

FAIR TRADING ACT 1987—REGULATION

(Caravan and Relocatable Home Park Industry Code of Practice
Regulation 1992)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council,
and in pursuance of the Fair Trading Act 1987, has been pleased to make
the Regulation set forth hereunder.

PETER COLLINS
Minister for Consumer Affairs.

Citation

1. This Regulation may be cited as the Caravan and Relocatable Home
Park Industry Code of Practice Regulation 1992.

Commencement

2. This Regulation commences on 30th March, 1992.

Code of Practice

3. For the purposes of section 75 of the Fair Trading Act 1987, the
Caravan and Relocatable Home Park Industry Code of Practice set out in
Schedule 1 is a prescribed code of practice.

**SCHEDULE 1—CARAVAN AND RELOCATABLE HOME
PARK INDUSTRY CODE OF PRACTICE**

(Cl. 3)

Foreword

After a major review of caravan parks in New South Wales the Local Government (Movable Dwellings) Amendment Act 1986 started on 1 December 1986. This legislation led to the introduction of Local Government Ordinance No. 71 which caused significant changes in caravan living in New South Wales.

The main changes were:

Long term residence on caravan parks was legally permitted.

Standards were established for the construction, maintenance and operation of caravan parks and movable dwellings.

Improved forms of movable dwellings including “relocatable (chassis built) homes” were also recognised.

These new requirements and standards applied to all new parks from 1 December 1986. Existing parks were allowed time to upgrade progressively.

On 30 October 1989 the Residential Tenancies Act 1987 commenced. This Act applies to permanent residents of movable dwellings in caravan parks (as detailed in Regulation 16 of the Residential Tenancies Regulation 1989). This applies the residential landlord and tenant law to permanent residents of caravan/relocatable home parks. Specific regulations on the application of the new law reflected differences in caravan/relocatable home living from general residential living. Still, there were several matters that were not addressed by this legislation about permanent caravan/relocatable home living.

The outstanding issues are dealt with in this mandatory Code of Practice. It particularly takes account of the community aspect of caravan and relocatable home living. This Code is the product of extensive consultation with the public, relevant industry and consumer groups and government bodies.

The Code contains:

- a statement of objectives;
- specific pre-entry disclosure requirements;
- provision for the making of park rules;
- a park dispute resolution process to deal with disputes about park rules.

The Code deals with permanent caravan and relocatable home park living. The Residential Tenancies Act 1987 also will continue to apply to permanent residents of caravan/relocatable homes. A code of practice provides a responsible and flexible package for the regulation of these aspects of the caravan/relocatable home industry. It safeguards rights and gives clear guidelines for the industry. It does not affect the operation of Ordinance No. 71 made under the Local Government Act 1919.

Importantly also, the Code does not apply to tourist or short-stay accommodation or reserved or dedicated Crown Land. Only park sites/premises that are residential premises under the Residential Tenancies Act 1987 and the Residential Tenancies Regulation 1989 are subject to the Code.

Compliance

This is a mandatory code under the Fair Trading Act 1987. It is compulsory and compliance will be monitored by the Tenancy Commissioner. Because it is a mandatory code, it can be enforced under the Fair Trading Act 1987 and through the Commercial Tribunal.

Review

The Code of Practice format has been adopted because of its inherent flexibility. Using the broad framework of the Fair Trading Act 1987, the Code allows the Government to introduce regulation that meets the needs of everyone. As part of this flexible approach, the effectiveness of the Code will be reviewed periodically in consultation with industry and relevant organisations and amendments made when required.

PART 1—APPLICATION, OBJECTIVES AND PRINCIPLES

This Code sets out what is good practice in the operation of caravan/relocatable home parks, particularly as it relates to tenancy arrangements for permanent residents. It must be applied in conjunction with the Residential Tenancies Act 1987 and Ordinance No. 71 made under the Local Government Act 1919.

Application

The provisions of this Code are mandatory. They apply to all, including the Crown, who own or manage or who are permanent residents of caravan/relocatable home parks. The “permanent” residents of a park are those who come under the Residential Tenancies Act 1987 and the Residential Tenancies Regulation 1989.

Objectives of the Code

The objectives of the Code are:

- (a) to clarify the rights and obligations of residents and management of caravan/relocatable home parks and by doing so promote fair trading practices in the industry;
- (b) to ensure disclosure of all important information about becoming a permanent resident of a particular caravan/relocatable home park;
- (c) to require contract documents for caravan/relocatable home park accommodation to contain full details of the obligations and rights of residents and management;
- (d) to establish appropriate mechanisms for the resolution of disputes about changes to park rules under the Code;
- (e) to provide unique security of tenure for owners of caravans with rigid annexes attached and relocatable homes located on sites in caravan/relocatable home parks;
- (f) to encourage the promotion and development of caravan/relocatable home parks according to the Code.

