

# Residential (Land Lease) Communities Bill 2013

## Consultation draft

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# Residential (Land Lease) Communities Bill 2013

## Part 1 Preliminary

### 1.1 Name of Act

This Act is the *Residential (Land Lease) Communities Act 2013*.

### 1.2 Commencement

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

### 1.3 Objects of Act

The objects of this Act are as follows:

- (a) to promote the ongoing improvement of the governance of residential communities,
- (b) to set out particular rights and obligations of operators of residential communities and home owners in residential communities,
- (c) to enable prospective home owners to make informed choices,
- (d) to establish procedures for resolving disputes between operators and home owners,
- (e) to protect home owners from unfair business practices,
- (f) to encourage the continued growth and viability of residential communities in the State.

### 1.4 Definitions

- (1) In this Act:

***approved form*** means a form approved by the Commissioner.

***close associate*** of an operator includes:

- (a) the spouse or an employee of the operator, or
- (b) a person who has a relationship with the operator that is of a kind prescribed by the regulations.

***Commissioner*** means:

- (a) the Commissioner for Fair Trading, Department of Finance and Services, or
- (b) if no such position exists—the Director-General of the Department of Finance and Services.

***common area*** in a community means any amenities, building, road or other area in the community provided for common use by residents of the community.

***community*** or ***residential community*** means an area of land that includes:

- (a) residential sites, and
- (b) common areas, and
- (c) facilities for the personal comfort, convenience or enjoyment of persons residing in homes located on residential sites.

**Note.** A community may be:

- a caravan park (that is, land, including a camping ground, on which

caravans, or caravans and other moveable dwellings, have been, are or are to be placed, installed or erected),

- a manufactured home estate as defined in the *Local Government Act 1993* (that is, land on which manufactured homes have been, are or are to be placed),

whether or not the caravan park or manufactured home estate is the subject of an approval under the *Local Government Act 1993*.

**community rules** for a community means the rules made under Part 8 for the community.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**home** means:

- (a) any caravan or other van or other portable device (whether on wheels or not) other than a tent, used for human habitation, or
- (b) a manufactured home as defined in the *Local Government Act 1993*, or
- (c) any conveyance, structure or thing of a class or description prescribed by the regulations for the purposes of this definition.

**home owner** means:

- (a) a person who owns a home on a residential site in a community under a site agreement (whether or not the person resides at the site), or
- (b) a person who obtains an interest in a site agreement as the personal representative, or a beneficiary of the estate, of a deceased individual who immediately before the individual's death was a person mentioned in paragraph (a), or
- (c) another successor in title of a person mentioned in paragraph (a),

but does not include any person or class of persons excluded from this definition by the regulations.

**investigator** means an investigator appointed under section 18 of the *Fair Trading Act 1987*.

**office holder** means the chairperson or secretary of a residents committee (who is elected under Part 9).

**operator** of a community means:

- (a) except to the extent paragraph (b) applies, a person who is:
  - (i) the person who manages, controls or otherwise operates the community, including by granting rights of occupancy under site agreements, whether or not the person is an owner of the community, or
  - (ii) the personal representative, or a beneficiary of the estate, of a deceased individual who immediately before the individual's death was a person mentioned in subparagraph (i), or
  - (iii) a mortgagee in possession of a community for which site agreements are in force, or
  - (iv) another successor in title of a person mentioned in subparagraph (i), other than a person, or a person of a class, excluded from this paragraph by the regulations, or

- (b) a person specified or described in the regulations in relation to the community or a class of communities to which the community belongs.

**owner** of a community means:

- (a) except to the extent paragraph (b) applies, a person who is:
- (i) the owner of land on which the community is located, or
  - (ii) the personal representative, or a beneficiary of the estate, of a deceased individual who immediately before the individual's death was a person mentioned in subparagraph (i), or
  - (iii) a mortgagee in possession of a community for which site agreements are in force, or
  - (iv) another successor in title of a person mentioned in subparagraph (i), other than a person, or a person of a class, excluded from this paragraph by the regulations, or
- (b) a person specified or described in the regulations in relation to the community or a class of communities to which the community belongs.

**prospective home owner** means a person who indicates (or on whose behalf it is indicated) to the operator of a community that he or she is (or might be) interested in becoming a home owner in the community.

**Register** means the Register of Communities kept by the Commissioner under Part 3.

**resident** means a person who is a home owner or tenant in a community.

**residential community**—see the definition of **community**.

**residential site** or **site** means a site in a community for a home that is used, or is intended to be used, as a residence by an individual.

**residents committee**, in relation to a community, means the residents committee for that community under Part 9.

**site agreement** means an agreement under which an operator grants to another person for value a right of occupation of a site in a community for the purpose of allowing the other person to use a home owned by the other person or a third party and located on the site for use as a residence by an individual.

**Note.** A site agreement gives rise to a tenancy.

**site fees** means money paid or payable by a home owner to an operator on a periodic basis for occupation of a residential site under a site agreement.

**tenancy agreement** means a residential tenancy agreement within the meaning of the *Residential Tenancies Act 2010*.

**tenant** has the same meaning as in the *Residential Tenancies Act 2010*.

**termination notice** means a termination notice under Part 11 given by a party to a site agreement.

**termination order** means a termination order under Part 11 made by the Tribunal.

**Tribunal** means the Consumer, Trader and Tenancy Tribunal established by the *Consumer, Trader and Tenancy Tribunal Act 2001*.

**utility** means any of the following services:

- (a) electricity,
- (b) gas,
- (c) sewerage,
- (d) water,
- (e) another service prescribed by the regulations.

**utility charge** means a fee or charge payable by a home owner under Part 7.

- (2) If there are two or more operators of a community:
  - (a) a reference (however expressed) in this Act to the operator is a reference to any one or more of them, and
  - (b) without limiting paragraph (a), it is sufficient compliance with the requirements of this Act and the regulations if:
    - (i) any of them exercises the functions of the operator under this Act or the regulations, and
    - (ii) any notice or other document required to be given to the operator under this Act or the regulations is given to any of them.
- (3) If there are two or more owners of a community:
  - (a) a reference (however expressed) in this Act to the owner is a reference to any one or more of them, and
  - (b) without limiting paragraph (a), it is sufficient compliance with the requirements of this Act and the regulations if:
    - (i) any of them exercises the functions of the owner under this Act or the regulations, and
    - (ii) any notice or other document required to be given to the owner under this Act or the regulations is given to any of them.
- (4) Notes included in this Act do not form part of this Act.

## **Part 2                      Application of Act**

### **2.1                      Application of Act to communities**

This Act applies to all communities:

- (a) whether existing immediately before or coming into existence after the commencement of this section, and
  - (b) whether described as residential parks, communities or otherwise, and
  - (c) whether or not any relevant approval for them has been obtained under the *Local Government Act 1993*, and
  - (d) whether or not they are included in the Register,
- unless a provision of this Act provides otherwise.

**Note.** See section 2.8 for exemptions under the regulations.

## 2.2 Application of Act to site agreements

- (1) This Act applies to all site agreements, whether existing immediately before or coming into existence after the commencement of this section, unless a provision of this Act provides otherwise.
- (2) Where this Act applies to a site agreement, it so applies despite the terms of the agreement or any other contract, agreement or arrangement, whether made before or after the commencement of this section.
- (3) This Act applies to a site agreement until it is terminated in accordance with this Act.

## 2.3 Application of Act to homes

- (1) This Act applies to a home owned by its occupant (the **home owner**) and located or proposed to be located in a community owned by someone else.
- (2) This Act applies to a home owned by a third party and located or proposed to be located in a community owned by someone else, and so applies in the same way as it applies to a home owned by its occupant. A **third party** is a person who is neither the owner nor the operator of the community.
- (3) Subsection (2) does not have effect in relation to a home if:
  - (a) the *Residential Tenancies Act 2010* applies to the home, or
  - (b) the home is of a class or description prescribed for the purposes of this paragraph (whether by reference to the ownership or occupation of the home or otherwise).

## 2.4 Arrangements to which this Act does not apply

- (1) This Act does not apply to the following arrangements made in good faith:
  - (a) an occupation agreement to which the *Holiday Parks (Long-term Casual Occupation) Act 2002* applies, or
  - (b) an arrangement for occupation of a residential site for holiday purposes, or
  - (c) an arrangement for occupation of a residential site by an itinerant worker, unless the parties to the arrangement agree to enter into a site agreement, or
  - (d) an arrangement for accommodation in a community for an employee of the operator, or
  - (e) any other arrangements prescribed by the regulations.
- (2) The operator of a community who enters into an arrangement of the kind referred to in subsection (1) and who knows at the time or ought reasonably to know at the time that it is not made in good faith commits an offence.

Maximum penalty: 100 penalty units.

- (3) In this section:

**arrangement** includes a contract or agreement.

**itinerant worker** means a person who lives elsewhere but stays in a community due to seasonal work in the area (for example, fruit picking).

**Note.** If an arrangement of the kind referred to in this section is not entered into in good faith, orders could be sought from the Tribunal under section 2.6.

## **2.5 Places to which this Act does not apply**

- (1) This Act does not apply to the following places:
  - (a) a place owned or managed by a co-operative,
  - (b) a place that is subject to a strata scheme or community land scheme,
  - (c) a place owned by a company title corporation occupied by a shareholder of the corporation,
  - (d) any other places prescribed by the regulations.
- (2) In this section:

*community land scheme* means a scheme (other than a strata scheme) within the meaning of the *Community Land Management Act 1989*.

*company title corporation* means a company registered under the *Corporations Act 2001* of the Commonwealth that is the owner of land if ownership of a share or shares in that company entitles the owner of the share or shares to the exclusive use and occupation of residential premises on that land.

*co-operative* has the same meaning as it has in the *Co-operatives Act 1992*.

*strata scheme* has the same meaning as it has in the *Strata Schemes Management Act 1996*.

## **2.6 Declaration by Tribunal**

The Tribunal may, on application by any person, make an order declaring that:

- (a) a specified place is or is not a community to which this Act or a specified provision of this Act or the regulations applies, or
- (b) a specified agreement is or is not a site agreement to which this Act or a specified provision of this Act or the regulations applies, or
- (c) specified premises are or are not a home to which this Act or a specified provision of this Act or the regulations applies, or
- (d) a specified contract, agreement or arrangement of a kind referred in section 2.4 was or was not made in good faith.

## **2.7 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

## **2.8 Exemptions from operation of Act**

- (1) The regulations may exempt from the operation of this Act or the regulations or any specified provision of this Act or the regulations any specified community or other place, agreement or home or any specified class of communities or other places, agreements or homes.
- (2) An exemption may be unconditional or subject to conditions.

## **2.9 Contracting out prohibited**

- (1) The provisions of this Act and the regulations have effect despite any stipulation to the contrary in any agreement, contract or arrangement, and no agreement contract or arrangement operates to annul, vary or exclude any of the provisions of this Act or the regulations.

- (2) Subsection (1) applies in relation to an agreement, contract or arrangement (including a collateral agreement between the parties to a site agreement), and so applies in relation to the agreement, contract or arrangement:
  - (a) whether or not it is a site agreement, and
  - (b) whether or not it is a tenancy agreement, and
  - (c) whether it is oral or wholly or partly in writing, and
  - (d) whether it is or was made or entered into before or after the commencement of this section.
- (3) Without limiting subsection (1), a term of an agreement, contract or arrangement referred to in that subsection, including but not limited to a purported waiver (however expressed) of a right under this Act or the regulations, is void to the extent it is inconsistent with this Act or the regulations.
- (4) A person must not enter into any agreement, contract or arrangement after the commencement of this section with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act or the regulations.

Maximum penalty: 100 penalty units.

## **2.10 Relationship of Act with other laws**

- (1) This Act does not apply to tenancy agreements, except to the extent this Act provides otherwise.
- (2) The *Retirement Villages Act 1999* does not apply to communities occupied by retired persons or predominantly by retired persons (that is, persons who have reached the age of 55 years or have retired from full-time employment).
- (3) Nothing in this Act limits any requirement imposed by or under the *Local Government Act 1993* or the *Environmental Planning and Assessment Act 1979*.

## **Part 3 Registration of communities**

### **3.1 Commissioner to keep Register**

- (1) The Commissioner is to keep a Register of Communities.
- (2) The Register may be kept in such form as the Commissioner considers appropriate.
- (3) The Commissioner is to ensure that information on the Register is kept up to date, and in particular the Commissioner may remove any information from the Register that appears to the Commissioner to be out of date.
- (4) The Commissioner may correct any error in or omission from the Register.
- (5) A community is registered if the particulars of the community are currently included in the Register.

### **3.2 Information to be recorded in Register**

- (1) The Commissioner is to record in the Register in relation to each community:
  - (a) particulars about the community notified under Part 13A of the *Residential Parks Act 1998* that appear to the Commissioner to be up to date, and
  - (b) particulars about the community notified to the Commissioner under this Part.

- (2) The Commissioner may also record in the Register in relation to a community:
  - (a) particulars of any enforcement action taken in respect of the community, its operator or any of its staff, and
  - (b) any other particulars or information that the Commissioner considers appropriate or that may be prescribed by the regulations.

### **3.3 Notifying particulars of community**

- (1) The operator of a community must notify the Commissioner, in accordance with this section, of the following particulars so as to enable the Commissioner to include information about the community in the Register:
  - (a) the trading name, address and contact details of the community,
  - (b) the name and contact details of the operator and the owner of the community (if different from the operator),
  - (c) information relating to any relevant training, qualifications or experience of the operator or other persons involved in the management of the community,
  - (d) whether the community has a residents committee and, if so, the name and site number of an office holder of the committee or (if there is no office holder) at least one member of the residents committee (if nominated by the committee),
  - (e) information relating to the occupation and use of sites located in the community,
  - (f) information relating to the commencement of operation of the community,
  - (g) information relating to the community's membership of any industry association,
  - (h) such other particulars as may be approved by the Commissioner or prescribed by the regulations.
- (2) Particulars do not need to be notified again if the community was operating as a residential park immediately before the commencement of this section and the particulars were notified before that commencement under Part 13A of the *Residential Parks Act 1998*.
- (3) The operator of a community must notify the Commissioner of the particulars referred to in subsection (1):
  - (a) if the community was operating as a community on the commencement of this section and the particulars had not been previously notified under Part 13A of the *Residential Parks Act 1998*—within 30 days after that commencement, or
  - (b) if the community begins operating as a community after the commencement of this section—within 30 days after it begins operating as a community.
- (4) The operator of a community must notify the Commissioner within 30 days of any change to the particulars previously notified.
- (5) The operator of a community who contravenes this section is guilty of an offence.

Maximum penalty:

  - (a) in the case of a corporation—100 penalty units, and
  - (b) in any other case—50 penalty units.



- (6) An operator is not excused from a requirement under this section to notify particulars concerning a community on the ground that the notification of those particulars may incriminate the operator or make the operator liable to a penalty.
- (7) Any notification given to the Commissioner under this section is to be in the approved form. Information is not duly provided unless all particulars required by the form are provided.

### **3.4 Notifying when a place ceases to be a community**

If a place ceases to be a community, the person who was the operator immediately before the cessation must notify the Commissioner of that cessation, and of the date when it occurred, within 30 days of the cessation.

Maximum penalty:

- (a) in the case of a corporation—20 penalty units, and
- (b) in any other case—10 penalty units.

### **3.5 False or misleading information**

A person must not, in purported compliance with any requirement under this Part, provide to the Commissioner any information that the person ought reasonably to know is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, and
- (b) in any other case—50 penalty units.

### **3.6 Publication of certain information for public access**

- (1) The Commissioner is to arrange for the following information contained in the Register about a community to be published on the internet for public access:
  - (a) the trading name, address and contact details of the community,
  - (b) the name of the operator,
  - (c) particulars of enforcement action taken in respect of the community, its operator or any of its staff that are currently authorised or required by the regulations to be included for publication,
  - (d) such other information as may be prescribed by the regulations.
- (2) No other information contained in the Register may be made available to the public.
- (3) The operator of a community may advise the Commissioner that the community has ceased accepting new residents. The Commissioner may (if he or she considers it appropriate to do so) include in the published information a note to that effect.
- (4) The information referred to in subsection (1), and any note referred to in subsection (3), may also be provided to members of the public in any other manner approved by the Commissioner.

### **3.7 Evidential provisions concerning Register**

- (1) The Register is evidence of any particulars or information recorded in it.
- (2) A certificate signed or purporting to be signed by the Commissioner, or an officer or employee of the Department of Finance and Services authorised in writing by the Commissioner, and stating:

- (a) that a place named in the certificate was or was not registered at a specified time, or
- (b) any other particulars or information recorded in the Register at a specified time,

is admissible in any legal proceedings and is evidence of the matters stated in the certificate.

## **Part 4            Entering into site agreements**

### **Division 1        Disclosure of information**

#### **4.1            Disclosure statement for prospective home owners**

- (1) This section applies to communities that are currently available for negotiation of site agreements.
- (2) The operator of a community must provide a disclosure statement relating to a particular residential site to a prospective home owner (or person acting on behalf of a prospective home owner), who:
  - (a) requests a copy, or
  - (b) expresses an interest in the site,as soon as reasonably practicable but within 14 days after the request is received or the expression of interest is made.

Maximum penalty: 20 penalty units.
- (3) Without limiting subsection (2), the disclosure statement is to be in the approved form and is to include:
  - (a) details of the fees and charges that will be payable under the proposed site agreement for the particular site, and
  - (b) details of the services and facilities available in the community, and
  - (c) key elements of the community rules (if any), and
  - (d) details of compliance with statutory requirements applying to the community, and
  - (e) other matters likely to be of material interest to a prospective home owner.
- (4) The Tribunal may, on application by a prospective home owner, make an order requiring the operator of a community to provide a disclosure statement if the operator fails to provide a disclosure statement in accordance with this section.
- (5) A disclosure statement is to be signed and dated by the operator.

