

Act 1994 No. 94

**RESIDENTIAL TENANCIES (CARAVAN PARKS AND
MANUFACTURED HOME ESTATES) AMENDMENT
BILL 1994***

NEW SOUTH WALES



EXPLANATORY NOTE

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

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

- (a) to imply additional terms into certain residential tenancy agreements (that is, agreements between the proprietors of caravan parks and manufactured home estates and the owners of caravans and manufactured homes installed on residential sites within those parks and estates); and
- (b) to restrict the grounds on which the landlord under such an agreement may issue a notice of termination in respect of the agreement; and
- (c) to provide for the payment of compensation when a notice of termination in respect of such an agreement is issued in circumstances where the tenant under the agreement is not in breach of the agreement; and
- (d) to provide for the relocation of caravans and manufactured homes from one residential site to another under the same residential tenancy agreement; and
- (e) to make other provision of a minor, consequential or ancillary nature; and
- (f) to enact savings and transitional provisions.

Clause 1 specifies 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 Schedule of amendments to the Principal Act.

* Amended in committee—see table at end of volume.

SCHEDULE I—AMENDMENTS

General

Part 1 of proposed Schedule 3 (to be inserted by Schedule 1 (19) to the proposed Act) contains a definitions clause and an application clause.

Proposed clause 1 defines the expressions “Crown reserve”, “dwelling”, “National Parks and Wildlife reserve”, “residential park”, “residential site” and “residential site agreement” for the purposes of the proposed Schedule. A residential site agreement is a residential tenancy agreement under which the landlord grants to the tenant a right to install a dwelling on a residential site (being a dwelling owned by the tenant) and to use the dwelling as a residence, whether or not the right is a right of exclusive occupation.

Proposed clause 2 applies the proposed Schedule to all residential site agreements other than the following:

- (a) agreements made in good faith for the purpose of giving a person a right to install a dwelling on a residential site and to use the dwelling as a residence, for a period of not more than 2 months, for the purpose of a holiday;
- (b) agreements under which the tenant under some other residential site agreement grants a sub-lease of the residential site;
- (c) agreements under which the tenant is a person whose principal place of residence is elsewhere than the residential site;
- (d) agreements with respect to land within a Crown reserve, other than an agreement arising from a lease or licence under section 102 of the Crown Lands Act 1989 to which the Minister administering that Act has granted consent;
- (e) agreements with respect to land within a National Parks and Wildlife reserve.

Implied terms

Part 2 of proposed Schedule 3 contains provisions that imply additional terms into all residential site agreements to which the Schedule applies.

Proposed clause 3 prohibits tenants from unreasonably restricting or interfering with the privacy, peace or quiet of, or the proper use and enjoyment of the residential park by, other residents of the residential park. It also requires tenants to observe the park rules for the residential park. It also requires the landlord to take all reasonable steps to ensure that other tenants comply with their obligations under the proposed clause.

Proposed clause 4 ensures that a tenant may assign or sub-let a residential site, with the consent of the landlord, and that such consent is not to be unreasonably refused. The clause excludes certain residential site agreements from the operation of section 33 of the Principal Act.

Termination of residential site agreements by the landlord

Part 3 of proposed Schedule 3 contains provisions with respect to the termination of residential site agreements by the landlord.

Division 1—Preliminary

Proposed clause 5 provides that a landlord under a residential site agreement to which the proposed Schedule applies may not issue a notice of termination under section 56, 57, 58, 60 or 61 of the Principal Act and that such an agreement may not be terminated by the Tribunal on the application of the landlord under section 69 of the Principal Act.

Division 2—Termination for breach of agreement by tenant

Proposed clause 6 enables a landlord to issue a notice of termination to a tenant who is in breach of a residential site agreement for non-payment of rent.

Proposed clause 7 enables a landlord to issue a notice of termination to a tenant who is in breach of a residential site agreement because of the dilapidated condition of the dwelling installed on the residential site.

Proposed clause 8 enables a landlord to issue a notice of termination to a tenant who is in serious or persistent breach of a residential site agreement on some other ground than non-payment of rent or the condition of the dwelling installed on the residential site.

Division 3—Termination otherwise than for breach of agreement by tenant

Proposed clause 9 enables a landlord to issue a notice of termination to a tenant on the ground that the residential site, or the residential park in which it is situated, requires maintenance. The clause provides for the payment of compensation in the event that such a notice is issued.

Proposed clause 10 enables a landlord to issue a notice of termination to a tenant on the ground that the residential site is to be used for a purpose other than that of a residential site. The clause provides for the payment of compensation in the event that such a notice is issued.

Proposed clause 11 enables a landlord to issue a notice of termination to a tenant on the ground that the agreement has become frustrated as the residential site is no longer physically or legally useable as a residential site. The clause provides for the payment of compensation in the event that such a notice is issued.

Proposed clause 12 enables the Tribunal to terminate a residential site agreement if it is satisfied that it is necessary to do so to avoid undue hardship for the landlord. The clause provides for the payment of compensation in the event that an agreement is so terminated.

Proposed clause 13 enables a landlord to require a tenant to relocate as an alternative to issuing a notice of termination under proposed clause 9, 10 or 11. The clause provides for the payment of compensation in the event that a tenant relocates in accordance with such a requirement.

Proposed clause 14 provides for the assessment of compensation payable under proposed clauses 9–13, and provides that the monetary limit set by section 85 (3) of the Principal Act does not apply.

Relocation of tenants

Part 4 of Schedule 3 contains provisions with respect to the relocation of tenants.

Proposed clause 15 provides for the relocation of a tenant from one residential site to another by agreement with the landlord.

Proposed clause 16 provides for the variation of a residential site agreement when a tenant relocates, whether by compulsion or by agreement.

Minor, consequential and ancillary provisions

The proposed Act contains the following minor, consequential and ancillary provisions:

- (a) a provision replacing “movable dwelling” with “moveable dwelling” throughout the Principal Act, so as to bring the spelling of that expression into line with the spelling used in the Local Government Act 1993 (Schedule 1 (1));
- (b) a provision providing that notes in the text to the Principal Act do not form part of the Act (Schedule 1 (2));
- (c) provisions inserting notes throughout the Act to draw attention to the provisions of proposed Schedule 3 (Schedule 1 (3)–(7), (9)–(14), (16) and (17));
- (d) provisions consequentially amending sections 53, 64 and 137 of the Principal Act (Schedule 1 (8), (15) and (18));
- (e) a provision enacting a formal provision to give effect to proposed Schedule 3 (Schedule 1 (3)).

Savings and transitional provisions

Proposed Schedule 4 contains provisions of a savings or transitional nature and enables the Governor to make regulations containing further provisions of a savings or transitional nature (Schedule 1 (19)).