General principles

The general principles guiding those involved in the caravan/relocatable home park industry are as follows:

- (a) the well-being and interests of residents and the rights of management should be given proper recognition;
- (b) everyone involved in park living should have access to clear and meaningful information about their rights and obligations;
- (c) the freedom of decision and action of residents should be restricted as little as possible;
- (d) residents should be treated fairly and protected from abuse and exploitation;
- (e) through the provision of relevant information people can be given the opportunity to make meaningful marketplace choices.

**PART 2—BASIC RIGHTS OF RESIDENTS AND
MANAGEMENT****Residents' privacy**

Residents have a basic right to privacy in personal accommodation that must be respected by management according to the Residential Tenancies

Act 1987. The management has the responsibility of helping the residents' quiet enjoyment of both personal accommodation and communal amenities.

Sound management

Everyone must recognise the basic need for the management of the park to be conducted in a sensible and prudent manner.

PART 3—DISCLOSURE OF INFORMATION

Management's general obligations

The following requirements apply to the agreement for occupation and to all information given to residents by management:

The agreement must be in accordance with the standard form of agreement for landlords and tenants of movable dwellings or movable dwelling sites set out in Schedule 2 to the Residential Tenancies Regulation 1989.

If any additional terms (including park rules) are included in the agreement, they:

- must not conflict with the Residential Tenancies Act 1987, Ordinance No. 71 made under the Local Government Act 1919 or any other law; and
- must not conflict with the standard terms of the prescribed agreement; and
- must be written in clear, concise and plain English avoiding vague or ambiguous statements.

The agreement must not be in breach of any provisions of this Code, the Residential Tenancies Act 1987, Ordinance No. 71 made under the Local Government Act 1919 or the Fair Trading Act 1987 or any other law.

The agreement and other information must fully show in writing all the arrangements that will apply in relation to a resident's occupation of the park. Also, the agreement must show any land use restrictions that apply to the park.

Where a premium for sale on-site of a movable dwelling is payable by a resident the relevant requirements of the Code and the premium, or the basis for its determination, must be clearly set out in the agreement.

Each resident must be given a copy of Schedule A to this Code containing written answers by the park owner to the questions set out in that Schedule.

A park owner must not restrict any person's right to seek independent advice before entering into an agreement.

Residents' general obligations

Residents must inform themselves about the residential tenancy agreement and any other matter relating to their living in the park. Anyone considering permanent living in a caravan/relocatable home park should get independent legal advice before signing any documents.

Sale of the caravan/relocatable home

The residential tenancy agreement between a park owner and an owner of a caravan/relocatable home must contain a term allowing a "for sale" sign to be displayed within the movable dwelling. But, a sign can only be displayed if the park owner is notified of the intention to sell before the sign is placed there. Any restrictions about the size of any "for sale" sign must be set out in the agreement. The agreement must state whether "for sale" signs may be displayed outside the movable dwelling and must indicate any applicable conditions.

Restrictions on sale on-site

If there are any restrictions on the sale of the unit on-site they must be disclosed in the agreement.

Premium for sale on-site

The park owner and the resident may agree that a movable dwelling will remain on-site after the residential tenancy agreement ends. If a premium for sale of the unit on-site is payable by a resident to the park owner, the premium or the basis for its determination must be clearly set out in the agreement. If a premium for sale on-site is payable, the park owner must allow the caravan/relocatable home to remain on-site, subject to the park owner approving the purchaser. Where the park owner does not approve a purchaser keeping the home on the site no premium is payable by the purchaser or the former resident. Where a premium for sale on-site is payable under an agreement a park owner must not charge any commission for acting as a selling agent.

Right of entry and restrictive practices (tradespersons and service providers)

A park owner must not restrict in any way the right of a resident to purchase goods or services from the person of his/her choice.

Tradespersons and service providers may be prohibited from entry to the park:

- if they have unduly disturbed the peace and quiet of the park; or
- if they have failed to observe reasonable rules of conduct established by the park owner; or
- if they have violated the park rules about motor vehicle traffic.

Responsibility for preservation or landscaping of site

This is about the preservation or landscaping of the site and not landscaping of the whole of the park. Any standard of site preservation must be set out in the residential tenancy agreement together with the respective responsibilities of the parties about the site when the agreement ends. A park owner must not charge a fee for site preservation as a condition of residence, but reasonable site landscaping and maintenance requirements may be included in the park rules. A park owner must not require a resident or prospective resident to purchase, rent or lease goods or services for site preservation or landscaping from any person, company or corporation.