#### **4.2            Approved information for prospective home owners**

- (1) The Commissioner may approve the content and form of information that the operator of a community must provide to a prospective home owner or a person acting on behalf of a prospective home owner.
- (2) The operator of a community must not, without reasonable excuse, fail to provide the information in the approved form at or before the time the disclosure statement is provided in accordance with section 4.1.

Maximum penalty: 10 penalty units.

- (3) Without limiting subsection (1), the approved information may relate to any of the following:
  - (a) the community industry generally,
  - (b) the rights and responsibilities of home owners in communities,
  - (c) a checklist for prospective home owners to consider before buying a home,
  - (d) contact details to obtain information and advice.

#### **4.3 Time to read information and seek advice**

- (1) The operator of a community must not enter into a site agreement with a person earlier than 14 days after the person (or another person acting on behalf of that person) has been provided by the operator with both a disclosure statement and a copy of the proposed agreement.

Maximum penalty: 100 penalty units.

**Note.** If both documents are provided on the same day, the 14-day period is reckoned from that day. If the documents are provided on different days, the 14-day period is reckoned from the day on which the later document is provided.

- (2) The operator of a community must not restrict any person's right to seek independent advice before entering into a site agreement.

Maximum penalty: 10 penalty units.

#### **4.4 False, misleading or deceptive information**

The operator of a community or a person acting on behalf of the operator must not induce a person to enter into a site agreement by any statement, representation or promise that the operator or person acting on behalf of the operator knows or ought reasonably to know is false, misleading or deceptive.

Maximum penalty: 20 penalty units.

### **Division 2 Site agreements**

#### **4.5 Site agreements generally**

- (1) The operator of a community must ensure that the site agreement for a site in the community is in writing at the commencement of the agreement.

Maximum penalty: 20 penalty units.

- (2) The agreement must:
  - (a) identify the site, and
  - (b) state:
    - (i) the operator's name and address for service of documents, and
    - (ii) if the operator is a company—the address of the registered office of the company, and
    - (iii) if the operator is not the owner of the community—the name of the owner, and
  - (c) be signed by the parties, and
  - (d) comply with any other requirements prescribed by the regulations (including as to the content or form of the agreement).

- (3) If a site agreement does not comply with a requirement of subsection (2), the operator of the community is guilty of an offence.

Maximum penalty: 20 penalty units.

- (4) The Tribunal:

- (a) may, on application by a home owner who was not given a written site agreement at the time occupation of the residential site commenced, order the operator to prepare and enter into:

(i) a written site agreement in the relevant standard form, if prescribed, or

(ii) a written site agreement that includes, or contains only, terms specified or of a kind specified by the Tribunal, if there is no relevant prescribed standard form, and

- (b) may, by the same order, specify a commencement date for the agreement that occurred before the order was made.

- (5) The operator for the time being is taken to be a party to every site agreement for residential sites in the community whenever the agreement was entered into.

#### **4.6 Standard site agreements**

- (1) The regulations may prescribe a standard form of site agreement.

- (2) The regulations may provide for the following:

(a) the terms of the site agreement,

(b) more than one standard form of site agreement for use for different classes of communities, agreements or parties,

(c) the addition of terms to, or the omission or variation of terms contained in, a standard form of site agreement in specified circumstances,

(d) a form of site condition report to be completed by the parties and annexed to the site agreement.

- (3) A site agreement that is entered into on or after the day a relevant standard form is prescribed:

(a) must be in the standard form (but may contain additional terms—see section 4.7), and

(b) is taken to include the terms of the standard form to the extent they are not physically included.

- (4) The terms contained in the standard form must not be varied by the parties and to the extent the terms they are so varied are taken not to have been varied.

- (5) The Tribunal may, on application by a home owner under a site agreement that is entered into after the commencement of this section and is not in the relevant standard form, order the operator to prepare and enter into a site agreement that is in the relevant standard form.

#### **4.7 Additional terms**

- (1) The parties may insert additional terms in a standard form of site agreement, but only if the terms:

(a) do not contravene this or any other Act, and

(b) are not inconsistent with the terms prescribed in the standard form, and

- (c) are set out in a separate and clearly labelled part of the site agreement.
- (2) The Tribunal:
  - (a) may, on application by a home owner or operator of a community, make an order declaring an additional term is void, on being satisfied that the additional term contravenes subsection (1), and
  - (b) may, by the same order, prohibit either or both of the following:
    - (i) the current operator or any future operator of the community from using the same or a similar term in any future site agreement entered into in connection with the community while the community remains in the same ownership,
    - (ii) the current operator from using the same or a similar term in any future site agreement entered into in connection with any other community being operated by the operator.

#### **4.8 Prohibited terms of site agreements**

- (1) The regulations may prohibit a specified type of term in a site agreement.
- (2) The operator of a community must not include, or attempt to enforce, a term of a site agreement that is prohibited under subsection (1).

Maximum penalty: 100 penalty units.
- (3) A site agreement is void to the extent it contains a term that is prohibited under subsection (1).
- (4) A home owner or operator of a community may apply to the Tribunal to consider whether part or all of a specified term of a site agreement is void under subsection (3).
- (5) The Tribunal may, on application under subsection (4), make any of the following orders:
  - (a) an order declaring that a specified term of the site agreement is void,
  - (b) an order declaring that a specified term of the site agreement is not void,
  - (c) an order declaring that a specified term of the site agreement is void to a specified extent,
  - (d) an order varying a specified term of the site agreement,
  - (e) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.

#### **4.9 No fees or charges payable before entry**

The operator of a community, or a person acting on the operator's behalf, must not request, demand or receive any fee or charge from a prospective home owner before entering into a site agreement with the prospective home owner.

Maximum penalty: 20 penalty units.

#### **4.10 Duration of site agreement**

- (1) A site agreement may (but need not) provide for its duration to be for a specified fixed period.
- (2) The parties to a site agreement that specifies a fixed period may (but need not) enter into a new site agreement for a new fixed period, regardless of the terms of the agreement.

- (3) However, if a site agreement entered into after the commencement of this section specifies a fixed period, the period must exceed 3 years.
- (4) A term of a site agreement entered into after the commencement of this section has no effect to the extent it specifies a period of 3 years or less. In that case, the agreement is unlimited as to its duration.
- (5) A home owner's right under a site agreement to occupy a residential site continues until the agreement is terminated in accordance with this Act, whether or not a fixed period (if any) has expired.

#### **4.11 Home owner to be given copy of site agreement**

The operator of a community must ensure that a home owner receives a copy of the site agreement (for the home owner to keep), when the home owner and the operator have both signed it.

Maximum penalty: 10 penalty units.

#### **4.12 Certain unexecuted site agreements enforceable**

- (1) If a site agreement has been signed by a home owner and given to the operator of a community or a person on the operator's behalf and has not been signed by the operator:
  - (a) acceptance of site fees by or on behalf of the operator without reservation, or
  - (b) any act of part performance of the agreement by or on behalf of the operator,

gives to the document the same effect it would have if it had been signed by the operator on the first day in respect of which the site fee was accepted or on the day on which such an act was first performed.

- (2) This section applies despite section 54A of the *Conveyancing Act 1919*.
- (3) In this section:

*signed* includes executed by a corporation in any manner permitted by law.

#### **4.13 Non-compliance not to affect validity or enforceability**

A site agreement is not rendered void or unenforceable by non-compliance with a requirement of this Part, except to the extent specifically provided by a provision of this Part.

## **Part 5 Rights and obligations**

### **Division 1 Basic responsibilities**

#### **5.1 What this Division is about**

- (1) This Division states some of the basic responsibilities of home owners and operators of communities.
- (2) Other provisions of this Act deal with more specific rights and responsibilities.
- (3) This Division does not limit the rights and responsibilities of an operator or home owner under this Act.

## **5.2 Home owner's responsibilities**

A home owner has the following responsibilities:

- (a) to use the residential site only as a place of residence except so far as the operator consents to its use for another or additional purpose,
- (b) to use the community's common areas only for a purpose associated with the home owner's use of the site,
- (c) not to use, or allow other occupants or guests to use, the site or the community's common areas for an illegal purpose,
- (d) not to interfere with, and to ensure as far as practicable other occupants or guests do not interfere with, the reasonable peace, comfort or privacy of the community's residents,
- (e) to pay the site fees and other charges payable by the home owner under the site agreement,
- (f) not to intentionally or recklessly damage or destroy, or allow other occupants or guests to intentionally or recklessly damage or destroy, the community's common areas,
- (g) to maintain (subject to fair wear and tear) the home located on the site in a reasonable state of cleanliness and repair, and fit to live in, and in particular to keep the site tidy and free of rubbish,
- (h) to notify the operator as soon as practicable of:
  - (i) any damage to the site, or
  - (ii) any damage to common areas caused or permitted by the home owner, other occupants or their guests,
- (i) to respect the rights of the operator, and agents and employees of the operator, to work in an environment free from harassment or intimidation,
- (j) not to act in a manner that adversely affects the occupational health and safety of persons working in the community,
- (k) to notify the operator before the site is to be left unoccupied for more than 30 days or, if the home owner is not able to give notice before leaving the site, as soon as is reasonably practicable after leaving it,
- (l) otherwise, to comply with the site agreement and the community rules.

## **5.3 Operator's responsibilities**

- (1) The operator of a community has the following responsibilities:
  - (a) to ensure that the community is reasonably safe and secure,
  - (b) to take reasonable steps to ensure the home owners:
    - (i) always have access to their residential sites, and
    - (ii) have reasonable access to the common areas,
  - (c) to maintain the common areas in a reasonable state of cleanliness and repair, and fit for use by the home owners,
  - (d) not to intentionally or recklessly damage or destroy any property of the home owners, other occupants or their guests,
  - (e) to ensure the times the operator or a representative of the operator is available to be contacted by the home owners are reasonable, having

- regard to all the circumstances, including the utilities supplied by the operator to residential sites,
- (f) to the extent it is within the operator's control, to ensure the continuity of supply of utilities to residential sites occupied by home owners,
  - (g) to take reasonable steps to keep the common areas free of noxious weeds and vermin,
  - (h) to take reasonable steps to mitigate the impact of a bushfire or flood and ensure residents are aware of emergency evacuation procedures,
  - (i) to pay all rates, taxes and other charges payable by the owner or operator of the community,
  - (j) to comply with all statutory obligations relating to the community,
  - (k) otherwise, to comply with the site agreements and the community rules.
- (2) With regard to the operator's obligation to maintain the common areas (see subsection (1) (c)):
- (a) the necessary work must be carried out as soon as reasonably practicable and in a way that minimises disruption to residents, and
  - (b) the standard to which the work is to be carried out is to be determined having regard to the age and prospective life of the community and to the level of fees and charges payable by residents, and
  - (c) if there is a failure to carry out the work at all or to an appropriate standard, the Tribunal may, on application by a home owner, make any of the following orders in respect of the failure:
    - (i) an order requiring work of a specified kind to be carried out,
    - (ii) an order that the operator pay compensation to the home owner and any other home owners,
    - (iii) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.

#### **5.4 Right to quiet enjoyment**

The operator of a community must not unreasonably restrict or interfere with a home owner's privacy, peace and quiet or proper use and enjoyment of the site and the common areas.

Maximum penalty: 10 penalty units.

#### **5.5 Access to residential site by operator**

- (1) The operator of a community or a person acting on the operator's behalf may, while a site agreement is in force, enter a residential site and any home located on it, in the following circumstances only:
- (a) with the consent of the home owner, so long as the consent is given at the time of entry or no more than 14 days before entry,
  - (b) in an emergency, so long as entry is needed to avert danger to life or valuable property,
  - (c) in a case where electricity, water or gas is supplied to the home owner by the operator, to inspect and read any electricity, water or gas meter located on the residential site,



- (d) to comply with an obligation under this Act or another Act, so long as (subject to the legislation concerned) at least 2 days' notice has been given to the home owner,
  - (e) for the purpose of lawn or grounds maintenance, so long as entry is made at a reasonable time and on a reasonable number of occasions and the home owner agreed to such an arrangement when entering into the site agreement,
  - (f) in accordance with an order of the Tribunal.
- (2) A person exercising a right of entry under subsection (1):
- (a) must not act in an unreasonably intrusive manner on the residential site or home, and
  - (b) without limiting the effect of paragraph (a), must not, without the home owner's consent:
    - (i) enter a part of the site or home to which entry is not reasonably required for the purpose for which the right of entry is being exercised, or
    - (ii) remain on the site or home longer than is reasonably necessary for the purpose for which the right of entry is being exercised.
- (3) The Tribunal may, on application by the operator of a community, make an order authorising the operator or any other person to enter a residential site and home located on it.
- (4) The Tribunal may, on application by a home owner or the operator of a community, make an order settling any dispute involving entry to the residential site or home.
- (5) The operator or any other person referred to in this section must not, while the site agreement is in force, enter the residential site or the home located on it except as permitted by this section.

Maximum penalty: 10 penalty units.

## **5.6 Access to community by tradespersons and service providers**

- (1) The operator of a community must take all reasonable steps to ensure that tradespersons and service providers have access to a home in the community to provide goods and services arranged by the home owner.

Maximum penalty: 20 penalty units.

- (2) The operator of a community must not:
- (a) require a home owner to purchase, rent or lease goods or services from any particular person, or
  - (b) restrict the right of a home owner to purchase, rent or lease goods or services from a person of his or her choice.

Maximum penalty: 10 penalty units.

- (3) However, the operator may impose reasonable restrictions on the further entry of particular tradespersons and service providers to the community for a particular period (including, if appropriate, a prohibition on further entry), but only if they have:
- (a) unduly disturbed the peace and quiet of the community, or

- (b) violated any community rules for the community, concerning motor vehicle traffic, that are displayed in or outside the community.
- (4) The Tribunal may, on application by a home owner, make an order resolving a dispute concerning an operator's compliance with this section.

### **5.7 Access to community by emergency and home care service vehicles**

- (1) The operator of a community must take all reasonable steps to ensure that:
  - (a) emergency and home care service personnel have unimpeded vehicular access to homes in the community at all times, and
  - (b) the home owners in the community, and all local emergency and home care service agencies, are consulted and kept informed as to any arrangements made to secure that access, and
  - (c) the roads and sites in the community are signposted, or a map placed at each entry to the community, in a way that provides adequate information for emergency and home care service personnel seeking to locate a home in the community.

Maximum penalty: 20 penalty units.

- (2) The Tribunal may, on application by a home owner or a representative of an emergency or home care agency, make an order resolving a dispute concerning an operator's compliance with this section.

### **5.8 Alterations and additions to, and replacement of, homes**

- (1) A home owner must not, except with the written consent of the operator of the community or unless the agreement otherwise provides:
  - (a) make any alteration to the exterior of the home (other than painting or minor repairs) or add a fixture to the site, or
  - (b) replace the home with another home.
- (2) The operator must not unreasonably withhold or refuse the consent.
- (3) The consent may be given with reasonable conditions.
- (4) The Tribunal may, on application by the home owner, order that any alteration, addition or replacement requiring consent can be carried out without consent if the Tribunal finds that the withholding or refusal of consent was unreasonable.
- (5) The Tribunal must not make an order under this section if the relevant alteration, addition or replacement is or would be designed, constructed or installed in breach of the *Local Government Act 1993*, the *Environmental Planning and Assessment Act 1979* or any approval, consent or certificate under either or both of those Acts.
- (6) A home located 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. This subsection does not apply to a home that is owned by the owner of the community.
- (7) Without limiting subsection (6), a fixture added to a residential site by a home owner remains the property of the home owner and does not become part of the land, and the home owner may remove it at any time or sell it as part of the home.

### **5.9 Dilapidation**

- (1) If the operator of a community reasonably believes that:
  - (a) the residential site or home located on it is significantly dilapidated, or

- (b) any external feature of the home has been altered or added to or any fixtures on the residential site have been altered or have been added to the site by the home owner in such a manner as to be likely to cause serious health or safety risks to other persons,

the operator may issue a written notice to the home owner requiring the home owner to carry out work within 60 days to rectify the defect concerned.

- (2) If the home owner fails to comply with the notice, the Tribunal may, on application by the operator, make:
  - (a) an order requiring the home owner to carry out the work within a specified period, and
  - (b) if the home owner does not comply with the order under paragraph (a)—an order authorising the operator to arrange for the work to be carried out, and to recover the reasonable costs from the home owner, as directed by the Tribunal.

#### **5.10 Additional occupants**

- (1) A home owner must not, except with the written consent of the operator of the community or unless the agreement otherwise provides, allow additional persons to occupy the residential site.
- (2) The operator must not unreasonably withhold or refuse the consent.
- (3) The consent may be given with reasonable conditions.
- (4) The Tribunal may, on application by the home owner, order that the home owner may allow other named persons to occupy the residential site without the consent if the Tribunal finds that the withholding or refusal of the consent was unreasonable.
- (5) However:
  - (a) a home owner's spouse or de facto partner, and
  - (b) any children under 18 years of age of the spouse or de facto partner,who are not named or referred to in the site agreement have an automatic right of occupation of the residential site without the need for the operator's consent.
- (6) The Tribunal may, on application by the home owner or operator, make orders to settle a dispute arising under this section.
- (7) The operator may give the consent under this section, and the Tribunal may make an order under this section, despite any term of the site agreement that prohibits additional occupants or puts limits on the number of occupants.

