



New South Wales

Residential Parks Amendment (Statutory Review) Bill 2005

Explanatory note

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

Overview of Bill

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

- (a) a statement of the objects of the principal Act,
- (b) the content of residential tenancy agreements,
- (c) the effect of unwritten residential tenancy agreements,
- (d) obligations as to advertising to be complied with by park owners,
- (e) disclosure of information to prospective and incoming residents,
- (f) payment of charges for gas, electricity and water,
- (g) the on-site sale of moveable dwellings,
- (h) orders by the Consumer, Trader and Tenancy Tribunal as to excessive rent increases,
- (i) access to residential parks by emergency and home care services,

- (j) termination of residential tenancy agreements because of a proposed change of use of land,
- (k) compensation for termination of residential tenancy agreements and relocation of residents,
- (l) the protection of residents who are absent for long periods while in care,
- (m) Park Liaison Committees and residents committees,
- (n) disputes concerning park rules,
- (o) the status of moveable dwellings in connection with the law as to fixtures,
- (p) the appointment and functions of investigators,
- (q) the appointment and functions of administrators, receivers and managers of residential parks,
- (r) penalties for non-compliance with the principal Act,
- (s) matters of a savings or transitional nature,
- (t) other matters of a minor, consequential or ancillary nature.

Outline of provisions

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

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

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

Schedule 1 Amendments

Objects of the principal Act

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

Content of residential tenancy agreements

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

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

Effect of unwritten residential tenancy agreements

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

Advertising by park owners

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

Disclosure of information to prospective and incoming residents

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

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

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

Schedule 1 [34] amends section 73 so as to require a park owner to provide every prospective resident who intends to enter into a residential tenancy agreement with a copy of the park rules for the residential park and a document that clearly states that a resident's right to occupy residential premises under the agreement is a leasehold right only, and not a freehold right or other right of an unlimited or perpetual nature and that such a right may be terminated in certain circumstances. The resident must

also be provided with any other documents prescribed by the regulations (which might include any publications of the Office of Fair Trading concerning residential park living). This requirement is in addition to the documents referred to in section 73 (2) of the principal Act (as amended by Schedule 1 [33]), which park owners are currently required to be provided to a prospective resident. However, the maximum penalty for failure to disclose the necessary information to prospective residents is increased from 2 penalty units (currently \$220) to 20 penalty units (currently \$2,200).

Schedule 1 [35] inserts a new section 74A. The proposed section makes it an offence for a park owner to give information to a resident or prospective resident knowing that the information is false or misleading in a material particular. The maximum penalty for a contravention of the proposed section is 20 penalty units (currently \$2,200).

Payment of charges for gas, electricity and water

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

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

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

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

On-site sale of moveable dwellings

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

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

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

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

Access to residential parks by emergency and home care services

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

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

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

Schedule 1 [55] amends section 102 so as to provide that a notice of termination in respect of a change of use of a residential site must not specify a date for vacating the residential site earlier than 12 months (rather than the current 180 days) after the day on which the notice is given.

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

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

Compensation for termination of residential tenancy agreements and relocation of residents

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

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

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

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

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

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

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

Park Liaison Committees and residents committees

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

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

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

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

Disputes concerning park rules

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

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

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

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

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

Appointment and functions of investigators

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Penalties for non-compliance with the principal Act

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

Schedule 1 [13] increases the penalties under the principal Act for certain offences from a maximum of 5 penalty units (currently \$550) to a maximum of 10 penalty units (currently \$1,100).

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

Matters of a savings or transitional nature

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

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

Other matters of a minor, consequential or ancillary nature

Schedule 1 [1]–[5] amend section 3:

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

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

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

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

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

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

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

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Explanatory note

First print



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New South Wales

Residential Parks Amendment (Statutory Review) Bill 2005

No. , 2005

A Bill for

An Act to amend the *Residential Parks Act 1998* as a consequence of a review carried out under section 156 of that Act and in connection with which a report was tabled in Parliament in December 2004.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Residential Parks Amendment (Statutory Review) Act 2005</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6
3 Amendment of Residential Parks Act 1998 No 142	7
The <i>Residential Parks Act 1998</i> is amended as set out in Schedule 1.	8

