site agreement relating to the residential site).
- (8) In this section, a *collateral agreement* includes a contract for sale of a home on the site, if the seller is the operator of the community.

24 No restrictions on obtaining advice

The operator of a community must not restrict any person's right to seek independent advice before entering into a site agreement.

Maximum penalty: 10 penalty units.

25 False, misleading or deceptive information

The operator of a community or a person acting on behalf of the operator must not induce a person to enter into a site agreement by any statement, representation or promise that the operator or person acting on behalf of the operator knows or ought reasonably to know is false, misleading or deceptive.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in any other case—50 penalty units.

Division 2 Site agreements

26 Site agreements generally

- (1) The operator of a community must ensure that the site agreement for a site in the community is in writing at the commencement of the agreement.
Maximum penalty: 20 penalty units.
- (2) The agreement must:
 - (a) identify the residential site by its number and its dimensions, and
 - (b) state:
 - (i) the operator's name and address for service of documents, and

- (ii) if the operator is a company—the address of the registered office of the company, and
 - (iii) if the operator is not the owner of the community—the name of the owner, and
 - (c) be signed by the parties, and
 - (d) comply with any other requirements prescribed by the regulations (including as to the content or form of the agreement).
- (3) If a site agreement does not comply with a requirement of subsection (2), the operator of the community is guilty of an offence.
Maximum penalty: 20 penalty units.
- (4) The Tribunal:
- (a) may, on application by a home owner who was not given a written site agreement at the time occupation of the residential site commenced, order the operator to prepare and enter into:
 - (i) a written site agreement in the relevant standard form, if prescribed, or
 - (ii) a written site agreement that includes, or contains only, terms specified or of a kind specified by the Tribunal, if there is no relevant prescribed standard form, and
 - (b) may, by the same order, specify a commencement date for the agreement that occurred before the order was made.

27 Standard site agreements

- (1) The regulations may prescribe a standard form of site agreement.
- (2) The regulations may provide for the following:
 - (a) the terms of the standard form of site agreement,
 - (b) more than one standard form of site agreement for use for different classes of communities, agreements or parties,
 - (c) the addition of terms to, or the omission or variation of terms contained in, a standard form of site agreement in specified circumstances,
 - (d) a form of site condition report to be completed by the parties and annexed to the site agreement.
- (3) A site agreement that is entered into on or after the day a relevant standard form is prescribed:
 - (a) must be in the standard form (but may contain additional terms—see section 28), and
 - (b) is taken to include the terms of the standard form to the extent they are not included in the site agreement.
- (4) The terms contained in the standard form must not be varied by the parties and to the extent the terms are so varied they are taken not to have been varied.
- (5) The Tribunal may, on application by a home owner under a site agreement that is entered into after the commencement of this section and is not in the relevant standard form, order the operator to prepare and enter into a site agreement that is in the relevant standard form.

28 Additional terms

- (1) The parties may insert additional terms in a standard form of site agreement, 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 a separate and clearly labelled part of the site agreement.
- (2) The Tribunal:
 - (a) may, on application by a home owner or operator of a community, make an order declaring an additional term is void on being satisfied that the additional term contravenes subsection (1), and
 - (b) may, by the same order, prohibit either or both of the following:
 - (i) the current operator or any future operator of the community from using the same or a similar term in any future site agreement entered into in connection with the community while the community remains in the same ownership,
 - (ii) the current operator from using the same or a similar term in any future site agreement entered into in connection with any other community being operated by the operator.

29 Prohibited terms of site agreements

- (1) The regulations may prohibit a specified type of term in a site agreement.
- (2) The operator of a community must not include, or attempt to enforce, a term of a site agreement that is prohibited under subsection (1).
Maximum penalty: 100 penalty units.
- (3) A term of a site agreement that is prohibited under subsection (1) is void.
- (4) A home owner or operator of a community may apply to the Tribunal to consider whether part or all of a specified term of a site agreement is void under subsection (3).
- (5) The Tribunal may, on application under subsection (4), make any of the following orders:
 - (a) an order declaring that a specified term of the site agreement is void,
 - (b) an order declaring that a specified term of the site agreement is not void,
 - (c) an order declaring that a specified term of the site agreement is void to a specified extent,
 - (d) an order varying a specified term of the site agreement,
 - (e) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.

30 No fees or charges payable before entry

- (1) The operator of a community, or a person acting on the operator's behalf, must not request, demand or receive any fee or charge from a prospective home owner before entering into a site agreement with the prospective home owner.
Maximum penalty: 20 penalty units.
- (2) Subsection (1) does not apply to a fee or charge payable to the operator by the prospective home owner as a deposit to build or provide a home on the residential site under a separate agreement.

31 Duration of site agreement

- (1) A site agreement may (but need not) provide for its duration to be for a specified fixed period.
- (2) The parties to a site agreement that specifies a fixed period may (but need not) enter into a new site agreement for a new fixed period, regardless of the terms of the agreement.
- (3) However, if a site agreement entered into after the commencement of this section specifies a fixed period, the period must exceed the minimum period.
- (4) A term of a site agreement entered into after the commencement of this section has no effect to the extent that it specifies a period that does not exceed the minimum period. In that case, the agreement is taken to be unlimited as to its duration.
- (5) A home owner's right under a site agreement to occupy a residential site continues until the agreement is terminated in accordance with this Act, whether or not a fixed period (if any) has expired, and accordingly all terms of the agreement remain in full force and effect.
- (6) For the purposes of this section, the *minimum period* is 3 years or, if another period is specified as the minimum period in the regulations, the period so specified.
- (7) A regulation that imposes a new minimum period applies to site agreements entered into on or after the commencement of the regulation.

32 Home owner to be given copy of site agreement

The operator of a community must ensure that a home owner receives, free of charge, a copy of the site agreement (for the home owner to keep), when the home owner and the operator have both signed it.

Maximum penalty: 10 penalty units.

33 Certain unexecuted site agreements enforceable

- (1) If a site agreement has been signed by a home owner and given to the operator of a community or a person acting on the operator's behalf and has not been signed by the operator:
 - (a) acceptance of site fees by or on behalf of the operator without reservation, or
 - (b) any act of part performance of the agreement by or on behalf of the operator, gives to the document the same effect it would have if it had been signed by the operator on the first day in respect of which the site fee was accepted or on the day on which such an act was first performed.
- (2) This section applies despite section 54A of the *Conveyancing Act 1919*.
- (3) In this section:
signed includes executed by a corporation in any manner permitted by law.

34 Non-compliance not to affect validity or enforceability

A site agreement is not rendered void or unenforceable by non-compliance with a requirement of or under this Part, except to the extent specifically provided by a provision of this Part.

Part 5 Rights and obligations

Division 1 Basic responsibilities

35 What this Division is about

- (1) This Division states some of the basic responsibilities of home owners and operators of communities.
- (2) Other provisions of this Act deal with more specific rights and responsibilities.
- (3) This Division does not limit the rights and responsibilities of an operator or home owner under this Act.

36 Home owner's responsibilities

A home owner has the following responsibilities:

- (a) to use the residential site only as a place of residence, except so far as the operator consents to its use for another or additional purpose,
- (b) to use the community's common areas only for a purpose associated with the home owner's use of the residential site,
- (c) not to use, or allow other occupants living with the home owner or guests to use, the residential site or the community's common areas for an illegal purpose,
- (d) not to interfere with, and to ensure as far as practicable that other occupants living with the home owner or guests do not interfere with, the reasonable peace, comfort or privacy of the community's residents,
- (e) to pay the site fees and other charges payable by the home owner under the site agreement,
- (f) not to intentionally or recklessly damage or destroy, or allow other occupants living with the home owner or guests to intentionally or recklessly damage or destroy, the community's common areas,
- (g) to maintain (subject to fair wear and tear) the home located on the residential site in a reasonable state of cleanliness and repair, and so as to be fit to live in, and to keep the residential site tidy and free of rubbish,
- (h) to notify the operator as soon as practicable of:
 - (i) any damage to the residential site, or
 - (ii) any damage to the community's common areas caused or permitted by the home owner, other occupants living with the home owner or guests of the home owner,
- (i) to respect the rights of the operator, and agents and employees of the operator, to work in an environment free from harassment or intimidation,
- (j) not to act in a manner that adversely affects the work health and safety of persons working in the community,
- (k) to notify the operator before the residential site is to be left unoccupied for more than 30 days or, if the home owner is not able to give notice before leaving the residential site, as soon as is reasonably practicable after leaving it,
- (l) otherwise, to comply with the site agreement and the community rules.

37 Operator's responsibilities

- (1) The operator of a community has the following responsibilities:
 - (a) to ensure that the community is reasonably safe and secure,

- (b) to take reasonable steps to ensure that the home owners:
 - (i) always have access to their residential sites, and
 - (ii) have reasonable access to the community's common areas,
 - (c) to maintain the community's common areas in a reasonable state of cleanliness and repair, and so as to be fit for use by the home owners,
 - (d) not to intentionally or recklessly damage or destroy any property of the home owners, other occupants or their guests,
 - (e) to ensure that the times the operator or a representative of the operator is available to be contacted by the home owners are reasonable, having regard to all the circumstances, including the utilities supplied by the operator to residential sites,
 - (f) to the extent that it is within the operator's control, to ensure the continuity of supply of utilities to residential sites occupied by home owners,
 - (g) to take reasonable steps to keep the community's common areas reasonably free of noxious weeds and vermin,
 - (h) to have in place emergency evacuation procedures and take reasonable steps to ensure that all residents are aware of these procedures,
 - (i) to pay all rates, taxes and other charges payable by the owner or operator of the community,
 - (j) to comply with all statutory obligations relating to the community,
 - (k) to ensure a residential site is in a reasonable condition, and fit for habitation, at the commencement of a site agreement for the site,
 - (l) otherwise, to comply with the site agreements and the community rules.
- (2) With regard to the operator's obligation to maintain the community's common areas (in subsection (1) (c)):
- (a) any necessary work must be carried out as soon as is reasonably practicable and in a way that minimises disruption to residents, and
 - (b) the work is to be carried out at an appropriate standard having regard to the age and prospective life of the community and to the level of fees and charges payable by residents, and
 - (c) if there is a failure to carry out the work at all or to an appropriate standard, the Tribunal may, on application by a home owner, make any of the following orders in respect of the failure:
 - (i) an order requiring work of a specified kind to be carried out,
 - (ii) an order that the operator pay compensation to the home owner and any other home owners,
 - (iii) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.

38 Right to quiet enjoyment

- (1) The operator of a community must not unreasonably restrict or interfere with, or permit any unreasonable restriction or interference with, a home owner's privacy, peace and quiet, or proper use and enjoyment of the residential site and the community's common areas.
Maximum penalty: 10 penalty units.
- (2) The Tribunal may, on application by a home owner, make an order resolving a dispute concerning an operator's compliance with this section.

39 Access to residential site by operator

- (1) The operator of a community or a person acting on the operator's behalf may, while a site agreement is in force, enter a residential site and any home located on it, in the following circumstances only:
 - (a) with the consent of the home owner, so long as the consent is given at the time of entry or no more than 14 days before entry,
 - (b) in an emergency, so long as entry is needed to avert danger to life or valuable property,
 - (c) in a case where electricity, water or gas is supplied to the home owner by the operator—to inspect, read, service, repair or replace any electricity, water or gas meter located on the residential site,
 - (d) to comply with an obligation under this Act or another Act, so long as (subject to the legislation concerned) at least 2 days' notice has been given to the home owner,
 - (e) for the purpose of lawn or grounds maintenance, so long as:
 - (i) entry is made at a reasonable time and on a reasonable number of occasions, and
 - (ii) the home owner has agreed to such an arrangement, and
 - (iii) the home owner's agreement has not been revoked by a notice in writing given to the operator,
 - (f) in accordance with an order of the Tribunal.
- (2) A person exercising a right of entry under subsection (1):
 - (a) must not act in an unreasonably intrusive manner on the residential site or in the home, and
 - (b) without limiting the effect of paragraph (a), must not, without the home owner's consent:
 - (i) enter a part of the residential site or home to which entry is not reasonably required for the purpose for which the right of entry is being exercised, or
 - (ii) remain on the residential site or in the home longer than is reasonably necessary for the purpose for which the right of entry is being exercised.
- (3) The Tribunal may, on application by a home owner or the operator of a community, make an order settling any dispute involving entry to the residential site or home (including by authorising entry by the operator or any other person).
- (4) The operator or any other person referred to in this section must not, while the site agreement is in force, enter the residential site or the home located on it except as permitted by this section.
Maximum penalty (subsection (4)): 10 penalty units.

40 Access to community by tradespersons and service providers

- (1) The operator of a community must take all reasonable steps to ensure that tradespersons and service providers have access to a home in the community to provide goods and services arranged by a resident of the home.
Maximum penalty: 20 penalty units.
- (2) The operator of a community must not:
 - (a) require a resident to purchase, rent or lease goods or services from any particular person, or

(b) restrict the right of a resident to purchase, rent or lease goods or services from a person of his or her choice.

Maximum penalty: 20 penalty units.

- (3) However, the operator may impose reasonable restrictions on the further entry of particular tradespersons and service providers to the community for a particular period (including, if appropriate, a prohibition on further entry), but only if they have:
- (a) unduly disturbed the peace and quiet of the community, or
 - (b) violated any community rules, concerning motor vehicle traffic, that are displayed in or outside the community.
- (4) The Tribunal may, on application by a resident, make an order resolving a dispute concerning an operator's compliance with this section.

41 Access to community by emergency and home care service vehicles

- (1) The operator of a community must take all reasonable steps to ensure that:
- (a) emergency and home care service personnel have unimpeded vehicular access to homes in the community at all times, and
 - (b) the residents of the community, and all relevant local emergency and home care service agencies, are consulted and kept informed as to any arrangements made to secure that access, and
 - (c) the roads and residential sites in the community are signposted, or a map is placed at each entry to the community, in a way that provides adequate information for emergency and home care service personnel seeking to locate a home in the community.
- Maximum penalty: 20 penalty units.
- (2) The Tribunal may, on application by a resident or a representative of an emergency or home care service agency, make an order resolving a dispute concerning an operator's compliance with this section.

42 Alterations and additions to, and replacement of, homes

- (1) A home owner must not, except with the written consent of the operator of the community or unless the site agreement otherwise provides:
- (a) make any alteration to the exterior of the home (other than painting or minor repairs) or add a fixture to the residential site, or
 - (b) replace the home with another home.
- (2) The operator must not unreasonably withhold or refuse the consent.
- (3) The consent may be given with reasonable conditions.
- (4) The Tribunal may, on application by the home owner, order that any alteration, addition or replacement requiring consent can be carried out without consent if the Tribunal finds that the withholding or refusal of consent is unreasonable or that unreasonable conditions were imposed.
- (5) The Tribunal must not make an order under this section if the relevant alteration, addition or replacement is or would be designed, constructed or installed in breach of the *Local Government Act 1993*, the *Environmental Planning and Assessment Act 1979* or any approval, consent or certificate under either or both of those Acts.
- (6) A home located on a residential site is not, for any purpose, to be regarded as a fixture, regardless of the manner in which it is attached to the land. This subsection does not apply to a home that is owned by the owner of the community.

- (7) Without limiting subsection (6), a fixture added to a residential site by a home owner remains the property of the home owner and does not become part of the land, and the home owner may remove it at any time or sell it as part of the home.

43 Dilapidation

- (1) If the operator of a community reasonably believes that:
- (a) the residential site or home located on it is significantly dilapidated, or
 - (b) any external feature of the home has been altered or added to, or any fixtures on the residential site have been altered or added to the site, by the home owner in such a manner as to be likely to cause serious health or safety risks to other persons,
- the operator may issue a written notice to the home owner requiring the home owner to carry out work within 60 days to rectify the defect concerned.
- (2) If the home owner fails to comply with the notice, the Tribunal may, on application by the operator, make:
- (a) an order requiring the home owner to carry out the work within a specified period, and
 - (b) if the home owner does not comply with the order under paragraph (a)—an order authorising the operator to arrange for the work to be carried out, and to recover the reasonable costs from the home owner, as directed by the Tribunal.
- (3) The Tribunal may, on application by the home owner, make:
- (a) an order declaring that the notice given by the operator is invalid on the ground that:
 - (i) the residential site or home is not significantly dilapidated, or
 - (ii) the alteration or addition is not likely to cause serious health or safety risks to other persons, or
 - (b) an order that the period of 60 days be extended by a further period on the ground that 60 days provides insufficient time to rectify the defect.

