

South Australia

## **Residential Parks Act 2007**

An Act to regulate the relationship between residents in residential parks and park owners; to make consequential amendments to the *Residential Tenancies Act 1995*; and for other purposes.

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- 1 Amendment of *Residential Tenancies Act 1995*

### Legislative history

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Residential Parks Act 2007*.

#### 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

#### 3—Interpretation

- (1) In this Act, unless the contrary intention appears—

***abandoned property***—see Part 9 Division 10;

***ADI*** means an authorised deposit-taking institution within the meaning of the *Banking Act (Cwth)*;

***bailiff*** of the Tribunal means a bailiff appointed under the *Residential Tenancies Act 1995*;

***bond*** means an amount a resident is required to pay under a provision of a residential park agreement or collateral agreement as security for the performance of obligations under the residential park agreement or this Act;

***business day*** means a day other than a Saturday or Sunday or other public holiday;

***collateral agreement*** means—

- (a) a sub-tenancy managing agent agreement; or

(b) any agreement collateral to a residential park agreement;

**Commissioner** means the Commissioner for Consumer Affairs;

**common area** in a residential park means any facilities, building, road or other area in the park provided for common use by residents of the park;

**damage** to property includes the loss of property;

**deputy registrar** means a deputy registrar of the Tribunal appointed under the *Residential Tenancies Act 1995*;

**dwelling** means—

- (a) a structure, whether fixed or moveable, that is designed to be used and is capable of being used for human habitation; or
- (b) a motor vehicle or trailer that is designed to be used and is capable of being used for human habitation,

and includes a part of a dwelling but does not include a tent or a structure of a kind prescribed by regulation;

**exclusion period**—see section 96;

**forwarding address** of a resident means the address of the place at which the resident will next reside, or an address that will be a postal address of the resident, after termination of the residential park agreement;

**Fund** means the Residential Tenancies Fund continued in existence under the *Residential Tenancies Act 1995*;

**housing improvement notice** means a notice of intention to declare a dwelling substandard, a notice declaring a dwelling to be substandard, or a notice fixing the maximum rent payable for a dwelling, under Part 7 of the *Housing Improvement Act 1940*;

**lawyer** means a person entitled to practise the profession of the law under the *Legal Practitioners Act 1981*;

**motor vehicle** has the same meaning as in the *Motor Vehicles Act 1959*;

**occupied site** in a residential park means a site in the park occupied by a resident;

**park owner** of a residential park means the owner or operator of the residential park, and includes a successor in title to the park (or rented property) whose title is subject to a resident's interest and a prospective park owner and a former park owner;

**Note—**

Part 8 relates to sub-tenancy agreements and contains a provision that extends the meaning of the term **park owner** in relation to sub-tenancy agreements.

**park rules**—see Part 2;

**permanently fixed dwelling** means a structure that—

- (a) has the character of a dwelling; and
- (b) is designed to be permanently fixed to land; and
- (c) could not, under any reasonable arrangement, be removed in a state that would allow the structure to be reused as a dwelling at another place;

**personal documents** means official documents, photographs, correspondence or other documents that it would be reasonable to expect a person might wish to keep;

**Presiding Member** means the Presiding Member of the Tribunal appointed under the *Residential Tenancies Act 1995*;

**registrar** means the registrar of the Tribunal appointed under the *Residential Tenancies Act 1995*;

**rent** means an amount payable under a residential park agreement for the right to occupy the rented property for a period under the agreement;

**rented property** means—

- (a) in relation to a residential park tenancy agreement—the site and dwelling in respect of which the right of occupancy has been granted under the residential park tenancy agreement; or
- (b) in relation to a residential park site agreement—the site in respect of which the right of occupancy has been granted under the residential park site agreement,

and includes, in either case, so far as the context admits, property (not forming part of the site or dwelling) that is provided by the park owner, either under the agreement or independently of the agreement, for use by the resident;

**resident** of a residential park means a person who is granted a right of occupancy under a residential park tenancy agreement or a residential park site agreement in respect of the residential park, or a person to whom the right passes by assignment or operation of law, and includes a prospective resident or a former resident;

**residential park** means an area of land used or intended to be used in either or both of the following ways:

- (a) as a complex of sites of dwellings in respect of which rights of occupancy are conferred under various residential park tenancy agreements, together with common area bathroom, toilet and laundry facilities and other common areas;
- (b) as a complex of sites in respect of which rights of occupancy are conferred under various residential park site agreements, together with common areas (which may, but need not, include bathroom, toilet and laundry facilities);

**residential park agreement** means—

- (a) a residential park tenancy agreement; or
- (b) a residential park site agreement;

**residential park dispute** means—

- (a) a claim under a residential park agreement or a collateral agreement; or
- (b) a dispute between parties or former parties to a residential park agreement or a collateral agreement about matters arising under the agreement or this Act; or
- (c) any matter that may be the subject of an application under this Act to the Tribunal;

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***residential park site agreement*** means an agreement under which a park owner grants another person, for valuable consideration, a right (which may, but need not, be an exclusive right) to occupy a site in the residential park, and to install or locate a dwelling on the site, for residential purposes;

***residential park tenancy agreement*** means—

- (a) an agreement under which a park owner grants another person, for valuable consideration, a right (which may, but need not, be an exclusive right) to occupy a site in the residential park, and a dwelling made available on the site by the park owner, for residential purposes; or
- (b) an agreement (a ***sub-tenancy agreement***) under which a resident grants another person, for valuable consideration, a right (which may, but need not, be an exclusive right) to occupy the site in respect of which the resident has a right of occupancy, and the dwelling on the site (whether a dwelling made available by the park owner or installed or located on the site by the resident), for residential purposes;

***statutory charges*** means—

- (a) rates or other charges on land under the *Local Government Act 1999*; and
- (b) rates or other charges under the *Waterworks Act 1932* or the *Sewerage Act 1929*; and
- (c) tax under the *Land Tax Act 1936*; and
- (d) levies under the *Emergency Services Funding Act 1998*; and
- (e) levies under the *Natural Resources Management Act 2004*; and
- (f) any charges of a kind imposed under an Act and declared by regulation to be statutory charges;

***sub-tenancy agreement***—see paragraph (b) of the definition of ***residential park tenancy agreement***;

***sub-tenancy managing agent agreement***—see Part 8;

***trailer*** has the same meaning as in the *Motor Vehicles Act 1959*;

***Tribunal*** means the Residential Tenancies Tribunal continued in existence under the *Residential Tenancies Act 1995*.

- (2) If this Act provides for something to be done within a specified period from a particular day, the period is to be taken not to include the particular day.
- (3) If this Act provides that action may be taken after the expiration of a specified period of days, the period is to be taken to be a period of clear days.
- (4) For the purposes of this Act, a residential park agreement includes an agreement granting a corporation a right in respect of a dwelling that is occupied, or intended to be occupied, as a place of residence by a natural person.

#### 4—Presumption of periodicity in case of short fixed terms

- (1) If a residential park agreement is entered into for a short fixed term, the agreement is taken to be an agreement for a periodic tenancy with a period equivalent to the length of the fixed term unless the park owner establishes that—
  - (a) the resident genuinely wanted an agreement ending at the end of the short fixed term and the term was fixed at the resident's request; or
  - (b) before the residential park agreement was entered into—
    - (i) the park owner gave the resident a notice containing a warning in the form approved by the Commissioner; and
    - (ii) the resident signed a statement in the form approved by the Commissioner acknowledging that the resident did not expect to continue in occupation of the rented property after the end of the term stated in the agreement.
- (2) In this section—

*short fixed term* means a term of 90 days or less.

#### 5—Application of Act

- (1) This Act does not apply to an agreement that confers on a person a right to occupy a dwelling in a residential park unless the dwelling is or is to be the person's principal place of residence.
- (2) For the purposes of this Act, evidence that the address of a residential park in which a person has a right to occupy a dwelling is the person's address as appearing on the electoral roll is to be taken, in the absence of proof to the contrary, to be proof that the dwelling is the person's principal place of residence.
- (3) This Act does not apply to an agreement that has been genuinely entered into for the purpose of conferring on a person a right to occupy a dwelling in a residential park for a holiday.
- (4) For the purposes of this Act—
  - (a) an agreement conferring a right to occupy a dwelling for a fixed term of 60 days or longer; or
  - (b) an arrangement consisting of 2 or more agreements that confer on the same person a right to occupy a dwelling for consecutive fixed terms the sum of which is 60 days or longer,is to be taken, in the absence of proof to the contrary, not to be an agreement referred to in subsection (3).
- (5) For the purposes of this Act, evidence that a person has occupied a dwelling in a residential park under an agreement for 60 days or longer is to be taken, in the absence of proof to the contrary, to be proof that the agreement is not an agreement referred to in subsection (3).
- (6) For the purposes of this Act, a term of an agreement to the effect that a right to occupy a dwelling in a residential park is conferred by the agreement for a holiday is not of itself sufficient to establish that the agreement is an agreement referred to in subsection (3).

- (7) This Act does not apply to—
- (a) an agreement giving a right of occupancy in—
    - (i) a hotel or motel; or
    - (ii) an educational institution, college, hospital or nursing home; or
    - (iii) club premises; or
    - (iv) a home for aged or disabled persons administered by an eligible organisation under the *Aged or Disabled Persons Care Act 1954* of the Commonwealth; or
    - (v) a retirement village within the meaning of the *Retirement Villages Act 1987*; or
    - (vi) a supported residential facility within the meaning of the *Supported Residential Facilities Act 1992*; or
    - (vii) premises prescribed by regulation, or premises of a class prescribed by regulation; or
  - (b) an agreement under which a person boards or lodges with another; or
  - (c) an agreement for the sale of land or a dwelling, or both, that confers a right to occupy the land or dwelling, or both, on a party to the agreement; or
  - (d) a mortgage; or
  - (e) an agreement prescribed by regulation, or an agreement of a class prescribed by regulation.

## **Part 2—Park rules and residents committees**

### **6—Park rules**

- (1) The park owner of a residential park may make rules about the use, enjoyment, control and management of the park.
- (2) However, rules may be made only about any of the following:
  - (a) the use of common areas and the operation of common area facilities;
  - (b) the making and abatement of noise;
  - (c) the carrying on of sporting and other recreational activities;
  - (d) the speed limits for motor vehicles;
  - (e) the parking of motor vehicles;
  - (f) the disposal of refuse;
  - (g) the keeping of pets;
  - (h) maintenance standards for dwellings installed or located in the residential park by residents, as they affect the general amenity of the park;
  - (i) the landscaping and maintenance of sites for dwellings;
  - (j) the terms of any sub-tenancy managing agent agreements between the park owner and residents;

- (k) limiting who may become residents to persons who are over the age of 50 years;
  - (l) guests or visitors of residents;
  - (m) other things prescribed under a regulation.
- (3) Park rules relating to the terms of sub-tenancy managing agent agreements must include any rules approved by the Commissioner as model rules for the purposes of this subsection.
- (4) A park rule will be void for the purposes of this Act to the extent that it is inconsistent with—
- (a) this Act; or
  - (b) a model rule approved under subsection (3); or
  - (c) any other Act or law.
- (5) The *Subordinate Legislation Act 1978* does not apply to park rules.

### **7—Residents committees**

- (1) Residents from at least 5 different occupied sites in a residential park may form a residents committee to represent the interests they have in common as residents of the park (on the basis that only a resident may be a member of the committee and that any resident who is employed or engaged by the park owner to assist in the management of the residential park may not be a member of the committee).
- (2) Only 1 residents committee may be formed under this section in relation to the same residential park.
- (3) A resident of a residential park has a right to participate in any organisation of residents of that residential park or of residential parks generally.
- (4) A park owner or park owner's agent who unreasonably interferes with a resident's rights under subsections (1) and (3) is guilty of an offence.

Maximum penalty: \$1 250.