#### **5.11 Sub-letting residential site or assignment of site agreement**

- (1) A home owner may, with the written consent of the operator of the community:
  - (a) enter into a tenancy agreement for, or otherwise sub-let, the residential site or the home located on it, or
  - (b) assign the site agreement if it is for a fixed term that has not expired.
- (2) A purported residential tenancy, sub-lease or assignment is void if it is in breach of subsection (1).
- (3) This section has effect despite the terms of the site agreement and does not prevent the home owner from selling the home on site or from having additional occupants as contemplated by section 5.10.

### **5.12 Right of home owner to appoint agent**

- (1) A home owner may appoint a person as the home owner's agent for the purpose of receiving notices or other documents to be given to the home owner under a site agreement or under this Act.

**Note.** A home owner may wish to appoint an agent if the home owner (for example) cannot read or write English, is sick, or is going to be away from his or her home for some time.

- (2) An appointment of the operator of the community (or a close associate of the operator or a person nominated by the operator) as an agent under this section is of no effect.
- (3) An appointment under this section:
  - (a) may be made in a site agreement or at any time after the agreement commences, and
  - (b) may be revoked at any time by the home owner,but any such appointment or revocation has no effect until it is notified in writing to the operator.
- (4) The operator must give to the agent appointed by a home owner, until such time as the appointment expires or is revoked, any notices or other documents that the operator is required to give to the home owner under a site agreement or this Act.
- (5) A notice or other document that is required by this section to be given to the agent appointed by the home owner and that is not so given is taken not to have been given to the home owner.

### **5.13 Mail facilities**

- (1) The operator of a community must establish and maintain at the community reasonable, accessible mail facilities for the home owners.
- (2) The operator of a community must not access or interfere with individual mail facilities provided to a home owner in the community, except with the prior consent of the home owner.

Maximum penalty: 10 penalty units.

- (3) The Tribunal may, on application by a home owner, make an order resolving a dispute concerning an operator's compliance with this section.

### **5.14 Maintenance of trees**

- (1) The operator of a community must ensure that trees in the community are maintained so as not to pose a danger to any person or property.

**Note.** Maintenance for this purpose includes (but is not limited to) trimming overhanging branches and removing tree roots causing damage to driveways, pipes and other property.

- (2) However, an operator is not required under this section to take any action that is prohibited by law.
- (3) The Tribunal may, on application by a home owner, make an order resolving a dispute concerning an operator's compliance with this section.

### **5.15 Services, facilities and improvements**

- (1) The operator of a community must maintain all services and facilities required by the development consent for the community to be available for the life of the community.

- (2) Before:
  - (a) removing or substantially restricting a facility or service required by the development consent or otherwise available for a community, or
  - (b) providing a new service or facility for a community,the operator must give at least 30 days notice to the residents committee (or if there is no residents committee, to all residents) of any proposal to do so.
- (3) The home owners in a community may, by a special resolution, both:
  - (a) request the operator to provide a specified new facility or service for the community or to make a specified improvement to the community, and
  - (b) agree to pay a special levy for the purpose calculated in accordance with the special resolution.
- (4) The special levy may be recovered as a debt owing to the operator from all home owners in the community in equal shares.
- (5) Once all payments have been received by the operator from the special resolution, the operator must, within a reasonable time, use the money for the purpose for which the special resolution was passed. Any unused amount must be refunded in equal shares.
- (6) The Tribunal may, on application by the operator or a home owner, make any of the following orders:
  - (a) an order that quashes the special resolution in whole or in part,
  - (b) an order that confirms the special resolution in whole or in part,
  - (c) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (7) The Tribunal is not to make an order quashing the special resolution, in whole or in part, unless satisfied that the operator or home owner has reasonable grounds to seek the order.
- (8) This section does not authorise an operator to take any action that is prohibited by law or that is inconsistent with a site agreement.
- (9) A special resolution has no effect unless reasonable notice of the proposal to make it is given to all the home owners and the resolution is passed by at least 75% of the home owners who participate in the vote.

#### **5.16 Change of operator**

- (1) If another person becomes the operator of a community, the benefits and obligations under existing site agreements pass from the old operator to the new operator.
- (2) The new operator must, within 14 days after becoming the operator, give all existing home owners in the community a notice stating the operator's name and business address.

Maximum penalty: 10 penalty units.

#### **5.17 Change of name or address of operator**

If the name or address of the operator of a community changes, the operator must, within 14 days after the change, give the existing home owners a notice stating the new name or address.

Maximum penalty: 10 penalty units.

## **Division 2            Conduct and education of operators**

### **5.18            Rules of conduct for operators**

- (1) The rules of conduct in Schedule 1 are to be observed by the operator of a community in the course of the carrying on of business or the exercise of functions as operator.
- (2) The operator of a community who, without reasonable excuse, contravenes a rule of conduct in Schedule 1 is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, and
- (b) in any other case—50 penalty units.

### **5.19            Mandatory education briefing for new operators**

- (1) This section applies to a person who becomes the operator of a community after the commencement of this section.
- (2) Within 30 days after the operator's name is inserted in the Register:
  - (a) if the operator is an individual—the operator must undertake an education briefing approved by the Commissioner, or
  - (b) if the operator is not an individual—the operator must arrange for a nominated person involved in the day-to-day management of the community to undertake an education briefing approved by the Commissioner.
- (3) The operator must notify the Commissioner in writing within 7 days of the completion of the education briefing that it has been undertaken and completed.
- (4) The operator must not, in purported compliance with subsection (3), provide to the Commissioner any information that the operator knows is false or misleading in a material particular.
- (5) The regulations may specify circumstances when an operator is not required to undertake or arrange for the education briefing.

**Note.** The regulations could, for example, provide that an operator is not required to undertake the briefing when he or she was the operator of another community within a certain period.

- (6) The education briefing may consist of one or more sessions, and may be conducted in any way the Commissioner thinks appropriate (for example, by a seminar or over the internet).

Maximum penalty: 50 penalty units.

### **5.20            Retaliatory conduct by operators**

- (1) The operator of a community or a close associate of the operator must not engage in retaliatory conduct against a home owner in the community if the conduct reasonably appears to have taken place wholly or partly in consequence of:
  - (a) a complaint made by the home owner in good faith to the Commissioner or a government agency about the operator, or
  - (b) a complaint made by the home owner in good faith to the operator, or
  - (c) an application made by the home owner to the Tribunal or a court, or

- (d) any action by the home owner to promote the establishment of a residents committee for the community, or
- (e) any matter prescribed by the regulations.

Maximum penalty: 100 penalty units.

- (2) The Tribunal may, on application by a home owner, make an order resolving a dispute concerning an operator's compliance with this section.
- (3) In this section:

*retaliatory conduct* by an operator or a close associate of an operator against a home owner includes:

- (a) increasing the home owner's site fees (whether or not site fees for other home owners are increased), and
- (b) amending community rules in a way that is detrimental to the home owner (whether or not it is detrimental to other home owners), and
- (c) giving or threatening to give the home owner a termination notice, and
- (d) any action that is of a kind prescribed by the regulations.

## **Part 6 Site fees**

### **Division 1 Payment of site fees**

#### **6.1 Site fees in advance**

- (1) A person must not demand or require that a home owner or prospective home owner pay, as site fees in advance, more than 2 weeks' site fees.

Maximum penalty: 10 penalty units.

- (2) A person must not demand or require the payment of any site fees (other than the first payment) under a site agreement for a period of occupation of a residential site to be made before the end of the previous period for which site fees have been paid.

Maximum penalty: 10 penalty units.

#### **6.2 Receipt for site fees**

- (1) If site fees are paid in person, any person who receives payment of the fees must, without delay, give the person making the payment a receipt for the payment.
- (2) If site fees are not paid in person, the operator of a community must, on receiving the fees and being asked for a receipt, prepare a receipt for the fees and provide it to the home owner.
- (3) A receipt for site fees is not a receipt for the purposes of this section unless it includes the following particulars:
  - (a) the name and address of the community, and the number or other identifying feature of the residential site,
  - (b) the name of the home owner,
  - (c) whether the home owner is in debit or credit as at the date of payment and by what amount,
  - (d) the period for which the fees are paid,

- (e) the date on which the fees are received,
- (f) the amount of fees paid.

Maximum penalty: 10 penalty units.

### **6.3 Records of site fees paid**

- (1) The operator of a community must keep, or cause to be kept, a record showing site fees received under site agreements for the community.

Maximum penalty: 10 penalty units.

- (2) A person must not knowingly make an entry that is false in a material particular in a record kept under this section.

Maximum penalty: 10 penalty units.

- (3) Any record of site fees received required to be kept under this section may be kept in written or electronic form.

### **6.4 Penalty site fee terms**

A term of a site agreement is void to the extent that it provides that, if the home owner breaches the agreement or this or any other Act, the home owner is liable to pay:

- (a) all or any part of the site fees remaining payable under the agreement, or
- (b) increased site fees, or
- (c) any amount as a penalty, or
- (d) any amount as liquidated damages.

### **6.5 Premium site fee terms**

- (1) This section applies if a term of a site agreement provides that, if the home owner does not breach the agreement or this or any other Act:

- (a) the site fees must or may be reduced, or
- (b) the home owner must or may be granted or paid a rebate or refund of site fees or other benefit.

- (2) The term of the agreement is taken to have been varied from the commencement of the agreement or the commencement of the application of this section to the agreement (whichever is the later) so that the home owner is immediately entitled to the reduction, rebate, refund or other benefit.

### **6.6 Accrual and apportionment of site fees**

- (1) The site fees payable under a site agreement accrue from day to day.
- (2) If a site fee is paid in advance, and the site agreement ends before the end of the period for which fee has been paid, the operator must refund the appropriate proportion of the amount paid to the home owner or apply it towards other liabilities of the home owner to the operator.

### **6.7 How and where site fees to be paid**

A home owner under a site agreement must pay the site fees payable under the agreement in the manner and at the place:

- (a) specified in the site agreement, or
- (b) agreed in writing between the operator and the home owner.



## **6.8 Site becoming uninhabitable**

If a residential site becomes wholly uninhabitable, otherwise than as a result of a breach of the site agreement, the site fees abate accordingly until the earlier of the following occurs:

- (a) the site becomes wholly habitable,
- (b) the site agreement is terminated under this Act.

## **Division 2 Reduction of site fees**

### **6.9 Reduction of site fees by agreement**

- (1) The site fees payable under a site agreement may be reduced:
  - (a) under a provision of the agreement, under which the site fees payable change automatically at specified intervals on a basis set out in the agreement, or
  - (b) by mutual agreement between the home owner and the operator.
- (2) Site fees may be reduced on a temporary basis so that, at the end of a specified period, the site fees revert to the level the fees would have been before the temporary reduction.
- (3) If the site fees are reduced by mutual agreement between the home owner and the operator, the terms of the site agreement are varied accordingly.

### **6.10 Power of Tribunal to reduce site fees**

- (1) The Tribunal may, on application by the home owner under a site agreement, make an order that the site fees payable under the agreement be reduced by an amount the Tribunal considers appropriate if it is satisfied:
  - (a) the amenity or standard of the community's common areas has decreased substantially since the agreement was entered into, or
  - (b) a communal facility or service provided at the community when the agreement was entered into has been withdrawn or substantially reduced, or
  - (c) a communal facility or service as follows has not been provided at the community:
    - (i) a communal facility or service described in advertising, done by or for the operator, of which the home owner was aware before the site agreement was entered into,
    - (ii) a communal facility or service described in a document made available to the home owner by the operator before the site agreement was entered into.
- (2) The Tribunal may consider any of the following documents for the purposes of subsection (1):
  - (a) the site agreement,
  - (b) a document containing information about the community and provided to home owner by the operator,
  - (c) any relevant advertising made available to the home owner by the operator before the site agreement was entered into,
  - (d) any other document the Tribunal considers is relevant.

## **Division 3      Increase of site fees**

### **6.11      How site fees may be increased**

- (1) Site fees payable under a site agreement can be increased only if the increase is made in accordance with this Division.
- (2) A site agreement may provide that site fees payable under it may be increased in accordance with either of the following procedures:
  - (a) the site fees may be increased at specified intervals (or on specified dates) by a fixed method, which may be either:
    - (i) by fixed amounts, or
    - (ii) by a fixed calculation (for example, in proportion to variations in the Consumer Price Index),
  - (b) the site fees may be increased by notice (otherwise than by a fixed method).

### **6.12      Increase of site fees by fixed method**

- (1) This section applies to a site agreement that provides for the increase of the site fees by a fixed method.
- (2) A site agreement must not provide that the site fees may be increased by more than one fixed method. If more than one method is specified, the method that results in the lower or lowest increase of site fees is the applicable method.
- (3) The operator must not increase (or attempt to increase) the site fees that are to be increased according to a fixed method otherwise than in accordance with that method and this section.

Maximum penalty: 50 penalty units.

- (4) The operator must give at least 14 days' written notice to the home owner of any increase in site fees, even if the timing of the increase is specified in the site agreement.
- (5) The notice must:
  - (a) specify the amount of the increased site fees, and
  - (b) how the increased site fees have been calculated, and
  - (c) specify the day on and from which the increased site fees are payable, and
  - (d) include such other information as may be prescribed by the regulations, and
  - (e) be in the approved form (if any).
- (6) The home owner is not required to pay any increase in the site fees until notice of the increase is given as required by this section.
- (7) The terms of a site agreement fixing the method of future increases of site fees cannot be challenged under this Act, but:
  - (a) the terms of the agreement may be varied if the parties enter into a written agreement to do so, and
  - (b) this subsection does not affect any right that the home owner has, apart from this Act and the *Consumer, Trader and Tenancy Tribunal Act 2001*, to challenge any of the terms.

**Note.** A home owner may be able to take action over unfair contract terms under

the Australian Consumer Law.

- (8) A fixed method of increase may:
  - (a) be for a specified period or for the duration of occupancy of a residential site by a home owner, and
  - (b) have effect for longer than the term of a site agreement for a fixed term.

### **6.13 Increase of site fees by notice**

- (1) This section applies to a site agreement that provides for the increase of the site fees by notice (otherwise than by a fixed method).
- (2) An increase in the site fees is not payable unless the fees are increased in accordance with this section.
- (3) The site fees must not be increased except by notice in writing given to all the home owners in the same community at the same time under site agreements to which this section applies.
- (4) The notice must:
  - (a) specify the amount of increased site fees, and
  - (b) specify the day (the *effective day*) on and from which the increased site fees are payable, and
  - (c) include a brief explanation for the increase, and
  - (d) include such other information as may be prescribed by the regulations, and
  - (e) be in the approved form (if any).
- (5) The day specified as the effective day must not be earlier than 60 days after the day on which the notice was given.
- (6) Site fees must not be increased more than once in any 12-month period under this section. This is calculated by reference to the day from which the increased site fees are payable.
- (7) Increases under this section in site fees payable by home owners in the same community under site agreements to which this section applies must take effect on the same day (and not on different days).
- (8) A notice under this section may be cancelled.
- (9) A later notice may provide for a lesser increase than that specified in an earlier notice under this section. A later notice has effect instead of the earlier notice and takes effect from the date on which the earlier notice was to take effect.
- (10) If the site fees payable under a site agreement are increased under this section, the terms of the agreement are varied accordingly.

### **6.14 Refund of overpaid site fees if increase not compliant**

- (1) A home owner under a site agreement may apply to the Tribunal for an order directing the refund of overpaid site fees on the ground that the increase of site fees did not comply with a requirement of this Division.
- (2) The Tribunal may make any of the following orders:
  - (a) an order directing a refund to the home owner,

- (b) an order directing a refund to any other home owner in the community who the Tribunal becomes aware also had a non-compliant increase of substantially the same kind,
  - (c) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (3) An application under this section must be lodged no later than 12 months after notice of the increase was given to the home owner.

## **Division 4            Compulsory mediation about increases of site fees by notice**

### **6.15            Mediation**

- (1) This section applies only to increases of site fees by notice (otherwise than by a fixed method). However, this section does not apply to an increase of site fees objected to solely on the ground that the increase is excessive when compared with increases for similar sites in the community.
- (2) An objection to an increase of site fees on the ground that the increase is excessive may be made by lodging an application for mediation under Division 2 of Part 12 signed by at least 25% of the home owners who received the notice within the first 30 days of the notice period, and not otherwise.
- (3) Home owners may nominate a representative or representatives under section 12.3 for the purposes of the mediation of the increase objected to. However, the nomination must be done in accordance with the prescribed procedure if the regulations so provide.
- (4) The parties to the mediation must use their best endeavours to participate and finalise mediation before the effective day.
- (5) A home owner may opt out of the mediation, and agree to pay the increase, but only if the home owner follows the process set out in the regulations.
- (6) The regulations may make provision for or with respect to the mediation of increases objected to.

## **Division 5            Applications to Tribunal about increases of site fees by notice**

### **6.16            Application of this Division**

This Division applies only to increases of site fees by notice (otherwise than by a fixed method).

### **6.17            Application following failed mediation**

- (1) An application to the Tribunal about an increase of site fees may be made only if a mediation attempt was unsuccessful.
- (2) The application may be made on behalf of all the affected home owners (other than those who opt out of the application) by one or more of them appointed as the representative or representatives by the participating home owners.
- (3) The application must be made before the effective day.
- (4) The application must be accompanied by a notice from the mediator stating mediation failed on the date specified by the mediator.

### **6.18 Application based on comparable sites**

- (1) A home owner under a site agreement for a site in a community may apply to the Tribunal for an order declaring that an increase of site fees is substantially excessive on the ground that the increase is excessive when compared with increases for similar sites in the community.
- (2) The application must be made within 30 days after the notice of the increase was given to the home owner.
- (3) This section does not prevent the home owner from also making or being a party to an application that can be made following failed mediation about an increase of site fees.

**Note.** Section 6.15 (which relates to compulsory mediation) does not apply to an increase of site fees objected to solely on the ground that the increase is excessive when compared with increases for similar sites in the community.