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 3 Definitions	3
	Insert in alphabetical order in section 3 (1):	4
	<i>Department</i> means the Department of Commerce.	5
[2]	Section 3 (1), definition of “Director-General”	6
	Omit “of Fair Trading”.	7
[3]	Section 3 (1), definition of “investigator”	8
	Omit the definition. Insert instead:	9
	<i>investigator</i> means:	10
	(a) an officer of the Department for the time being appointed under section 136A (1) as an investigator, or	11 12
	(b) an investigator appointed under section 18 of the <i>Fair Trading Act 1987</i> .	13 14
[4]	Section 3 (1), definition of “Park Disputes Committee”	15
	Omit the definition.	16
[5]	Section 3 (1), definition of “residents committee”	17
	Insert in alphabetical order:	18
	<i>residents committee</i> , in relation to a residential park, means the residents committee convened for that park under section 66A.	19 20
[6]	Section 4A	21
	Insert after section 4:	22
	4A Objects of Act	23
	The objects of this Act are as follows:	24
	(a) to set out the respective rights and obligations of park owners and residents, including their rights and obligations under residential tenancy agreements,	25 26 27
	(b) to establish legislative protection for residents,	28
	(c) to establish procedures for resolving disputes between park owners and residents.	29 30

[7] Section 5 Application of Act	1
Insert after section 5 (1):	2
(1A) A person does not cease to occupy residential premises as the person’s principal place of residence by reason only that the person is absent from the premises for the purpose of receiving medical, nursing or domestic care.	3 4 5 6
[8] Section 10 Additional terms	7
Insert after section 10 (1):	8
(1A) The regulations may regulate or prohibit the insertion of additional terms with respect to such matters as may be prescribed.	9 10 11
[9] Section 10 (2)	12
Insert “or the regulations under subsection (1A)” after “subsection (1)”.	13
[10] Sections 12 (2), 29 (2), 33 (1), (2) and (4), 63 (3), 66 (6), 67 (2), 68 (1) and (2), 69 (1), 70 (5), 72, 74 (2) and (3), 75 (2) and (3) and 81 (5)	14 15
Omit “2 penalty units” wherever occurring. Insert instead “5 penalty units”.	16
[11] Section 16A	17
Insert after section 16:	18
16A What if there is no written agreement?	19
(1) A park owner who, after the commencement of this section, knowingly enters into a residential tenancy agreement that is not in writing or that is only partly in writing is guilty of an offence. Maximum penalty: 10 penalty units.	20 21 22 23
(2) The fact that a residential tenancy agreement is not in writing does not by itself mean that the agreement is void or voidable.	24 25
(3) A residential tenancy agreement that is not in writing is taken to include the following standard terms:	26 27
(a) each term set out in the relevant prescribed standard form of residential tenancy agreement (with the blank spaces filled in with appropriate details),	28 29 30
(b) each term prescribed by the regulations.	31
(4) A residential tenancy agreement that is not in writing may include additional terms only if:	32 33
(a) they are consistent with this Act and every other Act, and	34

	(b) they do not contravene the regulations referred to in section 10 (1A), and	1 2
	(c) they are consistent with the standard terms referred to in subsection (3).	3 4
	(5) An additional term is void if the Tribunal so orders, on application by a resident or a park owner, on being satisfied that the additional term contravenes subsection (4).	5 6 7
	(6) This section applies despite section 54A (which requires certain contracts in relation to land to be in writing) of the <i>Conveyancing Act 1919</i> .	8 9 10
[12]	Section 17 Park owner to give resident copy of residential tenancy agreement	11 12
	Omit section 17 (1). Insert instead:	13
	(1) It is a term of every residential tenancy agreement that, before the resident either:	14 15
	(a) signs a copy of the agreement and gives it back to the park owner or park manager, or	16 17
	(b) enters into occupation of the residential premises to which the agreement relates,	18 19
	the park owner must give the resident a further copy of the agreement, together with a separate list of the provisions of the agreement that are additional to the provisions contained in the standard form agreement referred to in section 9.	20 21 22 23
[13]	Sections 17 (3), 20 (2), 22 (6), 23 (6), 44, 46 (1) and (2), 47, 48 (1), (2) and (3), 49 (1), (2) and (3), 53, 78 (3) and 146 (1)	24 25
	Omit “5 penalty units” wherever occurring. Insert instead “10 penalty units”.	26
[14]	Section 27 Alterations and additions to, and replacement of, moveable dwellings that belong to resident	27 28
	Omit section 27 (1). Insert instead:	29
	(1) It is a term of every residential tenancy agreement under which the residential premises consist of a residential site on which a moveable dwelling belonging to the resident is located that the resident must not, except with the park owner’s written consent or unless the agreement otherwise provides:	30 31 32 33 34
	(a) make any alteration or addition to the moveable dwelling that is visible from outside the moveable dwelling, or	35 36
	(b) replace the moveable dwelling with another moveable dwelling.	37 38