44 Additional occupants

- (1) A home owner must not, except with the written consent of the operator of the community or unless the site agreement otherwise provides, allow additional persons to occupy the residential site.
- (2) The operator must not unreasonably withhold or refuse the consent.
- (3) The consent may be given with reasonable conditions.
- (4) The Tribunal may, on application by the home owner, order that the home owner may allow other named persons to occupy the residential site without consent if the Tribunal finds that the withholding or refusal of consent was unreasonable or that unreasonable conditions were imposed.
- (5) However the followings persons have an automatic right of occupation of the residential site without the need for the operator's consent, even if they are not named or referred to in the site agreement:
- (a) a home owner's spouse or de facto partner,
 - (b) a home owner's carer.
- (6) It is not unreasonable for an operator to withhold or refuse consent on the ground that the additional person does not meet age restrictions for occupancy set out in the community rules that were in force when the home owner entered into the site agreement.

- (7) The Tribunal may, on application by the home owner or operator, make orders to settle a dispute arising under this section.
- (8) The operator may give consent under this section, and the Tribunal may make an order under this section, despite any term of the site agreement that prohibits additional occupants or puts limits on the number of occupants.

45 Sub-letting residential site or assignment of site agreement

- (1) A home owner may, with the written consent of the operator of the community:
 - (a) enter into a tenancy agreement for, or otherwise sub-let, the residential site or the home located on it, or
 - (b) assign the site agreement.
- (2) The operator must not unreasonably withhold or refuse consent for a tenancy agreement or other sub-lease that is proposed to be entered into or granted once during any 3-year period in which the site agreement has effect and is for a term of 12 months or less.
- (3) The operator must not unreasonably withhold or refuse consent to the assignment of a tenancy agreement.
- (4) Section 133B of the *Conveyancing Act 1919* does not prevent the operator from withholding or refusing consent, for any or no reason, for a tenancy agreement or other sub-lease if it is for a term exceeding 12 months.
- (5) This section has effect despite the terms of the site agreement and does not prevent the home owner from selling the home on site or from having additional occupants as contemplated by section 44.
- (6) The Tribunal may, on application by the home owner or operator, make orders to settle a dispute arising under this section, including but not limited to:
 - (a) a dispute arising where consent was withheld or refused, and
 - (b) a dispute arising where the term of a tenancy agreement or other sub-lease exceeds 12 months.

46 Right of home owner to appoint agent

- (1) A home owner may appoint a person as the home owner's agent for the purpose of receiving notices or other documents to be given to the home owner under a site agreement or under this Act.

Note. For example, a home owner may wish to appoint an agent if the home owner cannot read or write English, is sick, or is going to be away from his or her home for some time.
- (2) An appointment of the operator of the community (or a close associate of the operator or a person nominated by the operator) as an agent under this section is of no effect.
- (3) An appointment under this section:
 - (a) may be made in a site agreement or at any time after the agreement commences, and
 - (b) may be revoked at any time by the home owner,but any such appointment or revocation has no effect until it is notified in writing to the operator.
- (4) The operator must give to the agent appointed by a home owner, until such time as the appointment expires or is revoked, any notices or other documents that the operator is required to give to the home owner under a site agreement or this Act.

- (5) A notice or other document that is required by this section to be given to the agent appointed by the home owner and that is not so given is taken not to have been given to the home owner.

47 Mail facilities

- (1) The operator of a community must establish and maintain at the community reasonably accessible and reasonably secure mail facilities for the home owners.
- (2) The operator of a community must not access or interfere with individual mail facilities provided to a home owner in the community, except with the prior consent of the home owner.
Maximum penalty: 10 penalty units.
- (3) The Tribunal may, on application by a home owner, make an order resolving a dispute concerning an operator's compliance with this section.

48 Maintenance of trees

- (1) The operator of a community must:
 - (a) ensure that all trees in the community are properly maintained, and
 - (b) take reasonable action if a home owner reports that a tree has caused or is likely to cause injury to a person or damage to property.

Note. For example, the operator may be required to trim dead tree branches or remove tree roots causing damage to driveways, pipes and other property.
- (2) A home owner in a community, or an occupant in the home owner's home, must not plant a tree, or authorise a tree to be planted, in the community without the consent of the operator.
- (3) An operator is not required under this section to take any action that is prohibited by law.
- (4) The Tribunal may, on application by a home owner, make an order resolving a dispute concerning an operator's compliance with subsection (1).
- (5) The Tribunal may, on application by an operator, make an order for the removal of a tree that has been planted without the consent referred to in subsection (2). Without limitation, an order may require the home owner concerned to remove the tree at the home owner's expense or require the home owner to pay to the operator the reasonable costs of removing the tree.

49 Services, facilities and improvements

- (1) The operator of a community must maintain all services and facilities required by the development consent for the community to be available for the life of the community.
- (2) The operator of a community must give at least 30 days' prior notice to the residents committee (or if there is no residents committee, to all residents) of any of the following proposals:
 - (a) a proposal to remove or substantially restrict a facility or service required by the development consent or otherwise available for a community,
 - (b) a proposal to provide a new facility or service for a community.
- (3) Nothing in this section, or in any other provision of this Part, authorises an operator to take any action that is prohibited by law or that is inconsistent with a site agreement.

50 Special levy for community upgrade

- (1) The home owners in a community may, by a special resolution, agree to pay a special levy to enable the operator of the community to provide a specified new facility or service for the community or to make a specified improvement to the community (a *community upgrade*).
- (2) The special resolution is to provide for the amount or method of calculation of the special levy and when it is to be paid by home owners.
- (3) A special resolution has no effect unless reasonable notice of the proposal to make it is given to all the home owners and the resolution is passed by at least 75% of all the home owners within 90 days after the notice was given to the home owners.
- (4) A special resolution has no effect unless and until the operator of the community consents to the community upgrade by notice in writing given to all the home owners before or within 90 days after the special resolution is passed.
- (5) The Tribunal may, on application by the operator or a home owner, make any of the following orders:
 - (a) an order that quashes the special resolution in whole or in part,
 - (b) an order that confirms the special resolution in whole or in part,
 - (c) an order that determines whether or not the special resolution has effect under this section,
 - (d) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (6) The Tribunal is not to make an order quashing the special resolution, in whole or in part, unless satisfied that the operator or home owner has reasonable grounds to seek the order.

51 Payment and use of special levy

- (1) A special levy is payable by home owners in accordance with the special resolution by which home owners agree to pay it.
- (2) The special levy is not payable unless the special resolution has effect.
- (3) A special levy may be recovered as a debt owing to the operator from all home owners in the community in equal shares (with each residential site counting as one share).
- (4) The proceeds of the special levy are to be held by the operator on trust for the home owners until used or refunded under this section.
- (5) Once all payments of the special levy have been received by the operator, the operator must, within a reasonable time, use the money for the purpose for which the special resolution was passed. Any unused amount of the special levy must be refunded in equal shares.
- (6) Any special levy, or part of a special levy, payable to an operator by a home owner ceases to be payable by that home owner if the home is sold.
- (7) If a home is sold, any special levy, or part of a special levy, that has not been paid by the selling home owner becomes payable by (and recoverable as a debt from) the new home owner.
- (8) Subsection (7) applies only if the new home owner was advised of the requirement to pay the unpaid special levy in the disclosure statement provided by the operator.
- (9) Nothing in this section prevents an operator from contributing to the cost of a community upgrade for which a special levy has been made.

- (10) In this section:
special levy means a special levy under section 50.

52 Change of operator

- (1) If another person becomes the operator of a community, the benefits and obligations under existing site agreements pass from the old operator to the new operator.
- (2) The new operator must, within 14 days after becoming the operator, give all existing home owners in the community a notice stating the operator's name and business address.
- Maximum penalty: 10 penalty units.

53 Change of name or address of operator

- If the name or address of the operator of a community changes, the operator must, within 14 days after the change, give the existing home owners a notice stating the new name or address.
- Maximum penalty: 10 penalty units.

Division 2 Conduct and education of operators

54 Rules of conduct for operators

- (1) The rules of conduct in Schedule 1 are to be observed by the operator of a community in the course of the carrying on of business or the exercise of functions as operator.
- (2) The regulations may prescribe additional rules of conduct.
- (3) The operator of a community who, without reasonable excuse, contravenes a rule of conduct in Schedule 1 or prescribed by the regulations is guilty of an offence.
- Maximum penalty:
- (a) in the case of a corporation—100 penalty units, or
- (b) in any other case—50 penalty units.

55 Mandatory education briefing for new operators

- (1) This section applies to a person who becomes the operator of a community after the commencement of this section.
- (2) Within 30 days after the operator's name is inserted in the Register:
- (a) if the operator is an individual—the operator must undertake an education briefing approved by the Commissioner, or
- (b) if the operator is not an individual—the operator must arrange for a nominated person involved in the day-to-day management of the community to undertake an education briefing approved by the Commissioner.
- (3) The operator must notify the Commissioner in writing within 7 days of the completion of the education briefing that it has been undertaken and completed.
- (4) The operator must not, in purported compliance with subsection (3), provide to the Commissioner any information that the operator knows is false or misleading in a material particular.
- (5) The regulations may specify circumstances when an operator is not required to undertake or arrange for the education briefing.
- Note.** The regulations could, for example, provide that an operator is not required to undertake the briefing when he or she was the operator of another community within a certain period.

- (6) The education briefing may consist of one or more sessions, and may be conducted in any way the Commissioner thinks appropriate (for example, by a seminar or over the internet).
Maximum penalty: 50 penalty units.

56 Retaliatory conduct by operators

- (1) The operator of a community or a close associate of the operator must not engage in retaliatory conduct against a home owner if the conduct reasonably appears to have taken place wholly or partly in consequence of:
- (a) a complaint made by the home owner in good faith to the Commissioner or a government agency about the operator, or
 - (b) a complaint made by the home owner in good faith to the operator, or
 - (c) an application made by the home owner to the Tribunal or a court, or
 - (d) any action by the home owner to promote the establishment of a residents committee for the community, or
 - (e) any matter prescribed by the regulations.
- Maximum penalty: 100 penalty units.
- (2) The Tribunal may, on application by a home owner, make an order resolving a dispute concerning an operator's compliance with this section.
- (3) In this section:
retaliatory conduct by an operator or a close associate of an operator against a home owner includes:
- (a) amending community rules in a way that is detrimental to the home owner (whether or not it is detrimental to other home owners), and
 - (b) giving or threatening to give the home owner a termination notice, and
 - (c) any action that is of a kind prescribed by the regulations.

Part 6 Site fees

Division 1 Payment of site fees

57 Site fees in advance

- (1) A person must not demand or require that a home owner or prospective home owner pay, as site fees in advance, more than 2 weeks' site fees.
Maximum penalty: 10 penalty units.
- (2) A person must not demand or require the payment of any site fees (other than the first payment) under a site agreement for a period of occupation of a residential site to be made before the end of the previous period for which site fees have been paid.
Maximum penalty: 10 penalty units.

58 Receipt for site fees

- (1) If site fees are paid in person, any person who receives payment of the fees must, without delay, give the person making the payment a receipt for the payment.
- (2) If site fees are not paid in person, the operator of a community must, on receiving the fees and being asked for a receipt, prepare a receipt for the fees and provide it to the home owner.
- (3) A receipt for site fees is not a receipt for the purposes of this section unless it includes the following particulars:
 - (a) the name and address of the community, and the number or other identifying feature of the residential site,
 - (b) the name of the home owner,
 - (c) whether the home owner is in debit or credit as at the date of payment and by what amount,
 - (d) the period for which the fees are paid,
 - (e) the date on which the fees are received,
 - (f) the amount of fees paid.Maximum penalty: 10 penalty units.

59 Records of site fees paid

- (1) The operator of a community must keep, or cause to be kept, a record showing site fees received under site agreements for the community.
Maximum penalty: 10 penalty units.
- (2) A person must not knowingly make an entry that is false in a material particular in a record kept under this section.
Maximum penalty: 10 penalty units.
- (3) Any record of site fees received required to be kept under this section may be kept in written or electronic form.

60 Accrual and apportionment of site fees

- (1) The site fees payable under a site agreement accrue from day to day.
- (2) If a site fee is paid in advance, and the site agreement ends before the end of the period for which the fee has been paid, the operator must refund the appropriate proportion of the amount paid to the home owner or apply it towards other liabilities of the home owner to the operator.

61 How and where site fees to be paid

- (1) A home owner under a site agreement must pay the site fees payable under the agreement in the manner and at the place:
 - (a) specified in the site agreement, or
 - (b) agreed in writing between the operator and the home owner.
- (2) The operator must permit the home owner to pay site fees by at least one means for which the home owner does not incur a cost (other than bank fees or other account fees usually payable for the home owner's transactions) and that is reasonably available to the home owner.
Maximum penalty (subsection (2)): 10 penalty units.

62 Site becoming uninhabitable

If a residential site becomes wholly uninhabitable, otherwise than as a result of a breach of the site agreement, the site fees abate accordingly until the earlier of the following occurs:

- (a) the site becomes wholly habitable,
- (b) the site agreement is terminated under this Act.

Division 2 Reduction of site fees

63 Reduction of site fees by agreement

- (1) The site fees payable under a site agreement may be reduced:
 - (a) under a provision of the agreement, under which the site fees payable change automatically at specified intervals on a basis set out in the agreement, or
 - (b) by mutual agreement between the home owner and the operator.
- (2) Site fees may be reduced on a temporary basis so that, at the end of a specified period, the site fees revert to the level the fees would have been before the temporary reduction.
- (3) If the site fees are reduced by mutual agreement between the home owner and the operator, the terms of the site agreement are varied accordingly.

64 Power of Tribunal to reduce site fees

- (1) The Tribunal may, on application by the home owner under a site agreement, make an order that the site fees payable under the agreement be reduced by an amount the Tribunal considers appropriate if it is satisfied:
 - (a) the amenity or standard of the community's common areas has decreased substantially since the agreement was entered into, or
 - (b) a communal facility or service provided at the community when the agreement was entered into has been withdrawn or substantially reduced, or
 - (c) a communal facility or service as follows has not been provided at the community:
 - (i) a communal facility or service described in advertising, done by or for the operator, of which the home owner was aware before the site agreement was entered into,
 - (ii) a communal facility or service described in a document made available to the home owner by the operator before the site agreement was entered into.

- (2) The Tribunal may consider any of the following documents for the purposes of subsection (1):
 - (a) the site agreement,
 - (b) a disclosure statement or other document containing information about the community and provided to the home owner by the operator,
 - (c) any relevant advertising made available to the home owner by the operator before the site agreement was entered into,
 - (d) any other document that the Tribunal considers is relevant.

Division 3 Increase of site fees

65 How site fees may be increased

- (1) Site fees payable under a site agreement can be increased only if the increase is made in accordance with this Division.
- (2) A site agreement may provide that site fees payable under it may be increased in accordance with either of the following procedures:
 - (a) at specified intervals (or on specified dates) by a fixed method, which may be either:
 - (i) by fixed amounts, or
 - (ii) by a fixed calculation (for example, in proportion to variations in the Consumer Price Index or in the age pension),
 - (b) by notice (otherwise than by a fixed method).

66 Increase of site fees by fixed method

- (1) This section applies to a site agreement that provides for the increase of the site fees by a fixed method.
- (2) A site agreement must not provide that the site fees may be increased by more than one fixed method. If more than one method is specified, the method that results in the lower or lowest increase of site fees is the applicable method.
- (3) The operator must not increase (or attempt to increase) the site fees that are to be increased according to a fixed method otherwise than in accordance with that method and this section.
Maximum penalty: 50 penalty units.
- (4) The operator must give at least 14 days' written notice to the home owner of any increase in site fees, even if the timing of the increase is specified in the site agreement.
- (5) The notice must:
 - (a) specify the amount of the increased site fees, and
 - (b) specify how the increased site fees have been calculated, and
 - (c) specify the day on and from which the increased site fees are payable, and
 - (d) include such other information as may be prescribed by the regulations, and
 - (e) be in the approved form (if any).
- (6) The home owner is not required to pay any increase in the site fees until notice of the increase is given as required by this section.

- (7) The terms of a site agreement fixing the method of future increases of site fees cannot be challenged under this Act. However:
- (a) the terms of the agreement may be varied if the parties enter into a written agreement to do so, and
 - (b) this subsection does not affect any right that the home owner has, apart from this Act and the *Consumer, Trader and Tenancy Tribunal Act 2001*, to challenge any of the terms.

Note. A home owner may be able to take action over unfair contract terms under the *Australian Consumer Law* of the Commonwealth.

- (8) A fixed method of increase may:
- (a) be for a specified period or for the duration of occupancy of a residential site by a home owner, and
 - (b) have effect for longer than the term of a site agreement for a fixed term.

