

**RESIDENTIAL TENANCIES (MOVABLE DWELLINGS)
AMENDMENT BILL 1991 (No. 2)**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Local Government (Movable Dwellings) Amendment Bill 1991 (No. 2) is cognate with this Bill.

The object of this Bill is to amend the Residential Tenancies Act 1987:

- (a) to enable disputes about changes to caravan park rules to be referred to the Residential Tenancies Tribunal for adjudication; and
- (b) to vary the requirements relating to the minimum notice to which a landlord or tenant is entitled in certain cases when a tenancy at a caravan park is terminated without any grounds for the termination.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a proclaimed day or days.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

SCHEDULE 1—AMENDMENTS

Definitions

Schedule 1 (1) inserts definitions of “registrable movable dwelling”, “relevant code of practice”, “relocatable home” and “rigid annexe” into section 3.

A “relevant code of practice” is a code prescribed under the Fair Trading Act 1987 and declared by regulations under the Residential Tenancies Act to be relevant. Codes of practice are enforceable in the Commercial Tribunal, and may be made so as to apply to (among other things) dealings between caravan park owners and residents. A draft code has been prepared which applies to landlords and tenants at places licensed under section 289H of the Local Government Act 1919 (that is, caravan parks or relocatable home parks). That draft code is reproduced at the end of this note.

Residential Tenancies (Movable Dwellings) Amendment 1991 (No. 2)

A “relocatable home” is a movable dwelling that is not a caravan or a tent but is of a more sophisticated type that involves some difficulty to move.

Terms of tenancy limited by codes of practice

Schedule 1 (3) amends section 10 so as to provide that any terms which the parties to a residential tenancy agreement may agree to in addition to the terms of a standard tenancy must be consistent with any relevant code of practice.

Right to assign tenant’s interest

Schedule 1 (4) amends section 33 so as to provide that, in the case of a tenancy in a caravan park or relocatable home park, it is an implied term of any residential tenancy agreement that the landlord is not to withhold or refuse consent unreasonably to an assignment of the tenant’s interest under the agreement.

Referral of disputes to Residential Tenancies Tribunal

Schedule 1 (5) inserts a new Division 3 (ss. 35A–35C) into Part 3. The new Division applies to places licensed under section 289H of the Local Government Act 1919 (that is, caravan parks or relocatable home parks).

The draft code of practice referred to above makes provision for the resolution of disputes between park residents and owners or managers over changes to the rules of the park. The effect of new sections 35A–35C is to allow disputes that have not been resolved under the code procedures to be referred to the Residential Tenancies Tribunal by a group of the residents or by the park management. The Tribunal is empowered to make an order, if it thinks fit, setting aside the rule or modifying its operation.

Notices of termination

Schedule 1 (6) amends section 58, which deals with the length of notice to be given to a tenant by a landlord who wishes to terminate the tenancy without any grounds for doing so. In the general case the required period of notice is 60 days. The amendment allows 180 days in the case of a tenancy on the site of a movable dwelling, where the movable dwelling concerned is not owned or provided by the landlord and is a relocatable home or a caravan with a rigid annexe attached.

Schedule 1 (7) amends section 59, which deals with the length of notice to be given to a landlord by a tenant who wishes to terminate the tenancy without any grounds for doing so. In the general case the required period of notice is 21 days. The amendment allows 30 days in the case of a tenancy on the site of a movable dwelling, where the movable dwelling concerned is not owned or provided by the landlord and is a relocatable home or a caravan with a rigid annexe attached.

Schedule 1 (8) makes a consequential amendment.

Consequential amendments regarding application of the Act

Schedule 1 (2) makes an amendment as a consequence of other amendments made by the proposed Act, to make it clear that regulations under section 7 can also be made in relation to the amendments.

Residential Tenancies (Movable Dwellings) Amendment 1991 (No. 2)

**DRAFT MANDATORY CODE OF PRACTICE FOR THE
CARAVAN/RELOCATABLE HOME PARK INDUSTRY**

FOREWORD TO THE CODE

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

Long term residence on caravan parks was legally permitted.