[15] Section 36 Payment of rates, taxes and charges generally	1
Omit section 36 (1) (a).	2
[16] Section 36 (1) (c)	3
Insert “gas,” before “electricity”.	4
[17] Section 37 Resident may agree to pay certain charges for gas and electricity	5
Insert “gas or” before “electricity” wherever occurring.	6
[18] Section 37 (1), (2) and (3)	8
Omit “the Code” wherever occurring. Insert instead “the relevant code”.	9
[19] Section 37 (1) (b)	10
Omit “(whether by reference to a published domestic tariff or otherwise)”.	11
[20] Section 37 (2) (a1)	12
Insert after section 37 (2) (a):	13
(a1) the maximum amount that a person who consumed the same amount of gas or electricity would have to pay if the person were in other residential premises (not in a residential park) in the same locality, or	14
	15
	16
	17
[21] Section 37 (3) (d) and (e)	18
Omit “(in kWh)” wherever occurring.	19
[22] Section 37 (6)	20
Omit the subsection. Insert instead:	21
(6) In this section, <i>the relevant code</i> means:	22
(a) in relation to gas, the code prescribed by the regulations for the purposes of this paragraph with respect to gas, and	23
	24
(b) in relation to electricity, the code prescribed by the regulations for the purposes of this paragraph with respect to electricity.	25
	26
	27
[23] Section 38 Resident may agree to pay certain water consumption charges other than for excess water (until 31 December 1999)	28
Omit the section.	29
	30

[24] Section 39 Resident to pay certain charges for water	1
Insert “and water availability charges” after “water consumption charges” in section 39 (1).	2 3
[25] Section 39 (2)	4
Insert “in relation to water consumption charges” after “is required to pay”.	5
[26] Section 39 (2A)	6
Insert after section 39 (2):	7
(2A) If the resident is billed by the park owner, the amount that the resident is required to pay in relation to water availability charges is the lower of the following amounts:	8 9 10
(a) the amount paid by the park owner in relation to the water availability charges for the park divided by the number of residential sites in the park,	11 12 13
(b) the amount prescribed by the regulations.	14
[27] Section 39 (4)	15
Insert “or water availability charges” after “water consumption charges”.	16
[28] Section 58 Orders as to excessive rent increases or rents	17
Insert after section 58 (2):	18
(2A) A rent increase that does not exceed any increase in the Consumer Price Index (All Groups) for Sydney, as published from time to time by the Australian Statistician, during the period since the rent was previously fixed may not be determined to be excessive unless, during that period, there has been a reduction or withdrawal, by the park owner, of any goods, services or facilities provided with the residential premises.	19 20 21 22 23 24 25
[29] Section 66 Park Liaison Committee	26
Insert “if a majority of those residents so request” after “for the park” in section 66 (1).	27 28

[30] Sections 66A and 66B	1
Insert after section 66:	2
66A Residents committees and organisations (cf Act No 81 1999, section 70)	3 4
(1) A residents committee may, with the consent of the residents of a residential park, be established for the purpose of facilitating discussion between residents and the park owner.	5 6 7
(2) A residents committee is to be elected by the residents.	8
(3) Only one residents committee may be established for a residential park, and only residents of the park may be members of the committee.	9 10 11
(4) If more than one body or committee (regardless of its name) purports to be the residents committee for a particular residential park, the park owner or a resident of the park 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 park.	12 13 14 15 16 17
(5) A residents committee may, subject to the regulations:	18
(a) determine its own procedure, and	19
(b) form any one or more sub-committees and determine their procedure, and	20 21
(c) call meetings of all the residents of the park for the purpose of considering and voting on any matter.	22 23
(6) A park owner or park manager must not:	24
(a) discourage or prevent the establishment of a residents committee, or	25 26
(b) obstruct a residents committee in the exercise of its functions or prevent it from using park facilities that are generally available to residents.	27 28 29
Maximum penalty: 10 penalty units.	30
(7) Nothing in this section prevents the residents of a residential park from establishing other committees for other purposes.	31 32
66B Regulations concerning residents committees (cf Act No 81 1999, section 71)	33 34
(1) The regulations may make provision for or with respect to the election, functions and procedure of residents committees and sub-committees.	35 36 37

