

Passed by both Houses



New South Wales

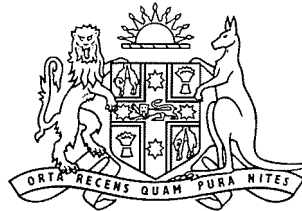
Residential Parks Amendment (Statutory Review) Bill 2005

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2005*



New South Wales

Residential Parks Amendment (Statutory Review) Bill 2005

Act No , 2005

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Residential Parks Amendment (Statutory Review) Act 2005*.

2 Commencement

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

3 Amendment of Residential Parks Act 1998 No 142

The *Residential Parks Act 1998* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Department means the Department of Commerce.

[2] Section 3 (1), definition of “Director-General”

Omit “of Fair Trading”.

[3] Section 3 (1), definition of “investigator”

Omit the definition. Insert instead:

investigator means:

- (a) an officer of the Department for the time being appointed under section 136A (1) as an investigator, or
- (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

[4] Section 3 (1), definition of “Park Disputes Committee”

Omit the definition.

[5] Section 3 (1), definition of “residents committee”

Insert in alphabetical order:

residents committee, in relation to a residential park, means the residents committee convened for that park under section 66A.

[6] Section 4A

Insert after section 4:

4A Objects of Act

The objects of this Act are as follows:

- (a) to set out the respective rights and obligations of park owners and residents, including their rights and obligations under residential tenancy agreements,
- (b) to establish legislative protection for residents,
- (c) to establish procedures for resolving disputes between park owners and residents.

[7] Section 5 Application of Act

Insert after section 5 (1):

- (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.

[8] Section 10 Additional terms

Insert after section 10 (1):

- (1A) The regulations may regulate or prohibit the insertion of additional terms with respect to such matters as may be prescribed.

[9] Section 10 (2)

Insert "or the regulations under subsection (1A)" after "subsection (1)".

[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)

Omit "2 penalty units" wherever occurring. Insert instead "5 penalty units".

[11] Section 16A

Insert after section 16:

16A What if there is no written agreement?

- (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.
- (2) The fact that a residential tenancy agreement is not in writing does not by itself mean that the agreement is void or voidable.
- (3) A residential tenancy agreement that is not in writing is taken to include the following standard terms:
 - (a) each term set out in the relevant prescribed standard form of residential tenancy agreement (with the blank spaces filled in with appropriate details),
 - (b) each term prescribed by the regulations.
- (4) A residential tenancy agreement that is not in writing may include additional terms only if:
 - (a) they are consistent with this Act and every other Act, and

- (b) they do not contravene the regulations referred to in section 10 (1A), and
- (c) they are consistent with the standard terms referred to in subsection (3).
- (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).
- (6) This section applies despite section 54A (which requires certain contracts in relation to land to be in writing) of the *Conveyancing Act 1919*.

[12] Section 17 Park owner to give resident copy of residential tenancy agreement

Omit section 17 (1). Insert instead:

- (1) It is a term of every residential tenancy agreement that, before the resident either:
 - (a) signs a copy of the agreement and gives it back to the park owner or park manager, or
 - (b) enters into occupation of the residential premises to which the agreement relates,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.

[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)

Omit “5 penalty units” wherever occurring. Insert instead “10 penalty units”.

[14] Section 27 Alterations and additions to, and replacement of, moveable dwellings that belong to resident

Omit section 27 (1). Insert instead:

- (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:
 - (a) make any alteration or addition to the moveable dwelling that is visible from outside the moveable dwelling, or
 - (b) replace the moveable dwelling with another moveable dwelling.

- [15] **Section 36 Payment of rates, taxes and charges generally**
Omit section 36 (1) (a).
- [16] **Section 36 (1) (c)**
Insert “gas,” before “electricity”.
- [17] **Section 37 Resident may agree to pay certain charges for gas and electricity**
Insert “gas or” before “electricity” wherever occurring.
- [18] **Section 37 (1), (2) and (3)**
Omit “the Code” wherever occurring. Insert instead “the relevant code”.
- [19] **Section 37 (1) (b)**
Omit “(whether by reference to a published domestic tariff or otherwise)”.
- [20] **Section 37 (2) (a1)**
Insert after section 37 (2) (a):
 (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
- [21] **Section 37 (3) (d) and (e)**
Omit “(in kWh)” wherever occurring.
- [22] **Section 37 (6)**
Omit the subsection. Insert instead:
 (6) In this section, *the relevant code* means:
 (a) in relation to gas, the code prescribed by the regulations for the purposes of this paragraph with respect to gas, and
 (b) in relation to electricity, the code prescribed by the regulations for the purposes of this paragraph with respect to electricity.
- [23] **Section 38 Resident may agree to pay certain water consumption charges other than for excess water (until 31 December 1999)**
Omit the section.