- (5) A park owner must, insofar as is reasonable after taking into account the facilities located at the residential park and any other relevant factor, allow the use of a place within the residential park for the purposes of a meeting of residents called by a residents committee which must, insofar as is reasonable, be an enclosed area.

Maximum penalty: \$750.

Expiation fee: \$105.

### **8—Amendment of park rules**

- (1) A park owner may make written amendments to park rules for a residential park.
- (2) An amendment does not have effect unless each resident of the residential park has been given 14 days written notice of the amendment.
- (3) If a residents committee has been established for the residential park, the park owner must consult, and consider the views of, the committee in relation to the amendment of park rules.

- (4) In this section—  
*amendment* to park rules includes—
- (a) a variation of a park rule; or
  - (b) the addition to the park rules of a new rule; or
  - (c) the revocation of an existing park rule.

### **9—Application to Tribunal if park rules are considered unreasonable**

- (1) An application may be made to the Tribunal to declare a park rule for a residential park unreasonable if a joint application is made by residents from a majority of the occupied sites in the park.
- (2) An application under this section is not affected if, after the date of the application, the applicants cease to consist of residents from a majority of the occupied sites in the park.
- (3) When an application is made to the Tribunal about the reasonableness of park rules, the Tribunal may make any of the following orders:
  - (a) an order declaring the rule or proposed rule to be reasonable or unreasonable;
  - (b) an order changing the rule in a way it considers appropriate to make it reasonable.
- (4) A park rule is void if the Tribunal makes an order that the rule or proposed rule is unreasonable.

## **Part 3—Formation of residential park agreements**

### **Division 1—Entering into residential park agreements**

#### **10—Residential park agreement to be in writing**

- (1) A residential park agreement must be in writing.
- (2) The agreement must include the terms prescribed by this Act and any terms prescribed by regulation as standard terms for residential park agreements.
- (3) If, for a standard term of a residential park agreement to be effective, the term requires stated information to be included in it, the agreement is to be taken to include the standard term only if the information is properly included.
- (4) The agreement must—
  - (a) be written in a clear and precise way; and
  - (b) precisely identify the site; and
  - (c) state—
    - (i) the park owner's full name and address for service of documents; and
    - (ii) if the park owner is a company—the address of the registered office of the company; and
    - (iii) the resident's full name and place of occupation; and

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### **Part 3—Formation of residential park agreements**

#### **Division 1—Entering into residential park agreements**

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- (d) be signed by the parties; and
  - (e) comply with any other requirements prescribed by the regulations (including as to the content or form of the agreement).
- (5) If a residential park agreement does not comply with a requirement of this section, the park owner is guilty of an offence.

Maximum penalty: \$750.

Expiation fee: \$105.

### **11—Copies of written agreements**

If a park owner invites or requires a resident to sign a written residential park agreement, or a document recording its terms, the park owner must ensure that—

- (a) the resident receives a copy of the agreement or other document (for the resident to keep), when the resident signs it; and
- (b) if the agreement or other document has not been signed by the park owner, a copy of the agreement or other document, as executed by all parties, is delivered to the resident within 14 days after the resident gives the agreement or other document back to the park owner to complete its execution.

Maximum penalty: \$750.

Expiation fee: \$105.

### **12—Agreements incorporate park rules**

The park rules for a residential park (as from time to time in force under Part 2) are to be taken to constitute terms of every residential park agreement relating to the park (but need not be set out in a written residential park agreement).

### **13—Cost of preparing written agreement**

The cost of preparing a written residential park agreement, or a document recording its terms, must be borne by the park owner.

### **14—Information to be provided by park owners to residents**

- (1) A park owner must ensure that a resident is given, before or at the time the park owner and resident enter into a residential park agreement—
- (a) a copy of any park rules in force for the residential park; and
  - (b) a written notice stating—
    - (i) any kind of charge payable by the resident in accordance with requirements imposed under Part 4 Division 10; and
    - (ii) any services provided to residents by the park owner on a fee-for-service basis; and
  - (c) a written notice stating—
    - (i) the park owner's full name and address for service of documents; and
    - (ii) if the park owner is a company—the address of the registered office of the company; and

- (iii) contact details for a person who will, on behalf of the park owner, carry out emergency repairs to the rented property or common area facilities of the park; and
- (d) a written notice stating—
  - (i) whether the resident is entitled to the payment of any amount (other than a bond) at the time the resident ceases to occupy the rented property and, if such an entitlement exists, the amount that will be payable or the method that will be used to determine the amount that will be payable; and
  - (ii) in the case of a residential park site agreement—the resident's rights to sell or relocate a dwelling on the site and any arrangements that may apply in the event that the resident, after the expiration of a period determined under the regulations, has been unable to sell the dwelling on the open market; and
  - (iii) any other information required by the regulations; and
- (e) a copy of an information notice in a form approved by the Commissioner.

Maximum penalty: \$750.

Expiation fee: \$105.

- (2) A park owner must ensure that a resident is given, before or at the time the resident commences occupation of the rented property under a residential park agreement, manufacturers' manuals, or written or oral instructions, about the operation of any appliances and devices provided for the use of the resident as part of the rented property or the common area facilities of the residential park.

Maximum penalty: \$750.

Expiation fee: \$105.

- (3) If a person succeeds another as the park owner, the new park owner must, within 14 days, notify the resident in writing of—
- (a) the full name and address for service of documents of the new park owner; and
  - (b) if the new park owner is a company—the address of the registered office of the company; and
  - (c) contact details for a person who will, on behalf of the new park owner, carry out emergency repairs to the rented property or common area facilities of the park.

Maximum penalty: \$750.

Expiation fee: \$105.

- (4) If a name or address or contact details of which the park owner is required to notify the resident under this section changes, the park owner must, within 14 days, notify the resident in writing of the change.

Maximum penalty: \$750.

Expiation fee: \$105.

### **15—False information from resident**

A resident must not give a park owner false information about the resident's identity or place of occupation.

Maximum penalty: \$750.

### **16—Non-compliance not to affect validity or enforceability**

A residential park agreement is not rendered void or unenforceable by non-compliance with a requirement of this Part.

## **Division 2—Discrimination against residents with children**

### **17—Discrimination against residents with children**

- (1) A person must not refuse to enter into a residential park agreement with another person on the ground that it is intended that a child should live on the rented property.

Maximum penalty: \$1 250.

- (2) A person must not—

- (a) instruct a person not to enter into a residential park agreement; or
- (b) state an intention (by advertisement or in any other way) not to enter into a residential park agreement,

on the ground that it is intended that a child should live on the rented property.

Maximum penalty: \$1 250.

- (3) However, this section does not apply if—

- (a) the park owner, or an agent appointed by the park owner to manage the residential park, resides in a dwelling to which the residential park agreement relates or in a dwelling adjacent to that dwelling; or
- (b) the park rules for the residential park limit who may become residents in the park to persons who are over the age of 50 years; or
- (c) circumstances prescribed by regulation apply.

## **Part 4—Mutual rights and obligations of park owners and residents**

### **Division 1—Rents and other charges**

#### **18—Permissible consideration for residential park agreement**

- (1) A person must not require or receive from a resident a payment, other than rent or a bond (or both), under a residential park agreement, or as a condition to entering into, renewing or extending a residential park agreement.

Maximum penalty: \$750.

- (2) However, the park owner may lawfully require and receive a payment of a class the park owner is authorised to require under Division 10.

## **19—Rent in advance**

- (1) A person must not demand or require another person to pay more than 2 weeks' rent under a residential park agreement before the end of the first 2 weeks of the period of occupancy under the agreement.  
Maximum penalty: \$750.  
Expiation fee: \$105.
- (2) If rent has been paid under a residential park agreement, a person must not require a further payment of rent until the end of the last period for which rent has been paid.  
Maximum penalty: \$750.  
Expiation fee: \$105.
- (3) A person must not require another person to give a post-dated cheque or other post-dated negotiable instrument in payment of rent under a residential park agreement.  
Maximum penalty: \$750.  
Expiation fee: \$105.

## **20—Method of payment of rent**

A park owner must not require that rent payments under a residential park agreement be made to the park owner or the park owner's agent at the rented property unless some reasonable alternative method of payment that does not involve personal attendance at the rented property has been offered by the park owner but not accepted by the resident.

Maximum penalty: \$750.  
Expiation fee: \$105.

## **21—Variation of rent**

- (1) The park owner may increase the rent payable under a residential park agreement by giving written notice to the resident specifying the date from which the increase takes effect.
- (2) However—
  - (a) the right to increase the rent may be excluded or limited by the terms of the residential park agreement; and
  - (b) if the residential park agreement is for a fixed term, the agreement is taken to exclude an increase in rent during the term unless the agreement specifically allows for an increase in rent; and
  - (c) the date fixed for an increase of rent must be at least 12 months after the date of the agreement or, if there has been a previous increase of rent under this section, the last increase and, subject to subsection (3), at least 60 days after the notice is given.
- (3) If the maximum rent for the rented property has been fixed by a housing improvement notice, and the notice is revoked, the park owner may, by notice given under this section within 60 days after revocation of the housing improvement notice, increase the rent for the rented property from a date falling at least 14 days after the notice is given.

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#### Division 1—Rents and other charges

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- (4) The rent payable under a residential park agreement may be reduced by mutual agreement between the park owner and the resident.
- (5) A reduction of rent may be made on a temporary basis so that the rent reverts to the level that would have been otherwise applicable at the end of a specified period.
- (6) If the rent payable under a residential park agreement is increased or reduced under this section, the terms of the agreement are varied accordingly.
- (7) This section does not affect the operation of a provision of a residential park agreement under which the rent payable under the agreement changes automatically on a basis set out in the agreement.
- (8) For the purposes of this section, a series of residential park agreements between the same parties and relating to the same site is to be treated as a single residential park agreement unless at least 12 months have elapsed since rent for the rented property was fixed or last increased.

## **22—Excessive rent**

- (1) The Tribunal may, on application made by a resident within 30 days after receipt of a notice of rent increase, declare that the proposed increased rent is excessive.
- (2) In deciding whether the increased rent is excessive, the Tribunal must have regard to—
  - (a) the general level of rents for comparable rented properties in the same or similar localities; and
  - (b) the estimated capital value of the rented property at the date of the application; and
  - (c) the outgoings for which the park owner is liable under the agreement; and
  - (d) the estimated cost of services provided by the park owner and the resident under the agreement; and
  - (e) the nature and value of furniture, equipment and other personal property provided by the park owner for the resident's use; and
  - (f) the state of repair and general condition of the rented property; and
  - (g) the amenity and standard of the common areas of the residential park; and
  - (h) other relevant matters.
- (3) If the Tribunal finds, on an application under this section, that the increased rent is excessive, the Tribunal may, by order—
  - (a) fix the rent payable for the rented property; and
  - (b) fix a period (which cannot exceed 1 year) for which the order is to remain in force.
- (4) The Tribunal may, on application by the park owner, vary or revoke an order under this section if satisfied that it is just to do so.
- (5) If, while an order remains in force under this section, a park owner asks for or receives rent for the rented property to which the order relates exceeding the amount fixed by the order, the park owner is guilty of an offence.

Maximum penalty: \$1 250.

- (6) In this section—

*rent* includes a payment that the resident is required by the park owner to make under Division 10.

### **23—Park owner's duty to keep proper records of rent**

- (1) A park owner under a residential park agreement must ensure that a proper record is kept of rent received under the agreement.

Maximum penalty: \$750.

Expiation fee: \$105.

- (2) A person must not—

- (a) make a false entry in a record of the rent received under a residential park agreement; or
- (b) falsify the record in any other way.

Maximum penalty: \$1 250.

### **24—Duty to give receipt for rent**

- (1) A person who receives rent under a residential park agreement must, within 48 hours after receiving the rent, give the person paying the rent a receipt stating—

- (a) the date on which the rent was received; and
- (b) the name of the person paying the rent; and
- (c) the amount paid; and
- (d) the period of occupancy to which the payment relates; and
- (e) the address of the rented property to which the payment relates.