### **6.19 Interim orders suspending increases in site fees**

On application for an order under this Division, the Tribunal may, if it is of the opinion that the circumstances so require, suspend payment of the whole or part of an increase of site fees until the Tribunal finally determines the application.

### **6.20 Orders as to excessive increases in site fees**

- (1) On application for an order under this Division, the Tribunal may make any of the following orders:
  - (a) an order declaring that an increase of site fees is excessive,
  - (b) an order reducing the amount of the increase by a specified amount,
  - (c) an order setting aside the increase,
  - (d) order that the site fees must not exceed a specified amount or specified amounts, either:
    - (i) from a specified day, not being earlier than the day from which the increased site fees were payable, or
    - (ii) during a specified period,
  - (e) an order confirming the increase on the conditions (if any) the Tribunal considers appropriate,
  - (f) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (2) The Tribunal may make orders applying to individual participating home owners, groups of participating home owners or all participating home owners.
- (3) An order applies to all affected home owners in the community (other than those who opt out), unless the Tribunal is satisfied there is a strong reason for making separate orders for different home owners or groups of home owners.
- (4) The Tribunal cannot make an order that would result in an increase lower than that needed to cover any actual or projected increase (established to the satisfaction of the Tribunal) in the outgoings and operating expenses for the community since the previous increase (if any) in site fees for the community.

### **6.21 Matters to be considered about excessive increases**

The Tribunal may have regard to the following factors when deciding whether to make an order under this Division:

- (a) the frequency and amount of past increases in site fees for the community,

- (b) any actual or projected increase in the outgoings and operating expenses for the community as provided by the operator since the previous increase (if any) in site fees for the community,
- (c) any repairs or improvements to the community:
  - (i) carried out since the previous increase (if any), or
  - (ii) planned by the operator for the period covered by the increase being reviewed,
- (d) the general condition of the community including its common amenities,
- (e) the range and average level of site fees within the community,
- (f) the value of the community, as determined by the Valuer-General,
- (g) whether the increase is fair and equitable in all the circumstances of the case,
- (h) any other matters prescribed by the regulations,
- (i) any other relevant matters.

## **Part 7                      Utility and other charges**

### **7.1                      Nature of utility charges**

- (1) A utility charge refers to usage charges and service availability charges where applicable.
- (2) The regulations may provide that a service availability charge for electricity payable by home owners to the operator of a community is to be discounted in accordance with the regulations where less than 60 amps are being supplied (as ascertained under the regulations).

### **7.2                      Limit on amounts payable by home owner**

- (1) The only fees and charges that may be required or received by the operator of a community from a home owner are as follows:
  - (a) site fees, including site fees payable in advance as permitted under section 6.1,
  - (b) the cost of registering or recording the agreement under the *Real Property Act 1900*, if any fixed term period exceeds 3 years,
  - (c) security deposits or charges payable in advance for the supply of any gas, electricity or telephone service by the operator, not exceeding the amount that could have been charged if the service was supplied directly to the home owner by the relevant authority,
  - (d) a refundable deposit for a key or any other opening device to access the community, not exceeding \$25 or another amount prescribed by the regulations,
  - (e) other fees, charges and deposits required or permitted by this Act or the regulations.
- (2) The regulations may require or permit payment of fees, charges and deposits that are specified or of a kind specified by the regulations, and in particular may (but need not) provide that they are not payable by a home owner unless required by the site agreement to be paid by the home owner.

### **7.3 Utility charges payable to operator by home owner**

- (1) This section applies if, under a site agreement, the home owner is required to pay charges to the operator for the use by the home owner of a utility at the site.
- (2) The home owner cannot be required to pay for the use unless the use is separately measured or metered.
- (3) The operator must not charge the home owner an amount for the use of a utility that is more than the amount charged by the relevant supply authority for the quantity of the service supplied to, or used at, the site.

Maximum penalty: 20 penalty units.

- (4) The regulations may provide for a maximum charge and create an offence for an operator to request or receive more than the maximum charge (if any).

### **7.4 Owner or operator to pay for certain matters**

The owner or operator of a community must pay all rates, taxes or utility charges payable in connection with the community (including the residential sites) other than those payable by a home owner.

### **7.5 Unpaid utility charges**

- (1) If a home owner is required to pay a utility charge to the operator of a community under this Part, the operator may charge a fee for late payment or a dishonoured payment, limited to (or proportionate to) the amount of the fee payable by the operator for late payment.
- (2) The operator may apply to the Tribunal for an order requiring the home owner to pay any unpaid fee to the operator within a specified period.
- (3) The Tribunal may, on application under this section, make:
  - (a) an order requiring the home owner to pay the unpaid fee (or a specified part of it) within a specified period, and
  - (b) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (4) The Tribunal is to determine the application without conducting a hearing unless it is satisfied that the interests of justice require that a hearing be held in the presence of the parties.

### **7.6 Site fees cannot be used to pay utility charges**

Any amount paid by a home owner by way of site fees is to be applied to site fees in arrears or site fees in advance and not to any other outstanding fees or charges payable by the home owner.

### **7.7 Separate measurement or metering of supply of utility**

- (1) This section applies if:
  - (a) the use by the home owner under a site agreement of a utility at the site is not separately measured or metered, and
  - (b) the operator wishes to separately measure or meter the use of the utility at the site.
- (2) The operator of a community must pay the cost of installing a measuring device or meter to measure the use of the utility at the site.

Maximum penalty: 100 penalty units.

## **7.8 Utility cost in site fees**

- (1) This section applies if:
  - (a) the use by the home owner under a site agreement of a utility at the residential site is not separately measured or metered, and
  - (b) either of the following events (a *change event*) happens:
    - (i) the home owner's use of the utility becomes separately measured or metered and the cost of the use becomes payable by the home owner,
    - (ii) the utility stops being available for use by the home owner for any reason other than the default or neglect of the home owner.
- (2) The operator of the community must, within 14 days after the change event happens, give the home owner a notice (a *utility cost notice*) stating the following:
  - (a) the utility cost factored into the site fees payable under the agreement and how the utility cost has been worked out,
  - (b) the date the change event happened,
  - (c) the site fees payable from that date,
  - (d) if the home owner disputes the utility cost, the home owner may, within 28 days of receiving the notice, apply to the Tribunal for an order.
- (3) The Tribunal may, on application by the home owner within 28 days of receiving the utility cost notice, make any order the Tribunal considers appropriate in the circumstances.
- (4) The site fees payable from the day the change event happens (the *change event day*) are the site fees payable immediately before the change event day, reduced by the utility cost stated in the utility cost notice.
- (5) The operator must, within 14 days after the home owner received the utility cost notice, refund to the home owner any overpayment of site fees, relating to the utility cost, from the change event day.

Maximum penalty: 10 penalty units.

## **7.9 Tribunal review of utility cost and reduction in site fees**

- (1) This section applies if:
  - (a) the operator under a site agreement contravenes section 7.8 (2), or
  - (b) the home owner under a site agreement who receives a utility cost notice under section 7.8 (2) disputes the utility cost stated in the notice.
- (2) The home owner under the site agreement mentioned in subsection (1) (a) may apply to the Tribunal for an order under subsection (4).
- (3) The home owner mentioned in subsection (1) (b) may apply to the Tribunal, within 28 days after receiving the notice, for an order under subsection (4).
- (4) On application by the home owner, the Tribunal may make any of the following orders:
  - (a) an order reducing the site rent payable under the agreement, from the change event day, by the amount the Tribunal considers appropriate,



(b) another order the Tribunal considers appropriate.

**Note.** An example of an order under subsection (4) (b) is an order that the operator refund to the home owner any overpaid site fees from the change event day.

- (5) In making an order under subsection (4), the Tribunal may have regard to the following:
- (a) relevant available information about the costs of supplying utilities in the local government area in which the community is situated;
  - (b) any terms of the agreement about utility costs,
  - (c) the number of persons occupying the home located on the residential site,
  - (d) anything else the Tribunal considers relevant.

#### **7.10 Access to information about utility charges**

The operator of a community must provide a home owner with reasonable access to bills or other documents in relation to utility charges payable by the home owner to the operator.

Maximum penalty: 10 penalty units.

#### **7.11 Receipt for utility charges**

- (1) If utility charges are payable by a home owner to the operator of a community and the charges are paid in person, any person who receives payment of the charges must, without delay, give the person making the payment a receipt for the payment.
- (2) If the utility charges are not paid in person, the operator must, on receiving the charges and being asked for a receipt, prepare a receipt for the charges and provide it to the home owner.
- (3) A receipt for the utility charges is not a receipt for the purposes of this section unless it includes the following particulars:
  - (a) the name and address of the community, and the number or other identifying feature of the residential site,
  - (b) the name of the home owner,
  - (c) whether the home owner is in debit or credit as at the date of payment and by what amount,
  - (d) the period for which the charges are paid,
  - (e) the date on which the charges are received,
  - (f) the amount of charges paid.

Maximum penalty: 10 penalty units.

#### **7.12 Recovery of amounts paid under a mistake of law or fact**

- (1) A home owner is entitled to recover an amount paid under this Part to the operator under a mistake of law or fact.
- (2) A home owner may recover an amount mistakenly paid to the operator of a community under this Part by deducting it from site fees payable by the home owner under the site agreement.

## **Part 8                      Community rules**

### **8.1                      Subject-matter of community rules**

- (1) Written rules relating to the use, enjoyment, control and management of a community may be made in accordance with this Part.
- (2) The community rules must be fair and reasonable and must be clearly expressed.
- (3) There is a rebuttable presumption that a community rule is not fair and reasonable if it does not apply uniformly to residents of a similar class in the community.
- (4) A community rule cannot invalidate anything that has already occurred.
- (5) A community rule that prohibits a pet does not apply to a pet that is living with a resident in the community when the rule is made and that continues to live there after the rule is made.
- (6) A term of a site agreement or tenancy agreement has no effect to the extent the term would:
  - (a) make all or any part of the community rules part of the agreement, or
  - (b) be substantially the same (or to the same effect) as a provision of a community rule or any part of a community rule.
- (7) A term of a site agreement or tenancy agreement prevails over a provision of the community rules to the extent of any inconsistency. This applies whether the provision of the community rules came into effect before, on or after the date of the agreement.

### **8.2                      Community rules to be consistent with other laws**

A community rule is of no effect to the extent that it is inconsistent with this Act or any other Act or law.

### **8.3                      Model community rules**

The Commissioner may publish model community rules that may be adopted for a community.

### **8.4                      How community rules are made**

- (1) The operator of a community may make written community rules for the community if, at the time the rules are made, the community has no residents. This also applies to the proposed operator of a proposed community.
- (2) If a community has residents but no community rules, community rules may be made for the community in the same way as community rules may be amended under section 8.5.

### **8.5                      Amendment of community rules**

- (1) The operator of a community may make written amendments to the community rules.
- (2) An amendment does not have effect unless:
  - (a) each resident has been given written notice of the amendment, and
  - (b) if the community has a residents committee, the operator has advised and consulted with the committee about the amendment and has done so before giving notice to residents under paragraph (a).

- (3) Notice must be given at least 30 days before the day on which the amendment is to have effect.
- (4) On the day that an amendment to the community rules takes effect, the community rules are amended in accordance with the amendment.

**Note.** See also section 8.9, which enables the Tribunal to stay the time when an amendment to the community rules takes effect.

- (5) For the purposes of this section, an amendment of community rules includes:
  - (a) a variation or deletion of a rule, and
  - (b) the addition of a new rule, and
  - (c) the replacement of a rule with a new rule, including the replacement of all the rules with a new set of rules.

### **8.6 Prohibited community rules**

- (1) The regulations may prohibit a specified type of community rule.
- (2) Without limiting subsection (1), a community rule is of a prohibited type if it requires or has the effect of requiring a home owner to replace or remove an older home, or to make upgrades or improvements to a home, for any reason that is not related to health or safety.
- (3) The operator of a community must not make or attempt to enforce a type of community rule that is prohibited by this section.  
Maximum penalty: 100 penalty units.
- (4) A community rule of a type that is prohibited by this section is of no effect.

### **8.7 Compliance with community rules**

- (1) The residents, owner and operator of a community must comply with the community rules.
- (2) Each resident must use his or her best endeavours to ensure compliance with the community rules by:
  - (a) any occupants living with the resident, and
  - (b) any other persons who are in the community at the resident's invitation.
- (3) The operator must use his or her best endeavours to ensure compliance with the community rules by:
  - (a) all residents and occupants, and
  - (b) any employees of the operator, and
  - (c) any other persons who are in the community at the operator's invitation.

### **8.8 Enforcement of community rules**

- (1) The operator of a community must ensure that the community rules are enforced and interpreted consistently and fairly.
- (2) The operator of a community may give a notice to a resident to remedy a breach of a community rule within a specified period of at least 30 days. The notice is to be in writing and to be in the approved form (if any).
- (3) If it appears to the operator that the breach has not been remedied within the 30-day period, the operator may, within a further period of 30 days, apply to the Tribunal for orders under this section.

- (4) The Tribunal may, on application under this section and if it considers the breach is in the circumstances sufficient to justify its doing so, make any one or more of the following orders:
  - (a) an order requiring compliance with the rule within a specified period,
  - (b) an order making it a term of a site agreement that the home owner's right to sell a home located on the residential site is suspended, until the breach is remedied,
  - (c) an order terminating the resident's site agreement or tenancy agreement,
  - (d) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (5) In considering the circumstances of the case, the Tribunal may consider (but is not limited to considering) the following:
  - (a) the nature of the breach,
  - (b) any previous breaches of the community rules by the resident,
  - (c) any steps taken by the resident to remedy the breach,
  - (d) any steps taken by the operator about the breach,
  - (e) the previous history of the operator or resident so far as it is relevant,
  - (f) whether the community rule is being enforced and interpreted consistently and fairly.
- (6) The Tribunal may refuse to make an order if it is satisfied that the breach has been remedied.

### **8.9 Applications to Tribunal about community rules**

- (1) A resident or operator of a community may apply to the Tribunal if there is a dispute about whether:
  - (a) a community rule complies with this Part, or
  - (b) the procedure for making a community rule has been correctly followed.
- (2) The Tribunal may, on application under this section, make one or more of the following orders:
  - (a) an order amending or setting aside the community rule,
  - (b) an order modifying the operation of the community rule in its application to some of the persons to or in respect of whom the rule applies,
  - (c) an order upholding the community rule,
  - (d) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (3) The Tribunal may make an order staying the time when a community rule takes effect pending its decision whether to make an order under subsection (2).
- (4) In this section:

***community rule*** includes:

  - (a) a proposed community rule, and
  - (b) an amendment or proposed amendment of a community rule (see section 8.5).

## **Part 9 Residents committees**

### **9.1 Establishment of residents committee**

- (1) A majority of residents of a community may by resolution establish a residents committee.
- (2) The resolution is to be carried at a meeting to which all residents of the community have been invited. The meeting is referred to as the *establishment meeting*.

**Note.** See section 9.3 for the election of the members of the residential committee at the establishment meeting.

- (3) The operator of a community must not:
  - (a) discourage or prevent the establishment or continued existence of a residents committee, or
  - (b) require a residents committee to be incorporated or to take out any form of insurance.

Maximum penalty: 20 penalty units.

### **9.2 Functions of residents committee**

- (1) The functions of a residents committee for a community are:
  - (a) to represent the interests of the residents, and to consult with residents or the operator or both, in connection with:
    - (i) the day-to-day running of the community, and
    - (ii) any complaint or proposal about the operation of the community raised by a resident, and
  - (b) to call meetings of all the residents of the community for the purpose of considering and voting on any matter relating to the community.
- (2) The operator of a community must not obstruct the residents committee in the exercise of its functions or prevent it from using community facilities that are generally available to residents.
- (3) The operator of a community must, as soon as practicable after being requested to do so by the residents committee, give the committee a list of the names of all current residents of the community, their site numbers and their postal addresses (if different from their site numbers).

Maximum penalty: 20 penalty units.

### **9.3 Membership of residents committee**

- (1) The members of a residents committee for a community are to be elected from time to time by residents of the community.
- (2) The members are elected by resolution of a majority of residents at the establishment meeting, and thereafter at meetings:
  - (a) to which all residents have been invited, and
  - (b) convened by the residents committee (or by residents from at least 5 residential sites in the community, if there are no members for the time being or the members are unwilling or unable to act).
- (3) The residents committee can consist only of residents of the community who are at least 18 years old.

- (4) A member holds office for a term of not more than 1 year, but may be re-elected.
- (5) The number of members to hold office is to be the number agreed at the establishment meeting or by resolution of a majority of residents from time to time at later meetings.
- (6) If the number of eligible persons currently nominated for election does not exceed the number of vacancies, the chairperson for the meeting is to declare the nominated persons duly elected, and they are members without the need for taking votes or other action.

#### **9.4 Office holders of residents committee**

- (1) A residents committee may elect a chairperson or secretary, or both, from among its members.
- (2) An office holder:
  - (a) holds office until his or her current term as a member of the committee ends, but may be re-elected, and
  - (b) may be removed from office, at any time, by resolution of the committee.
- (3) Removal from office under this section does not of itself affect the former office holder's membership of the committee.

#### **9.5 Procedure of residents committee**

- (1) A residents committee may:
  - (a) determine its own procedures, and
  - (b) form subcommittees and determine each subcommittee's procedures.
- (2) A residents committee may adopt and vary a constitution by resolution of the committee.
- (3) The Commissioner may publish a model constitution that may be adopted by a residents committee.