[24] Section 39 Resident to pay certain charges for water

Insert “and water availability charges” after “water consumption charges” in section 39 (1).

[25] Section 39 (2)

Insert “in relation to water consumption charges” after “is required to pay”.

[26] Section 39 (2A)

Insert after section 39 (2):

(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:

- (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,
- (b) the amount prescribed by the regulations.

[27] Section 39 (4)

Insert “or water availability charges” after “water consumption charges”.

[28] Section 58 Orders as to excessive rent increases or rents

Insert after section 58 (2):

(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.

[29] Section 66 Park Liaison Committee

Insert “if a majority of those residents so request” after “for the park” in section 66 (1).

[30] Sections 66A and 66B

Insert after section 66:

66A Residents committees and organisations (cf Act No 81 1999, section 70)

- (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.
- (2) A residents committee is to be elected by the residents.
- (3) Only one residents committee may be established for a residential park, and only residents of the park may be members of the committee.
- (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.
- (5) A residents committee may, subject to the regulations:
 - (a) determine its own procedure, and
 - (b) form any one or more sub-committees and determine their procedure, and
 - (c) call meetings of all the residents of the park for the purpose of considering and voting on any matter.
- (6) A park owner or park manager must not:
 - (a) discourage or prevent the establishment of a residents committee, or
 - (b) obstruct a residents committee in the exercise of its functions or prevent it from using park facilities that are generally available to residents.

Maximum penalty: 10 penalty units.
- (7) Nothing in this section prevents the residents of a residential park from establishing other committees for other purposes.

66B Regulations concerning residents committees (cf Act No 81 1999, section 71)

- (1) The regulations may make provision for or with respect to the election, functions and procedure of residents committees and sub-committees.

- (2) The regulations may also prescribe model rules that may be adopted by a residents committee.

[31] Section 71A

Insert after section 71:

71A Access to residential parks by emergency and home care service vehicles

The park owner of a residential park must take all reasonable steps to ensure that:

- (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
- (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.

Maximum penalty: 20 penalty units.

[32] Section 73 Prospective residents have a right to certain information

Insert “and, in particular, is there any prohibition on the on-site sale of that dwelling” after “dwelling” in section 73 (2) (f).

[33] Section 73 (2) (l)–(p)

Insert after section 73 (2) (k):

- (l) Has any development application been made during the past 5 years under the *Environmental Planning and Assessment Act 1979* for the redevelopment of the park or for a change of use of the land on which the park is situated?
- (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?
- (n) Would the park owner be prepared to buy the resident’s moveable dwelling if the resident were to decide to live elsewhere?
- (o) Is the park situated within a Crown reserve or a National Parks and Wildlife reserve?
- (p) What arrangements exist for the supply of energy to the residential site, and at what cost to the resident will energy be supplied?

[34] Section 73 (3)

Omit the subsection. Insert instead:

- (3) The park owner must not enter into a residential tenancy agreement unless the prospective resident has been provided with the following documents:
- (a) a copy of the document referred to in subsection (2),
 - (b) a copy of the park rules for the residential park,
 - (c) a document that clearly states that a resident's right to occupy residential premises under such an agreement:
 - (i) is a leasehold right only, and not a freehold right or other right of an unlimited or perpetual nature, and
 - (ii) may, in certain circumstances, be terminated,
 - (d) such other documents as are prescribed by the regulations for the purposes of this paragraph.

Maximum penalty: 20 penalty units.

[35] Section 74A

Insert after section 74:

74A False or misleading information

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.

Maximum penalty: 20 penalty units.

[36] Section 81 Provisions relating to on-site sale of moveable dwellings

Insert "or residential site" after "the moveable dwelling" in section 81 (1).

[37] Section 81 (2)

Omit "in or on the moveable dwelling while it is installed".

[38] Section 81 (3)

Omit "in or on the moveable dwelling while installed".

[39] Section 81 (4)

Omit "in or on the moveable dwelling while installed".

[40] Section 81 (5)

Omit “in or on the moveable dwelling”.

Insert instead “on the residential site”.

[41] Section 82 Restriction on sale on-site

Insert after section 82 (1):

- (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).

[42] Section 82 (2)

Omit “2 penalty units”. Insert instead “20 penalty units”.