Maximum penalty: \$750.

Expiation fee: \$105.

- (2) However, if the resident pays the rent into an account kept by the park owner or the park owner's agent at an ADI, and the park owner, or the park owner's agent keeps a written record containing the information required by subsection (1), a receipt need not be given.

### **25—Accrual and apportionment of rent**

- (1) The rent payable under a residential park agreement accrues from day to day.
- (2) If rent is paid in advance, and the residential park agreement ends before the end of the period for which rent has been paid, the park owner must refund the appropriate proportion of the amount paid to the resident or apply it towards other liabilities of the resident to the park owner.

### **26—Abolition of distress for rent**

A park owner is not entitled to distrain goods of a resident for non-payment of the rent payable under a residential park agreement.

## **Division 2—Bonds**

### **27—Bond**

- (1) A person must not—
  - (a) require more than 1 bond for the same residential park agreement; or
  - (b) require the payment of a bond exceeding 4 weeks rent under the agreement.

Maximum penalty: \$1 250.

- (2) The 4 weeks rent limit on the amount of the bond is calculated by reference to the rent, or if the rent varies, the lowest rent, payable during the first 6 months of the period of occupancy under the agreement (expressed as a weekly rent).

### **28—Receipt of bond and transmission to Commissioner**

- (1) A person must, within 48 hours after receiving an amount paid by way of a bond, give the person who paid a receipt stating the date payment was received, the name of the person from whom the payment was received, the amount paid, and the address of the rented property to which the payment relates.

Maximum penalty: \$1 250.

Expiation fee: \$160.

- (2) A person must, within 7 days after receiving an amount paid by way of a bond, pay the amount to the Commissioner and at the same time lodge with the Commissioner a notice in the form approved by the Commissioner.

Maximum penalty: \$1 250.

Expiation fee: \$160.

### **29—Repayment of bond**

- (1) An application may be made to the Commissioner for—
  - (a) payment of the whole amount of the bond either to the park owner or the resident; or
  - (b) payment of a specified amount of the bond to the park owner and the balance to the resident.

- (2) The application—

- (a) must be in a form approved by the Commissioner; and
- (b) may be made jointly by the park owner and the resident or by either the park owner or the resident.

- (3) If the application is undisputed, the Commissioner must pay out from the Fund the amount of the bond as specified in the application.

- (4) If an application is liable to be disputed, the Commissioner must give the respondent written notice of the application (in a form the Commissioner considers appropriate) and inform the respondent that, if the respondent wants to dispute the application, a written notice of dispute, in a form approved by the Commissioner, must be lodged with the Commissioner within 10 days after the date the notice is given to the respondent.

- (5) If the respondent does not give the Commissioner written notice of dispute, in a form approved by the Commissioner, within 10 days after the date the Commissioner's notice is given to the respondent, the Commissioner may pay out from the Fund the amount of the bond as proposed in the application.
- (6) If the Commissioner receives a written notice of dispute before the amount of the bond is paid out under subsection (5), the Commissioner must refer the dispute to the Tribunal for determination.
- (7) For the purposes of this section—
  - (a) an application is undisputed if it is a joint application by the park owner and the resident, or an application by the park owner that the whole of the amount of the bond be paid to the resident, or an application by the resident that the whole of the amount of the bond be paid to the park owner;
  - (b) an application that does not fall into any of those categories is liable to be disputed;
  - (c) if the application was made by the park owner, the resident is the respondent;
  - (d) if the application was made by the resident, the park owner is the respondent.

### **Division 3—Resident's entitlement to possession and quiet enjoyment**

#### **30—Vacant possession etc**

- (1) It is a term of a residential park agreement that the resident is entitled to vacant possession of the rented property (except for a part of the rented property in respect of which a right of exclusive occupation is not given by the agreement) from the day the right of occupancy under the agreement begins.
- (2) It is a term of a residential park agreement that there is no legal impediment of which the park owner has, or ought to have knowledge, to the resident's occupation of the rented property as a place of residence for the period of operation of the agreement.

#### **31—Quiet enjoyment**

- (1) It is a term of a residential park agreement that—
  - (a) the resident is entitled to quiet enjoyment of the rented property without interruption by the park owner or a person claiming under the park owner or with superior title to the park owner's title; and
  - (b) the park owner must not cause or permit an interference with the reasonable peace, comfort or privacy of the resident in the resident's use of the rented property or with the reasonable use or enjoyment by the resident of common areas of the residential park; and
  - (c) the park owner must take reasonable steps to prevent other residents of the residential park from causing or permitting interference with the reasonable peace, comfort or privacy of the resident in the resident's use of the rented property or with the reasonable use or enjoyment by the resident of common areas of the residential park.

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- (2) If the park owner contravenes the term of the agreement arising under subsection (1) in circumstances that amount to harassment of the resident, the park owner is guilty of an offence.

Maximum penalty: \$2 500.

- (3) The liability to be prosecuted for the offence is in addition to civil liability for breach of the agreement.

**Division 4—Residential park tenancy agreement—security of dwelling**

**32—Residential park tenancy agreement—security of dwelling**

- (1) It is a term of a residential park tenancy agreement that—

- (a) the park owner must take reasonable steps to provide and maintain the locks and other devices that are necessary to ensure the dwelling comprised in the rented property is reasonably secure; and
- (b) the park owner or the resident must not alter or remove a lock or other security device or add a lock or other security device without the consent of the other.

- (2) A park owner, park owner's agent or resident who, without reasonable excuse, contravenes the term of the agreement arising under subsection (1)(b) is guilty of an offence.

Maximum penalty: \$1 250.

- (3) The liability to be prosecuted for the offence is in addition to civil liability for breach of the agreement.

**Division 5—Access to residential park**

**33—Access to residential park**

- (1) It is a term of a residential park agreement that the park owner—

- (a) must provide 24 hours vehicular access for the resident to the rented property; and
- (b) must provide 24 hours access for the resident to the residential park and any common area bathroom and toilet facilities of the park; and
- (c) must provide access during all reasonable hours for the resident to any other common area facilities of the park.

- (2) It is a term of a residential park agreement that, if the park owner has installed a lock or other security device (such as boom gates) to restrict entry to the residential park, or some part of the residential park to which it is agreed that the resident may have access, the park owner—

- (a) must give a copy of the key or any other opening device or information required to open the security device to the resident—
- (i) in the case of a security device in place at the commencement of the agreement—at or before the commencement of the agreement; and

- (ii) in the case of a security device installed or changed during the term of the agreement—before the security device is locked or activated; and
  - (b) must maintain the security device in working order.
- (3) A park owner or park owner's agent who, without reasonable excuse, excludes or restricts, or attempts to exclude or restrict, access by a resident to the residential park or a part of the park in contravention of a term of a residential park agreement arising under this section is guilty of an offence.  
Maximum penalty: \$1 250.
- (4) The liability to be prosecuted for the offence is in addition to civil liability for breach of the agreement.

## **Division 6—Park owner's obligations in relation to condition of rented property and common areas**

### **34—Cleanliness**

It is a term of a residential park agreement that the park owner—

- (a) must ensure that the rented property is in a reasonable state of cleanliness when the resident enters into occupation of the rented property; and
- (b) must keep the common areas of the residential park and any garden or other areas in the park in a reasonable state of cleanliness; and
- (c) must arrange for the regular collection of the garbage of residents and any other garbage in the residential park.

### **35—Park owner's obligation to repair**

- (1) It is a term of a residential park agreement that the park owner—
  - (a) must ensure that the rented property and the common areas of the residential park are in a reasonable state of repair when the resident enters into occupation of the rented property and must keep them in a reasonable state of repair having regard to their age, character and prospective life; and
  - (b) must comply with statutory requirements affecting the rented property and the common areas of the residential park; and
  - (c) must, if required to carry out repairs to common area bathroom, toilet or laundry facilities, minimise inconvenience or disruption to the resident and, if necessary, provide temporary substitute facilities.
- (2) The obligation to repair applies even though the resident had notice of the state of disrepair before entering into occupation.
- (3) However—
  - (a) the park owner will not be regarded as being in breach of the obligation to repair unless—
    - (i) the park owner has notice of the defect requiring repair; and
    - (ii) the park owner fails to act with reasonable diligence to have the defect repaired; and

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- (b) if the rented property is subject to a housing improvement notice fixing the maximum rent for the rented property, the park owner's obligation under subsection (1) to repair the rented property does not apply.
- (4) If—
- (a) rented property is in a state of disrepair that does not arise from a contravention of the residential park agreement by the resident; and
  - (b) the state of disrepair is, unless remedied, likely to result in personal injury or damage to property or undue inconvenience; and
  - (c) the resident notifies the park owner of the state of disrepair or makes a reasonable attempt to do so; and
  - (d) the resident incurs costs in having the state of disrepair remedied; and
  - (e) the repairs are carried out by a person who is licensed to carry out the necessary work and the person provides the park owner with a report on the work carried out and the apparent cause of the state of disrepair,
- the resident is entitled to recover from the park owner the reasonable costs of having the repairs carried out.
- (5) However, the resident is not entitled to recover the cost of repairing the rented property if the rented property is subject to a housing improvement notice fixing the maximum rent payable for the rented property.
- (6) The obligation to repair includes an obligation to maintain all trees in the residential park in a condition that does not create any unreasonable risk to the safety of residents or their property.

## **Division 7—Resident's obligations in relation to rented property and common areas**

### **36—Resident's responsibility for cleanliness and damage**

- (1) It is a term of a residential park agreement that the resident—
- (a) must keep the rented property in a reasonable state of cleanliness; and
  - (b) must notify the park owner of damage to the rented property; and
  - (c) must notify the park owner of damage to any common area of the residential park caused by the resident or a person permitted on the rented property or the park by the resident; and
  - (d) must not intentionally or negligently cause or permit damage to the rented property or any common area of the residential park.
- (2) A resident who intentionally causes serious damage to the rented property or any common area of the residential park is guilty of an offence.  
Maximum penalty: \$2 500.
- (3) The liability to be prosecuted for the offence is in addition to civil liability for a breach of the agreement.

- (4) It is a term of a residential park agreement that, at the end of the agreement, the resident must give the rented property back to the park owner in reasonable condition and in a reasonable state of cleanliness.
- (5) In deciding whether property is in reasonable condition, its condition when the resident entered into occupation of it, and the probable effect of reasonable wear and tear since that time, must be taken into account.

### **37—Residential park tenancy agreement—alteration of rented property**

It is a term of a residential park tenancy agreement that—

- (a) a resident must not, without the park owner's written consent—
  - (i) affix a fixture, or make an alteration or addition, to the rented property; or
  - (ii) remove a fixture affixed to the rented property by the resident; and
- (b) if a resident causes damage to the rented property by removing a fixture, the resident must notify the park owner and, at the option of the park owner, repair the damage or compensate the park owner for the reasonable cost of repairing the damage; and
- (c) the park owner—
  - (i) must not unreasonably withhold consent; and
  - (ii) must not make a charge for giving consent or considering an application for consent exceeding the park owner's reasonable expenses; and
- (d) if the park owner withholds consent to the removal of a fixture affixed to the rented property by the resident with the park owner's written consent, the park owner must, at the request of the resident, compensate the resident without delay for the reasonable value of the fixture.

### **38—Residential park site agreement—alterations on site**

It is a term of a residential park site agreement that—

- (a) a resident must not, without the park owner's written consent, make an alteration or addition to the exterior of the dwelling installed or located on the site, or add any structure to the site; and
- (b) the park owner—
  - (i) must not unreasonably withhold consent; and
  - (ii) must not make a charge for giving consent or considering an application for consent exceeding the park owner's reasonable expenses.