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

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

These new requirements and standards applied to all new parks from 1 December 1986. But, existing parks were ‘allowed time to upgrade progressively.

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

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

The code contains:

- A statement of objectives; and
- Specific pre-entry disclosure requirements; and
- Provision for the making of park rules; and
- A park dispute resolution process to deal with disputes about park rules.

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

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

Residential Tenancies (Movable Dwellings) Amendment 1991 (No. 2)

COMPLIANCE

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

REVIEW

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

PART 1—APPLICATION, OBJECTIVES AND PRINCIPLES

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

Application

The provisions of this Code are mandatory. They apply to all, including the Crown, who promote, develop, sell, own or manage or who are permanent residents of caravan/relocatable home parks. It applies to those persons who come under the Residential Tenancies Act 1987 and the Residential Tenancies Regulation 1989.

Objectives of the Code

The objectives of the Code are:

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

Residential Tenancies (Movable Dwellings) Amendment 1991 (No. 2)

General principles

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

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

PART 2—BASIC RIGHTS OF RESIDENTS AND MANAGEMENT

Residents' privacy

Residents have a basic right to privacy in personal accommodation that must be respected by management according to the Residential Tenancies Act 1987. The management has the responsibility of helping the residents' quiet enjoyment of both personal accommodation and communal amenities.

Sound management

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

PART 3—DISCLOSURE OF INFORMATION

General Obligations

Management obligations

All information and agreements relating to a caravan/relocatable home park:

- (a) must be in accordance with the standard form of agreement for landlords and tenants of movable dwellings or movable dwelling sites as set out in Schedule 2 to the Residential Tenancies Regulation 1989; and
- (b) if any additional terms (including park rules) are in the agreement, they:
 - must not conflict with the Residential Tenancies Act 1987, Ordinance No. 71 made under the Local Government Act 1919 or any other Act; and
 - must not conflict with the standard terms of the prescribed agreement; and
 - must be written in clear, concise and plain English avoiding vague or ambiguous statements;

Residential Tenancies (Movable Dwellings) Amendment 1991 (No. 2)

- (c) must not be in breach of any provisions of this Code, the Residential Tenancies Act 1987, Ordinance No. 71 made under the Local Government Act 1919 or the Fair Trading Act 1987 or any other Act; and
- (d) must fully show in writing all the arrangements that will apply in relation to a resident's occupation of the park. Also, the agreement must show any land use restrictions that apply to the park and
- (e) must be such that, where a premium for sale on-site of a movable dwelling is payable by a resident the relevant requirements of the Code and the premium, or the basis for its determination, must be clearly set out in the residential tenancy agreement; and
- (f) must include a copy of Schedule A to this Code containing written answers by the park owner to the questions set out in that Schedule. A park owner must not restrict any person's right to seek independent advice before entering an agreement.

Resident obligations

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

Sale of the caravan/relocatable home

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

Restrictions on sale on-site

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

Premium for sale on-site

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

Residential Tenancies (Movable Dwellings) Amendment 1991 (No. 2)

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

A park owner must not restrict in any way the right of a resident to purchase goods or services from the person of his/her choice. Tradespersons and service providers may be prohibited from entry to the park:

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

Responsibility for preservation or landscaping of site

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

NOTE: This requirement becomes a term of the residential tenancy agreement. A breach of the agreement may be enforced by the Residential Tenancies Tribunal.

Rights to membership of organisations

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

PART 4—PARK RULES

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

- (a) the making and abatement of noise; and
- (b) motor vehicle speed limits within the park; and
- (c) the parking of motor vehicles; and
- (d) the disposal of refuse; and
- (e) the keeping of pets; and
- (f) the playing of games and other sports activities; and
- (g) the use and operation of communal facilities; and
- (h) maintenance standards for the caravan/relocatable home as they affect the general amenity of the park; and
- (i) reasonable landscaping and maintenance requirements for the site on which the caravan/relocatable home is.