67 Increase of site fees by notice

- (1) This section applies to a site agreement that provides for the increase of the site fees by notice (otherwise than by a fixed method).
- (2) An increase in the site fees is not payable unless the fees are increased in accordance with this section.
- (3) The site fees must not be increased except by notice in writing given to all the home owners in the same community at the same time under site agreements to which this section applies.
- (4) The notice must:
 - (a) specify the amount of the increased site fees, and
 - (b) specify the day (the *effective day*) on and from which the increased site fees are payable, and
 - (c) include an explanation for the increase, and
 - (d) include such other information as may be prescribed by the regulations, and
 - (e) be in the approved form (if any).
- (5) The day specified as the effective day must not be earlier than 60 days after the day on which the notice was given.
- (6) Site fees must not be increased more than once in any 12-month period under this section. This is calculated by reference to the day from which the increased site fees are payable.
- (7) Increases under this section in site fees payable by home owners in the same community under site agreements to which this section applies must take effect on the same day (and not on different days).
- (8) A notice under this section may be cancelled.
- (9) A later notice may provide for a lesser increase than that specified in an earlier notice under this section. 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.
- (10) If the site fees payable under a site agreement are increased under this section, the terms of the agreement are varied accordingly.

- (11) If a person becomes a home owner after a notice has been given under this section to other home owners in the community but before the date the increase takes effect:
 - (a) the operator must notify the home owner of the notice and its contents and effect, and
 - (b) the increase applies as if the notice had been given to the home owner at the same time as it was given to other home owners.

68 Refund of overpaid site fees if increase not compliant

- (1) A home owner under a site agreement may apply to the Tribunal for an order directing the refund of overpaid site fees on the ground that the increase of site fees did not comply with a requirement of this Division.
- (2) The Tribunal may make any of the following orders:
 - (a) an order directing a refund to the home owner,
 - (b) an order directing a refund to any other home owner in the community who the Tribunal becomes aware also had a non-compliant increase of substantially the same kind,
 - (c) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (3) An application under this section must be lodged no later than 12 months after notice of the increase was given to the home owner.

Division 4 Compulsory mediation about increases in site fees by notice

69 Mediation

- (1) This section applies if site fees are increased by notice (otherwise than by a fixed method). However, this section does not apply to an increase in site fees objected to solely on the ground that the increase is substantially excessive when compared with increases for similar residential sites in the community.
- (2) An objection to an increase in site fees on the ground that the increase is excessive may be made by lodging an application for mediation under Division 2 of Part 12 signed by at least 25% (or a lower percentage prescribed by the regulations) of the home owners who received the notice within the first 30 days of the notice period, and not otherwise.
- (3) Home owners may nominate a representative or representatives under section 146 for the purposes of the mediation of the objection. However, the nomination must be made in accordance with the prescribed procedure if the regulations so provide.
- (4) The parties to the mediation must use reasonable endeavours to participate in and finalise mediation before the effective day for the fee increase.
- (5) A home owner may opt out of the mediation, and agree to pay the increase, but only if the home owner follows the process set out in the regulations.
- (6) The fact that one or more home owners opt out of the mediation, after an application for mediation is made, does not prevent the continuation of the mediation in respect of the remaining home owners.
- (7) The regulations may make provision for or with respect to the mediation of objections to increases in site fees.

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

70 Application of this Division

This Division applies to increases in site fees by notice (otherwise than by a fixed method).

71 Application following failed mediation

- (1) One or more affected home owners may apply to the Tribunal for an order under section 73 if:
 - (a) the home owners object to the increase in site fees, and
 - (b) an application for mediation of the objection was made in accordance with section 69, and
 - (c) mediation was unsuccessful.
- (2) The application must be made on behalf of all the affected home owners (other than those who opt out of the application) by one or more of them appointed as the representative or representatives by the participating home owners.
- (3) The application must be made within 14 days after the date on which the mediation failed.
- (4) The application must be accompanied by a notice from the mediator stating mediation failed on the date specified by the mediator.

72 Application based on comparable residential sites

- (1) A home owner may apply to the Tribunal for an order under section 73 if the home owner objects to an increase in site fees on the ground that the increase is substantially excessive when compared with increases for similar residential sites in the community.
- (2) The application must be made within 30 days after the notice of the increase was given to the home owner.
- (3) This section does not prevent the home owner from also making or being a party to an application under section 71.

73 Orders as to excessive increases in site fees

- (1) The Tribunal may, on application under section 71 or 72, make any of the following orders:
 - (a) an order declaring that an increase in site fees is excessive,
 - (b) an order reducing the amount of the increase by a specified amount,
 - (c) an order setting aside the increase,
 - (d) an order that the site fees must not exceed a specified amount or specified amounts, either:
 - (i) from a specified day, not being earlier than the day from which the increased site fees were payable, or
 - (ii) during a specified period,
 - (e) an order confirming the increase on the conditions (if any) that the Tribunal considers appropriate,
 - (f) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.

- (2) The Tribunal may make orders applying to individual participating home owners, groups of participating home owners or all participating home owners.
- (3) An order applies to all affected home owners in the community (other than those who opt out), unless the Tribunal is satisfied there is a strong reason for making separate orders for different home owners or groups of home owners.
- (4) The Tribunal cannot make an order that would result in an increase lower than that needed to cover any actual or projected increase (established to the satisfaction of the Tribunal) in the outgoings and operating expenses for the community since the previous increase (if any) in site fees for the community.

74 Matters to be considered about excessive increases

- (1) The Tribunal may have regard to any or all of the following factors when deciding whether to make an order under section 73:
 - (a) the frequency and amount of past increases in site fees for the community,
 - (b) any actual or projected increase in the outgoings and operating expenses for the community as provided by the operator since the previous increase (if any) in site fees for the community,
 - (c) any repairs or improvements to the community:
 - (i) carried out by the operator since the previous increase (if any), or
 - (ii) planned by the operator for the period covered by the increase being reviewed,
 - (d) the general condition of the community including its common areas,
 - (e) the range and average level of site fees within the community,
 - (f) the value of the land comprising the community, as determined by the Valuer-General,
 - (g) the value of any improvements to the community (including common areas) paid for or carried out by home owners,
 - (h) any explanation for the increase provided by the operator by notice in writing to the affected home owners,
 - (i) variations in the Consumer Price Index (All Groups Index) for Sydney,
 - (j) whether the increase is fair and equitable in the operation of the community,
 - (k) any other matters prescribed by the regulations.
- (2) The regulations may require the Tribunal to disregard any specified matters (not being a matter referred to in subsection (1)), in any specified circumstances, when deciding whether to make an order under section 73.

75 Interim order suspending increases in site fees

- (1) The Tribunal may, if it is of the opinion that the circumstances so require, by order, suspend a requirement to pay the whole or part of an increase in site fees.
- (2) An application for an order under this section may be made by an affected home owner before, on or after making an application to the Tribunal for an order under section 73 in respect of the increase.
- (3) An application for an order under this section may be made on behalf of all the affected home owners (other than those who opt out of the application) by one or more of them appointed as the representative or representatives by the participating home owners.

- (4) An order under this section has effect for the period specified by the Tribunal, unless sooner revoked.
- (5) The Tribunal may revoke an order under this section at any time.

Part 7 Utility and other charges

76 Limit on amounts payable by home owner

- (1) The only fees and charges that may be required or received by the operator of a community from a home owner in connection with the occupation of a residential site, or the use of any of the facilities of a community, are as follows:
 - (a) site fees, including site fees payable in advance as permitted under section 57,
 - (b) the cost of registering or recording the site agreement under the *Real Property Act 1900* if any fixed term period exceeds 3 years,
 - (c) a refundable deposit for a key or any other opening device to access the community, not exceeding \$25 or another amount prescribed by the regulations,
 - (d) other fees, charges and deposits required or permitted by this Act or the regulations.
- (2) The regulations may require or permit payment of fees, charges and deposits that are specified or of a kind specified by the regulations and, in particular, may (but need not) provide that they are not payable by a home owner unless required by the site agreement to be paid by the home owner.
- (3) An operator of a community must not require or permit the payment of any fee, charge or deposit from a home owner in contravention of this section.
Maximum penalty: 20 penalty units.

77 Utility charges payable to operator by home owner

- (1) This section applies if, under a site agreement, the home owner is required to pay utility charges to the operator for the use by the home owner of a utility at the residential site.
- (2) The home owner cannot be required to pay for the use unless:
 - (a) the use is separately measured or metered, and
 - (b) the operator gives the home owner an itemised account and allows at least 21 days for the payment to be made.
- (3) The operator must not charge the home owner an amount for the use of a utility that is more than the amount charged by the utility service provider or regulated offer retailer who is providing the service for the quantity of the service supplied to, or used at, the residential site.
Maximum penalty: 20 penalty units.
- (4) The regulations may:
 - (a) provide for a maximum utility charge payable by home owners to the operator, and
 - (b) create an offence for an operator to request or receive more than that maximum charge (if any).
- (5) The regulations may provide that a service availability charge for electricity payable by home owners to the operator of a community is to be discounted in accordance with the regulations where less than 60 amps are being supplied.

78 Unpaid utility charges

- (1) If a home owner is required to pay a utility charge to the operator of a community under this Part, the operator may charge a fee for late payment or a dishonoured payment, not exceeding the amount that could have been charged if the service was

supplied directly to the home owner by the local utility service provider or regulated offer retailer.

- (2) The operator may apply to the Tribunal for an order requiring the home owner to pay to the operator:
 - (a) any unpaid utility charge, or
 - (b) any unpaid fee for late payment, or
 - (c) any unpaid fee for a dishonoured payment.
- (3) The Tribunal may, on application under this section, make:
 - (a) an order requiring the home owner to pay the unpaid charge or fee (or a specified part of it) within a specified period, and
 - (b) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (4) The Tribunal may determine the application without conducting a hearing with the consent of the parties.

79 Site fees cannot be used to pay utility charges

The operator of a community must not apply any amount paid by a home owner by way of site fees towards payment of other outstanding fees or charges payable by the home owner (not being site fees), unless specifically authorised to do so by this Act.
Maximum penalty: 20 penalty units.

Note. See section 60 (2).

80 Separate measurement or metering of supply of utility

- (1) This section applies if:
 - (a) the use by the home owner under a site agreement of a utility at the residential site is not separately measured or metered, and
 - (b) the operator wishes to separately measure or meter the use of the utility at the residential site.
- (2) The operator of a community must pay the cost of installing a measuring device or meter to measure the use of the utility at the residential site.
Maximum penalty: 100 penalty units.

81 Utility cost in site fees

- (1) This section applies if:
 - (a) the use by the home owner under a site agreement of a utility at the residential site is not separately measured or metered, and
 - (b) either of the following events (a *change event*) happens:
 - (i) the home owner's use of the utility becomes separately measured or metered and the cost of the use becomes payable by the home owner,
 - (ii) the utility stops being available for use by the home owner for any reason other than the default or neglect of the home owner.
- (2) The operator of the community must, within 14 days after the change event happens, give the home owner a notice (a *utility cost notice*) stating the following:
 - (a) the utility cost factored into the site fees payable under the agreement and how the utility cost has been worked out,
 - (b) the date the change event happened,
 - (c) the site fees payable from that date,

- (d) that if the home owner disputes the utility cost, the home owner may, within 30 days after receiving the notice, apply to the Tribunal for an order.
- (3) The Tribunal may, on application by the home owner within 30 days after receiving the utility cost notice, make any order the Tribunal considers appropriate in the circumstances.
- (4) The site fees payable from the day the change event happens (the *change event day*) are the site fees payable immediately before the change event day, reduced by the utility cost stated in the utility cost notice.
- (5) The operator must, within 14 days after the home owner received the utility cost notice, refund to the home owner any overpayment of site fees, relating to the utility cost, from the change event day.
Maximum penalty (subsection (5)): 10 penalty units.

82 Tribunal review of utility cost and reduction in site fees

- (1) This section applies if:
 - (a) the operator under a site agreement contravenes section 81 (2), or
 - (b) the home owner under a site agreement who receives a utility cost notice under section 81 (2) disputes the utility cost stated in the notice.
- (2) The home owner under the site agreement mentioned in subsection (1) (a) may apply to the Tribunal for an order under subsection (4).
- (3) The home owner mentioned in subsection (1) (b) may apply to the Tribunal, within 30 days after receiving the notice, for an order under subsection (4).
- (4) On application by the home owner, the Tribunal may make any of the following orders:
 - (a) an order reducing the site fees payable under the agreement, from the change event day, by the amount the Tribunal considers appropriate,
 - (b) another order the Tribunal considers appropriate.
Note. An example of an order under subsection (4) (b) is an order that the operator refund to the home owner any overpaid site fees from the change event day.
- (5) In making an order under subsection (4), the Tribunal may have regard to the following:
 - (a) relevant available information about the costs of supplying utilities in the local government area in which the community is situated,
 - (b) any terms of the site agreement about utility costs,
 - (c) anything else the Tribunal considers relevant.

83 Access to information about utility charges

The operator of a community must provide a home owner with reasonable access to bills or other documents in relation to utility charges payable by the home owner to the operator.

Maximum penalty: 10 penalty units.

84 Receipt for utility charges

- (1) If utility charges are payable by a home owner to the operator of a community and the charges are paid in person, any person who receives payment of the charges must, without delay, give the person making the payment a receipt for the payment.

- (2) If utility charges are not paid in person, the operator must, on receiving the charges and being asked for a receipt, prepare a receipt for the charges and provide it to the home owner.
- (3) A receipt for utility charges is not a receipt for the purposes of this section unless it includes the following particulars:
 - (a) the name and address of the community and the number or other identifying feature of the residential site,
 - (b) the name of the home owner,
 - (c) whether the home owner is in debit or credit as at the date of payment and by what amount,
 - (d) the period for which the charges are paid,
 - (e) the date on which the charges are received,
 - (f) the amount of charges paid.

Maximum penalty: 10 penalty units.

85 Recovery of amounts paid under a mistake of law or fact

- (1) A home owner is entitled to recover an amount paid under this Part to the operator under a mistake of law or fact.
- (2) A home owner may, with the consent of the operator of the community, recover an amount mistakenly paid to the operator under this Part by deducting it from site fees payable by the home owner under the site agreement.
- (3) The Tribunal may, on application by a home owner or operator, make an order resolving a dispute concerning the operation of this section in the circumstances of a particular case.

Part 8 Community rules

86 Subject-matter of community rules

- (1) Written rules relating to the use, enjoyment, control and management of a community may be made in accordance with this Part.
- (2) Without limiting subsection (1), a community rule may be made with respect to any matter specified in the regulations as being a matter that may be the subject of a community rule.
- (3) The community rules must be fair and reasonable and must be clearly expressed.
- (4) There is a rebuttable presumption that a community rule is not fair and reasonable if it does not apply uniformly to all residents of the community.
- (5) A community rule cannot invalidate anything that has already occurred.
- (6) A community rule that prohibits a pet does not apply to a pet that is living with a resident of the community when the rule is made and that continues to live there after the rule is made.
- (7) A term of a site agreement or tenancy agreement has no effect to the extent the term would:
 - (a) make all or any part of the community rules part of the agreement, or
 - (b) be substantially the same (or to the same effect) as a provision of a community rule or any part of a community rule.
- (8) A term of a site agreement or tenancy agreement prevails over a provision of the community rules to the extent of any inconsistency. This applies whether the provision of the community rules came into effect before, on or after the date of the agreement.

87 Community rules to be consistent with other laws

A community rule is of no effect to the extent that it is inconsistent with this Act or any other Act or law.

88 Model community rules

The Commissioner may publish model community rules that may be adopted for a community.

89 How community rules are made

- (1) The operator of a community may make written community rules for the community if, at the time the rules are made, the community has no residents. This also applies to the proposed operator of a proposed community.
- (2) If a community has residents but no community rules, community rules may be made for the community in the same way as community rules may be amended under section 90.

90 Amendment of community rules

- (1) The operator of a community may make written amendments to the community rules.
- (2) An amendment does not have effect unless:
 - (a) each resident has been given written notice of the amendment, and
 - (b) if the community has a residents committee—the operator has advised and consulted with the committee about the amendment and has done so before giving notice to residents under paragraph (a).

- (3) The written notice must be given at least 30 days before the day on which the amendment is to have effect.
- (4) On the day that an amendment to the community rules takes effect, the community rules are amended in accordance with the amendment.
Note. See also section 95, which enables the Tribunal to stay the time when an amendment to the community rules takes effect.
- (5) For the purposes of this section, an amendment of community rules includes:
 - (a) a variation or deletion of a rule, and
 - (b) the addition of a new rule, and
 - (c) the replacement of a rule with a new rule, including the replacement of all the rules with a new set of rules.