## **Division 8—Resident's conduct on rented property**

### **39—Resident's conduct**

It is a term of a residential park agreement that the resident—

- (a) must not use the rented property or common areas of the residential park, or cause or permit the rented property or common areas of the residential park to be used, for an illegal purpose; and
- (b) must not cause or permit a nuisance; and
- (c) must not cause or permit an interference—
  - (i) with the reasonable peace, comfort or privacy of another resident in the other resident's use of rented property or with the reasonable use or enjoyment by another resident of common areas of the residential park; or
  - (ii) with the reasonable peace, comfort or privacy of a person residing in the immediate vicinity of the residential park.

## **Division 9—Park owner's right of entry**

### **40—Residential park tenancy agreement—right of entry**

It is a term of a residential park tenancy agreement that the park owner may enter the rented property if (and only if)—

- (a) the entry is made in an emergency (including in order to carry out urgent repairs or avert danger to life or valuable property); or
- (b) the entry is made at a time previously arranged with the resident (but not more frequently than once every week) for the purpose of collecting the rent; or
- (c) in a case where the resident is required under Division 10 to pay charges based on the level of the water, electricity or gas consumption at the rented property, for the purpose of reading the relevant meter; or
- (d) the entry is made at a time previously arranged with the resident (but not more frequently than once every 3 months) for the purpose of inspecting the rented property; or
- (e) the entry is made for the purpose of carrying out necessary repairs or maintenance at a reasonable time of which the resident has been given at least 48 hours written notice; or
- (f) the entry is made for the purpose of showing the rented property to prospective residents, at a reasonable time and on a reasonable number of occasions during the period of 14 days preceding the termination of the agreement, after giving reasonable notice to the resident; or
- (g) the entry is made for the purpose of showing the rented property to prospective purchasers, at a reasonable time and on a reasonable number of occasions, after giving the resident reasonable notice; or

- (h) the entry is made for a purpose not referred to in a preceding paragraph and the park owner gives the resident written notice stating the purpose and specifying the date and time of the proposed entry not less than 7 and not more than 14 days before entering the rented property; or
- (i) the entry is made with the consent of the resident given at, or immediately before, the time of entry; or
- (j) the park owner believes on reasonable grounds that the resident has abandoned the rented property.

#### **41—Residential park site agreement—right of entry**

It is a term of a residential park site agreement that the park owner may enter the rented property if (and only if)—

- (a) the entry is made in order to avert danger to life or valuable property; or
- (b) in a case where the resident is required under Division 10 to pay charges based on the level of the water, electricity or gas consumption at the rented property, for the purpose of reading the relevant meter; or
- (c) the entry is made, at a reasonable time and on a reasonable number of occasions, for the purpose of ensuring compliance by the park owner with statutory requirements relating to separation distances between structures on neighbouring sites and removal of hazardous materials; or
- (d) the entry is made, at a reasonable time and on a reasonable number of occasions, for the purpose of lawn or grounds maintenance in a case where the resident agreed to such an arrangement when entering into the residential park site agreement; or
- (e) the entry is made with the consent of the resident given at, or immediately before, the time of entry; or
- (f) the entry is made in accordance with the regulations.

#### **42—Manner of exercise of right of entry**

It is a term of a residential park agreement that a park owner exercising a right of entry under this Division—

- (a) must not act in an unreasonably intrusive manner on the rented property; and
- (b) without limiting the effect of paragraph (a), must not, without the resident's consent—
  - (i) enter a part of the rented property to which entry is not reasonably required for the purpose for which the right of entry is being exercised; or
  - (ii) remain on the rented property longer than is reasonably necessary for the purpose for which the right of entry is being exercised.

## **Division 10—Statutory and other charges in respect of rented property**

### **43—Statutory and other charges in respect of rented property**

- (1) Without limiting the effect of section 18, it is a term of a residential park agreement that the park owner must bear all statutory charges imposed in respect of the rented property.
- (2) However, the park owner may, by a term of the residential park agreement—
  - (a) if water consumption at the rented property is separately metered, require the resident to pay charges payable under the *Waterworks Act 1932* based on the level of the water consumption at the rented property; and
  - (b) subject to the *Electricity Act 1996*, if electricity consumption at the rented property is separately metered, require the resident to pay charges based on the level of the electricity consumption at the rented property; and
  - (c) subject to the *Gas Act 1997*, if gas consumption at the rented property is separately metered, require the resident to pay charges based on the level of the gas consumption at the rented property; and
  - (d) if bottled gas is supplied at the rented property, require the resident to pay charges based on the level of the bottled gas consumption at the rented property; and
  - (e) require the resident to make any other payments of a kind prescribed by the regulations.
- (3) The regulations may provide that a resident need not make a payment of a kind referred to in subsection (2) unless the park owner provides to the resident, at the request of the resident, specified information (which may include accounts and receipts, or copies of accounts and receipts) relevant to the payment or the goods or services in respect of which the payment is sought.

## **Division 11—Resident's vicarious liability**

### **44—Vicarious liability**

It is a term of a residential park agreement that, if a person is on the rented property at the invitation or with the consent of the resident, the resident is vicariously responsible for an act or omission by the person that would, if it had been an act or omission of the resident, have constituted a breach of the agreement.

## **Division 12—Harsh or unconscionable terms**

### **45—Harsh or unconscionable terms**

- (1) The Tribunal may, on application by a resident, make an order rescinding or varying a term of a residential park agreement if satisfied that the term is harsh or unconscionable.
- (2) On making an order under subsection (1), the Tribunal may make consequential changes to the residential park agreement or another related document.

## **Division 13—Miscellaneous**

### **46—Accelerated rent and liquidated damages**

- (1) If a residential park agreement provides that, on breach by the resident of a term about rent or other term of the agreement, the resident is liable to pay—
  - (a) all or any part of the rent remaining payable under the agreement; or
  - (b) rent of an increased amount; or
  - (c) an amount by way of penalty; or
  - (d) an amount by way of liquidated damages,the provision is void.
- (2) If a residential park agreement provides that, on early or punctual payment of rent, the rent will or may be decreased or the resident will or may be granted or paid a rebate, refund or other benefit, the resident is entitled to the reduction, rebate, refund or other benefit in any event.
- (3) If a residential park agreement contains a provision to which this section applies, the park owner is guilty of an offence.  
Maximum penalty: \$1 250.

### **47—Duty of mitigation**

The rules of the law of contract about mitigation of loss or damage on breach of a contract apply to a breach of a residential park agreement.

## **Part 5—Assignment of residential park agreements**

### **48—Assignment of residential park agreement**

- (1) A resident under a residential park agreement may assign the resident's interest in the agreement to another person by written or oral agreement with the other person.
- (2) However, it is a term of a residential park agreement that—
  - (a) the resident must not assign the resident's interest without the written consent of the park owner; but
  - (b) the park owner—
    - (i) must not unreasonably withhold consent; and
    - (ii) must not make a charge for giving consent or considering an application for consent exceeding the park owner's reasonable expenses.
- (3) The park owner is to be taken to have consented to an assignment if—
  - (a) the resident—
    - (i) has given the park owner written notice of the assignment setting out the full name and contact details of the proposed assignee; and

- (ii) has requested the park owner to consent to the assignment by signing and returning the notice to the resident; and
  - (b) the park owner has not consented, or refused to consent, to the assignment within 7 days after receipt of the notice of the assignment.
- (4) The absence of consent does not invalidate an assignment.
- (5) However, if the park owner's consent to an assignment is not obtained, the resident who assigns the interest remains liable to the park owner under the residential park agreement (together with the new resident, who is jointly and severally liable) unless the park owner has unreasonably withheld consent.
- (6) This continuing liability of the assignor does not apply, in the case of a residential park agreement for a periodic tenancy, to a liability accruing more than 21 days after the park owner became aware or ought reasonably to have become aware of the assignment (whichever is the earlier).
- (7) If the park owner's consent to an assignment is not obtained and the park owner had, before the assignment, served a notice of termination on the assignor, the park owner may enforce the notice against the assignee.
- (8) The park owner may terminate a residential park agreement on the ground that the resident has assigned the resident's interest without the park owner's consent, but only if the park owner has not unreasonably withheld consent and serves the notice of termination within 21 days after the time the park owner became aware or ought reasonably to have become aware of the assignment (whichever is the earlier).
- (9) The effect of an assignment under this section is that the assignee is substituted for the assignor as resident under the residential park agreement (but the assignor remains responsible for liabilities that accrued before the date of the assignment).
- (10) An assignee is liable to indemnify the assignor for liabilities incurred by the assignor to the park owner because of a breach of the residential park agreement by the assignee.
- (11) If the resident assigns the resident's interest, an amount paid by the resident and held by way of a bond will (unless the parties agree to the contrary) continue to be held as a bond for the proper performance by the assignee of obligations under the residential park agreement.

## **Part 6—Residential park site agreement—acquisition of park or site**

### **49—Residential park site agreement—acquisition of park or site**

- (1) This section applies if—
  - (a) title to all or part of the land within a residential park is acquired from the park owner by a person (the *new owner*); and
  - (b) the land acquired includes land on which a person has installed a dwelling under a residential park site agreement for a term exceeding 12 months; and
  - (c) but for this section, the new owner's title would not be subject to the resident's interest under the residential park site agreement.

- (2) Notwithstanding the provisions of the *Real Property Act 1886*, the new owner's title to the land is subject to the resident's interest under the residential park site agreement.
- (3) The new owner may, however, by notice of termination given to the resident, terminate the residential park site agreement without specifying a ground of termination.
- (4) A notice of termination by the new owner must—
  - (a) be given to the resident within 14 days after the date of the new owner's acquisition of title to the land; and
  - (b) subject to subsection (5), specify the day on which the agreement is terminated which must not be earlier than whichever is the earlier of—
    - (i) the end of the term of the agreement as fixed by the agreement; and
    - (ii) 12 months from the date of the new owner's acquisition of title to the land.
- (5) In the case of a residential park site agreement under which a permanently fixed dwelling is located on the site, a notice of termination under this section must not specify a day on which the agreement is terminated that is earlier than the end of the term of the agreement as fixed by the agreement.
- (6) If the new owner gives notice of termination to the resident under this section, the resident is not necessarily bound by the residential park site agreement until it terminates as a result of that notice, but may, by notice of termination given to the new owner, terminate the agreement without specifying a ground of termination.
- (7) The period of the resident's notice to the new owner must be at least 28 days.
- (8) A notice under this section must comply with the requirements of Part 9 Division 5 as to the form of a notice of termination and, in the case of a notice given by the new owner, include any further information required by the Commissioner.
- (9) A notice terminating a residential park site agreement under this section is not ineffectual because the day on which the agreement is to end is not the last day of the term of the agreement as fixed by the agreement.

## **Part 7—Residential park site agreement—sale of dwelling on-site**

### **50—Residential park site agreement—sale of dwelling on-site**

- (1) It is a term of a residential park site agreement that the resident—
  - (a) is entitled to sell the dwelling installed or located on the site to which the agreement relates while the dwelling is in place on the site; and
  - (b) must inform the park owner of the resident's intention to offer the dwelling for sale before displaying a "for sale" sign in or on the dwelling or site.
- (2) A park owner or park owner's agent who—
  - (a) hinders, or attempts to hinder, the sale of a dwelling by a resident in accordance with the term of a residential park site agreement arising under subsection (1)(a); or

- (b) prevents, or attempts to prevent, the display by a resident of a "for sale" sign in or on a dwelling or site for the purpose of selling the dwelling in accordance with the term of a residential park site agreement arising under that subsection,

is guilty of an offence.

Maximum penalty: \$2 500.

- (3) Without limiting subsection (2), a park owner or park owner's agent is to be taken to hinder the sale of a dwelling if the park owner or park owner's agent stops potential buyers from inspecting the dwelling.
- (4) A park owner does not contravene subsection (2) in relation to the proposed sale of a dwelling installed or located on a site if the park owner has reasonably refused to consent to a proposed assignment of the resident's interest in the residential park site agreement relating to the site.