	(2) The regulations may also prescribe model rules that may be adopted by a residents committee.	1 2
[31]	Section 71A	3
	Insert after section 71:	4
	71A Access to residential parks by emergency and home care service vehicles	5 6
	The park owner of a residential park must take all reasonable steps to ensure that:	7 8
	(a) emergency and home care service personnel have unimpeded vehicular access to the residential premises in the park at all times, both by day and by night, and	9 10 11
	(b) that the residents of the park, and all relevant emergency and home care service agencies, are consulted and kept informed as to the arrangements made to secure that access.	12 13 14 15
	Maximum penalty: 20 penalty units.	16
[32]	Section 73 Prospective residents have a right to certain information	17
	Insert “and, in particular, is there any prohibition on the on-site sale of that dwelling” after “dwelling” in section 73 (2) (f).	18 19
[33]	Section 73 (2) (l)–(p)	20
	Insert after section 73 (2) (k):	21
	(l) Has any development application been made during the past 5 years under the <i>Environmental Planning and Assessment Act 1979</i> for the redevelopment of the park or for a change of use of the land on which the park is situated?	22 23 24 25 26
	(m) Have notices of termination been given to any residents during the past 12 months in connection with any proposed redevelopment of the park or any proposed change of use of the land on which the park is situated?	27 28 29 30
	(n) Would the park owner be prepared to buy the resident’s moveable dwelling if the resident were to decide to live elsewhere?	31 32 33
	(o) Is the park situated within a Crown reserve or a National Parks and Wildlife reserve?	34 35
	(p) What arrangements exist for the supply of energy to the residential site, and at what cost to the resident will energy be supplied?	36 37 38

[34] Section 73 (3)	1
Omit the subsection. Insert instead:	2
(3) The park owner must not enter into a residential tenancy agreement unless the prospective resident has been provided with the following documents:	3
(a) a copy of the document referred to in subsection (2),	4
(b) a copy of the park rules for the residential park,	5
(c) a document that clearly states that a resident’s right to occupy residential premises under such an agreement:	6
(i) is a leasehold right only, and not a freehold right or other right of an unlimited or perpetual nature, and	7
(ii) may, in certain circumstances, be terminated,	8
(d) such other documents as are prescribed by the regulations for the purposes of this paragraph.	9
Maximum penalty: 20 penalty units.	10
[35] Section 74A	11
Insert after section 74:	12
74A False or misleading information	13
A park owner must not, in purported compliance with any requirement of this Act, give to any resident or prospective resident any information that the park owner knows to be false or misleading in a material particular.	14
Maximum penalty: 20 penalty units.	15
[36] Section 81 Provisions relating to on-site sale of moveable dwellings	16
Insert “or residential site” after “the moveable dwelling” in section 81 (1).	17
[37] Section 81 (2)	18
Omit “in or on the moveable dwelling while it is installed”.	19
[38] Section 81 (3)	20
Omit “in or on the moveable dwelling while installed”.	21
[39] Section 81 (4)	22
Omit “in or on the moveable dwelling while installed”.	23

[40] Section 81 (5)	1
Omit “in or on the moveable dwelling”.	2
Insert instead “on the residential site”.	3
[41] Section 82 Restriction on sale on-site	4
Insert after section 82 (1):	5
(1A) A provision of a residential tenancy agreement that sets out a restriction of the kind referred to in subsection (1) is unenforceable unless notice of the restriction has been duly given pursuant to section 73 (2) (f).	6 7 8 9
[42] Section 82 (2)	10
Omit “2 penalty units”. Insert instead “20 penalty units”.	11
[43] Section 85A	12
Insert after section 85:	13
85A Moveable dwelling not a fixture	14
(1) A moveable dwelling situated on a residential site is not, for any purpose, to be regarded as a fixture, regardless of the manner in which it is attached to the land.	15 16 17
(2) This section does not apply to a moveable dwelling that is owned by the park owner.	18 19
[44] Section 87 Park Disputes Committee	20
Omit the section.	21
[45] Section 88 Applications to Tribunal about new or amended park rules	22
Omit section 88 (1) and (2). Insert instead:	23
(1) If a dispute arises in relation to:	24
(a) the introduction of new park rules for a residential park, or	25
(b) an amendment to the existing park rules for a residential park,	26 27
an application to have the dispute heard may be made to the Tribunal by any resident.	28 29
[46] Section 88 (3), (4) and (5)	30
Omit “Park Disputes Committee” wherever occurring.	31
Insert instead “Tribunal”.	32