91 Prohibited community rules

- (1) The regulations may prohibit a specified type of community rule.
- (2) Without limiting subsection (1), a community rule is of a prohibited type if it requires or has the effect of requiring a home owner to replace or remove an older home, or to make upgrades or improvements to a home, for any reason that is not related to health or safety.
- (3) The operator of a community must not make or attempt to enforce a type of community rule that is prohibited by this section.
Maximum penalty: 100 penalty units.
- (4) A community rule of a type that is prohibited by this section is of no effect.

92 Compliance with community rules

- (1) The residents, owner and operator of a community must comply with the community rules.
- (2) Each resident must use reasonable endeavours to ensure compliance with the community rules by:
 - (a) any occupants living with the resident, and
 - (b) any other persons who are in the community at the resident's invitation.
- (3) The operator must use reasonable endeavours to ensure compliance with the community rules by:
 - (a) all residents and occupants, and
 - (b) any employees of the operator, and
 - (c) any other persons who are in the community at the operator's invitation.

93 Enforcement of community rules

- (1) The operator of a community must ensure that the community rules are enforced and interpreted consistently and fairly.
- (2) The operator of a community may give a notice to a resident to remedy a breach of a community rule within a specified period of at least 30 days. The notice is to be in writing and to be in the approved form (if any).
- (3) If it appears to the operator that the breach has not been remedied within the 30-day period, the operator may, within a further period of 30 days, apply to the Tribunal for orders under this section.

- (4) The Tribunal may, on application under this section and if it considers the breach is in the circumstances sufficient to justify its doing so, make any one or more of the following orders:
 - (a) an order requiring compliance with the rule within a specified period,
 - (b) an order terminating the resident's site agreement or tenancy agreement,
 - (c) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (5) In considering the circumstances of the case, the Tribunal may consider (but is not limited to considering) the following:
 - (a) the nature of the breach,
 - (b) any previous breaches of the community rules by the resident,
 - (c) any steps taken by the resident to remedy the breach,
 - (d) any steps taken by the operator about the breach,
 - (e) the previous history of the operator or resident so far as it is relevant,
 - (f) whether the community rule is being enforced and interpreted consistently and fairly.
- (6) The Tribunal may refuse to make an order if it is satisfied that the breach has been remedied.

94 Applications to Tribunal by residents for breaches

- (1) A resident of a community may give a written notice (in the approved form, if any) to the operator to take action for the remedy of a breach of a community rule by any person within a specified period of at least 30 days.
- (2) If it appears to the resident that the breach has not been remedied within the 30-day period, the resident may, within a further period of 30 days, apply to the Tribunal for orders under this section.
- (3) The Tribunal may, on application under this section and if it considers the breach is in the circumstances sufficient to justify its doing so, make either or both of the following orders:
 - (a) an order requiring compliance with the rule within a specified period,
 - (b) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.

95 Applications to Tribunal about community rules

- (1) A resident or operator of a community may apply to the Tribunal if there is a dispute about whether:
 - (a) a community rule complies with this Part, or
 - (b) the procedure for making or amending a community rule has been correctly followed.
- (2) The Tribunal may, on application under this section, make one or more of the following orders:
 - (a) an order amending or setting aside the community rule,
 - (b) an order modifying the operation of the community rule in its application to some of the persons to or in respect of whom the rule applies,
 - (c) an order upholding the community rule,
 - (d) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (3) The Tribunal may make an order staying the time when a community rule takes effect pending its decision whether to make an order under subsection (2).

- (4) In this section:
community rule includes:
- (a) a proposed community rule, and
 - (b) an amendment or proposed amendment of a community rule.

Part 9 Residents committees

96 Establishment of residents committee

- (1) The residents of a community may by resolution establish a residents committee.
- (2) The resolution must be carried by a majority of residents of the community at a meeting to which all residents of the community have been invited. The meeting is referred to as the *establishment meeting*.

Note. Section 98 provides for the election of the members of the residents committee at the establishment meeting.

- (3) The operator of a community must not:
 - (a) discourage or prevent the establishment or continued existence of a residents committee, or
 - (b) require a residents committee to be incorporated or to take out any form of insurance.

Maximum penalty: 20 penalty units.

97 Functions of residents committee

- (1) The functions of a residents committee for a community are:
 - (a) to represent the interests of the residents, and to consult regularly with residents or the operator or both, in connection with:
 - (i) the day-to-day running of the community, and
 - (ii) any complaint or proposal about the operation of the community raised by a resident, and
 - (b) to call meetings of all the residents of the community for the purpose of considering and voting on any matter relating to the community.
- (2) The operator of a community must not obstruct the residents committee in the exercise of its functions or prevent it from using community facilities that are generally available to residents.
- (3) The operator of a community must, as soon as practicable after being requested to do so by the residents committee, give the committee a list of the names of all current residents of the community, their site numbers and their postal addresses (if different from their site numbers).

Maximum penalty: 20 penalty units.

98 Membership of residents committee

- (1) The members of a residents committee for a community are to be elected from time to time by residents of the community.
- (2) The members are elected by resolution of a majority of residents at the establishment meeting, and thereafter at meetings:
 - (a) to which all residents have been invited, and
 - (b) convened by the residents committee (or by residents from at least 5 residential sites in the community, if there are no members for the time being or the members are unwilling or unable to act).
- (3) The residents committee can consist only of residents of the community who are at least 18 years old.
- (4) A member holds office for a term of not more than one year, but may be re-elected.

- (5) The number of members to hold office is to be the number agreed at the establishment meeting or by resolution of a majority of residents from time to time at later meetings.
- (6) If the number of eligible persons currently nominated for election does not exceed the number of vacancies, the chairperson for the meeting is to declare the nominated persons duly elected, and they are members without the need for taking votes or other action.

99 Office holders of residents committee

- (1) A residents committee may elect a chairperson or secretary, or both, from among its members.
- (2) An office holder:
 - (a) holds office until his or her current term as a member of the committee ends, but may be re-elected, and
 - (b) may be removed from office, at any time, by resolution of the committee.
- (3) Removal from office under this section does not of itself affect the former office holder's membership of the committee.

100 Procedure of residents committee

- (1) A residents committee may:
 - (a) determine its own procedures, and
 - (b) form subcommittees and determine each subcommittee's procedures.
- (2) A residents committee may adopt and vary a constitution by resolution of the committee.
- (3) The Commissioner may publish a model constitution that may be adopted by a residents committee.

101 No more than one residents committee for a community

- (1) There can be no more than one residents committee for a community at any time.
- (2) If more than one body or committee (regardless of its name) purports to be the residents committee for a particular community, the operator or a resident may apply to the Tribunal for (and the Tribunal may make) an order determining which body or committee (if any) is the residents committee for the community.
- (3) Nothing in this Part prevents the residents of a community from establishing other committees for other purposes (for example, a social club).
- (4) Nothing in this Part prevents the residents committee and the operator from establishing and maintaining a consultative joint committee. However, a joint committee continues to exist only while there is a residents committee.

102 Residents' rights to membership of organisations

- (1) A resident of a community has a right to be a member of:
 - (a) the residents committee, or
 - (b) an external communities organisation if the resident is eligible to be a member of the organisation.
- (2) A representative of an external communities organisation has a right of reasonable access to a community to consult with residents of the community.

- (3) A person must not unreasonably interfere with a person's rights under this section.
Maximum penalty: 20 penalty units.
- (4) In this section:
external communities organisation means an organisation that represents the interests of residents of communities generally or of 2 or more communities within a particular locality.

103 Relationship of operator with residents committee

- (1) None of the following people can be members of a residents committee:
 - (a) the operator of the community,
 - (b) a close associate of the operator (even if he or she is a resident).
- (2) The operator of a community or close associate of the operator may, if invited by the residents committee, attend and speak at:
 - (a) a meeting of the committee or of a subcommittee, or
 - (b) a meeting of residents convened by the committee.

Part 10 Sale of homes

Division 1 Introduction

104 Application of this Part

- (1) This Part applies to a home owned by a home owner or former home owner that is located on a residential site in a community. Accordingly, references in this Part to a home owner include former home owners.

Note. The definition of **home owner** in section 4 provides that the term includes an executor, administrator or beneficiary of the estate of a deceased home owner.

- (2) Nothing in this Part applies to the sale of a home that is not located in a community.

Division 2 Rights and obligations regarding sale of homes

105 Right to sell home on residential site

- (1) A home owner is entitled to sell the home while the home is located on the residential site.
- (2) The home owner is required to give the operator of the community a notice of intention to offer the home for sale before offering it for sale.
- (3) A notice is taken to have lapsed:
 - (a) if the home owner notifies the operator that the home owner no longer intends to offer the home for sale, or
 - (b) if 3 months have passed since the notice was given and:
 - (i) the home is not being advertised for sale, or
 - (ii) there is no selling agent for the sale of the home.

106 “For sale” signage

- (1) A home owner is entitled to display a “for sale” sign in or on the home, but only if the home owner first informs the operator of the community of the intention to offer the home for sale.
- (2) A home owner is not entitled to display a “for sale” sign anywhere else in the community without the consent of the operator.

107 Interference with right to sell home

- (1) The operator of a community must not cause or permit any interference with, or any attempt to interfere with:
 - (a) a home owner’s right to sell a home, or
 - (b) a home owner’s right to display a “for sale” sign in or on a home.Maximum penalty: 100 penalty units.
- (2) Without limiting subsection (1):
 - (a) interference with a home owner’s right includes hindering the exercise of the right, and
 - (b) interference with a home owner’s right to sell a home includes unreasonably restricting prospective home owners from inspecting the home or any common area of the community, and
 - (c) interference includes making false or misleading statements about the community that affect or may affect either right, and

- (d) interference includes taking any action to require the home owner to comply with any requirement made by or under the *Local Government Act 1993* after becoming aware that the home owner is seeking to sell his or her home (unless the matter has been the subject of previous action).
- (3) An operator does not interfere with the right to sell the home if the operator declines to enter into a site agreement with a prospective home owner and does so on reasonable grounds.
- (4) Without limiting subsection (3), reasonable grounds can be established on:
 - (a) the basis of unfavourable information about the prospective home owner contained in a residential tenancy database referred to in the *Residential Tenancies Act 2010*, other than a database referred to in section 210 of that Act, or
 - (b) the basis that the prospective home owner has been evicted from the community or another community within the past 5 years for a breach of a site agreement by the prospective home owner.

108 Referral of prospective home owner to operator

- (1) A home owner must ensure that a genuine prospective home owner of the home is advised to contact the operator of the community about the proposed sale before a contract for the sale of the home is entered into, unless the home owner is aware that contact has already been made.

Note. This section helps the operator to comply with the disclosure obligations under Part 4.
- (2) A contract of sale or site agreement is not invalidated by a partial or complete failure of:
 - (a) the home owner to comply with subsection (1), or
 - (b) the prospective home owner to contact the operator as contemplated by that subsection or to continue contact, or
 - (c) the operator to respond to contact from a prospective home owner as contemplated by that subsection.

109 Operator to enter new site agreement

- (1) This section applies if a purchaser or prospective home owner under a contract, or proposed contract, for the sale of the home (the *sale contract*) requests the operator of the community to enter into a new site agreement (the *new site agreement*) for the residential site with the purchaser or prospective home owner.

Note. This section is not relevant if the purchaser or prospective home owner intends to remove the home from the community.
- (2) The operator must enter into the new site agreement after the request is made, unless:
 - (a) the operator declines to enter into the agreement and does so on reasonable grounds (including, for example, the ground that it appears reasonably unlikely that the sale contract will be entered into), or
 - (b) without limiting paragraph (a), the operator and the purchaser or prospective home owner do not agree on the terms of the proposed agreement.
- (3) If the sale contract is entered into before the new site agreement is entered into:
 - (a) the contract may include a term to the effect that the contract is subject to the new site agreement being entered into within a specified period after the contract is entered into, and
 - (b) the contract is unenforceable if it includes that term and the new site agreement is not entered into within that period.

- (4) If the new site agreement is entered into before the sale contract is entered into:
 - (a) the agreement may include a term to the effect that the agreement is subject to the sale contract being entered into within a specified period after the agreement is entered into, and
 - (b) the agreement is unenforceable if it includes that term and the sale contract is not entered into within that period.
- (5) The site fees under the new site agreement must not exceed fair market value.
- (6) Fair market value is the higher of the following:
 - (a) the site fees currently payable by the home owner who is selling the home,
 - (b) the site fees currently payable for residential sites of a similar size and location within the community.
- (7) The operator must not unreasonably delay or refuse to enter into a new site agreement referred to in subsection (2).

110 Voluntary sharing arrangement

- (1) A site agreement entered into after the commencement of this section may provide for a voluntary sharing arrangement.
- (2) A **voluntary sharing arrangement** is any provision under which the home owner agrees to one or more of the following:
 - (a) to pay a specified entry fee to the operator, on entry into the agreement or in any other manner specified in the agreement,
 - (b) to pay deferred site fees to the operator, being site fees the payment of which is deferred in a manner specified in the agreement,
 - (c) to pay a specified sale amount to the operator if the home is sold by the home owner, with that sale amount being either (but not both) of the following:
 - (i) a specified share of the capital gain in respect of the home,
 - (ii) a specified on-site premium of the total sale price of the home as determined in the agreement,
 - (d) to pay a specified exit fee to the operator, being a fixed fee (not of a kind referred to in paragraph (c)) that is payable if the home is sold or removed from the site.
- (3) If a home is sold and the operator is the selling agent, the operator may deduct any amount payable under the voluntary sharing arrangement from the proceeds of the sale that are held by the operator in accordance with the agreement.
- (4) If a home is sold and the operator is not the selling agent, the selling home owner must pay any amount owing to the operator under the voluntary sharing arrangement within 14 days of the sale being finalised.
- (5) The Tribunal may, at any time, on application by an operator, make an order requiring a home owner to pay any amount owing to the operator under a voluntary sharing arrangement together with interest determined by the Tribunal.
- (6) A sale amount is not payable if a home is sold to be removed from the residential site or is purchased by the operator or a close associate of the operator.
- (7) In this section:
capital gain means any increase between the amount that the home owner paid for the home and the amount that the purchaser paid for the home. Site fees and any fees or charges payable under the site agreement are not to be included in the calculation of the capital gain.

111 Restrictions on voluntary sharing arrangements

- (1) An operator of a community must not enter into a site agreement that contains a voluntary sharing arrangement if the offer of a rent only site agreement is required unless, before entering into the agreement:
 - (a) the operator informs the person that the person may instead enter into a rent only site agreement with the operator, and
 - (b) the operator offers (as an alternative) to enter into a rent only site agreement with the person.
- (2) The offer of a rent only site agreement is required if:
 - (a) the site agreement is to be entered into in connection with the sale of a home on the residential site, and the seller is not the operator of the community (or a close associate of the operator), or
 - (b) the site agreement is to be entered into with an existing home owner, being a person who is currently, or has previously been, a party to a site agreement relating to the residential site.
- (3) A **rent only site agreement** is a site agreement under which the site fees charged do not exceed fair market value and which does not contain any voluntary sharing arrangement.
- (4) Fair market value is the higher of the following:
 - (a) the site fees currently payable by the home owner occupying the residential site,
 - (b) the site fees currently payable for residential sites of a similar size and location within the community.
- (5) A site agreement that contains a voluntary sharing arrangement must, if entered into when the offer of a rent only site agreement is required, include:
 - (a) a declaration, signed by each party, that verifies that a rent only site agreement was offered to the home owner or prospective home owner by the operator and the offer was declined, and
 - (b) a declaration, signed by the home owner or prospective home owner, that the home owner or prospective home owner:
 - (i) obtained independent advice about the voluntary sharing arrangement before entering into the site agreement, or
 - (ii) waived the home owner's or prospective home owner's right to obtain independent advice about the voluntary sharing arrangement.
- (6) A voluntary sharing arrangement in a site agreement is void if this section is contravened.
- (7) In this section:
voluntary sharing arrangement has the meaning given by section 110.

Division 3 Selling agents

112 Appointing a selling agent

- (1) A home owner may appoint the operator of the community or another person as a selling agent to sell, or to negotiate the sale of, the home.
- (2) An operator cannot require a home owner:
 - (a) to appoint the operator or any other person as selling agent, or

- (b) to use the services of the operator or any other person, in connection with the sale or negotiation of the sale of the home, either under the terms of the site agreement or otherwise. Such a requirement is unenforceable.
- (3) If the home owner appoints a person other than the operator as selling agent, the operator must not unreasonably hinder the appointed person's access to the community.
Maximum penalty: 50 penalty units.
- (4) When the operator acts as a selling agent, the operator is not required to hold:
 - (a) a licence as agent under the *Property, Stock and Business Agents Act 2002*, or
 - (b) a dealer's licence under the *Motor Dealers Act 1974*.