## **Part 8—Sub-tenancy agreements**

### **51—Sub-tenancy agreements**

- (1) A resident under a residential park agreement may enter into a sub-tenancy agreement with another person in respect of the site to which the residential park agreement relates and the dwelling on the site (whether a dwelling made available by the park owner or installed or located on the site by the resident).
- (2) A sub-tenancy agreement may be in writing or oral.
- (3) However, it is a term of a residential park agreement that the resident must not enter into a sub-tenancy agreement unless—
  - (a) the park owner has park rules in force for the residential park defining the terms (as to payment or any other matter) on which the park owner will act as managing agent for residents in relation to sub-tenancy agreements and the services to be provided by the park owner to residents as managing agent in relation to sub-tenancy agreements; and
  - (b) the park owner has consented to the making of the sub-tenancy agreement; and
  - (c) the resident has entered into an agreement (a *sub-tenancy managing agent agreement*) with the park owner under which the park owner will act as managing agent for the resident in relation to the sub-tenancy agreement in accordance with the park rules.
- (4) If a resident enters into—
  - (a) a sub-tenancy agreement; and
  - (b) a sub-tenancy managing agent agreement with the park owner in relation to the sub-tenancy agreement,

a reference in this Act to a park owner is, in relation to the sub-tenancy agreement, to be taken to include a reference to—

- (c) the park owner acting as managing agent for the resident in relation to the sub-tenancy agreement; and

- (d) the resident.

## **Part 9—Termination of residential park agreements**

### **Division 1—Termination generally**

#### **52—Termination of residential park agreement**

A residential park agreement terminates if—

- (a) the park owner or the resident terminates the agreement by notice of termination given to the other (as required under this Act); or
- (b) the Tribunal terminates the agreement; or
- (c) a person having title superior to the park owner's title becomes entitled to possession of the rented property under the order of the Tribunal or a court; or
- (d) a mortgagee takes possession of the rented property under a mortgage; or
- (e) the resident abandons the rented property; or
- (f) the resident dies without leaving dependants in occupation of the rented property; or
- (g) the resident gives up possession of the rented property with the park owner's consent; or
- (h) the interest of the resident merges with another estate or interest in the land; or
- (i) disclaimer occurs.

#### **53—Agreement for fixed term continues if not terminated**

If a residential park agreement for a fixed term has not terminated at or before the end of the fixed term, the agreement continues—

- (a) as a residential park agreement for a periodic tenancy with a tenancy period equivalent to the interval between rental payment times under the agreement; and
- (b) with terms of agreement that in other respects are the same as those applying under the agreement immediately before the end of the fixed term.

#### **54—Termination of agreement for periodic tenancy**

A notice terminating a residential park agreement for a periodic tenancy under this Part is not ineffectual because—

- (a) the period of notice is less than would, apart from this Act, have been required at law; or
- (b) the day on which the agreement is to end is not the last day of a period of the tenancy.

## **55—Limitation of right to terminate**

- (1) If—
  - (a) rented property is subject to a housing improvement notice; or
  - (b) an order is in force under section 22 in respect of rented property or proceedings for such an order have been commenced,

the park owner may only terminate the residential park agreement by notice of termination under this Part if the notice is given on a specified ground, and the Tribunal authorises the notice of termination.
- (2) This section does not apply to a notice of termination given by the park owner to terminate a residential park agreement for a fixed term at the end of the fixed term.
- (3) The Tribunal may authorise a notice of termination under this section if satisfied of the genuineness of the proposed ground on which the notice is to be given.

## **Division 2—Residential park tenancy agreements—termination by parties**

### **Subdivision 1—Termination by park owners**

#### **56—Termination for breach of agreement**

- (1) If the resident breaches a residential park tenancy agreement, the park owner may give the resident a written notice in the form approved by the Commissioner—
  - (a) specifying the breach; and
  - (b) informing the resident that if the breach is not remedied within a specified period (which must be a period of at least 14 days) from the date the notice is given, then—
    - (i) the agreement is terminated by force of the notice; and
    - (ii) the resident must give up vacant possession of the rented property before the end of the next day.
- (2) If notice is given under this section on the ground of a failure to pay rent—
  - (a) the notice is ineffectual unless the rent (or any part of the rent) has remained unpaid in breach of the agreement for not less than 7 days before the notice was given; and
  - (b) the notice is not rendered ineffectual by failure by the park owner to make a prior formal demand for payment of the rent.
- (3) If notice is given under this section in respect of a residential park tenancy agreement for a fixed term, the notice is not ineffectual because the day specified as the day on which the resident is to give up vacant possession of the rented property is earlier than the last day of that term.

- (4) The resident may at any time after receiving a notice under this section and before giving vacant possession to the park owner, apply to the Tribunal for an order—
  - (a) declaring that the resident is not in breach of the residential park agreement, or has remedied the breach of the agreement, and that the agreement is not liable to be terminated under this section; or
  - (b) reinstating the agreement.
- (5) If the Tribunal is satisfied that a residential park tenancy agreement has been validly terminated under this section, but that it is just and equitable to reinstate the agreement (or would be just and equitable to reinstate the agreement if the conditions of the order were complied with), the Tribunal may make an order reinstating the agreement.
- (6) An order reinstating the agreement under this section may be made on conditions that the Tribunal considers appropriate.
- (7) On an application for an order reinstating the agreement, the Tribunal may make alternative orders providing for reinstatement of the agreement if specified conditions are complied with but, if not, ordering the resident to give up vacant possession of the rented property to the park owner.

#### **57—Termination where successive breaches of agreement**

- (1) A park owner may, by notice of termination given to the resident, terminate a residential park tenancy agreement on the ground that the resident—
  - (a) has breached a term of the agreement; and
  - (b) had committed breaches of the same term of the agreement on at least 2 previous occasions and been given separate notice under section 56 in respect of each of those breaches.
- (2) Subject to subsection (3), the period of notice given under this section must be at least 14 days.
- (3) If notice is given under this section on the ground of a failure to pay rent—
  - (a) the notice is ineffectual unless the rent (or any part of the rent) has remained unpaid in breach of the agreement for not less than 7 days before the notice was given; and
  - (b) the notice is not rendered ineffectual by failure by the park owner to make a prior formal demand for payment of the rent; and
  - (c) the period of notice given must be at least 7 days.

#### **58—Termination where serious misconduct by resident**

- (1) A park owner may, by notice of termination given to the resident, terminate a residential park tenancy agreement on the ground that the resident, or a person permitted on the rented property with the consent of the resident, has intentionally or recklessly caused or permitted, or is likely to cause or permit—
  - (a) personal injury to—
    - (i) the park owner or the park owner's agent; or
    - (ii) a person in the residential park or in the vicinity of the residential park; or

- (b) serious damage to the rented property or other property in the residential park; or
  - (c) serious interference—
    - (i) with the reasonable peace, comfort or privacy of another resident in the other resident's use of rented property or with the reasonable use or enjoyment by another resident of common areas of the residential park; or
    - (ii) with the reasonable peace, comfort or privacy of a person residing in the immediate vicinity of the residential park.
- (2) A notice given under this section may terminate the agreement immediately.

### **59—Termination where periodic tenancy and sale of rented property**

- (1) A park owner may, by notice of termination given to the resident, terminate a residential park tenancy agreement for a periodic tenancy on the ground that the park owner—
- (a) has entered into a contract for the sale of the rented property or the dwelling comprised in the rented property; and
  - (b) is required under the contract to give vacant possession of the rented property or the dwelling.
- (2) The period of notice given under this section must be at least 28 days or a period equivalent to a single period of the tenancy (whichever is the longer).
- (3) A person must not falsely state the ground of termination in a notice of termination given, or purportedly given, under this section.  
Maximum penalty: \$2 500.
- (4) A park owner who recovers possession of rented property under this section must not, without the consent of the Tribunal, enter into a residential park tenancy agreement with any person in relation to the same rented property within 6 months after recovering possession.  
Maximum penalty: \$2 500.

### **60—Termination where periodic tenancy and no specified ground of termination**

- (1) A park owner may, by notice of termination given to the resident, terminate a residential park tenancy agreement for a periodic tenancy without specifying a ground of termination.
- (2) However, an agreement cannot be terminated under this section if—
- (a) the rented property is subject to a housing improvement notice; or
  - (b) an order is in force under section 22 in respect of the rented property or proceedings for such an order have been commenced.
- (3) The period of notice under this section must be at least 60 days or a period equivalent to a single period of the tenancy (whichever is the longer).

### **61—Termination at end of fixed term**

- (1) A park owner may, by notice of termination given to the resident, terminate a residential park tenancy agreement for a fixed term at the end of the fixed term without specifying a ground of termination.
- (2) The period of notice under this section must be at least 28 days.

### **62—Termination where agreement frustrated**

- (1) A park owner may, by notice of termination given to the resident, terminate a residential park tenancy agreement on the ground that, otherwise than as a result of a breach of the agreement, the rented property or a substantial portion of the rented property—
  - (a) has been destroyed or rendered uninhabitable; or
  - (b) has ceased to be lawfully usable for residential purposes; or
  - (c) has been acquired by compulsory process.
- (2) A notice given under subsection (1)(a) or (b) may terminate the agreement immediately.
- (3) A notice given under subsection (1)(c) must provide for a period of notice of at least 60 days.

### **Subdivision 2—Termination by residents**

#### **63—Termination for breach of agreement**

- (1) If the park owner breaches a residential park tenancy agreement, the resident may give the park owner a written notice, in the form approved by the Commissioner—
  - (a) specifying the breach; and
  - (b) informing the park owner that if the breach is not remedied within a specified period (which must be a period of at least 14 days) from the date the notice is given, then—
    - (i) the agreement is terminated by force of the notice; and
    - (ii) the resident will give up vacant possession of the rented property before the end of the next day.
- (2) The park owner may, before the time fixed in the resident's notice for termination of the agreement or the resident gives up vacant possession of the rented property (whichever is the later), apply to the Tribunal for an order—
  - (a) declaring that the park owner is not in breach of the agreement, or has remedied the breach of the agreement, and that the agreement is not liable to be terminated under this section; or
  - (b) reinstating the agreement.
- (3) If the Tribunal is satisfied that a residential park tenancy agreement has been validly terminated under this section, but that it is just and equitable to reinstate the agreement (or would be just and equitable to reinstate the agreement if the conditions of the order were complied with), the Tribunal may make an order reinstating the agreement.

- (4) An order reinstating the agreement under this section may be made on conditions that the Tribunal considers appropriate.

#### **64—Termination where successive breaches of agreement**

- (1) A resident may, by notice of termination given to the park owner, terminate a residential park tenancy agreement on the ground that the park owner—
  - (a) has breached a term of the agreement; and
  - (b) had committed breaches of the same term of the agreement on at least 2 previous occasions and been given separate notice under section 63 in respect of each of those breaches.
- (2) The period of notice given under this section must be at least 14 days.

#### **65—Termination where periodic tenancy and no specified ground of termination**

- (1) A resident may, by notice of termination given to the park owner, terminate a residential park tenancy agreement for a periodic tenancy without specifying a ground of termination.
- (2) The period of notice under this section must be at least 21 days or a period equivalent to a single period of the tenancy (whichever is longer).

#### **66—Termination at end of fixed term**

- (1) A resident may, by notice of termination given to the park owner, terminate a residential park tenancy agreement for a fixed term at the end of the fixed term without specifying a ground of termination.
- (2) The period of notice under this section must be at least 28 days.

#### **67—Termination where agreement frustrated**

- (1) A resident may, by notice of termination given to the park owner, terminate a residential park tenancy agreement on the ground that, otherwise than as a result of a breach of the agreement, the rented property or a substantial portion of the rented property—
  - (a) has been destroyed or rendered uninhabitable; or
  - (b) has ceased to be lawfully usable for residential purposes; or
  - (c) has been acquired by compulsory process.
- (2) A notice given under this section may terminate the agreement immediately.