#### **9.6 No more than one residents committee for a community**

- (1) There can be no more than one residents committee for a community at any time.
- (2) If more than one body or committee (regardless of its name) purports to be the residents committee for a particular community, the operator or a resident 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 community.
- (3) Nothing in this Part prevents the residents of a community from establishing other committees for other purposes (for example, a social club).
- (4) Nothing in this Part prevents the residents committee and the operator from establishing and maintaining a consultative joint committee. However, a joint committee continues to exist only while there is a residents committee.

#### **9.7 Residents' rights to membership of organisations**

- (1) A resident of a community has a right to be a member of:
  - (a) the residents committee, or
  - (b) an external residential communities organisation if the resident is eligible to be a member of the organisation.

- (2) A representative of an external communities organisation has a right of reasonable access to a community to consult with residents of the community who are members of the organisation.
- (3) A person must not unreasonably interfere with a person's rights under this section.

Maximum penalty: 20 penalty units.

- (4) In this section:

*external communities organisation* means an organisation that represents the interests of residents of communities generally or of 2 or more communities within a particular locality.

## **9.8 Relationship of operator with residents committee**

- (1) None of the following people can be members of a residents committee even if he or she is a resident:
  - (a) the operator of the community,
  - (b) a close associate of the operator.
- (2) The operator of a community or close associate of the operator may, if invited by the residents committee, attend and speak at:
  - (a) a meeting of the committee or of a subcommittee, or
  - (b) a meeting of residents convened by the committee.

# **Part 10 Sale of homes**

## **Division 1 Introduction**

### **10.1 Application of this Part**

- (1) This Part applies to a home owned by a home owner or former home owner that is located on a residential site in a community. Accordingly, references in this Part to a home owner extend to include former home owners.

**Note.** The definition of *home owner* in section 1.4 provides that the term includes an executor, administrator or beneficiary of the estate of a deceased home owner.
- (2) Nothing in this Part applies to the sale of a home that is not located in a community.

## **Division 2 Rights and obligations regarding sale of homes**

### **10.2 Right to sell home on site**

- (1) A home owner is entitled to sell the home while the home is located on the residential site.
- (2) The home owner is required to have given the operator of the community a notice of intention to offer the home for sale before offering it for sale.
- (3) A notice is taken to have lapsed:
  - (a) if the home owner notifies the operator that the home owner no longer intends to offer the home for sale, or

- (b) if 3 months have passed since the notice was given and:
  - (i) the home is not being advertised for sale, or
  - (ii) there is no selling agent for the sale of the home.

### **10.3 “For sale” signage**

- (1) A home owner is entitled to display a “for sale” sign in or on the home, but this is subject to the home owner first informing the operator of the community of the intention to offer the home for sale.
- (2) A home owner is not entitled to display a “for sale” sign anywhere else in the community or on adjoining land without the consent of the operator.

### **10.4 Interference with right to sell home**

- (1) The operator of a community must not cause or permit any interference with, or any attempt to interfere with:
  - (a) a home owner’s right to sell a home, or
  - (b) a home owner’s right to display a “for sale” sign in or on a home.

Maximum penalty: 100 penalty units.

- (2) Without limiting subsection (1):
  - (a) interference with a home owner’s right includes hindering the exercise of the right, and
  - (b) interference with a home owner’s right to sell a home includes unreasonably restricting prospective purchasers from inspecting the home or any common area.
- (3) An operator does not interfere with the right to sell the home if the operator declines to enter into a site agreement with a prospective purchaser and does so on reasonable grounds.

### **10.5 Condition of home for sale**

- (1) This section applies if:
  - (a) the operator of a community:
    - (i) is notified by a home owner of an intention to sell the home on site, or to offer it for sale on site within 6 months, or
    - (ii) otherwise becomes aware of that intention, and
  - (b) the operator reasonably believes that:
    - (i) the home is significantly dilapidated, or
    - (ii) any external feature of the home has been altered or added to or any fixtures on the residential site have been altered or have been added to the site by the home owner in such a manner as to be likely to cause serious health or safety risks to other persons.
- (2) The Tribunal may, on application by the operator, make any of the following orders:
  - (a) an order requiring specified work to be carried out on the home or fixtures by the home owner before completion of the sale,



- (b) an order allowing the operator to insert additional terms in the site agreement to be entered into by the purchaser requiring specified work to be carried out on the home or fixtures by the purchaser after completion of the sale,
  - (c) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (3) During the currency of a notice given to an operator of a home owner's intention to sell the home, the operator cannot commence or pursue action with the home owner or prospective purchaser relating to any other fault or defect with the home or site not covered by subsection (1) (b).

#### **10.6 Referral of prospective purchaser to operator**

- (1) A home owner must ensure that a genuine prospective purchaser of the home is advised to contact the operator of the community about the proposed sale before a contract for the sale of the home is entered into, unless the home owner is aware that contact has already been made.

**Note.** This section helps the operator to comply with the disclosure obligations under Part 4.

- (2) A contract of sale or site agreement is not invalidated by a partial or complete failure of:
- (a) the home owner to comply with subsection (1), or
  - (b) the prospective home owner to contact the operator as contemplated by that subsection or to continue in contact, or
  - (c) the operator to respond to contact from a prospective purchaser as contemplated by that subsection.

#### **10.7 Obligation of operator to enter new site agreement**

- (1) This section applies if a purchaser or prospective purchaser under a contract for the sale of the home (the *sale contract*) requests the operator of the community to enter into a new site agreement (the *new site agreement*) for the residential site with the purchaser or prospective purchaser.

**Note.** This section is not relevant if the purchaser or prospective purchaser intends to remove the home from the community.

- (2) The operator must enter into the new site agreement within a period of 14 days (or another agreed period) after the request was made, unless:
- (a) the operator declines to enter into the agreement and does so on reasonable grounds (including, for example, the ground that it appears reasonably unlikely that the sale contract will be entered into), or
  - (b) without limiting paragraph (a), the operator and the purchaser or prospective purchaser do not agree on the terms of the proposed agreement and those terms are consistent with or contemplated by this Part.
- (3) If the sale contract is entered into before the new site agreement is entered into:
- (a) the contract may include a term to the effect that the contract is subject to the new site agreement being entered into within a period of 14 days (or another agreed period) after the contract is entered into, and
  - (b) the contract is unenforceable if it includes that term and the new site agreement is not entered into within that period.

- (4) If the new site agreement is entered into before the sale contract is entered into:
  - (a) the agreement may include a term to the effect that the agreement is subject to the sale contract being entered into within a period of 14 days (or another agreed period) after the agreement is entered into, and
  - (b) the agreement is unenforceable if it includes that term and the sale contract is not entered into within that period.
- (5) The site fee under the new site agreement must be no higher than the lower of the following:
  - (a) the site fees currently payable by the home owner who is selling the home, or
  - (b) the site fees currently payable for residential sites of a similar size and location within the community.

### **10.8 Payment of part of sale price to operator**

- (1) A site agreement entered into after the commencement of this section may provide that, on the sale of a home on the residential site, the home owner will pay to the operator of the community either (but not both):
  - (a) a specified share (but not more than 50 per cent) of the capital gain in respect of the home, or
  - (b) a specified on-site premium (but not more than 10 per cent) of the total sale price of the home as determined in the agreement.
- (2) If the operator is the selling agent, the operator may deduct any amount payable under this section from the proceeds of the sale that are held by the operator.
- (3) If the operator is not the selling agent, the former home owner must pay any amount owing to the operator under this section within 14 days of the sale being finalised.
- (4) The Tribunal may, on application by the operator, make an order requiring the former home owner to pay any amount owing to the operator under this section together with interest determined by the Tribunal.
- (5) No amount is payable under this section if the home is sold to be removed from the residential site or is purchased by the operator or a close associate of the operator.
- (6) In this section:

*capital gain* means any increase between the amount that the home owner paid for the home and the amount that the purchaser paid for the home. Site fees and any fees or charges payable under the site agreement are not to be included in the calculation of the capital gain.

## **Division 3 Selling agents**

### **10.9 Appointing a selling agent**

- (1) A home owner may appoint the operator of the community or another person as a selling agent to sell, or to negotiate the sale of, the home.
- (2) An operator cannot require a home owner:
  - (a) to appoint the operator or any other person as selling agent, or

- (b) to use the services of the operator or any other person, in connection with the sale or negotiation of the sale of the home, either under the terms of the site agreement or otherwise. Such a requirement is unenforceable.
- (3) If the home owner decides to appoint a person other than the operator as selling agent, the operator must not unreasonably hinder the agent's access to the community.  
Maximum penalty: 50 penalty units.
- (4) When the operator acts as a selling agent, the operator is not required to hold:
  - (a) a licence as agent under the *Property, Stock and Business Agents Act 2002*, or
  - (b) a dealer's licence under the *Motor Dealers Act 1974*.

#### **10.10 Selling agency agreement**

- (1) Neither a sale commission nor incidental expenses are payable in connection with the sale of a home, unless:
  - (a) there is a written selling agency agreement between the home owner and the selling agent entered before the sale, and
  - (b) if a sale commission is to be payable—the agreement:
    - (i) provides for the payment of the commission, and
    - (ii) specifies the amount of the sale commission or the method of its calculation, and
    - (iii) sets out the services the agent will perform in return for payment of the sale commission, and
  - (c) if incidental expenses are to be payable—the agreement:
    - (i) provides for the payment of the expenses, and
    - (ii) sets out the nature of the services for which the expenses will be payable, and
  - (d) an invoice or statement of claim is provided to the home owner, setting out amounts claimed and details of the services performed.
- (2) The selling agent must not charge a home owner a sale commission that is more than the amount (if any) prescribed by the regulations.

Maximum penalty: 100 penalty units.

- (3) No sale commission is payable if:
  - (a) the home is not sold, or
  - (b) the home is sold but the services provided by the selling agent are not the effective cause of the sale, or
  - (c) the home is sold but the purchaser is the operator or a close associate of the operator.
- (4) In this section:

*incidental expenses* means reasonable expenses that are incurred by the selling agent in connection with the sale or negotiation of the sale of the home and paid or payable to another person who provides an advertising or other service, and includes anything of a kind prescribed by the regulations for the purposes of this definition.

**sale commission** means a commission, fee or other amount (other than incidental expenses) for the sale or negotiation of the sale of a home.

#### **10.11 Operator to hold money in trust**

When the operator of a community receives any money under a selling agency agreement (except sale commission payable to the operator under the agreement), the operator holds the money in trust and must:

- (a) deposit the money in a separate ADI account opened in the name of the operator and the home owner and entitled “sale trust account”, and
- (b) when the sale is completed, pay the proceeds at the direction of the home owner, after deducting:
  - (i) any amounts owing to the operator by way of expenses or commission under the selling agency agreement, and
  - (ii) any other fees and charges owing to the operator under the site agreement.

**Note.** The *Interpretation Act 1987*, section 21, defines an ADI as an authorised deposit-taking institution within the meaning of the *Banking Act 1959* of the Commonwealth.

### **Division 4 Disputes**

#### **10.12 Disputes relating to sale**

- (1) A home owner, operator or selling agent may apply to the Tribunal for the resolution of any dispute concerning the sale of the home, the terms of the proposed site agreement or the proposed site fees, in particular:
  - (a) any dispute about compliance with a provision of this Part, and
  - (b) any dispute about whether a sale commission, incidental expense or other fee or charge is payable to the operator or agent in relation to the sale of the home, and
  - (c) any dispute about the amount of a sale commission, incidental expense or other fee or charge payable or paid to the operator or agent in relation to the sale of the home, and
  - (d) any dispute about interference by the operator or another person with the sale of the home, and
  - (e) any dispute about the reasonableness of a decision by the operator not to enter into a site agreement with a purchaser or prospective purchaser.
- (2) The Tribunal may make the following orders:
  - (a) an order that the home owner pay a sale commission, incidental expense or other fee or charge of a specified amount to the operator or selling agent,
  - (b) an order that the operator or selling agent refund any sale commission, incidental expense or other fee or charge paid by the home owner to the operator or agent (or any part of such a commission, expense, fee or charge),
  - (c) an order preventing interference with the sale of the home,
  - (d) an order requiring the operator to take all necessary steps to facilitate the sale of the home to a specified prospective purchaser,

- (e) an order that the operator pay compensation where:
    - (i) there is or has been interference by the operator with the sale, whether by action or inaction, or
    - (ii) the operator refuses to enter into a new site agreement without reasonable grounds,
  - (f) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (3) Without limiting its powers, the Tribunal may dismiss an application by the home owner to the extent the Tribunal is satisfied that the grounds on which the operator declined to enter into a site agreement with a prospective purchaser were reasonable.

## **Part 11 Termination of site agreements**

### **Division 1 Termination generally**

#### **11.1 Termination of site agreements**

A site agreement terminates only in one or more of the following circumstances:

- (a) if either party gives the other party a termination notice and the home owner delivers up vacant possession of the residential site after the notice is given,
- (b) if the Tribunal makes a termination order for the agreement and the home owner delivers up vacant possession of the residential site or a warrant for possession is enforced,
- (c) if the home owner delivers up vacant possession of the residential site with the prior consent of the operator, whether or not the consent is later withdrawn,
- (d) if the home owner agrees to relocation to a different residential site and a new site agreement is entered into under section 11.19,
- (e) if the Tribunal makes an order declaring that the home owner abandoned the residential site,
- (f) if the sale of the home to the operator or another person is completed.

#### **11.2 Termination notices**

- (1) A party to a site agreement may give the other party a termination notice for the termination of the agreement.
- (2) A termination notice must be in the approved form, be signed by the party giving the notice or the party's agent, and set out the following matters:
  - (a) the residential site concerned,
  - (b) the day on which vacant possession of the site is to be given,
  - (c) the ground for the notice (if any).
- (3) A termination notice that does not comply with this section is of no effect.

#### **11.3 Withdrawal of termination notices**

The party who gives a termination notice may, at any time, revoke the notice with the consent of the other party.

#### **11.4 Defects in termination notices**

The Tribunal may make a termination order for a site agreement even though there is a defect in the notice or the manner of service of the notice if:

- (a) it thinks it appropriate to do so in the circumstances of the case, and
- (b) it is satisfied that the person to whom the notice was given has not suffered any disadvantage because of the defect in the notice or service or that any disadvantage has been overcome by the order and any associated order.

#### **11.5 Disputes about termination notices**

The Tribunal may, on application by a party to a site agreement, make any of the following orders:

- (a) an order resolving a dispute about a termination notice,
- (b) an order declaring that a termination notice was or was not given in accordance with this Part,
- (c) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.

### **Division 2 Initiating termination**

#### **11.6 Termination notice given by operator for breach of agreement**

- (1) The operator of a community may give a termination notice on the ground that the home owner has breached the site agreement.
- (2) The termination notice must specify a date for vacating the residential site that is not earlier than 90 days after the day on which the notice is given.
- (3) The termination notice may specify a date for vacating the residential site that is before the end of the fixed term of the site agreement if it is a fixed term agreement.
- (4) For the purposes of this section, the home owner is not in breach of the site agreement for non-payment of a site fee unless the fee has remained unpaid for at least 30 days.
- (5) The Tribunal may make a termination order if it is satisfied that:
  - (a) a termination notice was given under this section and the home owner has not vacated the residential site as required by the notice, and
  - (b) the home owner has breached the site agreement, and
  - (c) the breach is, in the circumstances of the case, sufficient to justify termination of the agreement.
- (6) In considering the circumstances of the case, the Tribunal may consider (but is not limited to considering) the following:
  - (a) the nature of the breach,
  - (b) any previous breaches,
  - (c) any steps taken by the home owner to remedy the breach,
  - (d) any steps taken by the operator of the community about the breach,
  - (e) the previous history of the home owner's occupation of the residential site.
- (7) The Tribunal may refuse to make the termination order if it is satisfied that the home owner has remedied the breach.

### **11.7 Termination notice by operator for repairs and upgrading**

- (1) The operator of a community may give a termination notice on the ground that the operator requires vacant possession of the residential site in order to comply with an obligation imposed by or under an Act to carry out works (including works in the nature of repairs or upgrading) within the residential site or the community.
- (2) The termination notice must be accompanied by a copy of any order or notice imposing the obligation.
- (3) The termination notice must not specify a date for vacating the residential site earlier than 90 days after the day on which the notice is given.
- (4) The Tribunal may, on application by the home owner, make an order settling any dispute as to whether vacant possession is necessary in order to comply with the obligation.
- (5) The termination notice is of no effect if the notice does not comply with this section or if the Tribunal determines that vacant possession is not necessary in order to comply with the obligation.

### **11.8 Termination notice by operator for closure or change of use**

- (1) The operator of a community may give a home owner on a residential site a termination notice on the ground that:
  - (a) the operator has entered into a contract for the sale of the community (or a part of it on which the site is located) and is required under the contract to give vacant possession of the site, or
  - (b) the community (or a part of it on which the site is located) is to be closed, or
  - (c) the residential site is to be used for a different purpose.
- (2) A termination notice 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.
- (3) The operator must give at least 7 days' notice to the Commissioner before giving a termination notice on a ground referred to in subsection (1) (a) or (b).

Maximum penalty: 50 penalty units.

**Note.** Giving this notice may assist with providing an assistance protocol for closure of a community.

- (4) A failure to comply with subsection (3) does not invalidate a termination notice.
- (5) The termination notice 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 for a fixed term, the day following the date on which the fixed term ends,whichever is the later.
- (6) The home owner may, within 60 days after receiving a notice specifying a date for vacating the residential site, apply to the Tribunal for an order postponing the date.