113 Selling agency agreement

- (1) Neither a sale commission nor incidental expenses are payable in connection with the sale of a home, unless:
 - (a) there is a written selling agency agreement between the home owner and the selling agent entered before the sale, and
 - (b) if a sale commission is to be payable—the agreement:
 - (i) provides for the payment of the commission, and
 - (ii) specifies the amount of the sale commission or the method of its calculation, and
 - (iii) sets out the services the agent will perform in return for payment of the sale commission, and
 - (c) if incidental expenses are to be payable—the agreement:
 - (i) provides for the payment of the expenses, and
 - (ii) sets out the nature of the services for which the expenses will be payable, and
 - (d) an invoice or statement of claim is provided to the home owner, setting out amounts claimed and details of the services performed.
- (2) No sale commission is payable if:
 - (a) the home is not sold, or
 - (b) the home is sold but the services provided by the selling agent are not the effective cause of the sale, or
 - (c) the home is sold but the purchaser is the operator or a close associate of the operator.
- (3) In this section:
 - incidental expenses*** means reasonable expenses that are incurred by the selling agent in connection with the sale or negotiation of the sale of a home and paid or payable to another person who provides an advertising or other service, and includes anything of a kind prescribed by the regulations for the purposes of this definition.
 - sale commission*** means a commission, fee or other amount (other than incidental expenses) for the sale or negotiation of the sale of a home.

114 Operator to hold money in trust

When the operator of a community receives any money under a selling agency agreement (except sale commission payable to the operator under the agreement), the operator holds the money in trust and must:

- (a) deposit the money, as soon as possible but within 7 days after receiving it, in an ADI account that is:
 - (i) used only for depositing money under selling agency agreements, and
 - (ii) opened in the name of the operator, and
 - (iii) entitled “sales trust account”, and
- (b) when the sale is completed, pay the proceeds at the direction of the home owner, after deducting:
 - (i) any amounts owing to the operator by way of expenses or commission under the selling agency agreement, and
 - (ii) any other fees and charges owing to the operator under the site agreement.

Note. The *Interpretation Act 1987*, section 21, defines an ADI as an authorised deposit-taking institution within the meaning of the *Banking Act 1959* of the Commonwealth.

Division 4 Disputes

115 Disputes relating to sale

- (1) A home owner, prospective home owner, operator or selling agent may apply to the Tribunal for the resolution of any dispute concerning the sale of the home, the terms of the proposed site agreement or the proposed site fees, in particular:
 - (a) any dispute about compliance with a provision of this Part, and
 - (b) any dispute about whether a sale commission, incidental expense or other fee or charge is payable to the operator or agent in relation to the sale of the home, and
 - (c) any dispute about the amount of a sale commission, incidental expense or other fee or charge payable or paid to the operator or agent in relation to the sale of the home (including a claim that a sale commission is excessive when compared to sale commissions charged by local real estate agents), and
 - (d) any dispute about interference by the operator or another person with the sale of the home, and
 - (e) any dispute about the reasonableness of a decision by the operator not to enter into a site agreement with a purchaser or prospective home owner.
- (2) The Tribunal may make the following orders:
 - (a) an order that the home owner or prospective home owner pay a sale commission, incidental expense or other fee or charge of a specified amount to the operator or selling agent,
 - (b) an order reducing the amount of sale commission, incidental expense or other fee or charge payable by a home owner or prospective home owner to the operator or selling agent,
 - (c) an order that the operator or selling agent refund any sale commission, incidental expense or other fee or charge paid by the home owner or prospective home owner to the operator or selling agent (or any part of such a commission, expense, fee or charge),
 - (d) an order preventing interference with the sale of the home,

- (e) an order requiring the operator to take all necessary steps to facilitate the sale of the home to a specified prospective home owner,
 - (f) an order that the operator pay compensation where:
 - (i) there is or has been interference by the operator with the sale, whether by action or inaction, or
 - (ii) the operator refuses to enter into a new site agreement without reasonable grounds,
 - (g) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (3) Without limiting its powers, the Tribunal may dismiss an application by the home owner for compensation under subsection (2) (f) (ii) if the Tribunal is satisfied that the grounds on which the operator declined to enter into a site agreement with a prospective home owner were reasonable.

Part 11 Termination of site agreements

Division 1 Termination generally

116 Termination of site agreements

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

- (a) if either party gives the other party a termination notice in accordance with this Part and the home owner delivers up vacant possession of the residential site after the notice is given,
- (b) if the Tribunal makes a termination order for the agreement and the home owner delivers up vacant possession of the residential site or a warrant for possession is enforced,
- (c) if the home owner delivers up vacant possession of the residential site with the prior consent of the operator, whether or not the consent is later withdrawn,
- (d) if the home owner agrees to relocation to a different residential site and a new site agreement is entered into under section 135,
- (e) if the Tribunal makes an order declaring that the home owner abandoned the residential site,
- (f) if the occupation of the home is given over to another person following the completion of the sale of the home to the operator or another person.

117 Termination by home owner

- (1) The home owner under a site agreement may give a termination notice without having to specify a ground for termination.
- (2) The notice must specify the day, not earlier than 30 days after the notice is given, that the agreement is terminated.
- (3) The home owner must give the operator vacant possession of the residential site on or before the stated day.

118 Termination by operator

- (1) The operator of a community under a site agreement may give the home owner a termination notice for the termination of the agreement, but only in accordance with this Part.
- (2) A termination notice must be in the approved form, be signed by the operator or the operator's agent, and set out the following matters:
 - (a) the residential site concerned,
 - (b) the day on which vacant possession of the residential site is to be given,
 - (c) the ground for the notice.
- (3) A termination notice that does not comply with this section is of no effect.

119 Revocation of termination notices

The party who gives a termination notice may, at any time, revoke the notice with the consent of the other party.

120 Defects in termination notices

The Tribunal may make a termination order for a site agreement even if there is a defect in the notice or the manner of service of the notice if:

- (a) it thinks it appropriate to do so in the circumstances of the case, and

- (b) it is satisfied that the person to whom the notice was given has not suffered any disadvantage because of the defect in the notice or service or that any disadvantage has been overcome by the order and any associated order.

121 Disputes about termination notices

The Tribunal may, on application by a party to a site agreement, make any of the following orders:

- (a) an order resolving a dispute about a termination notice,
- (b) an order declaring that a termination notice was or was not given in accordance with this Part,
- (c) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.

Division 2 Circumstances in which operator can initiate termination

122 Termination by operator for breach of agreement

- (1) The operator of a community may give a termination notice on the ground that the home owner has seriously or persistently breached the site agreement.
- (2) The termination notice must not specify a date for vacating the residential site that is earlier than 90 days after the day on which the notice is given.
- (3) The termination notice may specify a date for vacating the residential site that is before the end of the fixed term of the site agreement if it is a fixed term agreement.
- (4) For the purposes of this section, the home owner is not in breach of the site agreement for non-payment of a site fee unless the fee has remained unpaid for at least 30 days.
- (5) The Tribunal may make a termination order if it is satisfied that:
 - (a) a termination notice was given under this section and the home owner has not vacated the residential site as required by the notice, and
 - (b) the home owner has breached the site agreement, and
 - (c) the breach is, in the circumstances of the case, sufficient to justify termination of the agreement.
- (6) In considering the circumstances of the case, the Tribunal may consider (but is not limited to considering) the following:
 - (a) the nature of the breach,
 - (b) any previous breaches,
 - (c) any steps taken by the home owner to remedy the breach,
 - (d) any steps taken by the operator of the community about the breach,
 - (e) the previous history of the home owner's occupation of the residential site.
- (7) The Tribunal may refuse to make the termination order if it is satisfied that the home owner has remedied the breach.

123 Termination by operator for repairs and upgrading

- (1) The operator of a community may give a termination notice on the ground that the operator requires vacant possession of the residential site in order to comply with an obligation imposed by or under an Act to carry out works (including works in the nature of repairs or upgrading) within the residential site or the community.
- (2) The termination notice must be accompanied by a copy of any order or notice imposing the obligation.

- (3) The termination notice must not specify a date for vacating the residential site that is earlier than 90 days after the day on which the notice is given.
- (4) The Tribunal may, on application by the home owner, make an order settling any dispute as to whether vacant possession is necessary in order to comply with the obligation.
- (5) The termination notice is of no effect if the notice does not comply with this section or if the Tribunal determines that vacant possession is not necessary in order to comply with the obligation.

124 Termination by operator for closure

- (1) The operator of a community may give a termination notice on the ground that the community is to be closed and used by the operator or another person for a purpose other than a residential community.
- (2) If use of the community for the new purpose requires development consent under the *Environmental Planning and Assessment Act 1979*, the termination notice must not be given unless development consent for the proposed use has been obtained under that Act.
- (3) The operator must give at least 7 days' notice to the Commissioner before giving a termination notice on a ground referred to in this section.
Maximum penalty: 50 penalty units.
Note. Giving this notice may assist with providing an assistance protocol for closure of a community.
- (4) A failure to comply with subsection (3) does not invalidate a termination notice.
- (5) The termination notice must not specify a date for vacating the residential site that is earlier than:
 - (a) 12 months after the day on which the notice is given, or
 - (b) in the case of an agreement for a fixed term, the day following the date on which the fixed term ends,whichever is the later.
- (6) The home owner may, within 90 days after receiving a notice specifying a date for vacating the residential site, apply to the Tribunal for an order postponing the date.
- (7) Unless the home owner advises the operator in writing that the operator's assistance under this subsection is not required, the operator is, after giving the termination notice, required to use reasonable endeavours to obtain (or make available) for the home owner alternative accommodation that:
 - (a) is of approximately the same standard as, and requires no greater financial outlay on the part of the home owner than, the home owner's current residential site, and
 - (b) is acceptable to the home owner or reasonably ought to be acceptable to the home owner.
- (8) Without otherwise limiting the Tribunal's powers to make a termination order in connection with the termination notice, the Tribunal is required to take into account the endeavours used by the operator to obtain (or make available) alternative accommodation for the home owner.

125 Termination by operator for change in use of residential site

- (1) The operator of a community may give a termination notice for a particular residential site on the ground that there is to be a change in use of the site.

- (2) A termination notice may not be given under this section unless:
 - (a) the Tribunal has authorised the operator to give a termination notice because of the proposed change of use of the residential site, and
 - (b) if the change of use requires development consent under the *Environmental Planning and Assessment Act 1979*, development consent for the proposed use has been obtained under that Act.
- (3) The Tribunal may, on application by the operator of a community, make an order authorising the operator to give a termination notice in respect of a site agreement because of a proposed change of use of the residential site to which the agreement relates.
- (4) The Tribunal is not to authorise the giving of a termination notice under this section if:
 - (a) the change of use is not proposed in good faith, or
 - (b) the change of use would permit use of the residential site in connection with an agreement or arrangement referred to in section 7.
- (5) A termination notice given under this section must not specify a date for vacating the residential site that is earlier than:
 - (a) 12 months after the day on which the notice is given, or
 - (b) in the case of an agreement for a fixed term—the day following the date on which the fixed term ends,whichever is the later.
- (6) The home owner may, within 90 days after receiving a notice specifying a date for vacating the residential site, apply to the Tribunal for an order postponing the date.
- (7) Unless the home owner advises the operator in writing that the operator's assistance under this subsection is not required, the operator is, after giving the termination notice, required to use reasonable endeavours to obtain (or make available) for the home owner alternative accommodation that:
 - (a) is of approximately the same standard as, and requires no greater financial outlay on the part of the home owner than, the home owner's current residential site, and
 - (b) is acceptable to the home owner or reasonably ought to be acceptable to the home owner.
- (8) Without otherwise limiting the Tribunal's powers to make a termination order in connection with the termination notice, the Tribunal is required to take into account the endeavours used by the operator to obtain (or make available) alternative accommodation for the home owner.

126 Termination by operator for compulsory acquisition

- (1) The operator of a community may give a termination notice on the ground that the residential site is appropriated or acquired under an Act of the State or the Commonwealth by compulsory process authorised by that Act.
- (2) The termination notice must not specify a date for vacating the residential site that is earlier than 90 days after the day on which the notice is given.
- (3) The home owner whose site agreement is terminated under this section is entitled to be paid compensation in accordance with Division 6.

127 Termination by operator for lack of authority for use of residential site

- (1) The operator of a community may give a termination notice on the ground that the residential site is not lawfully useable for the purposes of a residential site.
Note. For example, a notice may be given if the home owner is occupying a short term site on a permanent basis in contravention of a requirement made under the *Local Government Act 1993*.
- (2) The termination notice must not specify a date for vacating the residential site that is earlier than 90 days after the day on which the notice is given.
- (3) The home owner whose site agreement is terminated under this section is entitled to be paid compensation in accordance with Division 6 but only if, unknown to the home owner, the residential site was not lawfully useable for the purposes of a residential site when the agreement was entered into.

128 Termination by operator for non-use of residential site

- (1) The operator of a community may give a termination notice on the ground that the home owner's residential site has not been used for the past 3 years (and any further period not exceeding 3 years agreed to by the operator and the home owner) as:
 - (a) the home owner's place of residence, or
 - (b) another person's place of residence (but with the prior consent of the operator).
- (2) The termination notice must not specify a termination date that is earlier than 180 days after the day on which the notice is given.

129 Application by operator for termination for serious misconduct

- (1) The operator of a community may apply to the Tribunal for a termination order on the ground of serious misconduct, without the need for a termination notice to be given.
- (2) The Tribunal may make the termination order under Division 3 if it is satisfied that a home owner (or any person who is occupying or jointly occupying the residential site) has intentionally or recklessly caused or permitted:
 - (a) serious damage to any property in the community, or
 - (b) injury to any person when lawfully present in the community, or
 - (c) the residential site to be used for any purpose that is illegal at common law or under an Act, or
 - (d) the operator (or the operator's agent or an employee or contractor of the operator or operator's agent) or any resident to be seriously or persistently threatened or abused.
- (3) The termination order may take effect before or after the end of the fixed term if the site agreement is for a fixed term.

Division 3 Termination orders and possession orders

130 Termination orders

- (1) The Tribunal may, on application by the operator of a community, make a termination order in accordance with this Division.
- (2) A termination order may be made either:
 - (a) if vacant possession of a residential site is not given by the specified date as required by a termination notice, or
 - (b) if an application for the order can be made under this Part without the need for a termination notice.

131 Possession orders

- (1) If the Tribunal makes a termination order, it must also make an order for possession of the residential site (a *possession order*) specifying the day on which the possession order takes or took effect.
- (2) The Tribunal may suspend the operation of a possession order if it is satisfied that it is desirable to do so, having regard to the relative hardship likely to be caused to the operator and home owner by the suspension.

132 Prohibition on certain recovery proceedings in courts

The owner or operator of a community must not commence proceedings against a home owner in the Supreme Court, the District Court or the Local Court to obtain recovery of possession of a residential site subject to a site agreement.

133 Recovery of possession of residential site prohibited except by order

- (1) A person must not enter a residential site, or a home on a residential site, for the purpose of taking possession of the site or home before or after the end of a site agreement unless:
 - (a) the person is acting in accordance with a warrant arising out of a possession order of the Tribunal or a writ or warrant arising out of a judgment or order of a court, or
 - (b) the home owner has given vacant possession of the residential site, or
 - (c) the Tribunal has made an order declaring that the home owner has abandoned the residential site.

Maximum penalty: 200 penalty units.

Note. Under Division 7 an operator may apply to the Tribunal for an order declaring that a home owner has abandoned a residential site.

- (2) A court that finds an offence under this section proven may, in addition to any other penalty it may impose, order that compensation be paid to the home owner by the person who committed the offence or on whose behalf the offence was committed.
- (3) This section applies to a person who enters a residential site, or a home on a residential site, on his or her own behalf or on behalf of another person.

134 Enforcement of possession orders

- (1) The Registrar of the Tribunal may, on the application of an operator in whose favour a possession order was made, issue a warrant for possession of the residential site concerned if the Registrar is satisfied that the order or a condition of suspension of the order has not been complied with.
- (2) An application for a warrant for possession may be made immediately, if the possession order so provides, or not more than 30 days after the date by which vacant possession was required or within such further period as the Tribunal may permit.
- (3) Without limiting subsection (2), the Tribunal may permit an application to be made within a further period if the delay in making the application is attributable to genuine attempts by the applicant to arrange for breaches of the site agreement or this Act to be remedied so as to enable the continued occupation of the residential site under the site agreement.
- (4) A warrant for possession is to be in the approved form and must authorise a sheriff's officer:
 - (a) to enter a specified residential site, or a home or any part of a home on a residential site, and to give possession of the residential site to the person specified in the warrant, and

(b) to remove the occupants of the residential site, or a home on the residential site, from the community and prevent their access to the community.