### **Division 3—Residential park site agreements—termination by parties**

#### **Subdivision 1—Termination by park owners**

#### **68—Termination for breach of agreement**

- (1) If the resident breaches a residential park site agreement, the park owner may give the resident a written notice in the form approved by the Commissioner—
  - (a) specifying the breach; and

- (b) informing the resident that if the breach is not remedied within a specified period (which must be a period of at least 28 days) from the date the notice is given, then—
  - (i) the agreement is terminated by force of the notice; and
  - (ii) the resident must give up vacant possession of the rented property before the end of the next day.
- (2) If notice is given under this section on the ground of a failure to pay rent—
  - (a) the notice is ineffectual unless the rent (or any part of the rent) has remained unpaid in breach of the agreement for not less than 7 days before the notice was given; and
  - (b) the notice is not rendered ineffectual by failure by the park owner to make a prior formal demand for payment of the rent.
- (3) If notice is given under this section in respect of a residential park site agreement for a fixed term, the notice is not ineffectual because the day specified as the day on which the resident is to give up vacant possession of the rented property is earlier than the last day of that term.
- (4) The resident may, at any time after receiving a notice under this section and before giving vacant possession to the park owner, apply to the Tribunal for an order—
  - (a) declaring that the resident is not in breach of the residential park agreement, or has remedied the breach of the agreement, and that the agreement is not liable to be terminated under this section; or
  - (b) reinstating the agreement.
- (5) If the Tribunal is satisfied that a residential park site agreement has been validly terminated under this section, but that it is just and equitable to reinstate the agreement (or would be just and equitable to reinstate the agreement if the conditions of the order were complied with), the Tribunal may make an order reinstating the agreement.
- (6) An order reinstating the agreement under this section may be made on conditions that the Tribunal considers appropriate.
- (7) On an application for an order reinstating the agreement, the Tribunal may make alternative orders providing for reinstatement of the agreement if specified conditions are complied with but, if not, ordering the resident to give up vacant possession of the rented property to the park owner.

### **69—Termination where successive breaches of agreement**

- (1) A park owner may, by notice of termination given to the resident, terminate a residential park site agreement on the ground that the resident—
  - (a) has breached a term of the agreement; and
  - (b) had committed breaches of the same term of the agreement on at least 2 previous occasions and been given separate notice under section 68 in respect of each of those breaches.
- (2) The period of notice given under this section must be at least 28 days.

- (3) If notice is given under this section on the ground of a failure to pay rent—
- (a) the notice is ineffectual unless the rent (or any part of the rent) has remained unpaid in breach of the agreement for not less than 7 days before the notice was given; and
  - (b) the notice is not rendered ineffectual by failure by the park owner to make a prior formal demand for payment of the rent.

### **70—Termination where serious misconduct by resident**

- (1) A park owner may, by notice of termination given to the resident, terminate a residential park site agreement on the ground that the resident, or a person permitted on the rented property with the consent of the resident, has intentionally or recklessly caused or permitted, or is likely to cause or permit—
- (a) personal injury to—
    - (i) the park owner or the park owner's agent; or
    - (ii) a person in the residential park or in the vicinity of the residential park; or
  - (b) serious damage to the rented property or other property in the residential park; or
  - (c) serious interference—
    - (i) with the reasonable peace, comfort or privacy of another resident in the other resident's use of rented property or with the reasonable use or enjoyment by another resident of common areas of the residential park; or
    - (ii) with the reasonable peace, comfort or privacy of a person residing in the immediate vicinity of the residential park.
- (2) A notice given under this section may terminate the agreement immediately.

### **71—Termination where periodic tenancy and no specified ground of termination**

- (1) A park owner may, by notice of termination given to the resident, terminate a residential park site agreement for a periodic tenancy without specifying a ground of termination.
- (2) However, an agreement cannot be terminated under this section if an order is in force under section 22 in respect of the rented property or proceedings for such an order have been commenced.
- (3) The period of notice under this section must be at least 90 days.

### **72—Termination at end of fixed term**

- (1) A park owner may, by notice of termination given to the resident, terminate a residential park site agreement for a fixed term at the end of the fixed term without specifying a ground of termination.
- (2) The period of notice under this section must be at least 28 days.

### **73—Termination where agreement frustrated**

- (1) A park owner may, by notice of termination given to the resident, terminate a residential park site agreement on the ground that, otherwise than as a result of a breach of the agreement, the rented property or a substantial portion of the rented property—
  - (a) has been destroyed or rendered uninhabitable; or
  - (b) has ceased to be lawfully usable for residential purposes; or
  - (c) has been acquired by compulsory process.
- (2) A notice given under subsection (1)(a) or (b) may terminate the agreement immediately.
- (3) A notice given under subsection (1)(c) must provide for a period of notice of at least 60 days.

### **Subdivision 2—Termination by residents**

#### **74—Termination for breach of agreement**

- (1) If the park owner breaches a residential park site agreement, the resident may give the park owner a written notice, in the form approved by the Commissioner—
  - (a) specifying the breach; and
  - (b) informing the park owner that if the breach is not remedied within a specified period (which must be a period of at least 14 days) from the date the notice is given, then—
    - (i) the agreement is terminated by force of the notice; and
    - (ii) the resident will give up vacant possession of the rented property before the end of the next day.
- (2) The park owner may, before the time fixed in the resident's notice for termination of the agreement or the resident gives up vacant possession of the rented property (whichever is the later), apply to the Tribunal for an order—
  - (a) declaring that the park owner is not in breach of the agreement, or has remedied the breach of the agreement, and that the agreement is not liable to be terminated under this section; or
  - (b) reinstating the agreement.
- (3) If the Tribunal is satisfied that a residential park site agreement has been validly terminated under this section, but that it is just and equitable to reinstate the agreement (or would be just and equitable to reinstate the agreement if the conditions of the order were complied with), the Tribunal may make an order reinstating the agreement.
- (4) An order reinstating the agreement under this section may be made on conditions that the Tribunal considers appropriate.

### **75—Termination where successive breaches of agreement**

- (1) A resident may, by notice of termination given to the park owner, terminate a residential park site agreement on the ground that the park owner—
  - (a) has breached a term of the agreement; and
  - (b) had committed breaches of the same term of the agreement on at least 2 previous occasions and been given separate notice under section 74 in respect of each of those breaches.
- (2) The period of notice given under this section must be at least 14 days.

### **76—Termination where periodic tenancy and no specified ground of termination**

- (1) A resident may, by notice of termination given to the park owner, terminate a residential park site agreement for a periodic tenancy without specifying a ground of termination.
- (2) The period of notice under this section must be at least 28 days or a period equivalent to a single period of the tenancy (whichever is longer).

### **77—Termination at end of fixed term**

- (1) A resident may, by notice of termination given to the park owner, terminate a residential park site agreement for a fixed term at the end of the fixed term without specifying a ground of termination.
- (2) The period of notice under this section must be at least 28 days.

### **78—Termination where agreement frustrated**

- (1) A resident may, by notice of termination given to the park owner, terminate a residential park site agreement on the ground that, otherwise than as a result of a breach of the agreement, the rented property or a substantial portion of the rented property—
  - (a) has been rendered uninhabitable; or
  - (b) has ceased to be lawfully usable for residential purposes; or
  - (c) has been acquired by compulsory process.
- (2) A notice given under this section may terminate the agreement immediately.

## **Division 4—Termination by Tribunal**

### **79—Termination on application by park owner**

The Tribunal may, on application by a park owner, terminate a residential park agreement and make an order for possession of the rented property if satisfied that—

- (a) the resident has committed a breach of the agreement; and
- (b) the breach is sufficiently serious to justify termination of the agreement.

## **80—Termination on application by resident**

The Tribunal may, on application by a resident, terminate a residential park agreement and make an order for possession of the rented property if satisfied that—

- (a) the park owner has committed a breach of the agreement; and
- (b) the breach is sufficiently serious to justify termination of the agreement.

## **81—Termination based on hardship**

- (1) If the continuation of a residential park agreement would result in undue hardship to the park owner or the resident, the Tribunal may, on application by the park owner or the resident, terminate the agreement from a date specified in the Tribunal's order and make an order for possession of the rented property as from that day.
- (2) The Tribunal may also make an order compensating a park owner or resident for loss and inconvenience resulting, or likely to result, from the early termination of the agreement.

## **Division 5—Form of notices of termination**

### **82—Form of notice of termination**

- (1) A notice of termination given by a park owner to a resident must—
  - (a) be in writing and in the form approved by the Commissioner; and
  - (b) be signed by the park owner or the park owner's agent; and
  - (c) state the address of the rented property subject to the residential park agreement; and
  - (d) state the day on which the resident is required to give up vacant possession of the rented property to the park owner; and
  - (e) if the residential park agreement is to be terminated on a particular ground—specify and give reasonable particulars of the ground of termination; and
  - (f) include any further information required by the Commissioner.
- (2) A notice of termination given by a resident to a park owner must—
  - (a) be in writing and in the form approved by the Commissioner; and
  - (b) be signed by the resident or an agent of the resident; and
  - (c) state the address of the rented property subject to the residential park agreement; and
  - (d) state the day on which the resident is to give up vacant possession of the rented property to the park owner; and
  - (e) if the residential park agreement is to be terminated on a particular ground—specify and give reasonable particulars of the ground of termination; and
  - (f) include any further information required by the Commissioner.

## **Division 6—Repossession of rented property**

### **83—Order for possession**

- (1) The Tribunal may, on application by the park owner, if satisfied that a residential park agreement has terminated, make an order for possession of the rented property.
- (2) The order for possession will take effect on a date specified by the Tribunal in the order, being a date not more than 7 days after the date of the order.
- (3) However, if the Tribunal, although satisfied that the park owner is entitled to an order for possession of the rented property, is satisfied by the resident that the grant of an order for immediate possession of the rented property would cause severe hardship to the resident, the Tribunal may—
  - (a) suspend the operation of the order for possession for up to 90 days; and
  - (b) extend the operation of the residential park agreement until the park owner obtains vacant possession of the rented property from the resident.
- (4) In extending the operation of the residential park agreement, the Tribunal may make modifications to the agreement that it considers appropriate (but the modifications cannot reduce the resident's financial obligations under the agreement except as may be appropriate for the recovery by the resident of any compensation payable to the resident).
- (5) If the resident fails to comply with an order for possession, the park owner is entitled to compensation for any loss caused by that failure.
- (6) The Tribunal may, on application by the park owner, order the resident to pay to the park owner compensation to which the park owner is entitled under subsection (5).

### **84—Abandonment of rented property**

- (1) The Tribunal may, on application by a park owner—
  - (a) declare that a resident abandoned rented property on a day stated in the declaration; and
  - (b) make an order for immediate possession of the rented property.
- (2) In deciding whether a resident has abandoned rented property, the following matters are to be considered:
  - (a) whether rent payable under the residential park agreement is unpaid;
  - (b) whether the dwelling is unoccupied and neglected;
  - (c) whether the resident's mail is being collected;
  - (d) reports from neighbours, or other persons, about the absence or whereabouts of the resident;
  - (e) whether electricity or other services to the rented property have been disconnected or terminated;
  - (f) whether the resident's personal effects have been removed from the rented property;
  - (g) any other matters the Tribunal considers relevant.

- (3) A resident is to be taken to have abandoned the rented property on the day stated in a declaration under this section.
- (4) If a resident has abandoned rented property, the park owner is entitled to compensation for any loss (including loss of rent) caused by the abandonment.
- (5) However, the park owner must take reasonable steps to mitigate any loss and is not entitled to compensation for loss that could have been avoided by those steps.
- (6) The Tribunal may, on application by the park owner, order the resident to pay to the park owner compensation to which the park owner is entitled under this section.