- (7) Unless the home owner advises the operator in writing that the operator's assistance under this subsection is not required, the operator is, after giving the termination notice, required to use best endeavours to obtain (or make available) for the home owner alternative accommodation:
  - (a) that is of approximately the same standard as, and requires no greater financial outlay on the part of the home owner than, the home owner's current residential site, and
  - (b) that is acceptable to the home owner or reasonably ought to be acceptable to the home owner.
- (8) Without otherwise limiting the Tribunal's powers to make a termination order in connection with the termination notice, the Tribunal is required to take into account the endeavours used by the operator to obtain (or make available) alternative accommodation for the home owner.

#### **11.9 Termination notice by operator for compulsory acquisition**

- (1) The operator of a community may give a termination notice on the ground that the residential site is appropriated or acquired by any authority by compulsory process.
- (2) The termination notice must not specify a date for vacating the residential site earlier than 90 days after the day on which the notice is given.
- (3) The home owner whose site agreement is terminated under this section is entitled to be paid compensation in accordance with Division 6 but only if:
  - (a) the agreement is terminated on the ground that the residential site is not lawfully useable for the purposes of a residential site, and
  - (b) unknown to the home owner, the residential site was not lawfully useable for the purposes of a residential site when the agreement was entered into.

#### **11.10 Termination notice by operator for lack of authority for use of site**

- (1) The operator of a community may give a termination notice on the ground that the residential site is not lawfully useable for the purposes of a residential site.
- (2) The termination notice must not specify a date for vacating the residential site earlier than 90 days after the day on which the notice is given.
- (3) The home owner whose site agreement is terminated under this section is entitled to be paid compensation in accordance with Division 6 but only if:
  - (a) the agreement is terminated on the ground that the residential site is not lawfully useable for the purposes of a residential site, and
  - (b) unknown to the home owner, the residential site was not lawfully useable for the purposes of a residential site when the agreement was entered into.

#### **11.11 Termination notice by operator for non-use of site**

- (1) The operator of a community may give a termination notice on the ground that the home owner's residential site has not been used for the past 6 years as:
  - (a) the home owner's place of residence, or
  - (b) another person's place of residence (but with the prior consent of the operator).



- (2) The termination notice must specify a termination date that is not earlier than 180 days after the day on which the notice is given.

#### **11.12 Application by operator for termination for serious misconduct**

- (1) The operator of a community may apply to the Tribunal for a termination order on the ground of serious misconduct, without the need for a termination notice to be given.
- (2) The Tribunal may make the termination order (under Division 3) if it is satisfied that a home owner (or any person who is occupying or jointly occupying the residential site) has intentionally or recklessly caused or permitted:
  - (a) serious damage to any property in the community or on any neighbouring property, or
  - (b) injury to:
    - (i) the operator (or the operator's agent, an employee or contractor of the operator or the operator's agent) occurring in the community or on any neighbouring property, or
    - (ii) an occupier or person occurring in the community or on any neighbouring property, or
  - (c) the site is being or has been used for any purpose that is illegal at common law or under an Act, or
  - (d) the operator (or the operator's agent or an employee or contractor of the operator or operator's agent) to be seriously or persistently threatened or abused.
- (3) The termination order may take effect before or after the end of the fixed term if the site agreement is for a fixed term.
- (4) In this section:

*neighbouring property* means property outside the community but in the general locality of the community.

#### **11.13 Termination notice by home owner**

- (1) The home owner under a site agreement may give a termination notice without having to specify a ground for termination.
- (2) The notice must specify the day, not later than 30 days after the notice is given, the agreement is terminated.
- (3) The home owner must give the operator vacant possession of the site on or before the stated day.
- (4) This section applies during the currency of a site agreement whether or not the agreement is for a fixed term.

### **Division 3 Termination orders and possession orders**

#### **11.14 Termination orders**

- (1) The Tribunal may, on application by the operator of a community, make a termination order in accordance with this Division.
- (2) A termination order may be made either:
  - (a) if vacant possession of a residential site is not given by the specified date as required by a termination notice, or

- (b) if an application for the order can be made under this Part without the need for a termination notice.

#### **11.15 Possession orders**

- (1) If the Tribunal makes a termination order, it must also make an order for possession of the residential site (a *possession order*) specifying the day on which the possession order takes or took effect.
- (2) The Tribunal may suspend the operation of a possession order if it is satisfied that it is desirable to do so, having regard to the relative hardship likely to be caused to the operator and home owner by the suspension.

#### **11.16 Prohibition on certain recovery proceedings in courts**

The owner or operator of a community must not commence proceedings against a home owner in the Supreme Court, the District Court or the Local Court to obtain recovery of possession of a residential site subject to a site agreement.

#### **11.17 Recovery of possession of site prohibited except by order**

- (1) A person must not enter a residential site or a home on a residential site, for the purposes of taking possession of the site or home before or after the end of a site agreement unless:
  - (a) the person is acting in accordance with a warrant arising out of a possession order of the Tribunal or a writ or warrant arising out of a judgment or order of a court, or
  - (b) the home owner has given vacant possession of the site, or
  - (c) the Tribunal has made an order declaring that the home owner has abandoned the residential site.

Maximum penalty: 200 penalty units.

**Note.** Under Division 7 an operator may apply to the Tribunal for an order declaring that a home owner has abandoned a residential site.

- (2) A court that finds an offence under this section proven may, in addition to any other penalty it may impose, order that compensation be paid to the home owner by the person who committed the offence or on whose behalf the offence was committed.
- (3) This section applies to a person who enters a residential site or a home on a residential site, on his or her own behalf or on behalf of another person.

#### **11.18 Enforcement of possession orders**

- (1) The Registrar of the Tribunal may, on the application of an operator in whose favour a possession order was made, issue a warrant for possession of the residential site concerned if the Registrar is satisfied that the order or a condition of suspension of the order has not been complied with.
- (2) An application for a warrant for possession may be made immediately, if the possession order so provides, or not more than 30 days after the date by which vacant possession was required or within such further period as the Tribunal may permit.
- (3) Without limiting subsection (2), the Tribunal may permit an application to be made within a further period if the delay in making the application is attributable to genuine attempts by the applicant to arrange for breaches of the site agreement or this Act to be remedied so as to enable the continued occupation of the residential site under the site agreement.

- (4) A warrant for possession is to be in the approved form and must authorise a sheriff's officer to enter a specified residential site, or a home or any part of a home on a residential site, and to give possession of the site to the person specified in the warrant.

**Note.** See section 7A of the *Sheriff Act 2005* for provisions relating to the enforcement of warrants.

## **Division 4 Termination and relocation**

### **11.19 Relocation of home owner by agreement**

- (1) The operator and a home owner under a site agreement may agree to the relocation of the home owner to a different residential site, whether within the same community or within another community with the same operator.
- (2) All reasonable costs of relocating the home owner under the agreement are payable by the party initiating the proposal to relocate, unless the parties otherwise agree.
- (3) A person must not coerce or attempt to coerce a home owner into:
  - (a) relocating to a different residential site, or
  - (b) agreeing to relocate to a different residential site.

Maximum penalty: 100 penalty units.

- (4) If the home owner agrees to the relocation, a new site agreement is to be entered into, with the same or substantially the terms and conditions as the previous site agreement and the previous site agreement is terminated. The site fees payable under the new site agreement may be reduced, but may not be increased, by reason of the relocation.

### **11.20 Relocation of home owner by operator's request**

- (1) As an alternative to issuing a termination notice, the operator under a site agreement may, by notice in writing, request the home owner to relocate to a different residential site on a specified date, whether within the same community or within another community within a reasonable distance and with the same operator.
- (2) The specified date must be not earlier than 90 days after the notice is given.
- (3) If the home owner agrees to the relocation, all reasonable costs of relocating the home owner under this section are payable by the operator, unless the parties otherwise agree.
- (4) If the home owner agrees to the relocation, a new site agreement is to be entered into, with the same or substantially the same terms and conditions as the previous site agreement and the previous site agreement is terminated. The site fees payable under the new site agreement may be reduced, but may not be increased, by reason of the relocation.
- (5) If the home owner advises the operator that the home owner does not agree to the relocation or the notice expires (whichever first occurs), the operator may elect to issue a termination notice.

## **Division 5      Purchase of home by owner or operator of community**

### **11.21      Offer to buy home**

Nothing in this Part prevents the owner or operator of a community from offering to buy a home in the community and the home owner agreeing to sell the home to the owner or operator of the community for an agreed price.

### **11.22      Tribunal may value homes to facilitate sale**

- (1) The purpose of this section is to enable the Tribunal to assist an owner or operator of a community and a home owner to come to an agreement as to the value of the home owner's home where there is a proposed sale of the home from the home owner to the owner or operator of the community.
- (2) The Tribunal may, on application by the owner or operator of the community or the home owner (or both), make an order determining the value of the home. For that purpose, the Tribunal may obtain a valuation of the home, or seek advice as to the valuation of the home, from one or more registered valuers.
- (3) Any costs payable to a registered valuer are payable in such proportions as are agreed between the parties or (failing agreement) as ordered by the Tribunal.
- (4) The Tribunal's determination of the value of the home is advisory only, and does not bind the owner or operator of the community or the home owner or affect any agreement between them for the sale of the home (unless the agreement provides otherwise).
- (5) In this section:

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

## **Division 6      Compensation for termination**

### **11.23      Application of this Division**

This Division applies where a termination notice has been given to a home owner on:

- (a) the ground that the operator requires vacant possession of the residential site in order to comply with an obligation imposed by or under an Act to carry out works (see section 11.7), or
- (b) the ground that the community (or part of it) is to be sold or closed or that the residential site is to be used for a different purpose (see section 11.8), or
- (c) the ground that the residential site is to be appropriated or acquired by any authority by compulsory process (see section 11.9).

### **11.24      Compensation for relocation**

- (1) This section applies in circumstances where, after and in consequence of receiving a termination notice given by an operator (the *first operator*), a home owner decides to relocate to another community and the other community is operated by a different operator.

- (2) The first operator is liable:
  - (a) to pay in advance the likely reasonable costs of:
    - (i) removing the home from the old residential site (including the costs of disconnecting any services),
    - (ii) transporting the home, and the possessions of its occupants, to the new residential site,
    - (iii) installing the home at the new residential site (including the costs of connecting to the available services),
    - (iv) repairing any damage to the home arising from its relocation,
    - (v) landscaping the new residential site so as to bring it up to the condition of the old residential site, and
  - (b) to pay any additional reasonable costs incurred for those purposes after the relocation is complete.
- (3) The costs are payable to or at the direction of the person who was the home owner who received the termination notice.
- (4) The Tribunal may, on application by a home owner or operator, make an order resolving a dispute concerning the operation of this section in the circumstances of a particular case.

#### **11.25 Compensation in other circumstances**

- (1) This section applies in circumstances where a site agreement is terminated by the grant of a termination order, but does not apply:
  - (a) in circumstances in which section 11.24 applies, or
  - (b) to arrangements made for the purposes of the sale of a home to the owner or operator of the community.
- (2) The Tribunal may, when it decides to grant the termination order, make any of the following orders:
  - (a) an order for the payment of a fixed amount of compensation to be payable to the home owner in the manner and time determined by the Tribunal,
  - (b) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (3) In fixing the amount of compensation, the Tribunal must have regard to the following factors:
  - (a) the depreciated cost of the home,
  - (b) the age and state of the home,
  - (c) the length of time the home owner has lived on the residential site,
  - (d) the length of time remaining for the duration (if any) of the site agreement,
  - (e) the original purchase price paid by the home owner for the home and (if the home was purchased from the owner or operator of the community) any arrangements that were entered into in connection with the purchase,
  - (f) the current on-site market value of the home,
  - (g) site fees payable for the residential site,

- (h) any compensation amount or formula specified in the site agreement and relevant to the circumstances or any compensation amount recently offered by the operator,
- (i) any amount the home owner is able to recoup by selling the home off-site if the home owner were to keep the home,
- (j) any other relevant factor raised by the parties or prescribed by the regulations.

## **Division 7      Abandoned residential site and goods**

### **11.26      Abandonment of residential site**

- (1) The Tribunal may, on application by an operator, make any of the following orders:
  - (a) an order declaring that a home owner abandoned a residential site on a day stated in the declaration,
  - (b) an order for immediate possession of the site,
  - (c) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (2) In deciding whether a home owner has abandoned a residential site, the following matters may be considered:
  - (a) whether site fees payable under the site agreement are unpaid,
  - (b) whether the site is unoccupied and neglected,
  - (c) whether the home owner's mail is being collected,
  - (d) reports from neighbours, or other persons, about the absence or whereabouts of the home owner,
  - (e) whether electricity or other services to the site have been disconnected or terminated,
  - (f) whether the home owner's goods or personal effects have been removed from the site,
  - (g) any other matters the Tribunal considers relevant.
- (3) A home owner is taken to have abandoned the residential site on the day stated in a declaration under this section.

### **11.27      Home or goods abandoned after site agreement is terminated**

- (1) This section applies if a site agreement for a residential site is terminated.
- (2) If the operator reasonably believes a home on the residential site is abandoned, the operator must apply to the Tribunal for, and the Tribunal may make, an order giving directions as to how the home is to be dealt with.
- (3) If the operator reasonably believes any goods left behind on the residential site or common areas are abandoned and are rubbish or perishable items, the goods may be disposed of by the operator immediately in any way the operator thinks fit.
- (4) If the operator reasonably believes other goods left behind on the residential site or common areas are abandoned, then (subject to any order of the Tribunal under subsection (5)):
  - (a) the operator must make a reasonable attempt to contact the former home owner to make arrangements for the collection of those goods or their

- disposal, and
- (b) the goods may be dealt with or disposed of by the operator in any way the operator thinks fit if:
    - (i) the former home owner cannot be contacted after a reasonable attempt, or
    - (ii) the former home owner is contacted but does not respond to the operator in a meaningful way, or
    - (iii) the former home owner indicates to the operator that the former home owner does not wish to collect the goods or make other arrangements for their disposal, or
    - (iv) the former home owner indicates to the operator that the former home owner wishes to collect the goods or arrange for their disposal but the goods are not removed from the community within a reasonable period.
  - (5) If the operator decides to make an application for directions, the Tribunal may make an order giving directions as to the way in which the goods are to be dealt with or disposed of by the operator in the circumstances referred to in subsection (4).
  - (6) A purchaser of a home or goods sold in accordance with this section acquires good title to the home or goods, despite any prior interest of the former home owner or any other person.
  - (7) The operator has no liability in respect of a home or goods dealt with or disposed of under this section if the operator complies with this section or any order of the Tribunal under this section.
  - (8) This section does not apply to anything sold under a contract for sale.
  - (9) In this section:  
*goods* does not include a home on a residential site.

## **Part 12            Disputes**

### **Division 1        Resolving disputes by internal arrangements**

#### **12.1            Internal arrangements for voluntary dispute resolution**

- (1) The operator of a community may establish and from time to time vary arrangements for resolving disputes arising in connection with the community, whether the disputes arise between one or more home owners and the operator or between home owners or otherwise.
- (2) Attendance at, and participation in, dispute resolution sessions under the arrangements is voluntary. Any party to a dispute may withdraw from the resolution process at any time.
- (3) If there is a residents committee, action to establish or vary the arrangements can only be made in consultation with the committee.
- (4) The community rules may (but need not) provide the mechanism for voluntary dispute resolution.

## **Division 2            Mediation**

### **12.2            Operation of this Division**

- (1) Mediation may be arranged under this Division about disputes and other matters connected with a community. A matter may be referred for mediation on application by a home owner or operator or may be referred by the Tribunal.
- (2) This Division does not prevent any other form of dispute resolution being conducted apart from this Division, but this Division applies only to mediation under this Division.

**Note.** Part 6 contains provisions about mediation under this Division about proposed increases of site fees by notice.

### **12.3            Home owner or operator may apply for mediation**

- (1) A home owner, former home owner or operator may apply to the Commissioner for mediation of a matter.
- (2) The matter must be one for which orders can be sought from the Tribunal but which is not currently the subject of proceedings before the Tribunal.
- (3) The application must be:
  - (a) made in the approved form, and
  - (b) accompanied by the prescribed fee (if any), and
  - (c) made within the period (if any) prescribed by the regulations.
- (4) The matter is referred for mediation when the application is made, unless and until the Commissioner rejects the application under subsection (5).
- (5) The Commissioner may reject the application if:
  - (a) the application or the matter is vexatious, misconceived, frivolous or lacking in substance,
  - (b) the applicant has not responded, or has responded inadequately, to a request by the Commissioner for further information,
  - (c) the matter has been or is currently the subject of mediation or proceedings before the Tribunal and the Commissioner is of the opinion that further action is not warranted.
- (6) An application for mediation may be made under this Division by:
  - (a) one or more individual home owners in a particular community, or
  - (b) one or more nominated representatives of a group of home owners in a particular community, in respect of a matter arising out of the same or similar facts or circumstances.

### **12.4            Tribunal may refer matters for mediation**

- (1) The Tribunal may, with the consent of the parties, refer a matter arising in proceedings before it relating to a community to the Commissioner for mediation.
- (2) Any party to the proceedings may, at any time, withdraw from mediation and request that the matter be remitted to the Tribunal.
- (3) This section does not prevent the parties to proceedings from agreeing to and arranging for mediation of any matter otherwise than under this Division.



### **12.5 Appointment of mediators**

- (1) The Commissioner may appoint mediators for the purposes of this Division. A mediator may be a public servant or another person, but the Commissioner must be satisfied the appointees have the appropriate expertise or experience.
- (2) The Commissioner may assign one of the appointees to be the mediator for a particular mediation.

### **12.6 Mediation is voluntary**

- (1) Attendance at, and participation in, mediation sessions is voluntary. Any party to such proceedings may, at any time, withdraw from mediation.
- (2) This section does not apply to mediation relating to increases of site fees by notice (otherwise than by a fixed method).