Note. Section 7A of the *Sheriff Act 2005* contains provisions relating to the enforcement of warrants.

- (5) The provisions of section 7A (1) and (2) of the *Sheriff Act 2005* extend to authorising a sheriff's officer executing a warrant for possession to do the things referred to in subsection (4) (b).

Division 4 Termination and relocation

135 Relocation of home owner by agreement

- (1) The operator and a home owner under a site agreement may agree to the relocation of the home owner to a different residential site, whether within the same community or within another community with the same operator.
- (2) All reasonable costs of relocating the home owner under the agreement are payable by the party initiating the proposal to relocate, unless the parties otherwise agree.
- (3) A person must not coerce or attempt to coerce a home owner into:
- (a) relocating to a different residential site, or
 - (b) agreeing to relocate to a different residential site.
- Maximum penalty: 100 penalty units.
- (4) If the home owner agrees to the relocation, a new site agreement is to be entered into, with the same or substantially the same terms and conditions as the previous site agreement, and the previous site agreement is terminated. The site fees payable under the new site agreement may be reduced, but may not be increased, by reason of the relocation.

136 Relocation of home owner by operator's request

- (1) As an alternative to issuing a termination notice under Division 2, the operator may, by notice in writing, request the home owner to relocate the home to a different residential site on or by a specified date, whether within the same community or within another community within a reasonable distance and with the same operator.
- (2) The specified date must not be earlier than 90 days after the notice is given.
- (3) If the home owner agrees to the relocation, the costs of relocating the home under this section are payable by the operator.
- (4) If the home owner agrees to the relocation, a new site agreement is to be entered into, with the same or substantially the same terms and conditions as the previous site agreement, and the previous site agreement is terminated. The site fees payable under the new site agreement may be reduced, but may not be increased, by reason of the relocation.
- (5) If the home owner advises the operator that the home owner does not agree to the relocation or the notice expires (whichever first occurs), the operator may elect to issue a termination notice.

Division 5 Purchase of home by owner or operator of community

137 Offer to buy home

Nothing in this Part prevents the owner or operator of a community from offering to buy a home in the community and the home owner agreeing to sell the home to the owner or operator of the community for an agreed price.

138 Tribunal may value homes to facilitate sale

- (1) The purpose of this section is to enable the Tribunal to assist an owner or operator of a community and a home owner to come to an agreement as to the value of the home owner's home where there is a proposed sale of the home from the home owner to the owner or operator of the community.
- (2) The Tribunal may, on application by the owner or operator of the community or the home owner (or both), make an order determining the value of the home. For that purpose, the Tribunal may obtain a valuation of the home, or seek advice as to the valuation of the home, from one or more registered valuers.
- (3) Any costs payable to a registered valuer are payable in such proportions as are agreed between the parties or (failing agreement) as ordered by the Tribunal.
- (4) The Tribunal's determination of the value of the home is advisory only and does not bind the owner or operator of the community or the home owner or affect any agreement between them for the sale of the home (unless the agreement provides otherwise).
- (5) In this section:
registered valuer has the same meaning as it has in the *Valuers Act 2003*.

Division 6 Compensation for termination

139 Application of this Division

This Division applies where an operator gives a termination notice to a home owner, unless it is given under section 122 (for breach of agreement), 128 (for non-use of residential site) or 129 (for serious misconduct).

140 Compensation for relocation

- (1) This section applies if, after and in consequence of receiving a termination notice given by an operator (the *first operator*), a home owner decides to relocate to another community and the other community is operated by a different operator.
- (2) The first operator is liable:
 - (a) to pay in advance the likely reasonable costs of the following:
 - (i) removing the home from the old residential site (including the costs of disconnecting any services),
 - (ii) transporting the home, and the possessions of its occupants, to the new residential site,
 - (iii) installing the home at the new residential site (including the costs of connecting to the available services),
 - (iv) repairing any damage to the home arising from its relocation,
 - (v) landscaping the new residential site so as to bring it up to the condition of the old residential site, and
 - (b) to pay any additional reasonable costs incurred for those purposes after the relocation is complete.
- (3) The costs are payable to or at the direction of the person who was the home owner who received the termination notice.
- (4) The Tribunal may, on application by a home owner or operator, make an order resolving a dispute concerning the operation of this section in the circumstances of a particular case.

141 Compensation where home not relocated

- (1) The operator of a community is liable to pay compensation to a home owner as provided for by this section if the operator gives a termination notice to the home owner and the home owner does not want to relocate to another community or is unable to relocate to another community.
- (2) If the site agreement specifies any compensation amount or method for determining compensation in the circumstances to which this section applies, the compensation payable is to be determined as specified in the agreement.
- (3) If the site agreement does not specify the manner for determining the compensation payable in the circumstances to which this section applies, the following compensation is payable (in advance of relocation):
 - (a) compensation for the loss of residency,
 - (b) compensation for relocation.
- (4) The compensation payable for the loss of residency is such amount as is reasonable having regard to the following:
 - (a) the length of time remaining for the duration (if any) of the site agreement,
 - (b) the original purchase price paid by the home owner for the home and (if the home was purchased from the owner or operator of the community) any arrangements that were entered into in connection with the purchase,
 - (c) the current on-site market value of the home (determined as if the termination were not to occur),
 - (d) site fees payable for the residential site,
 - (e) any other relevant factor raised by the parties or prescribed by the regulations.
- (5) The compensation payable for relocation is such amount as is reasonable determined having regard to the following:
 - (a) the cost of moving,
 - (b) inconvenience to the home owner,
 - (c) the length of time that the occupant or occupants of the home have lived on the residential site,
 - (d) any other relevant factor raised by the parties or prescribed by the regulations.
- (6) If the home owner intends to keep the home:
 - (a) any amount the home owner is capable of recouping by selling the home off-site is to be deducted from the compensation payable for the loss of residency, and
 - (b) regard is to be had to the cost of removing and transporting the home in determining the cost of moving (and the compensation payable for relocation).
- (7) If the home owner does not intend to keep the home, the home owner must, in return for the payment of compensation under this section, transfer the home (free of all encumbrances) to the operator of the community.
- (8) The Tribunal may, on application by a home owner or operator, make an order resolving a dispute concerning the operation of this section in the circumstances of a particular case.
- (9) This section does not apply:
 - (a) in the circumstances to which section 140 applies, or
 - (b) to arrangements made for the purposes of the sale of a home to the owner or operator of the community.

Division 7 Abandoned residential site and goods

142 Abandonment of residential site

- (1) The Tribunal may, on application by an operator, make any of the following orders:
 - (a) an order declaring that a home owner abandoned a residential site on a day stated in the declaration,
 - (b) an order for possession of the residential site,
 - (c) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (2) In deciding whether a home owner has abandoned a residential site, the following matters may be considered:
 - (a) whether site fees payable under the site agreement are unpaid,
 - (b) whether the residential site is unoccupied and neglected,
 - (c) whether the home owner's mail is being collected,
 - (d) reports from neighbours, or other persons, about the absence or whereabouts of the home owner,
 - (e) whether electricity or other services to the residential site have been disconnected or terminated,
 - (f) whether the home owner's goods or personal effects have been removed from the residential site,
 - (g) any other matters the Tribunal considers relevant.
- (3) A home owner is taken to have abandoned the residential site on the day stated in a declaration under this section.

143 Home or goods abandoned after site agreement is terminated

- (1) This section applies if a site agreement for a residential site is terminated.
- (2) If the operator reasonably believes a home on the residential site is abandoned, the operator must apply to the Tribunal for, and the Tribunal may make, an order giving directions as to how the home is to be dealt with.
- (3) If the operator reasonably believes any goods left behind on the residential site or common areas are abandoned and are rubbish or perishable items, the goods may be disposed of by the operator immediately in any way the operator thinks fit.
- (4) If the operator reasonably believes other goods left behind on the residential site or common areas are abandoned, then (subject to any order of the Tribunal under subsection (5)):
 - (a) the operator must make a reasonable attempt to contact the former home owner to make arrangements for the collection of those goods or their disposal, and
 - (b) the goods may be dealt with or disposed of by the operator in any way the operator thinks fit if:
 - (i) the former home owner cannot be contacted after a reasonable attempt, or
 - (ii) the former home owner is contacted but does not respond to the operator in a meaningful way, or
 - (iii) the former home owner indicates to the operator that the former home owner does not wish to collect the goods or make other arrangements for their disposal, or

- (iv) the former home owner indicates to the operator that the former home owner wishes to collect the goods or arrange for their disposal but the goods are not removed from the community within a reasonable period.
- (5) If the operator decides to make an application for directions, the Tribunal may make an order giving directions as to the way in which the goods are to be dealt with or disposed of by the operator in the circumstances referred to in subsection (4).
- (6) A purchaser of a home or goods sold in accordance with this section acquires good title to the home or goods, despite any prior interest of the former home owner or any other person.
- (7) The operator has no liability in respect of a home or goods dealt with or disposed of if the operator complies with this section or any order of the Tribunal under this section.
- (8) This section does not apply to anything sold under a contract for sale.
- (9) In this section:
goods does not include a home on a residential site.

Part 12 Disputes

Division 1 Resolving disputes by internal arrangements

144 Internal arrangements for voluntary dispute resolution

- (1) The operator of a community may establish and from time to time vary arrangements for resolving disputes arising in connection with the community, whether the disputes arise between one or more home owners and the operator or between home owners or otherwise.
- (2) Attendance at, and participation in, dispute resolution sessions under the arrangements is voluntary. Any party to a dispute may withdraw from the resolution process at any time.
- (3) If there is a residents committee, action to establish or vary the arrangements can only be made in consultation with the committee.
- (4) The community rules may (but need not) provide the mechanism for voluntary dispute resolution.

Division 2 Mediation

145 Operation of this Division

- (1) Mediation may be arranged under this Division about disputes and other matters connected with a community. A matter may be referred for mediation on application by a home owner or operator or may be referred by the Tribunal.
- (2) This Division does not prevent any other form of dispute resolution being conducted apart from this Division, but this Division applies only to mediation under this Division.

146 Home owner or operator may apply for mediation

- (1) A home owner, former home owner or operator may apply to the Commissioner for mediation of a matter.
- (2) The matter must be one for which orders can be sought from the Tribunal but which is not currently the subject of proceedings before the Tribunal.
- (3) The application must be:
 - (a) made in the approved form, and
 - (b) accompanied by the prescribed fee (if any), and
 - (c) made within the period (if any) prescribed by the regulations.
- (4) The matter is referred for mediation when the application is made, unless and until the Commissioner rejects the application under subsection (5).
- (5) The Commissioner may reject the application if:
 - (a) the application or the matter is vexatious, misconceived, frivolous or lacking in substance, or
 - (b) the applicant has not responded, or has responded inadequately, to a request by the Commissioner for further information, or
 - (c) the matter has been or is currently the subject of mediation or proceedings before the Tribunal and the Commissioner is of the opinion that further action is not warranted.

- (6) An application for mediation may be made under this Division by:
 - (a) one or more individual home owners in a particular community, or
 - (b) one or more nominated representatives of a group of home owners in a particular community, in respect of a matter arising out of the same or similar facts or circumstances.

147 Tribunal may refer matters for mediation

- (1) The Tribunal may, with the consent of the parties, refer a matter arising in proceedings before it relating to a community to the Commissioner for mediation.
- (2) Any party to the proceedings may, at any time, withdraw from mediation and request that the matter be remitted to the Tribunal.
- (3) This section does not prevent the parties to proceedings from agreeing to and arranging for mediation of any matter otherwise than under this Division.

148 Appointment of mediators

- (1) The Commissioner may appoint mediators for the purposes of this Division. A mediator may be a public servant or another person, but the Commissioner must be satisfied the appointees have the appropriate expertise or experience.
- (2) The Commissioner may assign one of the appointees to be the mediator for a particular mediation.

149 Mediation is voluntary

- (1) Attendance at, and participation in, mediation sessions is voluntary. Any party to such proceedings may, at any time, withdraw from mediation.
- (2) This section does not apply to mediation relating to increases of site fees by notice (otherwise than by a fixed method).

150 Duties of mediators

- (1) A mediator has the following functions in a mediation:
 - (a) to encourage the settlement of the dispute or other matter by facilitating, and helping to conduct, negotiations between the parties,
 - (b) to promote the open exchange of information relevant to the dispute or other matter by the parties,
 - (c) to provide to the parties information about the operation of this Act relevant to a settlement of the dispute or other matter,
 - (d) to help in the settlement of the dispute or other matter in any other appropriate way.
- (2) A mediator does not have the power to determine any matter in dispute, whether or not the parties request or consent to such action.

151 Mediation procedure

- (1) Unless the mediator decides otherwise, the mediation is to be held in private and the mediator may exclude from the mediation any person apart from the parties and their representatives.
- (2) A party must, if required by the mediator, disclose to the other party details of the party's case and of the evidence available to the party in support of that case.
- (3) Mediation may, at the discretion of the mediator, be adjourned from time to time.
- (4) The mediator or a party may terminate a mediation at any time.

- (5) A settlement to which a party agrees in a mediation is binding on the party provided that it is not inconsistent with this Act.
- (6) The settlement must be put into writing and signed by or for the parties.
Note. Section 158 provides that the Tribunal can make orders to give effect to any agreement or arrangement arising out of mediation.

152 Representation of parties in mediation

A party to a mediation may be represented by a person who is not an Australian legal practitioner in the mediation if:

- (a) the party is a corporation and the representative is an officer or employee of the corporation, or
- (b) all parties to the proceedings agree to the representation and the mediator is satisfied that it will not unfairly disadvantage an unrepresented party, or
- (c) the mediator is satisfied that the party is unable to present the party's case properly without assistance.

153 Restriction on evidence of things said or done during mediation

Evidence of anything said or done in the course of mediation is inadmissible in proceedings before any court or body (including the Tribunal) except by consent of all parties to the proceedings.

154 Confidentiality of mediation

The Commissioner, a mediator or any other person may disclose information obtained during or in connection with mediation in any one or more of the following circumstances only:

- (a) with the consent of the person to whom the information relates,
- (b) in connection with the mediation,
- (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 Commissioner or the mediator refers a party to another person or body for advice or assistance and the disclosure is reasonably required for the purpose and is made with the consent of the parties,
- (e) in accordance with a requirement imposed by or under a law of the State or the Commonwealth.

155 Exoneration from liability for mediators

No matter or thing done or omitted to be done by a mediator subjects the mediator personally to any action, liability, claim or demand if the matter or thing was done in good faith.

Division 3 Powers of Tribunal

156 Applications to Tribunal relating to disputes

- (1) A home owner, former home owner or operator of a community may apply to the Tribunal for determination of any of the following:
 - (a) a dispute relating to a right or obligation under this Act,
 - (b) a dispute arising from, or relating to, a site agreement or collateral agreement,
 - (c) any other matter that may be determined by the Tribunal under this Act.

- (2) An application to the Tribunal must be made within the period (if any) specified in this Act or prescribed by the regulations.

157 Orders that may be made by Tribunal

- (1) The Tribunal may, on application by a party to a dispute or other matter before the Tribunal, or in any proceedings under this Act, make one or more of the following orders:
- (a) an order that restrains an action in breach of this Act or a site agreement or collateral agreement,
 - (b) an order that requires a person to comply with an obligation under this Act or a site agreement or collateral agreement,
 - (c) an order that relieves a party to a site agreement or collateral agreement from the obligation to comply with a provision of the agreement,
 - (d) an order for the payment of an amount of money,
 - (e) an order for the payment of compensation,
 - (f) an order that a party to a site agreement perform such work or take such other steps as the order specifies to remedy a breach of the agreement,
 - (g) an order that requires payment of part or all of the site fees payable under a site agreement to the Tribunal until the whole or part of the agreement has been performed or any application for compensation has been determined,
 - (h) an order that requires site fees paid to the Tribunal to be paid towards the cost of remedying a breach of the site agreement or towards the amount of any compensation,
 - (i) an order directing an operator to give a former home owner or person authorised by a former home owner access to a residential site or home on the site for the purpose of recovering goods of the former home owner,
 - (j) an order for anything else necessary or desirable to resolve a dispute.
- (2) An order under subsection (1) (a) or (b) 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.
- (3) The Tribunal must not make an order for:
- (a) the payment of an amount that exceeds the amount (if any) prescribed by the regulations for the purposes of this section, or
 - (b) the performance of work or the taking of steps the cost of which is likely to or will exceed the amount (if any) prescribed by the regulations for the purposes of this section.
- (4) An order for the payment of compensation to a party is not to be made for loss or damage to the extent the loss or damage could have been avoided or limited by taking reasonable steps to mitigate the loss or damage.
- (5) A provision of this Act that enables a resident to apply for a determination by the Tribunal and the Tribunal to determine a matter or make an order also applies, where appropriate, to a former resident.
- (6) The Tribunal does not have jurisdiction to award compensation for damages arising from personal injury.