### **85—Repossession of rented property**

A person must not enter rented property for the purpose of taking possession of the rented property before, or after, the end of a residential park agreement unless—

- (a) the resident abandons, or voluntarily gives up possession of, the rented property; or
- (b) the person is authorised to take possession of the rented property under the order of a court or the Tribunal.

Maximum penalty: \$2 500.

### **86—Forfeiture of head tenancy not to automatically end agreement**

- (1) A person cannot take possession of rented property so as to defeat the resident's right to possession under the residential park agreement unless an order for possession of the rented property is made by a court or the Tribunal.
- (2) If a person is entitled to possession of rented property as against a person who granted a residential park agreement, a court before which proceedings for possession of the rented property are brought, or the Tribunal, may, on application by an interested person, vest the residential park agreement in the person who would, but for the agreement, be entitled to possession of the rented property so that the resident holds the rented property directly from that person as park owner.
- (3) An order may be made under subsection (2) on terms and conditions the court or Tribunal considers just.

## **Division 7—Enforcement of orders for possession**

### **87—Enforcement of orders for possession**

- (1) If an order for possession of rented property has been made by the Tribunal but has not been complied with, the registrar or a deputy registrar must, at the written or oral request of the person in whose favour the order was made (or an agent of that person), direct a bailiff of the Tribunal to enforce the order.
- (2) A bailiff of the Tribunal must enforce an order for possession as soon as is practicable after being directed to do so under this section provided that a fee of an amount prescribed by the regulations has first been paid to the bailiff in respect of the enforcement action (which fee may be retained by the bailiff).
- (3) A bailiff enforcing an order for possession of rented property may enter the rented property, ask questions and take all steps as are reasonably necessary for the purpose of enforcing the order.

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Division 7—Enforcement of orders for possession

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- (4) In enforcing an order for possession, the bailiff is responsible for securing the removal of persons only and not property.
- (5) A police officer must, if requested by a bailiff, assist the bailiff in enforcing an order for possession.
- (6) In the exercise of the powers conferred by this section a bailiff may use the force that is reasonable and necessary in the circumstances.
- (7) A person must not hinder or obstruct a bailiff in the exercise of the powers conferred by this section.  
Maximum penalty: \$2 500.
- (8) A person questioned under this section must not refuse or fail to answer the question to the best of his or her knowledge, information and belief.  
Maximum penalty: \$2 500.
- (9) However, a person is not obliged to answer a question under this section if to do so might tend to incriminate the person or to make the person liable to a penalty, or would require the disclosure of information that is privileged under the principles of legal professional privilege.
- (10) A bailiff or a member of the police force assisting a bailiff incurs no civil or criminal liability for an honest act or omission in carrying out or purportedly carrying out official functions under this section.

**Division 8—Retaliatory action by park owner**

**88—Retaliatory action by park owner**

- (1) This section applies to proceedings before the Tribunal—
  - (a) on an application by a park owner for an order for possession of rented property or for both termination of a residential park agreement and an order for possession of the rented property; or
  - (b) on an application by a resident for relief under this section following receipt of a notice of termination (whether or not the residential park agreement has terminated by force of the notice).
- (2) If the Tribunal is satisfied that the park owner was wholly or partly motivated to make the application or give the notice of termination (as the case may be) by action of the resident to complain to a government authority or secure or enforce the resident's rights as a resident, the Tribunal may, if the Tribunal considers it appropriate to do so in the circumstances of the case, do either or both of the following:
  - (a) refuse the park owner's application;
  - (b) make an order reinstating the residential park agreement on such conditions (if any) as the Tribunal considers appropriate.
- (3) If the resident alleges retaliatory action on the part of the park owner and the Tribunal is satisfied that the resident had, within the preceding 6 months, taken action to complain to a government authority or secure or enforce the resident's rights as a resident, the burden will lie on the park owner to prove that the park owner was not wholly or partly motivated to make the application or give the notice of termination (as the case may be) by the action of the resident.

## **Division 9—Resident to give forwarding address**

### **89—Resident to give forwarding address**

If—

- (a) a residential park agreement has terminated; or
- (b) a notice has been given under this Part that will terminate a residential park agreement,

the resident must not fail, without reasonable excuse, to comply with a request of the park owner for the resident's forwarding address and must comply with the request immediately, or, if the address is not then known, as soon as practicable after it becomes known.

Maximum penalty: \$750.

Expiation fee: \$105.

## **Division 10—Abandoned property**

### **90—Abandoned property**

This Division applies to property (*abandoned property*) that is left on a site by the resident after termination of the residential park agreement.

### **91—Offence to deal with abandoned property in unauthorised way**

A park owner must not deal with abandoned property otherwise than in accordance with this Division.

Maximum penalty: \$2 500.

### **92—Action to deal with abandoned property other than personal documents**

- (1) This section applies to abandoned property other than personal documents.
- (2) The park owner may, at any time after recovering possession of the site, remove from the site and destroy or dispose of abandoned property consisting of perishable foodstuffs.
- (3) The following provisions of this section apply subject to section 94 if the abandoned property consists of or includes a dwelling installed or located on the site under a residential park site agreement or an item of property of a value or kind prescribed by regulation.
- (4) The park owner may, at any time after recovering possession of the site, remove from the site and destroy or dispose of abandoned property, other than perishable foodstuffs, if the value of the property is less than a fair estimate of the cost of removal, storage and sale of the property.
- (5) If there is any abandoned property (other than personal documents) on the site that may not be dealt with under subsection (2) or (4) (*valuable abandoned property*), the park owner must—
  - (a) as soon as practicable—

- (i) give notice, in the form approved by the Commissioner, to the resident if the park owner has a forwarding address for the resident;
    - (ii) if the park owner does not have a forwarding address for the resident—publish notice, in the form approved by the Commissioner, in a newspaper circulating generally throughout the State;
    - (iii) if a person other than the resident has, to the knowledge of the park owner, an interest in the property and the person's name and address are known to, or reasonably ascertainable by, the park owner—give notice, in the form approved by the Commissioner, to that other person; and
  - (b) take reasonable steps to keep the property safe until at least 28 days after the giving of such notice.
- (6) A person who is entitled to possession of valuable abandoned property may reclaim the property by paying to the park owner the reasonable costs incurred by the park owner in dealing with the property in accordance with this Division and any other reasonable costs incurred by the park owner as a result of the property being left on the site.
- (7) If valuable abandoned property is not reclaimed within 28 days after the giving of notice under subsection (5), the park owner must, as soon as practicable after the end of that period, have the property sold by public auction.
- (8) The park owner may use reasonable force to gain entry to the property or remove or deal with it as reasonably necessary for the park owner's use of the site or the sale of the property.
- (9) On the sale of the property by public auction, the park owner—
- (a) may retain out of the proceeds of sale—
    - (i) the reasonable costs incurred by the park owner in dealing with the property in accordance with this Division and any other reasonable costs incurred by the park owner as a result of the property being left on the site; and
    - (ii) any amounts owed to the park owner under the residential park agreement; and
  - (b) must pay the balance (if any) to the owner of the property, or if the identity and address of the owner are not known to, or reasonably ascertainable by, the park owner, to the Commissioner for the credit of the Fund.
- (10) If property is sold by public auction under this section, the purchaser acquires a good title to the property which defeats—
- (a) the resident's interest in the property; and
  - (b) the interest of any other person unless the purchaser has actual notice of the interest before purchasing the property.
- (11) If a dispute arises between a park owner and resident about the exercise of powers conferred by this section, the Tribunal may, on application by either party to the dispute, make orders resolving the matters in dispute.

### **93—Action to deal with abandoned personal documents**

- (1) This section applies to abandoned property consisting of personal documents.
- (2) This section applies subject to section 94 if the abandoned property also includes a dwelling installed or located on the site under a residential park site agreement or an item of property of a value or kind prescribed by regulation.
- (3) The park owner must—
  - (a) as soon as practicable, give notice, in the form approved by the Commissioner, to the resident if the park owner has a forwarding address for the resident; and
  - (b) take reasonable steps to keep the documents safe for at least 28 days.
- (4) If the personal documents are not reclaimed by the resident within 28 days, the park owner may destroy or dispose of the documents.
- (5) Subsection (4) applies subject to any Act relating to the preservation of records.

### **94—Action to deal with abandoned dwellings or prescribed items**

- (1) This section applies if there is abandoned property consisting of or including a dwelling installed or located on the site under a residential park site agreement or an item of property of a value or kind prescribed by regulation.
- (2) The park owner may not take any action to deal with the property unless the Tribunal has made an order for possession of the site.
- (3) The park owner must take reasonable steps to keep the property safe on the site pending the determination of proceedings before the Tribunal for an order for possession of the site.
- (4) If the Tribunal has made an order for possession of the site, the provisions of sections 92 and 93 apply in relation to the abandoned property, but in the application of section 92 to the dwelling or item of property of a value or kind prescribed by regulation, the reference in that section to 28 days is to be read as a reference to 60 days.

## **Part 10—Serious acts of violence**

### **95—Park owner may give person notice to leave for serious act of violence**

- (1) A park owner may give a resident a notice to leave the residential park immediately if the park owner has reasonable grounds to believe that—
  - (a) a serious act of violence by the resident has occurred in the park; or
  - (b) the safety of any person in the park is in danger from the resident.
- (2) A park owner may give a person permitted on rented property with the consent of the resident (a *resident's visitor*) a notice to leave the residential park immediately if the park owner has reasonable grounds to believe that—
  - (a) a serious act of violence by the resident's visitor has occurred in the park; or
  - (b) the safety of any person in the park is in danger from the resident's visitor.

- (3) A notice to leave under this section must be in the form approved by the Commissioner.
- (4) A notice to leave under this section must be given as soon as it is possible for the park owner to safely do so after the serious act of violence has occurred or the safety of a person in the park has been endangered.
- (5) A park owner must not give a notice under this section, or a document that purports to be a notice to leave under this section, unless the park owner has reasonable grounds to believe that—
  - (a) a serious act of violence by a resident or resident's visitor has occurred in the residential park; or
  - (b) the safety of any person in the residential park is in danger from a resident or a resident's visitor.

Maximum penalty: \$1 250.

- (6) A person who has been given a notice to leave a residential park under this section must not remain in the park after receiving the notice.

Maximum penalty: \$1 250.

#### **96—Exclusion from park for certain period**

- (1) A resident who is given a notice to leave under this Part must not enter or remain in the residential park for the exclusion period.

Maximum penalty: \$1 250.

- (2) In this section—

*exclusion period* means—

- (a) until the end of 2 business days after the notice is given; or
- (b) if an application is made under section 97—
  - (i) until the end of 4 business days after the notice is given; or
  - (ii) if within that period the Tribunal on the application of the park owner so orders, until the Tribunal has heard and determined the application.

#### **97—Park owner may make urgent application to Tribunal**

- (1) If a resident is given a notice to leave under this Part, the park owner may apply to the Tribunal for an order that the residential park agreement be terminated.
- (2) An application under subsection (1) must be made within the exclusion period.
- (3) On hearing an application under this section, the Tribunal may—
  - (a) make an order terminating the residential park agreement as at the date of the order and make an order for possession of the rented property; or
  - (b) make an order vesting the residential park agreement in a person who resides or resided on the rented property with the resident; or
  - (c) order that the resident be allowed to resume occupation of the rented property under the residential park agreement.

- (4) The Tribunal may make any ancillary or incidental orders that the Tribunal considers appropriate.
- (5) If the Tribunal orders that the resident be allowed to resume occupation of the rented property under the residential park agreement and is satisfied that there was no reasonable basis for the giving of the notice under this Part, the Tribunal may make 1 or more of the following orders:
  - (a) an order excusing the resident from paying rent in respect of the exclusion period;
  - (b) an order for compensation to be paid to the resident by the park owner for rent paid in respect of the exclusion period;
  - (c) an order for compensation to be paid to the resident by the park owner for reasonable expenses incurred by the resident relating to the exclusion period.