### **12.7 Duties of mediators**

- (1) A mediator has the following functions in a mediation:
  - (a) to encourage the settlement of the dispute or other matter by facilitating, and helping to conduct, negotiations between the parties,
  - (b) to promote the open exchange of information relevant to the dispute or other matter by the parties,
  - (c) to provide to the parties information about the operation of this Act relevant to a settlement of the dispute or other matter,
  - (d) to help in the settlement of the dispute or other matter in any other appropriate way.
- (2) A mediator does not have the power to determine any matter in dispute, whether or not the parties request or consent to such action.

### **12.8 Mediation procedure**

- (1) Unless the mediator decides otherwise, the mediation is to be held in private and the mediator may exclude from the mediation any person apart from the parties and their representatives.
- (2) A party must, if required by the mediator, disclose to the other party details of the party's case and of the evidence available to the party in support of that case.
- (3) Mediation may, at the discretion of the mediator, be adjourned from time to time.
- (4) The mediator or a party may terminate a mediation at any time.
- (5) A settlement to which a party agrees at a mediation is binding on the party provided that it is not inconsistent with this Act.
- (6) The settlement must be put into writing and signed by or for the parties.

**Note.** Section 12.15 provides that the Tribunal can make orders to give effect to any agreement or arrangement arising out of mediation.

### **12.9 Representation of parties in mediation**

A party to a mediation may be represented by a person who is not an Australian legal practitioner in a mediation if:

- (a) the party is a corporation and the representative is an officer or employee of the corporation, or
- (b) all parties to the proceedings agree to the representation and the mediator is satisfied that it will not unfairly disadvantage an unrepresented party, or

- (c) the mediator is satisfied that the party is unable to present the party's case properly without assistance.

**12.10 Restriction on evidence of things said or done during mediation**

Evidence of anything said or done in the course of mediation is inadmissible in proceedings before any court or body (including the Tribunal) except by consent of all parties to the proceedings.

**12.11 Confidentiality of mediation**

The Commissioner, a mediator or any other person, may disclose information obtained during or in connection with mediation in any one or more of the following circumstances only:

- (a) with the consent of the person to whom the information relates,
- (b) in connection with the mediation,
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,
- (d) if the Commissioner or the mediator refers a party to another person or body for advice or assistance and the disclosure is reasonably required for the purpose and is made with the consent of the parties,
- (e) in accordance with a requirement imposed by or under a law of the State or the Commonwealth.

**12.12 Exoneration from liability for mediators**

No matter or thing done or omitted to be done by a mediator subjects the mediator to any action, liability, claim or demand if the matter or thing was done in good faith.

**Division 3 Powers of Tribunal**

**12.13 Applications to Tribunal relating to disputes**

- (1) A home owner, former home owner or operator may apply to the Tribunal for determination of any of the following:
  - (a) a dispute relating to a right or obligation under this Act,
  - (b) a dispute arising from, or relating to, a site agreement or collateral agreement,
  - (c) any other matter that may be determined by the Tribunal under this Act.
- (2) An application to the Tribunal must be made within the period (if any) prescribed by the regulations.

**12.14 Orders that may be made by Tribunal**

- (1) The Tribunal may, on application by a party to a dispute or other matter before the Tribunal, or in any proceedings under this Act, make one or more of the following orders:
  - (a) an order that restrains an action in breach of this Act or a site agreement or collateral agreement,
  - (b) an order that requires a person to comply with an obligation under this Act or a site agreement or collateral agreement,

- (c) an order that relieves a party to a site agreement or collateral agreement from the obligation to comply with a provision of the agreement,
  - (d) an order for the payment of an amount of money,
  - (e) an order for the payment of compensation,
  - (f) an order that a party to a site agreement perform such work or take such other steps as the order specifies to remedy a breach of the agreement,
  - (g) an order that requires payment of part or all of the site fees payable under a site agreement to the Tribunal until the whole or part of the agreement has been performed or any application for compensation has been determined,
  - (h) an order that requires site fees paid to the Tribunal to be paid towards the cost of remedying a breach of the site agreement or towards the amount of any compensation,
  - (i) an order directing an operator to give a former home owner or person authorised by a former home owner access to a residential site or home on the site for the purpose of recovering goods of the former home owner,
  - (j) an order for anything else necessary or desirable to resolve a dispute.
- (2) An order under subsection (1) (a) or (b) may be made even though it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such a remedy would not otherwise be available.
- (3) The Tribunal must not make an order for:
- (a) the payment of an amount that exceeds the amount (if any) prescribed by the regulations for the purposes of this section, or
  - (b) the performance of work or the taking of steps the cost of which is likely to or will exceed the amount (if any) prescribed by the regulations for the purposes of this section.
- (4) An order for the payment of compensation to a party is not to be made for loss or damage to the extent the loss or damage could have been avoided or limited by taking reasonable steps to mitigate the loss or damage.
- (5) A provision of this Act that enables a resident to apply for a determination by the Tribunal and the Tribunal to determine a matter or make an order also applies, where appropriate, to a former resident.
- (6) The Tribunal does not have jurisdiction to award compensation for damages arising from personal injury, but otherwise nothing in this section limits the orders that the Tribunal may make under this Act.

**Note.** This Act also confers other order-making powers on the Tribunal, including other specific powers to make termination orders and to declare that a residential site has been abandoned.

### **12.15 Tribunal may make orders following mediation**

The Tribunal may, on application by a party to mediation, make orders that it is empowered to make under this Act or any other Act to give effect to any agreement or arrangement arising out of mediation under Division 2.

## **Division 4 Powers of Commissioner in proceedings**

### **12.16 Commissioner may represent persons**

In any proceedings before the Tribunal under this Act, a person may, despite any other law, be represented by the Commissioner or by an Australian legal practitioner or agent for the Commissioner.

### **12.17 Commissioner may take or defend proceedings**

- (1) If a person, not being a corporation, has made a complaint to the Commissioner and the Commissioner:
  - (a) after investigating the complaint, is satisfied that the person may have a right to take or defend proceedings before the Tribunal, and
  - (b) is of the opinion that it is in the public interest that the Commissioner should take or defend those proceedings on behalf of the person,the Commissioner may, with the consent of the person, take or defend those proceedings on behalf of and in the name of the person.
- (2) If the Minister so directs and the person consents, the Commissioner must take or defend proceedings before the Tribunal on behalf of a person.

### **12.18 Conduct of proceedings by Commissioner**

If the Commissioner takes or defends proceedings before the Tribunal on behalf of a person:

- (a) the Commissioner is to have the conduct of those proceedings on behalf of the person, may appear personally or by an Australian legal practitioner or agent and may do all things that are necessary or expedient to give effect to an order or a decision of the Tribunal, and
- (b) the Commissioner is liable to pay the costs (if any) of the person, and
- (c) the person is liable to pay any other amount that the Tribunal orders the person to pay.

### **12.19 Intervention by Commissioner**

- (1) Without limiting any other provision of this Division, the Commissioner may, if of the opinion that it would be in the public interest to do so, or, at the direction of the Minister must, intervene, and has a right to be heard personally or by an Australian legal practitioner or agent, in any proceedings arising under this Act or the regulations before the Tribunal.
- (2) The Commissioner, on intervening in any proceedings, becomes a party to the proceedings and has all the rights of such a party.

## **Part 13 Administration and enforcement**

### **Division 1 Commissioner**

#### **13.1 Functions of Commissioner**

- (1) The Commissioner has the following functions:
  - (a) to investigate and carry out research into matters relating to or affecting communities,

- (b) to investigate suspected contraventions of this Act or the regulations and to take appropriate action to enforce this Act or the regulations,
  - (c) to investigate and report on any matters, or make inquiries into any matters, referred to the Commissioner by the Minister in connection with this Act or the regulations,
  - (d) to provide information to the public about this Act and services provided under this Act by NSW Fair Trading, the Tribunal and other persons and the mediation services provided under this Act for the mediation of disputes,
  - (e) any other function conferred or imposed by or under this Act on the Commissioner.
- (2) The Commissioner may delegate to a person any of the Commissioner's functions under this Act, other than this power of delegation.

## **Division 2 Administrators, receivers and managers**

### **13.2 Application for order appointing administrator**

- (1) The Supreme Court may, on application by the Commissioner in accordance with the rules of the Court, make an order appointing a specified person as an administrator of a community:
- (a) to exercise all the functions of the operator of the community, or
  - (b) to exercise specified functions of the operator, or
  - (c) to exercise all the functions other than specified functions of the operator.
- (2) The Commissioner may apply for an order under this section only if the Commissioner is of the opinion that:
- (a) the well-being or financial security of the residents of the community has been, or is likely to be, seriously affected by the continued operation of the community by the operator, or
  - (b) the operator of the community is wilfully and repeatedly acting in contravention of an order made by the Tribunal or a court in relation to the community.
- (3) For the purpose of determining whether an application for an order under this section should be made, the Commissioner may appoint a person to inquire into, and report to the Commissioner on, the well-being and financial security of the residents of a community.
- (4) The Commissioner 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.
- (5) More than one order may be made under this Division in respect of the same community.

### **13.3 Terms and conditions of appointment**

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 owner or operator of the community as are specified or described in the order.

#### **13.4 Effect of appointment**

- (1) The owner or operator of a community must not, while an order under this Division is in force in respect of the community, exercise any of the functions of the owner or operator that the administrator is authorised to exercise.
- (2) Subject to the terms of the appointment, a person appointed as an administrator of a community must comply with all the obligations of the operator in relation to the functions that the person is authorised to exercise and is, in the exercise of those functions, taken to be the operator.

#### **13.5 Expenses of administration**

- (1) The expenses incurred by an administrator appointed under this Division in exercising the functions of the operator of a community are payable from site fees and other money that would be available to the operator for such expenses if the administrator had not been appointed.
- (2) Neither the Crown, the Minister nor the Commissioner is liable for:
  - (a) any expenses incurred by an administrator appointed under this Division to exercise the functions of the operator of a community, or
  - (b) any liability of an operator of a community in respect of which an administrator is appointed.

#### **13.6 Revocation of appointment**

An order made under this Division may be revoked or varied by the Supreme Court (whether or not on the application of the Commissioner) and, unless sooner revoked, ceases to have effect at the end of the period specified in the order.

#### **13.7 Receivers and managers**

- (1) If a receiver, or a receiver and manager, is appointed in respect of a community, the person so appointed must (subject to the terms of the appointment) comply with the operator's obligations under this Act as if the person were the operator.
- (2) This section does not apply to the extent that it is inconsistent with the *Corporations Act 2001* of the Commonwealth.

#### **13.8 No personal liability of administrators, receivers or managers**

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 Complaints and disciplinary action**

#### **13.9 Complaints and action under this Division**

- (1) Any person may make a complaint to the Commissioner setting out matters that are alleged to constitute grounds for taking disciplinary action against a person under this Division.
- (2) Action can be taken under this Division whether or not a complaint has been made.

- (3) The Commissioner may conduct inquiries and make investigations in relation to either or both of the following:
  - (a) the subject matter of a complaint, or
  - (b) the submissions (if any) made by or on behalf of the person to whom a show cause notice under this Division relates.
- (4) The Commissioner may decide to take no further action in relation to the subject matter of a complaint at any stage.

### **13.10 Grounds for disciplinary action**

Disciplinary action under this Division can be taken against a person who is or was an operator of a community on any one or more of the following grounds:

- (a) the person has contravened a provision of this Act or the regulations, whether or not the person has been prosecuted or convicted of an offence in respect of the contravention,
- (b) the person has breached any of the rules of conduct in Schedule 1,
- (c) the person has breached an undertaking given by the person to the Commissioner under this Division,
- (d) the person has failed to comply with a direction given to the person by the Commissioner under this Division within the period specified in the direction,
- (e) the person has failed to pay a monetary penalty payable under a penalty notice under Division 4 within the required period,
- (f) any other grounds specified in the regulations as grounds for the taking of disciplinary action against a person under this Division.

### **13.11 Show cause notice**

- (1) The Commissioner may serve a show cause notice on a person if the Commissioner is of the opinion that there is reasonable cause to believe that there are grounds for taking disciplinary action against the person.
- (2) A show cause notice is a notice requiring a person to show cause why disciplinary action should not be taken against the person under this Division on the grounds specified in the notice.
- (3) A show cause notice is to be in writing and is to specify a period of not less than 14 days after service of the notice as the period that the person to whom the notice is directed has to show cause as required by the notice.
- (4) The person on whom a show cause notice is served may within the period allowed by the notice make oral or written submissions to the Commissioner in respect of the matters to which the notice relates. In the case of a corporation, submissions may be made by a director or officer of the corporation.

### **13.12 Disciplinary action**

- (1) If the Commissioner is satisfied that there are grounds for taking disciplinary action under this Division, the Commissioner may, by order in writing served on the person, take such disciplinary action against the person as the Commissioner thinks is warranted.
- (2) Each of the following actions is disciplinary action that the Commissioner can take against a person:
  - (a) caution or reprimand the person,

- (b) give a direction to the person for one or more of the following:
  - (i) requiring the person:
    - (A) to undertake specified training within the period specified in the direction, or
    - (B) to arrange for another person engaged in the day-to-day management of a particular community to undertake specified training of that kind,
  - (ii) requiring the person to give a written explanation, correction or apology to one or more other persons,
  - (iii) requiring the person to vary a notice or document in a specified way,
  - (iv) requiring the person to give a specified undertaking to the Commissioner:
    - (A) as to the manner in which the person carries on activities as an operator of a particular community during a specified period (including, for example, that the community rules must not be varied in a particular way or at all), or
    - (B) to make arrangements as to the manner in which another person engaged in the day-to-day management of a particular community carries on activities in that management,
  - (v) prohibiting the person from carrying on all or specified activities in the management of a particular community during a specified period and requiring the appointment of another person as operator during that period,
  - (vi) prohibiting the person from carrying on all or specified activities in the management of all or particular communities during a specified period.
- (3) The order must include a statement of the reasons for the Commissioner's decision on the matter.

### **13.13 Review of disciplinary action by ADT**

A person against whom disciplinary action is taken by the Commissioner may apply to the Administrative Decisions Tribunal under the *Administrative Decisions Tribunal Act 1997* for a review of the Commissioner's decision on the disciplinary action or on a review of the disciplinary action.

## **Division 4 Offences and associated matters**

### **13.14 Proceedings for offences**

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily by the Local Court.
- (2) Proceedings for an offence against this Act or the regulations may be brought within the period of 3 years that next succeeds the commission of the offence or, only with the consent of the Attorney General, at any time.
- (3) A contravention of a provision of this Act or the regulations for the breach of which a penalty is not specified does not give rise to an offence.



### **13.15 Penalty notices**

- (1) An investigator may serve a penalty notice on a person if:
  - (a) it appears to the investigator that the person has committed an offence against this Act or the regulations, and
  - (b) the regulations prescribe the offence as being one for which a penalty notice may be issued.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice under this section is declared to be a penalty notice for the purposes of the *Fines Act 1996*.
- (4) A penalty notice may be served personally or by post.
- (5) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (6) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (7) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty for an offence if dealt with under this section, and
  - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (8) The amount of penalty prescribed under this section for an offence is not to exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (9) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings that may be taken in respect of offences.

### **13.16 Accessories to the commission of offences**

- (1) For the purposes of this section, a ***principal offence*** is an offence against this Act or the regulations that is capable of being committed by an individual or corporation.
- (2) An individual commits an offence against this section if:
  - (a) another person (the ***principal offender***) commits a principal offence, and
  - (b) the individual:
    - (i) aids, abets, counsels or procures the commission of the principal offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the principal offence, or
    - (iii) conspires with others to effect the commission of the principal offence, or

- (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the principal offence, and
- (c) if the principal offender is a corporation—the individual is:
  - (i) a director of the corporation, or
  - (ii) involved in the management of the corporation and is in a position to influence the conduct of the corporation in relation to the commission of the principal offence.

Maximum penalty: The maximum penalty for the principal offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the principal offence.
- (5) This section does not affect the liability of the principal offender for the principal offence, and applies whether or not the principal offender is prosecuted for, or convicted of, the principal offence.
- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of a corporation) who are concerned in, or party to, the commission of the principal offence.

## **Division 5 Powers of investigators**

### **13.17 Powers of entry and other powers**

- (1) An investigator may exercise the powers conferred by this section for the purposes of:
  - (a) investigating whether the provisions of this Act or the regulations are being complied with, or
  - (b) obtaining evidence, documents 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 any premises (including an office or other place for administering or managing a community) at any reasonable time and may inspect and do any one or more of the following:
  - (a) require any person on those premises to produce any documents in the possession or under the control of the person in written form and inspect those documents,
  - (b) take copies of or extracts from, or make notes from, any such documents and, for that purpose, take temporary possession of any such documents,
  - (c) take such photographs, films and audio, video and other recordings as the investigator considers necessary,
  - (d) require any person on those premises to answer questions or otherwise furnish information in relation to a contravention of this Act or the regulations,
  - (e) require the owner or occupier of those premises to provide the investigator with such assistance and facilities as are reasonably necessary to enable the investigator to exercise the functions of an investigator under this Division.

- (3) An investigator is not entitled to enter a part of premises used for residential purposes except:
  - (a) with the consent of the occupier, or
  - (b) under the authority of a search warrant.
- (4) An investigator may not exercise a function under this Division unless the investigator produces identification, in the approved form, to the person apparently in charge of those premises or apparently in charge of any work being performed on those premises.

### **13.18 Power to obtain information and other matters**

If an investigator believes on reasonable grounds that a person is capable of giving information, producing documents, or giving evidence in relation to a matter that constitutes, or may constitute, an offence under this Act or the regulations, the investigator may, by written notice 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 documents, 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 documents.