Residents' rights to membership of organisations

A park resident has a right to participate in any organisation of park residents. That right must not be restricted by a park owner.

PART 4—PARK RULES

A park owner may make rules relating to the use, enjoyment, control and management of the caravan/relocatable home park. Park rules must be in writing. A park rule must not be inconsistent with this Code, the Residential Tenancies Act 1987, Ordinance No. 71 made under the Local Government Act 1919 or any other law. A park owner must give each resident, before or at the time they enter into the residential tenancy agreement, a copy of any park rules with which residents must comply. Without limiting the generality of the definition of "park rules" a park owner may make park rules relating to any of the following:

- (a) the making and abatement of noise;
- (b) motor vehicle speed limits within the park;
- (c) the parking of motor vehicles;
- (d) the disposal of refuse;
- (e) the keeping of pets;
- (f) the playing of games and other sports activities:

- (g) the use and operation of communal facilities;
- (h) maintenance standards for the caravan/relocatable home as they affect the general amenity of the park;
- (i) reasonable landscaping and maintenance requirements for the site on which the caravan/relocatable home is.

The park rules are to be included as additional terms of the residential tenancy agreement between the park owner and a resident.

Changes to park rules

If a park owner wishes to change park rules (whether by variation, addition or abrogation), notice in writing must be given to each resident specifying the proposed change. Unless the proposed change affects the use of recreational facilities written notice must be given to each resident at least 60 days before the day on which the change is to have effect. Where the proposed change affects the use of recreational facilities at least 7 days written notice must be given to each resident.

Management obligation to enforce rules

The park owner must take all reasonable steps to ensure that the park rules in force for that park are observed by all residents and are enforced and interpreted consistently and fairly.

PART 5—DISPUTE RESOLUTION

Disputes Committee

The park owner must convene a Disputes Committee to hear and mediate disputes about changes to park rules that arise within the park. The Disputes Committee is to be a panel comprising 3 persons:

- a person appointed by the residents; and
- a person representing the park owner; and
- a person agreed to by both the person appointed by the residents and the owner's representative.

Applications to Disputes Committee about changes to park rules

Where a dispute arises about a change to park rules, 5 residents each of whom is from a different site at the park or, where there are fewer than 10 sites at a park, a majority of those residents, may apply to the park's Disputes Committee to have the matter heard. An application to the Disputes Committee must be made within 30 days of notice of the change

to the rules. The Committee may declare the rule to be unconscionable, harsh or oppressive or in contravention of any relevant code of practice. The Committee must advise the parties to the dispute, in writing, of its decision within 30 days of receiving notice of the dispute.

Appeals from Disputes Committee to the Residential Tenancies Tribunal

If 5 residents each from a different site at the park (or if there are fewer than 10 sites at the park, a majority of those residents) or management claim:

- (a) that a change to the park rules is unconscionable, harsh or oppressive, or contravenes a relevant code of practice applying to the caravan/relocatable home park; and
- (b) either:
 - (i) all procedures for settlement of the dispute under any relevant code of practice have been exhausted without resolution of the dispute to the satisfaction of the parties; or
 - (ii) there are no such procedures and the dispute has not been resolved,

the residents, or the park owner or manager, may apply to the Residential Tenancies Tribunal for an order.

The Tribunal may make an order:

- (a) setting aside the park rule; or
- (b) modifying the operation of the rule, either in its application to the resident or to some or all of the residents of the caravan/relocatable home park; or
- (c) upholding the rule.

The Tribunal may not make orders about changes to park rules that are inconsistent with the provisions of any relevant code of practice.

PART 6—TERMINATION OF RESIDENTIAL TENANCY AGREEMENTS FOR RELOCATABLE HOMES AND CARAVANS WITH RIGID ANNEXES ATTACHED

This Code recognises the high cost of moving relocatable homes and caravans with rigid annexes attached, the potential for resulting damage, the requirements for their installation and the cost of landscaping and site preparation. Because of these factors it is necessary that the owners of relocatable homes and caravans with rigid annexes attached occupied within caravan/relocatable home parks be given unique protection.

The Residential Tenancies Act 1987 provides that where a park owner wants to end a residential tenancy agreement for a caravan with a rigid annexe attached or a relocatable home the park owner may do so without specifying any ground for the termination but must give at least 180 days notice of termination.