Residential Tenancies (Movable Dwellings) Amendment 1991 (No. 2)

NOTE: The park rules become part of the residential tenancy agreement and can be enforced as a term of the agreement under the Residential Tenancies Act 1987. The terms about the number of occupants allowed, fees payable (including visitor fees) are in the residential tenancy agreement.

Also, further information about these matters should be included in the answers to the questions in Schedule A that must be given by the park owner to the resident at or before the time the parties enter the residential tenancy agreement.

Changes to park rules

If a park owner wishes to amend, repeal or add to any park rule, notice in writing must be given to the resident specifying the proposed change. Unless the proposed change affects the use of recreational facilities notice must be given to the resident at least 60 days before the day on which the change is to have effect. Where the proposed change affects the use of recreational facilities 7 days written notice must be given to the resident.

Management obligation to enforce rules

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

PART 5—DISPUTE RESOLUTION—DISPUTES COMMITTEE

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

- (a) a person appointed by the residents; and
- (b) a person representing the park owner; and
- (c) a person agreed to by both the resident and owner representatives.

Applications to Disputes Committee about park rules

Where a dispute arises about a park rule 5 residents from 5 different sites in a caravan/relocatable home park or, where there are less than 10 sites in a park a majority of those residents, may apply to the park's Disputes Committee to have the matter heard. An application to the Disputes Committee must be made within 30 days of notice of the change to the rule. The Committee may declare the rule to be unconscionable, harsh or oppressive or in contravention of any applicable code. The Committee must advise the parties to the dispute, in writing, of its decision within 30 days of receiving notice of the dispute.

PART 6—TERMINATION OF RESIDENTIAL TENANCY AGREEMENTS FOR RELOCATABLE HOMES

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

Residential Tenancies (Movable Dwellings) Amendment 1991 (No. 2)

The Residential Tenancies Act 1987 provides that where a park owner wants to end a residential tenancy agreement for a caravan with a rigid annexe attached or a relocatable home the park owner may do so without specifying any ground for the termination. A notice of termination, without any ground, given by the park owner requiring the removal of a caravan with a rigid annexe attached or a relocatable home must not specify a day for removal that is earlier than 180 days after the notice is given.

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

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

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

1. What restrictions are there on a resident in the use of his/her unit and the park facilities about:
 - having someone else live in the unit; and
 - having visitors, including overnight or short-stay guests; and
 - car parking; and
 - pets; and
 - other restrictions?
2. Is there any restriction on the type of movable dwelling allowed on the park?
3. What can the resident put on the site besides the movable dwelling, e.g. carport, garden shed? This should consider:
 - (i) what the proprietor will permit; and
 - (ii) what the local council will permit; and
 - (iii) what Ordinance No. 71 made under the Local Government Act 1919 will permit.
4. Can the resident move or be moved from one part of the park to another and, if so, under what circumstances?
5. If the park is sold to another organisation what protection does a resident have against a loss of rights?
6. Are residents liable for any additional or extraordinary charges and, if so, for what purposes?
7. Are there any restrictions on the resident on the sale of her/his caravan/relocatable home? If a premium is payable for sale on-site what is the amount of the premium or the basis for its determination?
8. Is the park currently licensed under Ordinance No. 71 made under the Local Government Act 1919 and, if so, are there any restrictions?
9. What facilities are there available for delivery of mail to the park residents?

Residential Tenancies (Movable Dwellings) Amendment 1991 (No. 2)

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

SCHEDULE B—DEFINITIONS

In this Code:

“**caravan/relocatable home park**” has the same meaning as “caravan park” as defined in Ordinance No. 71 made under the Local Government Act 1919;

“**caravan park**” means a property used (to an extent that, by operation of section 289F of the Local Government Act 1919, a licence is required) for the placement of caravans or of caravans and other movable dwellings;

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

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

“**registrable movable dwelling**” means a movable dwelling which is, or is capable of being, registered under the Traffic Act 1909;

“**relocatable home**” means a movable dwelling which is not:

- (a) a registrable movable dwelling or a tent; or
- (b) a movable dwelling of a type prescribed by the regulations for the purposes of this paragraph;

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

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

“**Tribunal**” means the Residential Tenancies Tribunal.