Residential Parks Amendment (Statutory Review) Bill 2005

Schedule 1 Amendments

[47] Section 88 (3)	1
Omit “or park owner”.	2
[48] Section 88 (6A)	3
Insert after section 88 (6):	4
(6A) The Tribunal may make an order:	5
(a) setting aside the new park rules or the amendment to the existing park rules, or	6 7
(b) modifying the operation of the new or amended park rules in their application to some or all of the residents of the residential park, or	8 9 10
(c) upholding the new park rules or the amendment to the existing park rules.	11 12
[49] Section 88 (7)	13
Omit “, unless an application under section 88 is made within that time”.	14
[50] Section 89 Application to Tribunal to reconsider certain disputes relating to park rules in residential parks	15 16
Omit the section.	17
[51] Section 90 Application to Tribunal regarding disputes about existing park rules	18 19
Omit section 90 (1) and (2). Insert instead:	20
(1) If a dispute arises in relation to the legal validity of a park rule for a residential park, an application to have the dispute heard may be made to the Tribunal by any resident or by the park owner or park manager.	21 22 23 24
[52] Section 91 Tribunal may refer certain matters for alternative dispute resolution	25 26
Omit section 91 (2) (a).	27
[53] Section 91 (2) (c)	28
Omit “Department of Fair Trading’s”. Insert instead “Department’s”.	29

[54] Section 102 Termination by park owner for change of use	1
Insert after section 102 (1):	2
(1A) Notice of termination may not be given on the ground of a change of use that requires development consent under the <i>Environmental Planning and Assessment Act 1979</i> unless development consent for the proposed use has been obtained under that Act.	3 4 5 6 7
(1B) Notice of termination may not be given on the ground of a change of use that does not require development consent under the <i>Environmental Planning and Assessment Act 1979</i> unless consent for the issue of the notice has been obtained under section 102AA.	8 9 10 11 12
(1C) Within 7 days after giving a notice of termination under this section, the park owner must cause written notice of that fact to be given to the Director-General of the Department of Housing.	13 14 15
[55] Section 102 (2)	16
Omit the subsection. Insert instead:	17
(2) A notice of termination in respect of a residential site must not specify a date for vacating the residential site earlier than:	18 19
(a) 12 months after the day on which the notice is given, or	20
(b) in the case of an agreement that creates a tenancy for a fixed term, the day following the date on which the fixed term ends,	21 22 23
whichever is the later.	24
[56] Section 102 (4)	25
Omit the subsection. Insert instead:	26
(4) A notice of termination under this section must include the following statements, either in the body of the notice or in a separate document accompanying the notice:	27 28 29
(a) a statement to the effect that the resident is not required to deliver up vacant possession of the residential premises until ordered to do so by the Tribunal,	30 31 32
(b) a statement to the effect that the resident may be entitled to be paid compensation under section 128 which, if payable, must be paid in full before the resident is required to deliver up vacant possession,	33 34 35 36
(c) such other statements as may be prescribed by the regulations.	37 38

[57] Section 102AA	1
Insert after section 102:	2
102AA Consent by Tribunal to notice of termination on ground of change of use	3
(1) A park owner may apply to the Tribunal for consent to the issue of a notice of termination in respect of a residential site on the ground of a change of use of the land on which the residential site is situated, being a change of use for which development consent is not required under the <i>Environmental Planning and Assessment Act 1979</i> .	4 5 6 7 8 9 10
(2) Consent to the issue of the notice is not to be granted unless the Tribunal is satisfied that the park owner genuinely intends to use the land for a purpose other than that of a residential site.	11 12 13
(3) Before determining an application under this section, the Tribunal:	14 15
(a) must ensure that both the park owner and the residents are given a reasonable opportunity to make submissions to the Tribunal with respect to the proposed change of use, and	16 17 18
(b) must give proper consideration to any such submissions that are duly made.	19 20
[58] Section 128 Compensation for termination or relocation	21
Insert “by agreement between the resident and the park owner or” after “fixed” in section 128 (1).	22 23
[59] Section 128 (2A)	24
Insert after section 128 (2):	25
(2A) An application for a further such order may be made by the resident on the ground that the compensation fixed by any earlier order or orders is inadequate, having regard to the matters referred to in subsection (3) or (4), as the case requires.	26 27 28 29
[60] Section 128 (6)	30
Omit “300”. Insert instead “500”.	31