- (7) Except as provided by subsection (6), nothing in this section limits the orders that the Tribunal may make under this Act.

Note. This Act also confers other order-making powers on the Tribunal, including other specific powers to make termination orders and to declare that a residential site has been abandoned.

158 Tribunal may make orders following mediation

The Tribunal may, on application by a party to mediation, make orders that it is empowered to make under this Act or any other Act to give effect to any agreement or arrangement arising out of mediation under Division 2.

Division 4 Powers of Commissioner in proceedings

159 Commissioner may represent persons

In any proceedings before the Tribunal under this Act, a person may, despite any other law, be represented by the Commissioner or by an Australian legal practitioner or agent for the Commissioner.

160 Commissioner may take or defend proceedings

- (1) If a person, not being a corporation, has made a complaint to the Commissioner and the Commissioner:
- (a) after investigating the complaint, is satisfied that the person may have a right to take or defend proceedings before the Tribunal, and
 - (b) is of the opinion that it is in the public interest that the Commissioner should take or defend those proceedings on behalf of the person,
- the Commissioner may, with the consent of the person, take or defend those proceedings on behalf of and in the name of the person.
- (2) If the Minister so directs and the person consents, the Commissioner must take or defend proceedings before the Tribunal on behalf of a person.

161 Conduct of proceedings by Commissioner

If the Commissioner takes or defends proceedings before the Tribunal on behalf of a person:

- (a) the Commissioner:
 - (i) is to have the conduct of those proceedings on behalf of the person, and
 - (ii) may appear personally or by an Australian legal practitioner or agent, and
 - (iii) may do all things that are necessary or expedient to give effect to an order or a decision of the Tribunal, and
- (b) the Commissioner is liable to pay the costs (if any) of the person, and
- (c) the person is liable to pay any other amount that the Tribunal orders the person to pay.

162 Intervention by Commissioner

- (1) Without limiting any other provision of this Division, the Commissioner may, if of the opinion that it would be in the public interest to do so, or, at the direction of the Minister must, intervene, and has a right to be heard personally or by an Australian legal practitioner or agent, in any proceedings arising under this Act or the regulations before the Tribunal.

- (2) The Commissioner, on intervening in any proceedings, becomes a party to the proceedings and has all the rights of such a party.

Part 13 Administration and enforcement

Division 1 Commissioner

163 Functions of Commissioner

- (1) The Commissioner has the following functions under this Act:
 - (a) to investigate and carry out research into matters relating to or affecting residential communities,
 - (b) to investigate suspected contraventions of this Act or the regulations and to take appropriate action to enforce this Act or the regulations,
 - (c) to investigate and report on any matters, or make inquiries into any matters, referred to the Commissioner by the Minister in connection with this Act or the regulations,
 - (d) to provide information to the public about this Act and services provided under this Act by NSW Fair Trading, the Tribunal and other persons and the mediation services provided under this Act for the mediation of disputes,
 - (e) any other function conferred or imposed by or under this Act on the Commissioner.
- (2) The Commissioner may delegate to a person any of the Commissioner's functions under this Act, other than this power of delegation.

Division 2 Administrators, receivers and managers

164 Application for order appointing administrator

- (1) The Supreme Court may, on application by the Commissioner in accordance with the rules of the Court, make an order appointing a specified person as an administrator of a community:
 - (a) to exercise all the functions of the operator of the community, or
 - (b) to exercise specified functions of the operator, or
 - (c) to exercise all the functions other than specified functions of the operator.
- (2) The Commissioner may apply for an order under this section only if the Commissioner is of the opinion that:
 - (a) the well-being or financial security of the residents of the community has been, or is likely to be, seriously affected by the continued operation of the community by the operator, or
 - (b) the operator of the community is wilfully and repeatedly acting in contravention of an order made by the Tribunal or a court in relation to the community or a direction given as disciplinary action by the Commissioner.
- (3) For the purpose of determining whether an application for an order under this section should be made, the Commissioner may appoint a person to inquire into, and report to the Commissioner on, the well-being and financial security of the residents of a community.
- (4) The Commissioner is not to apply for an order appointing a person as an administrator under this Division unless the person has consented in writing to the appointment.
- (5) More than one order may be made under this Division in respect of the same community.

165 Terms and conditions of appointment

Without limiting the terms and conditions of the order of appointment of an administrator under this Division, the terms and conditions may exempt the administrator from the requirement to comply with such obligations of the owner or operator of the community as are specified or described in the order.

166 Effect of appointment

- (1) The owner or operator of a community must not, while an order under this Division is in force in respect of the community, exercise any of the functions of the owner or operator that the administrator is authorised to exercise.
- (2) Subject to the terms of the appointment, a person appointed as an administrator of a community must comply with all the obligations of the operator in relation to the functions that the person is authorised to exercise and is, in the exercise of those functions, taken to be the operator.

167 Expenses of administration

- (1) The expenses incurred by an administrator appointed under this Division in exercising the functions of the operator of a community are payable from site fees and other money that would be available to the operator for such expenses if the administrator had not been appointed.
- (2) Neither the Crown, the Minister nor the Commissioner is liable for:
 - (a) any expenses incurred by an administrator appointed under this Division to exercise the functions of the operator of a community, or
 - (b) any liability of an operator of a community in respect of which an administrator is appointed.

168 Revocation of appointment

An order made under this Division may be revoked or varied by the Supreme Court (whether or not on the application of the Commissioner) and, unless sooner revoked, ceases to have effect at the end of the period specified in the order.

169 Receivers and managers

- (1) If a receiver, or a receiver and manager, is appointed in respect of a community, the person so appointed must (subject to the terms of the appointment) comply with the operator's obligations under this Act as if the person were the operator.
- (2) This section does not apply to the extent that it is inconsistent with the *Corporations Act 2001* of the Commonwealth.

170 No personal liability of administrators, receivers or managers

A matter or thing done or omitted to be done:

- (a) by an administrator, a receiver or a receiver and manager, or
- (b) by any person acting under the direction of the administrator, receiver or receiver and manager,

does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject the administrator, receiver, receiver and manager or person so acting personally to any action, liability, claim or demand.

Division 3 Complaints and disciplinary action

171 Complaints and action under this Division

- (1) Any person may make a complaint to the Commissioner setting out matters that are alleged to constitute grounds for taking disciplinary action against a person under this Division.
- (2) Action can be taken under this Division whether or not a complaint has been made.
- (3) The Commissioner may conduct inquiries and make investigations in relation to either or both of the following:
 - (a) the subject matter of a complaint,
 - (b) the submissions (if any) made by or on behalf of the person to whom a show cause notice under this Division relates.
- (4) The Commissioner may decide to take no further action in relation to the subject matter of a complaint at any stage.

172 Grounds for disciplinary action

Disciplinary action under this Division can be taken against a person who is or was an operator of a community on any one or more of the following grounds:

- (a) the person has contravened a provision of this Act or the regulations, whether or not the person has been prosecuted or convicted of an offence in respect of the contravention,
- (b) the person has breached any of rules of conduct in Schedule 1 or prescribed by the regulations,
- (c) the person has breached an undertaking given by the person to the Commissioner under this Division,
- (d) the person has failed to comply with a direction given to the person by the Commissioner under this Division within the period specified in the direction,
- (e) the person has failed to pay a monetary penalty payable under a penalty notice under Division 4 within the required period,
- (f) any other grounds specified in the regulations as grounds for the taking of disciplinary action against a person under this Division.

173 Show cause notice

- (1) The Commissioner may serve a show cause notice on a person if the Commissioner is of the opinion that there is reasonable cause to believe that there are grounds for taking disciplinary action against the person.
- (2) A show cause notice is a notice requiring a person to show cause why disciplinary action should not be taken against the person under this Division on the grounds specified in the notice.
- (3) A show cause notice is to be in writing and is to specify a period of not less than 14 days after service of the notice as the period that the person to whom the notice is directed has to show cause as required by the notice.
- (4) The person on whom a show cause notice is served may, within the period allowed by the notice, make oral or written submissions to the Commissioner in respect of the matters to which the notice relates. In the case of a corporation, submissions may be made by a director or officer of the corporation.

174 Disciplinary action

- (1) If the Commissioner is satisfied that there are grounds for taking disciplinary action under this Division, the Commissioner may, by order in writing served on the person, take such disciplinary action against the person as the Commissioner thinks is warranted.
- (2) Each of the following actions is disciplinary action that the Commissioner can take against a person:
 - (a) caution or reprimand the person,
 - (b) give a direction to the person for one or more of the following:
 - (i) requiring the person:
 - (A) to undertake specified training within the period specified in the direction, or
 - (B) to arrange for another person engaged in the day-to-day management of a particular community to undertake specified training of that kind,
 - (ii) requiring the person to give a written explanation, correction or apology to one or more other persons,
 - (iii) requiring the person to vary a notice or document in a specified way,
 - (iv) requiring the person to give a specified undertaking to the Commissioner:
 - (A) as to the manner in which the person carries on activities as an operator of a particular community during a specified period (including, for example, that the community rules must not be varied in a particular way or at all), or
 - (B) to make arrangements as to the manner in which another person engaged in the day-to-day management of a particular community carries on activities in that management,
 - (v) prohibiting the person from carrying on all or specified activities in the management of a particular community during a specified period and requiring the appointment of another person as operator during that period,
 - (vi) prohibiting the person from carrying on all or specified activities in the management of all or particular communities during a specified period.
- (3) The order must include a statement of the reasons for the Commissioner's decision on the matter.

175 Review of disciplinary action by ADT

A person against whom disciplinary action is taken by the Commissioner may apply to the Administrative Decisions Tribunal under the *Administrative Decisions Tribunal Act 1997* for a review of the Commissioner's decision on the disciplinary action or on a review of the disciplinary action.

Division 4 Offences and associated matters

176 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily by the Local Court.
- (2) Proceedings for an offence against this Act or the regulations may be commenced within the period of 3 years that next succeeds the commission of the offence.

- (3) Proceedings for an offence against this Act or the regulations may also be commenced within 3 years after the date on which evidence of the alleged offence first came to the attention of any relevant investigator.
- (4) If subsection (3) is relied on for the purpose of commencing proceedings for an offence, the court attendance notice or application must contain particulars of the date on which evidence of the offence first came to the attention of any relevant investigator. The date on which evidence first came to the attention of any relevant investigator is the date specified in the court attendance notice or application, unless the contrary is established.
- (5) A contravention of a provision of this Act or the regulations for the breach of which a penalty is not specified does not give rise to an offence.
- (6) In this section:
evidence of an offence means evidence of any act or omission constituting the offence.

177 Penalty notices

- (1) An investigator may serve a penalty notice on a person if:
 - (a) it appears to the investigator 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 under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) The amount of penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) 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.

178 Accessories to the commission of offences

- (1) For the purposes of this section, a *principal offence* is an offence against this Act or the regulations that is capable of being committed by an individual or corporation.
- (2) An individual commits an offence against this section if:
 - (a) another person (the *principal offender*) commits a principal offence, and
 - (b) the individual:
 - (i) aids, abets, counsels or procures the commission of the principal offence, or
 - (ii) induces, whether by threats, promises or otherwise, the commission of the principal offence, or
 - (iii) conspires with others to effect the commission of the principal offence, or
 - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the principal offence, and
 - (c) if the principal offender is a corporation—the individual is:
 - (i) a director of the corporation, or
 - (ii) involved in the management of the corporation and is in a position to influence the conduct of the corporation in relation to the commission of the principal offence.

Maximum penalty: The maximum penalty for the principal offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the principal offence.
- (5) This section does not affect the liability of the principal offender for the principal offence and applies whether or not the principal offender is prosecuted for, or convicted of, the principal offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of a corporation) who are concerned in, or party to, the commission of the principal offence.

Division 5 Powers of investigators

179 Powers of entry and other powers

- (1) An investigator may exercise the powers conferred by this section for the purposes of:
 - (a) investigating whether the provisions of this Act or the regulations are being complied with, or
 - (b) obtaining evidence, documents or information in relation to a matter that constitutes or may constitute a contravention of this Act or the regulations.
- (2) An investigator may enter any premises (including an office or other place for administering or managing a community) at any reasonable time and may inspect and do any one or more of the following:
 - (a) require any person on those premises to produce any documents in the possession or under the control of the person in written form and inspect those documents,

- (b) take copies of or extracts from, or make notes from, any such documents and, for that purpose, take temporary possession of any such documents,
 - (c) take such photographs, films and audio, video and other recordings as the investigator considers necessary,
 - (d) require any person on those premises to answer questions or otherwise furnish information in relation to a contravention of this Act or the regulations,
 - (e) require the owner or occupier of those premises to provide the investigator with such assistance and facilities as are reasonably necessary to enable the investigator to exercise the functions of an investigator under this Division.
- (3) An investigator is not entitled to enter a part of premises used for residential purposes except:
- (a) with the consent of the occupier, or
 - (b) under the authority of a search warrant.
- (4) An investigator may not exercise a function under this Division unless the investigator produces identification, in the approved form, to the person apparently in charge of those premises or apparently in charge of any work being performed on those premises.

180 Power to obtain information and other matters

If an investigator 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 under this Act or the regulations, the investigator may, by written notice given to the person, require the person:

- (a) to provide an investigator with any such information in writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation) and given to the investigator within the time and in the manner specified in the notice, 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.

181 Obstruction of investigator

- (1) A person must not:
- (a) without reasonable excuse, refuse or fail to comply with any notice given or requirement made, or to answer any question asked, by an investigator under this Division, or
 - (b) provide information or give evidence in purported compliance with a requirement made or question asked by an investigator under this Division knowing the information or evidence to be false or misleading in a material particular, or
 - (c) wilfully delay, hinder or obstruct an investigator in the exercise of the investigator's functions under this Division.

Maximum penalty: 20 penalty units.

- (2) Despite any other provision of this Division, an individual is excused from answering any question, providing any information, giving evidence or producing or permitting the inspection of a document in accordance with this Division on the ground that the answer, information, evidence or document may tend to incriminate the individual.

182 Taking possession of documents to be used as evidence

- (1) If an investigator takes possession of any documents under this Division for the purpose of obtaining evidence or protecting evidence from destruction, they may be retained by the investigator until the completion of proceedings (including proceedings on appeal) in which they may be evidence.
- (2) The person from whom the documents are taken must be provided, within a reasonable time after the documents are taken, with a copy of the documents certified by an investigator as a true copy.

183 Search warrants

- (1) An investigating officer may apply to an issuing officer for the issue of a search warrant for premises if the investigator believes on reasonable grounds:
 - (a) that a provision of this Act or the regulations is being or has been contravened on the premises or in the community to which the premises are related, or
 - (b) that there is on the premises evidence of a contravention of this Act or the regulations.
- (2) An issuing officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an investigator named in the warrant, when accompanied by a police officer, and any other person named in the warrant:
 - (a) to enter the premises concerned, and
 - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:
issuing officer means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Part 14 Miscellaneous

184 Service of notices and documents

- (1) A notice or document required or authorised to be given to a person under this Act may be:
 - (a) sent by post addressed to the person, or an agent of the person, at the last known address of the person or agent, or
 - (b) given personally:
 - (i) to the person, or
 - (ii) to an agent of the person, or
 - (c) if the person is a resident—given by delivering it to the residential site and leaving it there with a person apparently of or above the age of 16 years, or
 - (d) if the person is an operator—given personally to an employee of the person, or
 - (e) if the person has agreed to notices or documents being given by email—to an email address provided by the person, or
 - (f) left in a mailbox at the last known address of the person, or
 - (g) given in such other manner as may be prescribed by the regulations for the purposes of this section or approved by the Tribunal.
- (2) Service under:
 - (a) subsection (1) (a) is taken to be effected as provided for by section 76 of the *Interpretation Act 1987*, and
 - (b) subsection (1) (b), (c) or (d) is taken to be effected on the day the notice or document is given, and
 - (c) subsection (1) (e) is taken to be effected on the day the notice or document is sent by email, and
 - (d) subsection (1) (f) is taken to be effected on the day the notice or document is left in the mailbox, and
 - (e) subsection (1) (g) is taken to be effected on the day provided for by the regulations or the Tribunal.
- (3) However, a notice or document is not validly given to a person unless it is sent by post addressed to the person at a particular address if:
 - (a) the person is a resident, and
 - (b) the notice or document is to be given by an operator, and
 - (c) the person has requested an operator to send notices or documents to the person by post to that address and cancellation of the request has not been communicated in writing to the operator.
- (4) If 2 or more persons are the operators of the same community or are home owners of the same residential site, a notice or other document is duly given if given to any one of them.