This requirement does not apply to a residential tenancy agreement that creates a tenancy for a fixed term during the currency of the term.

NOTE: A landlord (park owner) may only give a notice of termination, without any ground, after the fixed term of the agreement has ended. For example, where an agreement is for a fixed term of 5 years a landlord must not give a notice of termination, without any ground, until the 5 year period has ended.

**SCHEDULE A—QUESTIONS TO BE ANSWERED BY
CARAVAN/RELOCATABLE HOME PARK OWNER**

1. What restrictions are there on a resident in the use of his/her unit and the park facilities about:
 - having someone else live in the unit;
 - having visitors, including overnight or short-stay guests;
 - car parking;
 - pets;
 - other?

2. Is there any restriction on the type of movable dwelling allowed at the park?

3. What can the resident put on the site besides the movable dwelling, e.g. carport, garden shed? The answer to this should take into account:
 - (i) what the proprietor will permit; and
 - (ii) what the local council will permit; and
 - (iii) what Ordinance No. 71 made under the Local Government Act 1919 will permit.

4. Can the resident move or be moved from one part of the park to another and, if so, under what circumstances?

5. If the park is sold, what protection does a resident have against a loss of rights?

1992—No. 151

6. Are residents liable for any additional or extraordinary charges and, if so, for what purposes?

7. Are there any restrictions on the resident on the sale of her/his caravan/relocatable home? If a premium is payable for sale on-site, what is the amount of the premium or the basis for its determination?

8. Is the park currently licensed under Ordinance No. 71 made under the Local Government Act 1919 and, if so, are there any restrictions?

9. What facilities are there available for delivery of mail to the park residents?

10. Are there restrictions on the use of common facilities? If so, what hours are the facilities available, who may use the facilities? Are there any other restrictions on the use of these facilities?

SCHEDULE B—DEFINITIONS

In this Code:

“caravan” has the same meaning as “registrable movable dwelling” in the Residential Tenancies Act 1987, i.e. it means a movable dwelling which is, or is capable of being, registered under the Traffic Act 1909;

“caravan/relocatable home park” has the same meaning as “caravan park” in Ordinance No. 71 made under the Local Government Act 1919, i.e. it means a property used (to an extent that, by operation of section 289F of the Local Government Act 1919, a licence is required) for the placement of caravans or of caravans and other movable dwellings;

“park owner” means the person who holds a licence to operate a caravan/relocatable home park and includes the manager appointed to be in attendance at the premises by clause 97 of Ordinance No. 71 made under the Local Government Act 1919;

“park rules” means the rules with which residents of a caravan/relocatable home park are expected by the park owner to comply;

“relocatable home” has the same meaning as in the Residential Tenancies Act 1987, i.e. it means a movable dwelling that is not a registrable movable dwelling or a tent;

“resident” means a person who is a tenant of residential premises which consist of a caravan or a relocatable home or of the site on which a caravan or a relocatable home is situated, in a caravan/relocatable home park under a residential tenancy agreement;

“rigid annexe” has the same meaning as in the Residential Tenancies Act 1987, i.e. it means an attachment to a movable dwelling used as an extension of the habitable area of the dwelling, not being an extension that (apart from any rigid support frame and any door, window or other securable opening constructed of non-flexible material) consists entirely of canvas or other flexible material;

“Tribunal” means the Residential Tenancies Tribunal.

NOTE

TABLE OF PROVISIONS

1. Citation
2. Commencement
3. Code of Practice

SCHEDULE 1—CARAVAN AND RELOCATABLE HOME PARK INDUSTRY CODE OF PRACTICE

EXPLANATORY NOTE

This Regulation prescribes a Code of Practice under the Fair Trading Act 1987 for the caravan/relocatable home park industry. The Code provides agreed standards of practice relating to that industry.

The Code applies to owners and managers of and permanent residents of caravan/relocatable home parks. The Code does not apply to short and long term holiday makers living in such parks. The Code contains:

- a statement of objectives;
- a statement of the basic rights of residents and park management;
- requirements as to the information that must be disclosed by park management to prospective residents of such parks;
- provision for the making of park rules;
- procedures for the resolution of disputes concerning changes to park rules;
- requirements regarding the termination of tenancy agreements involving relocatable homes and caravans with rigid annexes attached.

1992—No. 151

The Code complements the operation of the Residential Tenancies Act 1987 and Ordinance No. 71 made under the Local Government Act 1919. That Act makes provision for the rights and obligations of park management and permanent residents arising under residential tenancy agreements. Ordinance No. 71 establishes standards for the construction, maintenance and operation of caravan parks and movable dwellings.