[61] Section 128A	1
Insert after section 128:	2
128A Compensation to be paid in advance	3
(1) This section applies if the Tribunal makes an order fixing the amount of compensation that a resident is entitled to be paid by a park owner as a consequence of:	4
(a) the resident giving up possession of residential premises, as referred to in section 102, or	5
(b) the resident relocating to a different residential site, as referred to in section 127.	6
(2) Despite any other provision of this Act, a resident who becomes entitled to compensation before he or she gives up possession of residential premises may not be required to give up possession of the premises until the compensation has been paid in full.	7
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[62] Section 130A	15
Insert after section 130:	16
130A Tribunal may value dwellings to facilitate sale	17
(1) The object of this section is to enable the Tribunal to assist a park owner and a resident to come to an agreement as to the value of the resident's dwelling where there is a proposed sale of the dwelling from the resident to the park owner.	18
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(2) The Tribunal may, by order, determine the value of the resident's dwelling and, for that purpose, may obtain a valuation of the dwelling, or seek advice as to the valuation of the dwelling, from one or more registered valuers.	22
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(3) An application for such an order may be made by the resident or by the park owner, or by both.	26
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(4) The Tribunal's determination may not have regard to the dwelling's location.	28
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(5) The Tribunal's determination of the value of the resident's dwelling is advisory only, and does not bind the resident or the park owner or affect any agreement between them for the sale of the dwelling.	30
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(6)	Any costs payable to a registered valuer for any valuation or advice provided to the Tribunal for the purposes of proceedings under this section are payable by the Tribunal, except to the extent to which the regulations provide that the parties to the proceedings are to pay such costs.	1 2 3 4 5
(7)	The regulations may provide that the parties are to pay such costs:	6
(a)	in such proportions as are agreed between them or, failing agreement, as are ordered by the Tribunal, or	7 8
(b)	in any other manner prescribed by the regulations.	9
(8)	In this section:	10
	<i>dwelling</i> means a relocatable home or a registrable moveable dwelling with a rigid annexe attached to it.	11 12
	<i>registered valuer</i> has the same meaning as it has in the <i>Valuers Act 2003</i> .	13 14
[63]	Part 13, Divisions 1 and 2	15
	Insert before section 137:	16
	Division 1 Investigators	17
136A	Investigators (cf Act No 66 2002, section 204)	18
(1)	The Director-General may appoint any officer of the Department as an investigator for the purposes of this Act.	19 20
(2)	An investigator is to be provided by the Director-General with a certificate of identification.	21 22
(3)	An investigator must, when exercising on any premises any function of the investigator under this Act, produce the investigator's certificate of identification to any person apparently in charge of the premises who requests its production.	23 24 25 26
136B	Powers of entry, inspection etc (cf Act No 66 2002, section 205)	27
(1)	An investigator may exercise the powers conferred by this section for the purpose of:	28 29
(a)	ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened, or	30 31 32
(b)	investigating a complaint made or intended to be made under this Act, or	33 34

(c)	obtaining evidence, records or information in relation to a matter that constitutes or may constitute a contravention of this Act or the regulations.	1 2 3
(2)	An investigator may enter and inspect a residential park at any reasonable time.	4 5
(3)	While on premises entered under this section or under the authority of a search warrant under this Division, an investigator may do any one or more of the following:	6 7 8
(a)	require any person involved in the management of the park to produce any records in the possession or under the control of that person relating to the management of the park, and (in the case of records stored electronically) to produce any such record in written form,	9 10 11 12 13
(b)	inspect, take copies of or extracts from, or make notes from, any such records, and for that purpose may take temporary possession of any such records,	14 15 16
(c)	take possession of any such records if the investigator considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction,	17 18 19
(d)	take such photographs, films and audio, video and other recordings as the investigator considers necessary,	20 21
(e)	require any person involved in the management of the park to answer questions or otherwise furnish information in relation to the management of the park or a contravention of a provision of this Act or the regulations,	22 23 24 25
(f)	require the park owner to provide the investigator with such assistance and facilities as is or are reasonably necessary to enable the investigator to exercise the functions of an investigator under this section.	26 27 28 29
(4)	An investigator is not entitled to enter a part of premises used for residential purposes, except with the consent of the occupier of the part.	30 31 32
136C	Power of investigator to obtain information, records and evidence	
	(cf Act No 66 2002, section 206)	33
	If an investigator believes on reasonable grounds that a person is capable of giving information, producing records or giving evidence in relation to a matter that constitutes, or may constitute, an offence against this Act or the regulations, the investigator may, by notice in writing given to the person, require the person:	34 35 36 37 38