185 Regulations

- (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.
- (2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

186 Repeals

Each of the following is repealed:

- (a) the *Residential Parks Act 1998* No 142,
- (b) the *Residential Parks Regulation 2006*.

187 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 commencement of 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.

Schedule 1 Rules of conduct for operators

(Section 54)

1 Knowledge of Acts and regulations

An operator must have a knowledge and understanding of:

- (a) the legislation, which in these rules refers to:
 - (i) the *Residential (Land Lease) Communities Act 2013* and regulations under the Act, each as in force from time to time, and
 - (ii) the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* (or its replacement), as in force from time to time, and
- (b) such other laws relevant to the management of a community (including, laws relating to residential tenancy, fair trading, trade practices, anti-discrimination and privacy) as may be necessary to enable the operator to exercise his or her functions as operator lawfully.

2 Honesty, fairness and professionalism

- (1) An operator must act honestly, fairly and professionally with all parties in a negotiation or transaction carried out as operator.
- (2) An operator must not mislead or deceive any parties in negotiations or a transaction carried out as operator.

3 Skill, care and diligence

An operator must exercise reasonable skill, care and diligence.

4 High pressure tactics, harassment or unconscionable conduct

An operator must not engage in high pressure tactics, harassment or harsh or unconscionable conduct.

5 Confidentiality

An operator must not, at any time, use or disclose any confidential information obtained while acting on behalf of a resident (which in this rule includes a prospective resident or former resident) or dealing with a resident, unless:

- (a) the resident authorises disclosure, or
- (b) the operator is permitted or compelled by law to disclose.

6 Ensuring employees comply with the legislation

An operator must take reasonable steps to ensure persons employed in the operation of a residential community comply with the legislation.

7 Selling homes

An operator, when acting as a selling agent for more than one home in a community, must act fairly and advise prospective home owners of the details of all available homes in the community.

8 Soliciting through false or misleading advertisements or communications

An operator must not solicit prospective residents through advertisements or other communications that the operator knows or should know are false or misleading.

9 Insertion of material particulars in documents

An operator must not submit or tender to any person for signature a document, or cause or permit any document to be submitted or tendered to any person for signature, unless at the time of submission or tendering of the document all material particulars have been inserted in the document.

10 Representations about the legislation

- (1) An operator must not falsely represent to a person the nature or effect of a provision of the legislation.
- (2) An operator must not, either expressly or impliedly, falsely represent, whether in writing or otherwise, to a person that a particular form of agreement or any term of such an agreement is required by the legislation.

Schedule 2 Savings and transitional provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act amending 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 on the NSW legislation website, 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 Provisions consequent on enactment of this Act

2 Definition

In this Part:

repealed Act means the *Residential Parks Act 1998*.

3 General savings

Subject to this Act, each person, thing and circumstance appointed or created under the repealed Act or existing or continuing under that Act immediately before the commencement of the relevant provisions of this Act continues to have the same status, operation and effect as it would have had if this Act had not been enacted.

4 Existing registrations

- (1) If current registrable information about a residential park was included in the register of residential parks under the repealed Act and operative immediately before the commencement of the relevant provisions of this Act, the park is taken to be registered as a community under this Act.
- (2) However, the Commissioner may require appropriate persons to provide particulars for inclusion in the Register of Communities under this Act.

5 Existing agreements

- (1) Agreements entered into under the repealed Act that have not been terminated remain valid after the commencement of the relevant provisions of this Act.

Note. Accordingly, an existing agreement continues without the need to sign a new agreement once this Act commences.
- (2) Without limiting subclause (1), a term of an agreement entered into under the repealed Act that provides for the increase of site fees by a fixed method (however expressed) remains in force after the commencement of the relevant provisions of this Act.

- (3) A residential site agreement, moveable dwelling agreement or NPWS agreement (other than an excluded agreement) in force immediately before the repeal of the repealed Act is taken, on that repeal, to be a site agreement between the resident (as or on behalf of the home owner) and the park owner (as operator of the community in which the home is located).
- (4) An excluded agreement in force immediately before the repeal of the repealed Act is taken, on that repeal, to be a tenancy agreement.
- (5) This clause does not validate a term of an agreement entered into under the repealed Act that was void under that Act.
- (6) In this clause:
excluded agreement means a moveable dwelling agreement or NPWS agreement under which a resident occupies a home that is owned by the park owner.
moveable dwelling agreement means an agreement of a kind referred to in clause 5 (1) (c) or (d) of the *Residential Parks Regulation 2006* as in force immediately before its repeal by this Act.
NPWS agreement means an agreement of a kind referred to in clause 5 (1) (e) of the *Residential Parks Regulation 2006* as in force immediately before its repeal by this Act.

6 Pending Tribunal or court proceedings

Any proceedings before the Tribunal or a court that were commenced before the commencement of the relevant provisions of this Act but have not been determined before that commencement are to be determined in accordance with the repealed Act.

7 Existing Tribunal or court orders

Any order of a Tribunal or court made under or for the purposes of the repealed Act and operative immediately before the repeal of the relevant provisions of that Act continues in force despite that repeal.

8 Termination notices

Any termination notice issued under the repealed Act and operative immediately before the repeal of the relevant provisions of that Act is taken to have been issued under this Act, unless proceedings referred to in clause 6 arising from the issue of the notice are to be determined in accordance with the repealed Act as provided in that clause.

9 Proposed rent increases

- (1) A valid notice issued under the repealed Act in relation to a rent increase operates in the same way as a corresponding notice issued for a site fee increase under this Act, even if the increase had not taken effect at the commencement of the relevant provisions of this Act.
- (2) Any dispute about an increase to which such a notice was issued and for which an application was not pending at that commencement is to be dealt with in accordance with this Act.
- (3) The provisions of Part 6 of this Act that provide that site fees must not be increased more than once in any 12-month period apply in relation to site agreements operative at that commencement.

10 Compensation for closure

If notice for closure or change of use under the repealed Act has been given and compensation to any residents affected has not yet been paid at the commencement of the relevant provisions of this Act, this Act applies in relation to the compensation.

11 Goods left behind

Any goods left behind by a former resident under the repealed Act that have not already been sold or otherwise dealt with at the commencement of the relevant provisions of this Act are to be dealt with in accordance with this Act.

12 Administrators

Any administrators appointed under the repealed Act are taken to be administrators under this Act.

13 Enforcement action

Any enforcement action for offences under the repealed Act, including penalty notices issued, is not affected by the repeal of that Act.

14 Delegations

Any delegations made by the Director-General of the Department of Finance and Services under the repealed Act and in force immediately before the commencement of the relevant provisions of this Act are taken to be delegations made by the Commissioner under this Act.

15 Fees and charges

- (1) Any fees and charges which were validly paid or received under the repealed Act are not affected by this Act.
- (2) Any new fee or charge permitted by this Act does not apply to any agreement entered into before the commencement of the relevant provisions of this Act.
- (3) Fees for late payment of utility charges are not payable for utilities unpaid at the commencement of the relevant provisions of this Act.

16 Sale of homes

- (1) This Act does not affect any contract for the sale of a home that was entered into before the commencement of the relevant provisions of this Act.
- (2) This Act does not affect the appointment of a person made before the commencement of the relevant provisions of this Act for the sale of a home.
- (3) This Act does not require a home owner to inform the operator of the community of the intention to sell the home if the home is being advertised for sale at the commencement of the relevant provisions of this Act.

17 Disclosure to prospective residents

The disclosure statement and approved information referred to in Part 4 of this Act is required to be given to a person who is a prospective home owner at the commencement of the relevant provisions of this Act, even if the person had received information under the repealed Act.

18 Existing committees

- (1) Any residents committee established under the repealed Act and in existence at the commencement of the relevant provisions of this Act is taken to be a residents committee under this Act.

- (2) Any Park Liaison Committee established under the repealed Act and in existence at the commencement of the relevant provisions of this Act is taken to be a residents committee under this Act, excluding any management representatives, unless the park already has a residents committee. Otherwise, it is dissolved.

19 Community rules

- (1) Park rules made under the repealed Act and operative at the commencement of the relevant provisions of this Act are taken to be community rules under this Act and are to be complied with and enforced accordingly.
- (2) Any notice given under the repealed Act and operative at the commencement of the relevant provisions of this Act to amend park rules is taken to have been given under this Act.
- (3) Park rules that formed part of agreements under the repealed Act are, after the commencement of the relevant provisions of this Act, taken to no longer be terms of those agreements.

20 Notices

Notices validly served under the repealed Act before the commencement of the relevant provisions of this Act are taken to have been validly served under this Act.

Schedule 3 Amendment of legislation

3.1 Boarding Houses Act 2012 No 74

Section 5 Meaning of “registrable boarding house”

Omit section 5 (3) (m). Insert instead:

- (m) premises that are the subject of a site agreement to which the *Residential (Land Lease) Communities Act 2013* applies,

3.2 Consumer, Trader and Tenancy Tribunal Act 2001 No 82

[1] Section 5 Establishment of Consumer, Trader and Tenancy Tribunal

Omit “*Residential Parks Act 1998*” from the note to section 5 (2).

Insert instead “*Residential (Land Lease) Communities Act 2013*”.

[2] Schedule 1 Divisions of the Tribunal

Omit clause 1 (e). Insert instead:

- (e) the *Residential Communities Division*, in which the Tribunal’s jurisdiction is to be exercised in respect of any matter arising under the *Residential (Land Lease) Communities Act 2013*,

3.3 Consumer, Trader and Tenancy Tribunal Regulation 2009

[1] Clause 12 Persons authorised to sign applications

Omit clause 12 (4) and (5). Insert instead:

- (4) An application made under the *Residential (Land Lease) Communities Act 2013* by a resident may be completed, signed, dated and lodged by:
 - (a) the resident’s agent appointed under section 46 of that Act, or
 - (b) a person authorised in writing by the resident to do so.
- (5) An application made under the *Residential (Land Lease) Communities Act 2013* by the operator of a residential community may be completed, signed, dated and lodged by a person authorised in writing by the operator to do so.

[2] Clause 14 Circumstances in which application may be made

Omit clause 14 (1). Insert instead:

- (1) if the party is the operator of a residential community and is to be represented by:
 - (i) an employee or agent (other than an Australian legal practitioner) of the operator, or
 - (ii) a representative (other than an Australian legal practitioner) of an industry association relevant for owners and operators of residential communities,
- (1a) if the party is a resident, all residents or a group of residents of a residential community and who is to be represented by a representative (other than an Australian legal practitioner) of:
 - (i) a resident association for residents of residential communities, or
 - (ii) a resident of the community nominated by the party, or
 - (iii) the residents committee of the community,

[3] Clauses 25 (2), 26 and Schedule 2

Omit “Residential Parks Division” wherever occurring.

Insert instead “Residential Communities Division”.

3.4 Crown Lands Act 1989 No 6

Section 102A Minister’s consent not required for certain leases, licences or easements

Omit “*Residential Parks Act 1998*” from section 102A (11).

Insert instead “*Residential (Land Lease) Communities Act 2013*”.

3.5 Fair Trading Act 1987 No 68

Section 4 Definitions

Omit paragraph (e) of the definition of *services* in section 4 (1). Insert instead:

- (e) a site agreement (within the meaning of the *Residential (Land Lease) Communities Act 2013*), or

3.6 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Omit “*Residential Parks Act 1998*, section 149”.

Insert instead “*Residential (Land Lease) Communities Act 2013*, section 177”.

3.7 Holiday Parks (Long-term Casual Occupation) Act 2002 No 88

[1] Section 3 Definitions

Omit the definition of *park rules for casual occupants* from section 3 (1).

[2] Section 7

Omit the section. Insert instead:

7 Certain other Acts have no or limited application

- (1) Neither the *Residential Tenancies Act 2010* nor the *Residential (Land Lease) Communities Act 2013* applies to an agreement to which this Act applies.
- (2) However, Part 8 of the *Residential (Land Lease) Communities Act 2013* applies to sites occupied under occupation agreements to which this Act applies and the occupants of those sites.

[3] Section 45 Park owner may employ or appoint park manager

Omit section 45 (5).

3.8 Landlord and Tenant Act 1899 No 18

Section 1B

Omit the section. Insert instead:

1B Exclusion of certain agreements and land from operation of Act

This Act does not apply to:

- (a) a residential tenancy agreement, or land that is subject to a residential tenancy agreement, to which the *Residential Tenancies Act 2010* applies, or
- (b) a site agreement, or a residential site, to which the *Residential (Land Lease) Communities Act 2013* applies.

3.9 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Act

Insert in appropriate order:

Residential (Land Lease) Communities Act 2013, section 183

3.10 Personal Property Securities (Commonwealth Powers) Act 2009 No 35

Schedule 1 Savings, transitional and other provisions consequent on enactment of Personal Property Securities Act 2009 of the Commonwealth

Omit clause 23A (2) (i). Insert instead:

- (i) Division 7 of Part 11 of the *Residential (Land Lease) Communities Act 2013*,

3.11 Property, Stock and Business Agents Act 2002 No 66

[1] Section 171 Meaning of “failure to account”

Insert after section 171 (4):

- (5) For the purposes of this Division, a licensee’s business includes acting as a selling agent for a home in a residential community under the *Residential (Land Lease) Communities Act 2013*.

[2] Section 190 Application of money for purposes of certain Acts

Omit “*Residential Parks Act 1998*” from section 190 (1) (a).

Insert instead “*Residential (Land Lease) Communities Act 2013*”.

[3] Section 190 (1) (b)

Omit “Residential Parks”. Insert instead “Residential Communities”.

3.12 Residential Tenancies Act 2010 No 42

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

premises includes a moveable dwelling within the meaning of the *Local Government Act 1993*.

[2] Section 8 Agreements to which Act does not apply

Insert after section 8 (1) (b):

- (ba) site agreements within the meaning of the *Residential (Land Lease) Communities Act 2013*,

[3] Section 8 (2)

Omit the subsection.

[4] Section 8A

Insert after section 8:

8A Application of Act to premises

This Act applies to any agreement to rent premises anywhere, including in a caravan park regulated under the *Local Government Act 1993* or a community within the meaning of the *Residential (Land Lease) Communities Act 2013*.

[5] Section 9 Employee and caretaker arrangements

Insert after section 9 (2):

- (3) However, this section does not apply to a person employed as a manager or another full-time employee in a community within the meaning of the *Residential (Land Lease) Communities Act 2013*.

[6] Section 157 Definitions

Omit the definitions of *landlord* and *tenant*. Insert instead:

landlord includes a former landlord.

tenant includes a former tenant.

[7] Section 157

Omit the definitions of *residential premises* and *residential tenancy agreement*.

[8] Section 189 Application of provisions relating to Tribunal

Omit section 189 (2).

[9] Section 209 Definitions

Omit the definitions of *residential premises*, *residential tenancy agreement* and *tenant*.

3.13 Residential Tenancies Regulation 2010

Clause 18 Trial residential park agreements

Omit the clause.

3.14 Retirement Villages Act 1999 No 81

Section 5 Meaning of “retirement village”

Omit section 5 (3) (d). Insert instead:

- (d) a community within the meaning of the *Residential (Land Lease) Communities Act 2013*,

3.15 Sheriff Act 2005 No 6

Section 7A Powers of Sheriff when executing writs and warrants for possession of land

Omit “*Residential Parks Act 1998*” wherever occurring in section 7A (4) and (5).

Insert instead “*Residential (Land Lease) Communities Act 2013*”.

3.16 Uncollected Goods Regulation 2011

Clause 4 Act not available as an alternative to certain Acts

Omit “*Residential Parks Act 1998*”.

Insert instead “*Residential (Land Lease) Communities Act 2013*”.

3.17 Water Industry Competition (General) Regulation 2008

Schedule 3 Water industry infrastructure exempt from licensing requirement

Omit item 10 (b) (i) (E). Insert instead:

- (E) if the customer is the operator of a community within the meaning of the *Residential (Land Lease) Communities Act 2013*, a home owner in the community,

[Second reading speech made in—

Legislative Assembly on 18 September 2013

Legislative Council on 12 November 2013]