### **13.19 Obstruction of investigator**

- (1) 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) provide information or give evidence in purported compliance with a requirement made or question asked by an investigator under this Division knowing the information or evidence to be false or misleading in a material particular, or
  - (c) wilfully delay, hinder or obstruct an investigator in the exercise of the investigator's functions under this Division.

Maximum penalty: 20 penalty units.

- (2) Despite any other provision of this Division, an individual is excused from answering any question, providing any information, giving evidence or producing or permitting the inspection of a document in accordance with this Division on the ground that the answer, information, evidence or document may tend to incriminate the individual.

### **13.20 Taking possession of documents to be used as evidence**

- (1) If an investigator takes possession of any documents 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 proceedings (including proceedings on appeal) in which they may be evidence.

- (2) The person from whom the documents are taken must be provided, within a reasonable time after the documents are taken, with a copy of the documents certified by an investigator as a true copy.

### **13.21 Search warrants**

- (1) An investigator may apply to an issuing officer for the issue of a search warrant for premises if the investigator believes on reasonable grounds:
  - (a) that a provision of this Act or the regulations is being or has been contravened on the premises or in the community to which the premises are related, or
  - (b) that there is on the premises evidence of a contravention of this Act or the regulations.
- (2) An issuing officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an investigator named in the warrant, when accompanied by a police officer, and any other person named in the warrant:
  - (a) to enter the premises concerned, and
  - (b) to search the premises for evidence of a contravention of this Act or the regulations.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) In this section:

*issuing officer* means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

## **Part 14 Miscellaneous**

### **14.1 Service of notices and documents**

- (1) A notice or document required or authorised to be given to a person under this Act may be:
  - (a) sent by post addressed to the person, or an agent of the person, at the last known address of the person or agent, or
  - (b) given personally:
    - (i) to the person, or
    - (ii) to an agent of the person, or
  - (c) if the person is a resident—given by delivering it to the site and leaving it there with a person apparently of or above the age of 16 years for the resident, or
  - (d) if the person is an operator—given personally to an employee of the person, or
  - (e) left in a mailbox at the last known address of the person, or
  - (f) given in such other manner as may be prescribed by the regulations for the purposes of this section or approved by the Tribunal.

- (2) Service under:
  - (a) subsection (1) (b), (c) or (d) is taken to be effected on the day the notice or document is given, and
  - (b) subsection (1) (e) is taken to be effected on the day the notice or document is left in the mailbox, and
  - (c) subsection (1) (f) is taken to be effected on the day provided for by the regulations or the Tribunal.
- (3) However, a notice or document is not validly given to a person unless it is sent by post addressed to the person at a particular address if:
  - (a) the person is a resident, and
  - (b) the notice or document is to be given by an operator, and
  - (c) the person has requested an operator to send notices or documents to the person by post to that address and cancellation of the request has not been communicated in writing to the operator.
- (4) If 2 or more persons are the operators of the same community or are home owners of the same residential site, a notice or other document is duly given if given to any one of them.

#### **14.2 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

#### **14.3 Repeals**

Each of the following is repealed:

- (a) the *Residential Parks Act 1998* (1998 No 142),
- (b) the *Residential Parks Regulation 2006*.

#### **14.4 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 Rules of conduct for operators**

(Section 5.18)

### **1 Knowledge of Acts and regulations**

An operator must have a knowledge and understanding of:

- (a) the legislation, which in these rules refers to:
  - (i) the *Residential (Land Lease) Communities Act 2013* and regulations under the Act, each as in force from time to time, and
  - (ii) the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* (or its replacement), as in force from time to time, and
- (b) such other laws relevant to the management of a community (including, laws relating to residential tenancy, fair trading, trade practices, anti-discrimination and privacy) as may be necessary to enable the operator to exercise his or her functions as operator lawfully.

### **2 Honesty, fairness and professionalism**

- (1) An operator must act honestly, fairly and professionally with all parties in a negotiation or transaction.
- (2) An operator must not mislead or deceive any parties in negotiations or a transaction carried out as operator.

### **3 Skill, care and diligence**

An operator must exercise reasonable skill, care and diligence.

### **4 High pressure tactics, harassment or unconscionable conduct**

An operator must not engage in high pressure tactics, harassment or harsh or unconscionable conduct.

### **5 Confidentiality**

An operator must not, at any time, use or disclose any confidential information obtained while acting on behalf of a resident (which in this rule includes a prospective resident or former resident) or dealing with a resident, unless:

- (a) the resident authorises disclosure, or
- (b) the operator is permitted or compelled by law to disclose.

### **6 Ensuring employees comply with the legislation**

An operator of a community must take reasonable steps to ensure persons employed in the business conducted at a place of business of the community comply with the legislation.

### **7 Conflicts of interest**

An operator must not accept an appointment to act, or continue to act, as a selling agent for a home owner if doing so would place the operator's interests in conflict with the interests of the home owner.

**8           Soliciting through false or misleading advertisements or communications**

An operator must not solicit prospective residents through advertisements or other communications that the operator knows or should know are false or misleading.

**9           Insertion of material particulars in documents**

An operator must not submit or tender to any person for signature a document, or cause or permit any document to be submitted or tendered to any person for signature, unless at the time of submission or tendering of the document all material particulars have been inserted in the document.

**10         Representations about the Act or regulations**

- (1) An operator must not falsely represent to a person the nature or effect of a provision of the legislation.
- (2) An operator must not, either expressly or impliedly, falsely represent, whether in writing or otherwise, to a person that a particular form of agreement or any term of such an agreement is required by the legislation.

## **Schedule 2 Savings and transitional provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act amending this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Definition**

In this Part:

*repealed Act* means the *Residential Parks Act 1998*.

#### **3 General savings**

Subject to this Act, each person, thing and circumstance appointed or created under the repealed Act or existing or continuing under that Act immediately before the commencement of relevant provisions of that Act continues to have the same status, operation and effect as it would have had if this Act had not been enacted.

#### **4 Existing registrations**

- (1) If current registrable information about a residential park was included in the register of residential parks under the repealed Act and operative immediately before the commencement of the relevant provisions of that Act, the park is taken to be registered as a community under this Act.
- (2) However, the Commissioner may require appropriate persons to provide particulars for inclusion in the Register of Communities under this Act.

#### **5 Existing agreements**

Agreements entered into under the repealed Act that have not been terminated remain valid after the commencement of the relevant provisions of this Act, but this Act applies to any such agreement (unless otherwise stated in this Act) despite the terms of the agreement.

**Note.** Accordingly, the existing agreement continues without the need to sign a new agreement once this Act commences.



**6 Pending Tribunal or court proceedings**

Any proceedings before the Tribunal or a court that were commenced before the commencement of the relevant provisions of this Act but have not been determined before that commencement are to be determined in accordance with the repealed Act.

**7 Existing Tribunal or court orders**

Any order of a Tribunal or court made under or for the purposes of the repealed Act and operative immediately before the repeal of the relevant provisions of that Act continues in force despite that repeal.

**8 Termination notices**

Any termination notice issued under the repealed Act and operative immediately before the repeal of the relevant provisions of that Act is taken to have been issued under this Act, unless proceedings referred to in clause 6 arising from the issue of the notice are to be determined in accordance with the repealed Act as provided in that clause.

**9 Proposed rent increases**

- (1) A valid notice issued under the repealed Act in relation to a rent increase operates in the same way as a corresponding notice issued for the same purpose under this Act, even if the increase had not taken effect at the commencement of the relevant provisions of this Act.
- (2) Any dispute about an increase to which such a notice was issued and for which an application was not pending at that commencement is to be dealt with in accordance with this Act.
- (3) The provisions of Part 6 of this Act that provide that site fees must not be increased more than once in any 12-month period apply in relation to site agreements operative at that commencement.

**10 Compensation for closure**

If notice for closure or change of use under the repealed Act has been given and compensation to any residents affected has not yet been paid at the commencement of the relevant provisions of this Act, this Act applies in relation to the compensation.

**11 Goods left behind**

Any goods left behind by a former resident under the repealed Act that have not already been sold or otherwise dealt with at the commencement of the relevant provisions of this Act are to be dealt with in accordance with this Act.

**12 Administrators**

Any administrators appointed under the repealed Act are taken to be administrators under this Act.

**13 Enforcement action**

Any enforcement action for offences under the repealed Act, including penalty notices issued, is not affected by the repeal of that Act.

**14 Delegations**

Any delegations made by the Director-General of the Department of Finance and Services under the repealed Act and in force immediately before the commencement of the relevant provisions of this Act are taken to be delegations made by the Commissioner under this Act.

**15 Fees and charges**

- (1) Any fees and charges which were validly paid or received under the repealed Act are not affected by this Act.
- (2) Any new fee or charge permitted by this Act does not apply to any agreement entered into before the commencement of the relevant provisions of this Act.
- (3) Fees for late payment of utility charges are not payable for utilities unpaid at the commencement of the relevant provisions of this Act.

**16 Sale of homes**

- (1) This Act does not affect any contract for the sale of a home that was entered into before the commencement of the relevant provisions of this Act.
- (2) This Act does not affect the appointment of a person made before the commencement of the relevant provisions of this Act for the sale of a home.
- (3) This Act does not require a home owner to inform the operator of the community of the intention to sell the home if the home is being advertised for sale at the commencement of the relevant provisions of this Act.

**17 Disclosure to prospective residents**

The disclosure statement and approved information referred to in Part 4 of this Act is required to be given to a person who is a prospective home owner at the commencement of the relevant provisions of this Act, even if the person had received information under the repealed Act.

**18 Existing committees**

- (1) Any residents committee established under the repealed Act and in existence at the commencement of the relevant provisions of this Act is taken to be a residents committee under this Act.
- (2) Any park liaison committee established under the repealed Act and in existence at the commencement of the relevant provisions of this Act is taken to be a residents committee under this Act, excluding any management representatives, unless the park already has a residents committee. Otherwise, it is dissolved.

**19 Community rules**

- (1) Park rules made under the repealed Act and operative at the commencement of the relevant provisions of this Act are taken to be community rules under this Act.
- (2) Any notice given under the repealed Act and operative at the commencement of the relevant provisions of this Act to amend park rules is taken to have been given under this Act.
- (3) Park rules that formed part of agreements under the repealed Act are, after the commencement of the relevant provisions of this Act, taken to no longer be terms of those agreements.

**20 Notices**

Notices validly served under the repealed Act before the commencement of the relevant provisions of this Act are taken to have been validly served under this Act.

## **Schedule 3    Amendment of legislation**

### **3.1        Boarding Houses Act 2012 No 74**

#### **Section 5 Meaning of “registrable boarding house”**

Omit section 5 (3) (m). Insert instead:

- (m) premises that are the subject of a site agreement to which the *Residential (Land Lease) Communities Act 2013* applies,

### **3.2        Consumer, Trader and Tenancy Tribunal Act 2001 No 82**

#### **[1]        Section 5 Establishment of Consumer, Trader and Tenancy Tribunal**

Omit “*Residential Parks Act 1998*” from the note.

Insert instead “*Residential (Land Lease) Communities Act 2013*”.

#### **[2]        Schedule 1 Divisions of the Tribunal**

Omit clause 1 (e). Insert instead:

- (e) the *Residential Communities Division*, in which the Tribunal’s jurisdiction is to be exercised in respect of any matter arising under the *Residential (Land Lease) Communities Act 2013*,

### **3.3        Consumer, Trader and Tenancy Tribunal Regulation 2009**

#### **[1]        Clause 12 Persons authorised to sign applications**

Omit clause 12 (4) and (5). Insert instead:

- (4) An application made under the *Residential (Land Lease) Communities Act 2013* by a resident may be completed, signed, dated and lodged by:
  - (a) the resident’s agent appointed under section 5.12 of that Act, or
  - (b) a person authorised in writing by the resident to do so.
- (5) An application made under the *Residential (Land Lease) Communities Act 2013* by the operator of a residential community may be completed, signed, dated and lodged by a person authorised in writing by the operator to do so.

#### **[2]        Clause 14 Circumstances in which application may be made**

Omit clause 14 (l). Insert instead:

- (l) if the party is the operator of a residential community and is to be represented by:
  - (i) an employee or agent (other than an Australian legal practitioner) of the operator, or
  - (ii) a representative (other than an Australian legal practitioner) of an industry association relevant for owners and operators of residential communities,
- (li) if the party is a resident, all residents or a group of residents in a residential community and who is to be represented by a representative (other than an Australian legal practitioner) of:
  - (i) a resident association for residents in residential communities, or
  - (ii) a resident of the community nominated by the party, or
  - (iii) the residents committee of the community,

**3.4 Crown Lands Act 1989 No 6**

**Section 102A Minister's consent not required for certain leases, licences or easements**

Omit "*Residential Parks Act 1998*" from section 102A (11).

Insert instead "*Residential (Land Lease) Communities Act 2013*".

**3.5 Fair Trading Act 1987 No 68**

**Section 4 Definitions**

Omit paragraph (e) of the definition of *services* in section 4 (1).

Insert instead:

- (e) a site agreement (within the meaning of the *Residential (Land Lease) Communities Act 2013*), or

**3.6 Fines Act 1996 No 99**

**Schedule 1 Statutory provisions under which penalty notices issued**

Omit "*Residential Parks Act 1998*, section 149".

Insert instead "*Residential (Land Lease) Communities Act 2013*, section 13.15".

**3.7 Holiday Parks (Long-term Casual Occupation) Act 2002 No 88**

**[1] Section 3 Definitions**

Omit the definition of *park rules for casual occupants* from section 3 (1).

**[2] Section 7**

Omit section 7. Insert instead:

**7 Certain other Acts have no or limited application**

- (1) Neither the *Residential Tenancies Act 2010* nor the *Residential (Land Lease) Communities Act 2013* applies to an agreement to which this Act applies.
- (2) However, Part 8 of the *Residential (Land Lease) Communities Act 2013* applies to sites occupied under occupation agreements to which this Act applies and the occupants of those site.

**[3] Section 45 Park owner may employ or appoint park manager**

Omit section 45 (5).

**3.8 Landlord and Tenant Act 1899 No 18**

Omit section 1B. Insert instead:

**1B Exclusion of certain agreements and land from operation of Act**

This Act does not apply to:

- (a) a residential tenancy agreement, or land that is subject to a residential tenancy agreement, to which the *Residential Tenancies Act 2010* applies, or
- (b) a site agreement, or a residential site, to which the *Residential (Land Lease) Communities Act 2013* applies.

- 3.9 Personal Property Securities (Commonwealth Powers) Act 2009 No 35**  
**Schedule 1 Savings, transitional and other provisions consequent on enactment of Personal Property Securities Act 2009 of the Commonwealth**  
Omit clause 23A (2) (i). Insert instead:
- (i) Division 7 of Part 11 of the *Residential (Land Lease) Communities Act 2013*,
- 3.10 Property Stock and Business Agents Act 2002 No 66**  
**Section 190 Application of money for purposes of certain Acts**  
Omit “*Residential Parks Act 1998*” from section 190 (1) (a).  
Insert instead “*Residential (Land Lease) Communities Act 2013*”.
- 3.11 Residential Tenancies Act 2010 No 42**
- [1] **Section 3 Definitions**  
Insert in alphabetical order in section 3 (1):
- premises* includes a moveable dwelling within the meaning of the *Local Government Act 1993*.
- [2] **Section 8 Agreements to which Act does not apply**  
Insert after section 8 (1) (b):
- (b1) site agreements within the meaning of the *Residential (Land Lease) Communities Act 2013*,
- [3] **Section 8 (2)**  
Omit the subsection.
- [4] **Section 8A**  
Insert after section 8:
- 8A Application of Act to premises**
- This Act applies to any agreement to rent premises anywhere, including in a caravan park within the meaning of the *Local Government Act 1993* or a community within the meaning of the *Residential (Land Lease) Communities Act 2013*.
- [5] **Section 9 Employee and caretaker arrangements**  
Insert after section 9 (2):
- (3) However, this section does not apply to a person employed as a manager or another full time employee in a community within the meaning of the *Residential (Land Lease) Communities Act 2013*.
- [6] **Section 157 Definitions**  
Omit the definitions of *landlord* and *tenant*. Insert instead:
- landlord* includes a former landlord.
  - tenant* includes a former tenant.
- [7] **Section 157**  
Omit the definitions of *residential premises* and *residential tenancy agreement*.

- [8]        **Section 189 Application of provisions relating to Tribunal**  
Omit section 189 (2).
- [9]        **Section 209 Definitions**  
Omit the definitions of *residential premises*, *residential tenancy agreement* and *tenant*.
- 3.12       Residential Tenancies Regulation 2010**  
**Clause 18 Trial residential park agreements**  
Omit the clause.
- 3.13       Retirement Villages Act 1999 No 81**  
**Section 5 Meaning of “retirement village”**  
Omit section 5 (3) (d). Insert instead:  
          (d) a community within the meaning of the *Residential (Land Lease) Communities Act 2013*,
- 3.14       Sheriff Act 2005 No 6**  
**Section 7A Powers of Sheriff when executing writs and warrants for possession of land**  
Omit “*Residential Parks Act 1998*” from section 7A (4).  
Insert instead “*Residential (Land Lease) Communities Act 2013*”.
- 3.15       Uncollected Goods Regulation 2011**  
**Clause 4 Act not available as an alternative to certain Acts**  
Omit “*Residential Parks Act 1998*”.  
Insert instead “*Residential (Land Lease) Communities Act 2013*”.
- 3.16       Water Industry Competition (General) Regulation 2008**  
**Schedule 3 Water industry infrastructure exempt from licensing requirement**  
Omit item 10 (b) (i) (E). Insert instead:  
          (E) if the customer is the operator of a community within the meaning of the *Residential (Land Lease) Communities Act 2013*, a home owner in the community,
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