(a)	to provide an investigator, by 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, with any such information, or	1 2 3 4 5
(b)	to produce to an investigator, in accordance with the notice, any such records, or	6 7
(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 records.	8 9 10
136D	Obstruction etc of investigators (cf Act No 66 2002, section 207)	11
	A person must not:	12
(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	13 14 15
(b)	wilfully delay, hinder or obstruct an investigator in the exercise of the investigator's functions under this Division.	16 17 18
	Maximum penalty: 10 penalty units.	19
136E	Taking possession of records to be used as evidence (cf Act No 66 2002, section 208)	20 21
(1)	If an investigator takes possession of any records 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 any proceedings (including proceedings on appeal) in which they may be evidence.	22 23 24 25 26
(2)	The person from whom the records are taken must be provided, within a reasonable time after the records are taken, with a copy of the records certified by an investigator as a true copy.	27 28 29
(3)	A copy of records provided under this section is, as evidence, of equal validity to the records of which it is certified to be a copy.	30 31
Division 2	Administrators, receivers and managers	32
136F	Application for order appointing administrator (cf Act No 81 1999, section 84)	33 34
(1)	The Director-General may apply to the Supreme Court, in accordance with the rules of the Court, for an order appointing a specified person as an administrator of a residential park:	35 36 37

(a)	to exercise all the functions of the park owner of the residential park, or	1 2
(b)	to exercise specified functions of the park owner, or	3
(c)	to exercise all the functions other than specified functions of the park owner.	4 5
(2)	The Director-General may apply for an order under this section only if the Director-General is of the opinion that:	6 7
(a)	the well-being or financial security of the residents of the residential park is at risk, or	8 9
(b)	the park owner has contravened an order of the Tribunal with respect to the management of the residential park.	10 11
(3)	For the purposes of determining whether an application for an order under this section should be made, the Director-General may appoint a person to inquire into, and report to the Director-General on, the well-being and financial security of the residents of a residential park.	12 13 14 15 16
136G	No application without consent (cf Act No 81 1999, section 85)	17
	The Director-General 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.	18 19 20
136H	Terms and conditions of appointment (cf Act No 81 1999, section 86)	21
	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 park owner as are specified or described in the order of appointment.	22 23 24 25 26
136I	Effect of appointment (cf Act No 81 1999, section 87)	27
(1)	The park owner of a residential park must not, while an order under this Division is in force in respect of the park, exercise any of the functions of the park owner that the administrator is authorised to exercise.	28 29 30 31
(2)	Subject to the terms of the appointment, a person appointed as an administrator of a residential park must comply with all the obligations of the park owner in relation to the functions that the person is authorised to exercise and is, in the exercise of those functions, taken to be the park owner.	32 33 34 35 36

136J	Revocation of appointment (cf Act No 81 1999, section 88)	1
(1)	An order made under this Division may be revoked or varied by the Supreme Court (whether or not on the application of the Director-General) and, unless sooner revoked, ceases to have effect at the expiration of such period after its making as may be specified in the order.	2 3 4 5 6
(2)	More than one order may be made under this Division in respect of the same residential park.	7 8
136K	Receivers and managers (cf Act No 81 1999, section 89)	9
(1)	If a receiver, or a receiver and manager, is appointed in respect of a park owner of a residential park, the person so appointed must (subject to the terms of the appointment) comply with the park owner's obligations under this Act as if that person were the park owner.	10 11 12 13 14
(2)	The terms and conditions of appointment of a receiver, or a receiver and manager, may exempt the appointee from the requirement to comply with such obligations of the park owner as are specified or described in the order of appointment.	15 16 17 18
(3)	This section does not apply to the extent that it is inconsistent with the <i>Corporations Act 2001</i> of the Commonwealth.	19 20
136L	No personal liability of administrator, receiver or receiver and manager (cf Act No 81 1999, section 90)	21
	A matter or thing done or omitted to be done:	22
(a)	by an administrator, a receiver or a receiver and manager, or	23 24
(b)	by any person acting under the direction of the administrator, receiver or receiver and manager,	25 26
	does not, if the matter or thing was done or omitted 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.	27 28 29 30
Division 3	General	31
[64]	Sections 139 and 140	32
	Omit the sections.	33