[43] Section 85A

Insert after section 85:

85A Moveable dwelling not a fixture

- (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.
- (2) This section does not apply to a moveable dwelling that is owned by the park owner.

[44] Section 87 Park Disputes Committee

Omit the section.

[45] Section 88 Applications to Tribunal about new or amended park rules

Omit section 88 (1) and (2). Insert instead:

- (1) If a dispute arises in relation to:
- (a) the introduction of new park rules for a residential park, or
- (b) an amendment to the existing park rules for a residential park,
- an application to have the dispute heard may be made to the Tribunal by any resident.

[46] Section 88 (3), (4) and (5)

Omit “Park Disputes Committee” wherever occurring.

Insert instead “Tribunal”.

[47] Section 88 (3)

Omit “or park owner”.

[48] Section 88 (6A)

Insert after section 88 (6):

- (6A) The Tribunal may make an order:
- (a) setting aside the new park rules or the amendment to the existing park rules, or
 - (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
 - (c) upholding the new park rules or the amendment to the existing park rules.

[49] Section 88 (7)

Omit “, unless an application under section 88 is made within that time”.

[50] Section 89 Application to Tribunal to reconsider certain disputes relating to park rules in residential parks

Omit the section.

[51] Section 90 Application to Tribunal regarding disputes about existing park rules

Omit section 90 (1) and (2). Insert instead:

- (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.

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

Omit section 91 (2) (a).

[53] Section 91 (2) (c)

Omit “Department of Fair Trading’s”. Insert instead “Department’s”.

[54] Section 102 Termination by park owner for change of use

Insert after section 102 (1):

- (1A) Notice of termination may not be given on the ground of a change of use that requires development consent under the *Environmental Planning and Assessment Act 1979* unless development consent for the proposed use has been obtained under that Act.
- (1B) Notice of termination may not be given on the ground of a change of use that does not require development consent under the *Environmental Planning and Assessment Act 1979* unless consent for the issue of the notice has been obtained under section 102AA.
- (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.

[55] Section 102 (2)

Omit the subsection. Insert instead:

- (2) A notice of termination in respect of a residential site must not specify a date for vacating the residential site earlier than:
 - (a) 12 months after the day on which the notice is given, or
 - (b) in the case of an agreement that creates a tenancy for a fixed term, the day following the date on which the fixed term ends,whichever is the later.

[56] Section 102 (4)

Omit the subsection. Insert instead:

- (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:
 - (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,
 - (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,
 - (c) such other statements as may be prescribed by the regulations.

[57] Section 102AA

Insert after section 102:

102AA Consent by Tribunal to notice of termination on ground of change of use

- (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 *Environmental Planning and Assessment Act 1979*.
- (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.
- (3) Before determining an application under this section, the Tribunal:
 - (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
 - (b) must give proper consideration to any such submissions that are duly made.

[58] Section 113 Application to Tribunal by park owner for termination and order for possession

Insert after section 113 (3):

- (3A) The Tribunal must not make an order for possession as a consequence of an order terminating a residential tenancy agreement pursuant to a notice given by the park owner on the ground referred to in section 102 (Termination by park owner for change of use) unless it is satisfied that:
 - (a) compensation for the cost of relocating the dwelling to its new location has been determined under section 128, or
 - (b) the park owner has agreed to buy the dwelling from the resident at a price no less than its value, as determined by the Tribunal under section 130A, or
 - (c) the park owner and the resident have reached an acceptable negotiated settlement, and that agreement is bona fide.

[59] Section 128 Compensation for termination or relocation

Insert “by agreement between the resident and the park owner or” after “fixed” in section 128 (1).

[60] Section 128 (2A)

Insert after section 128 (2):

- (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.

[61] Section 128 (6)

Omit “300”. Insert instead “500”.

[62] Section 128A

Insert after section 128:

128A Compensation to be paid in advance

- (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:
- (a) the resident giving up possession of residential premises, as referred to in section 102, or
 - (b) the resident relocating to a different residential site, as referred to in section 127.
- (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.

[63] Section 130A

Insert after section 130:

130A Tribunal may value dwellings to facilitate sale

- (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.
- (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.
- (3) An application for such an order may be made by the resident or by the park owner, or by both.

- (4) The Tribunal's determination may not have regard to the dwelling's location.
- (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.
- (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.
- (7) The regulations may provide that the parties are to pay such costs:
 - (a) in such proportions as are agreed between them or, failing agreement, as are ordered by the Tribunal, or
 - (b) in any other manner prescribed by the regulations.
- (8) In this section:

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

registered valuer has the same meaning as it has in the *Valuers Act 2003*.