[65] Section 143A	1
Insert after section 143:	2
143A Advertising by park owners	3
A park owner must not advertise the availability of residential premises under a residential tenancy agreement in any way unless the advertisement clearly states that a resident's right to occupy the premises under a residential tenancy agreement:	4 5 6 7
(a) is a leasehold right only, and not a freehold right or other right of an unlimited perpetual nature, and	8 9
(b) may, in certain circumstances, be terminated.	10
Maximum penalty: 20 penalty units.	11
[66] Schedule 1 Savings and transitional provisions	12
Insert at the end of clause 1 (1):	13
<i>Residential Parks Amendment (Statutory Review) Act 2005</i>	14
[67] Schedule 1, Part 4	15
Insert after Part 3:	16
Part 4 Provisions consequent on enactment of Residential Parks Amendment (Statutory Review) Act 2005	17 18 19
20 Definition	20
In this Part:	21
<i>the 2005 amending Act</i> means the <i>Residential Parks Amendment (Statutory Review) Act 2005</i> .	22 23
21 Application of amendments to existing residential tenancy agreements	24 25
An amendment made by the 2005 amending Act to section 27, 36, 39, 81 or 128 applies to and in respect of a residential tenancy agreement entered into before the commencement of that amendment in the same way as it applies to and in respect of a residential tenancy agreement entered into on or after that commencement.	26 27 28 29 30 31

22	Application of section 128A to existing residential tenancy agreements	1 2
	Section 128A, as inserted by the 2005 amending Act, applies to and in respect of a residential tenancy agreement entered into before the commencement of that section in the same way as it applies to and in respect of a residential tenancy agreement entered into on or after that commencement.	3 4 5 6 7
23	Orders as to excessive rent increases	8
	Section 58 (2A), as inserted by the 2005 amending Act, does not apply to or in respect of any application under section 55 or 56 that had not been determined before the commencement of that subsection.	9 10 11 12
24	Provision of section 73 documentation	13
	An amendment made by the 2005 amending Act to section 73 (2) does not apply in relation to a residential tenancy agreement in respect of which a park owner had, before the commencement of that amendment, provided the prospective resident with a copy of the document referred to in that subsection.	14 15 16 17 18
25	Applications to Park Disputes Committee	19
	An application that had been made to the Park Disputes Committee of a residential park under section 88 before its amendment by the 2005 amending Act has no effect after that amendment commences.	20 21 22 23
26	Proceedings before Tribunal in relation to section 102 notices of termination	24 25
	(1) Subject to this clause, an application that, before the amendment of section 102 by the 2005 amending Act, had been made to the Tribunal in relation to a notice of termination of a residential tenancy agreement on the ground of change of use is to be determined under section 113 as if that amendment had not been made.	26 27 28 29 30 31
	(2) In any proceedings on such an application, the Tribunal is not to make an order terminating the residential tenancy agreement concerned unless:	32 33 34
	(a) the applicant has established to the Tribunal whether development consent under the <i>Environmental Planning and Assessment Act 1979</i> is, or is not, required for the proposed use, and	35 36 37 38

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- (b) the Tribunal is satisfied: 1
- (i) if such development consent is required, that the 2
relevant development consent has been obtained, or 3
 - (ii) if such development consent is not required, that the 4
applicant genuinely intends to use the land for a 5
purpose other than that of a residential park. 6
- (3) If the applicant has applied for development consent for the 7
proposed use, whether before or after the proceedings were 8
commenced, the Tribunal may adjourn the proceedings pending 9
the relevant consent authority's determination of the application. 10
- (4) Subclause (3) does not limit any power the Tribunal may 11
otherwise have to adjourn proceedings. 12