[64] Part 13, Divisions 1 and 2

Insert before section 137:

Division 1 Investigators

136A Investigators (cf Act No 66 2002, section 204)

- (1) The Director-General may appoint any officer of the Department as an investigator for the purposes of this Act.
- (2) An investigator is to be provided by the Director-General with a certificate of identification.
- (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.

136B Powers of entry, inspection etc (cf Act No 66 2002, section 205)

- (1) An investigator may exercise the powers conferred by this section for the purpose of:
 - (a) ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened, or
 - (b) investigating a complaint made or intended to be made under this Act, or
 - (c) obtaining evidence, records 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 and inspect a residential park at any reasonable time.
- (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:
 - (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,
 - (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,
 - (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,
 - (d) take such photographs, films and audio, video and other recordings as the investigator considers necessary,
 - (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,
 - (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.
- (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.

136C Power of investigator to obtain information, records and evidence

(cf Act No 66 2002, section 206)

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:

- (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
- (b) to produce to an investigator, in accordance with the notice, any such records, 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 records.

136D Obstruction etc of investigators (cf Act No 66 2002, section 207)

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) wilfully delay, hinder or obstruct an investigator in the exercise of the investigator's functions under this Division.

Maximum penalty: 10 penalty units.

136E Taking possession of records to be used as evidence (cf Act No 66 2002, section 208)

- (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.
- (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.
- (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.

Division 2 Administrators, receivers and managers

136F Application for order appointing administrator (cf Act No 81 1999, section 84)

- (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:
 - (a) to exercise all the functions of the park owner of the residential park, or
 - (b) to exercise specified functions of the park owner, or
 - (c) to exercise all the functions other than specified functions of the park owner.
- (2) The Director-General may apply for an order under this section only if the Director-General is of the opinion that:
 - (a) the well-being or financial security of the residents of the residential park is at risk, or
 - (b) the park owner has contravened an order of the Tribunal with respect to the management of the residential park.
- (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.

136G No application without consent (cf Act No 81 1999, section 85)

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.

136H Terms and conditions of appointment (cf Act No 81 1999, section 86)

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.

136I Effect of appointment (cf Act No 81 1999, section 87)

- (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.

- (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.

136J Revocation of appointment (cf Act No 81 1999, section 88)

- (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) More than one order may be made under this Division in respect of the same residential park.

136K Receivers and managers (cf Act No 81 1999, section 89)

- (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.
- (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.
- (3) This section does not apply to the extent that it is inconsistent with the *Corporations Act 2001* of the Commonwealth.

136L No personal liability of administrator, receiver or receiver and manager (cf Act No 81 1999, section 90)

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 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 General

[65] Sections 139 and 140

Omit the sections.

[66] Section 143A

Insert after section 143:

143A Advertising by park owners

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:

- (a) is a leasehold right only, and not a freehold right or other right of an unlimited perpetual nature, and
- (b) may, in certain circumstances, be terminated.

Maximum penalty: 20 penalty units.

[67] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

Residential Parks Amendment (Statutory Review) Act 2005

[68] Schedule 1, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on enactment of
Residential Parks Amendment (Statutory
Review) Act 2005**

20 Definition

In this Part:

the 2005 amending Act means the *Residential Parks Amendment (Statutory Review) Act 2005*.

21 Application of amendments to existing residential tenancy agreements

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.

22 Application of section 128A to existing residential tenancy agreements

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.

23 Orders as to excessive rent increases

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.

24 Provision of section 73 documentation

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.

25 Applications to Park Disputes Committee

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.

26 Proceedings before Tribunal in relation to section 102 notices of termination

- (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.

- (2) In any proceedings on such an application, the Tribunal is not to make an order terminating the residential tenancy agreement concerned unless:
 - (a) the applicant has established to the Tribunal whether development consent under the *Environmental Planning and Assessment Act 1979* is, or is not, required for the proposed use, and
 - (b) the Tribunal is satisfied:
 - (i) if such development consent is required, that the relevant development consent has been obtained, or
 - (ii) if such development consent is not required, that the applicant genuinely intends to use the land for a purpose other than that of a residential park.
- (3) If the applicant has applied for development consent for the proposed use, whether before or after the proceedings were commenced, the Tribunal may adjourn the proceedings pending the relevant consent authority's determination of the application.
- (4) Subclause (3) does not limit any power the Tribunal may otherwise have to adjourn proceedings.