### **98—Occupation of rented property pending application or hearing**

- (1) A park owner must not, during the exclusion period, allow any third person to occupy the rented property.

Maximum penalty: \$1 250.

- (2) In this section—

*third person* means a person other than the resident or a person who resided on the rented property with the resident immediately before the notice to leave the residential park was given to the resident.

## **Part 11—Residential Tenancies Tribunal**

### **Division 1—Role of registrars and magistrates**

#### **99—Registrars may exercise jurisdiction in certain cases**

The registrar or a deputy registrar may—

- (a) exercise the jurisdiction of the Tribunal under this Act if specifically authorised to do so by or under this Act; and
- (b) subject to direction by the Presiding Member—exercise the jurisdiction of the Tribunal under this Act in respect of classes of matters, or in circumstances, specified by the regulations.

#### **100—Magistrates may exercise jurisdiction in certain cases**

- (1) A magistrate may exercise the jurisdiction of the Tribunal under this Act.
- (2) The regulations may prescribe a scheme for the listing of matters before magistrates.
- (3) A regulation cannot be made for the purposes of subsection (2) except after the Minister has consulted with the Presiding Member of the Tribunal and the Chief Magistrate.
- (4) A magistrate exercising the jurisdiction of the Tribunal under this Act is taken to be a member of the Tribunal.

## **Division 2—Proceedings before Tribunal**

### **101—Constitution of Tribunal**

- (1) The Tribunal is constituted for the purpose of hearing proceedings under this Act of a single member of the Tribunal.
- (2) The Tribunal may, at any 1 time, be separately constituted for the hearing and determination of a number of separate matters under this Act.

### **102—Duty to act expeditiously**

The Tribunal must, where practicable, hear and determine proceedings under this Act within 14 days after the proceedings are commenced and, if that is not practicable, as expeditiously as possible.

## **Division 3—Tribunal's jurisdiction**

### **103—Jurisdiction of Tribunal**

- (1) The Tribunal has exclusive jurisdiction to hear and determine a residential park dispute.
- (2) However, the Tribunal does not have jurisdiction to hear and determine a monetary claim under this Act if the amount claimed exceeds \$40 000 unless the parties to the proceedings consent in writing to the claim being heard and determined by the Tribunal (and if consent is given, it is irrevocable).
- (3) If a monetary claim under this Act is above the Tribunal's jurisdictional limit, the claim and any other claims related to the same residential park agreement may be brought in a court competent to hear and determine a claim founded on contract for the amount of the claim.
- (4) A court in which proceedings are brought under subsection (3) may exercise the powers of the Tribunal under this Act.

### **104—Application to Tribunal**

- (1) An application under this Act to the Tribunal must be in the form approved by the Commissioner.
- (2) Before the Tribunal proceeds to hear an application under this Act it must—
  - (a) give the applicant notice in writing setting out the time and place at which it will hear the application; and
  - (b) give to any other party—
    - (i) notice in writing setting out the time and place at which it will hear the application; and
    - (ii) notice of the nature of the application as it thinks fit.
- (3) A fee prescribed by regulation is payable on an application under this section.

## **Division 4—Mediation**

### **105—Mediators**

- (1) The Commissioner may appoint mediators for this Act.
- (2) The Commissioner may appoint a person as a mediator only if the Commissioner is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.
- (3) Without limiting subsection (2), the Commissioner may be satisfied a person has the necessary expertise or experience because the person has satisfactorily completed the training approved by the Commissioner for this section.
- (4) A mediator appointed under this section has the same protection and immunity as a member of the Tribunal.

### **106—Referral of applications to mediation**

- (1) The registrar or deputy registrar may refer applications to the Tribunal, of a class prescribed by the regulations, to the Commissioner for Consumer Affairs for mediation.
- (2) A mediator nominated by the Commissioner will act as the mediator of a residential park dispute referred for mediation.

### **107—Mediator to notify parties**

The mediator must notify the parties to a residential park dispute of the time and place fixed for mediation of the dispute.

### **108—Duties of mediators**

- (1) Mediators have the following functions in the mediation of a residential park dispute:
  - (a) to encourage the settlement of the dispute by facilitating, and helping to conduct, negotiations between the parties to the dispute;
  - (b) to promote the open exchange of information relevant to the dispute by the parties;
  - (c) to provide to the parties information about the operation of this Act relevant to a settlement of the dispute;
  - (d) to help in the settlement of the dispute 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.

### **109—Procedure**

- (1) Mediation of a residential park dispute may, at the discretion of the mediator, be adjourned from time to time.
- (2) Unless the mediator decides otherwise, the mediation will be held in private and the mediator may exclude from the mediation any person apart from the parties and their representatives.

- (3) 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.
- (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.
- (7) The mediator may make a determination or order to give effect to the settlement.
- (8) A determination or order made by a mediator under this section operates as a determination or order of the Tribunal.
- (9) If a mediation is terminated because it appears to the mediator that it is unlikely that an agreed settlement can be reached within a reasonable time or for any other reason, the mediator must refer the matter to the registrar or deputy registrar for the listing of the matter before the Tribunal.

### **110—Representation of parties in mediation**

A party to a residential park dispute may be represented by a person who is not a lawyer in the mediation of the dispute if—

- (a) the party is a body corporate and the representative is an officer or employee of the body corporate; 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.

### **111—Restriction on evidence**

Evidence of anything said or done in the course of mediation under this Division is inadmissible in proceedings before the Tribunal except by consent of all parties to the proceedings.

## **Division 5—Intervention by Commissioner**

### **112—Power to intervene**

- (1) The Commissioner may intervene in proceedings before the Tribunal or a court concerning a residential park dispute.
- (2) If the Commissioner intervenes in proceedings, the Commissioner becomes a party to the proceedings and has all the rights (including rights of appeal) of a party to the proceedings.

## **Division 6—Evidentiary and procedural powers**

### **113—Tribunal's powers to gather evidence**

- (1) For the purpose of proceedings under this Act, the Tribunal may—
  - (a) by summons signed by a member, registrar or deputy registrar of the Tribunal, require a person to attend before the Tribunal;

- (b) by summons signed by a member, registrar or deputy registrar of the Tribunal, require the production of books, papers or documents;
  - (c) inspect books, papers or documents produced before it, retain them for a reasonable period, and make copies of them, or of their contents;
  - (d) require a person appearing before the Tribunal to make an oath or affirmation that the person will truly answer relevant questions put by the Tribunal or a person appearing before the Tribunal;
  - (e) require a person appearing before the Tribunal (whether summoned to appear or not) to answer any relevant questions put by the Tribunal or a person appearing before the Tribunal.
- (2) If a person—
- (a) fails without reasonable excuse to comply with a summons under subsection (1); or
  - (b) refuses or fails to comply with a requirement of the Tribunal under subsection (1); or
  - (c) misbehaves before the Tribunal, wilfully insults the Tribunal or interrupts the proceedings of the Tribunal,
- the person is guilty of an offence.  
Maximum penalty: \$2 500.
- (3) Evidence before the Tribunal cannot be used in criminal proceedings except proceedings for an offence against this Act or for perjury.

#### **114—Procedural powers of Tribunal**

- (1) In proceedings under this Act, the Tribunal may—
- (a) hear an application in the way the Tribunal considers most appropriate;
  - (b) decline to entertain an application, or adjourn a hearing, until the fulfilment of conditions fixed by the Tribunal with a view to promoting the settlement of matters in dispute between the parties;
  - (c) decline to entertain an application if it considers the application frivolous;
  - (d) proceed to hear and determine an application in the absence of a party;
  - (e) extend a period prescribed by or under this Act within which an application or other step in respect of proceedings must be made or taken (even if the period had expired);
  - (f) vary or set aside an order if the Tribunal considers there are proper grounds for doing so;
  - (g) adjourn a hearing to a time or place or to a time and place to be fixed;
  - (h) allow the amendment of an application;
  - (i) hear an application jointly with another application;
  - (j) receive in evidence a transcript of evidence in proceedings before a court and draw conclusions of fact from that evidence;

- (k) adopt, as in its discretion it considers proper, the findings, decision or judgment of a court that may be relevant to the proceedings;
  - (l) generally give directions and do all things that it thinks necessary or expedient in the proceedings.
- (2) The Tribunal's proceedings under this Act must be conducted with the minimum of formality and in the exercise of its jurisdiction under this Act the Tribunal is not bound by evidentiary rules but may inform itself as it thinks appropriate.

### **115—General powers of Tribunal to cure irregularities**

- (1) The Tribunal may, if satisfied that it would be just and equitable to do so, excuse a failure to comply with a provision of this Act on terms and conditions the Tribunal considers appropriate.
- (2) The Tribunal may amend proceedings if satisfied that the amendment will contribute to the expeditious and just resolution of the questions in issue between the parties.

## **Division 7—Judgments and orders**

### **116—General powers of Tribunal to resolve disputes**

- (1) The Tribunal may, on application by a party to a residential park dispute—
  - (a) restrain an action in breach of this Act or a residential park agreement or collateral agreement; or
  - (b) require a person to comply with an obligation under this Act or a residential park agreement or collateral agreement; or
  - (c) order a person to make a payment (which may include compensation) under this Act or a residential park agreement or collateral agreement or for breach of this Act or a residential park agreement or collateral agreement; or
  - (d) modify a residential park agreement to enable the resident to recover compensation payable to the resident by way of a reduction in the rent otherwise payable under the agreement; or
  - (e) relieve a party to a residential park agreement or collateral agreement from the obligation to comply with a provision of the agreement; or
  - (f) terminate a residential park agreement or declare that a residential park agreement has, or has not, terminated; or
  - (g) reinstate rights under a residential park agreement that have been forfeited or have otherwise terminated; or
  - (h) require payment of rent into the Fund until conditions stipulated by the Tribunal have been complied with; or
  - (i) require that rent paid into the Fund be paid out and applied as directed by the Tribunal; or
  - (j) require that a bond paid into the Fund be paid out and applied as directed by the Tribunal; or
  - (k) require a resident to give up possession of rented property to the park owner; or

- (l) make orders to give effect to rights and liabilities arising from the assignment of a residential park agreement; or
  - (m) exercise any other power conferred on the Tribunal under this Act; or
  - (n) do anything else necessary or desirable to resolve a residential park dispute.
- (2) The Tribunal does not have jurisdiction to award compensation for damages arising from personal injury.

### **117—Special powers to make orders and give relief**

- (1) The Tribunal may in proceedings under this Act make an order in the nature of an injunction (including an interim injunction) or an order for specific performance.
- (2) However, a member of the Tribunal who is not legally qualified cannot make an order under subsection (1) without the approval of the Presiding Member of the Tribunal.
- (3) Although a particular form of relief is sought by a party to proceedings before the Tribunal, the Tribunal may grant any other form of relief that it considers more appropriate to the circumstances of the case.
- (4) The Tribunal may make interlocutory orders on matters within its jurisdiction under this Act.
- (5) The Tribunal may, on matters within its jurisdiction under this Act, make binding declarations of right whether or not any consequential relief is or could be claimed.
- (6) The Tribunal may, in the exercise of its jurisdiction under this Act, make ancillary or incidental orders.

### **118—Restraining orders**

- (1) If the Tribunal is satisfied, on application by a park owner, that there is a risk that a resident or a person permitted on rented property by a resident may cause serious damage to property or personal injury, the Tribunal may make an order (a **restraining order**) restraining the resident and other persons on the rented property from engaging in conduct of a kind described in the order.
- (2) An application for a restraining order may be made without notice to the persons against whom the order is sought but, if the order is made without giving them a reasonable opportunity to respond to the allegations against them, the Tribunal must allow them a reasonable opportunity to satisfy it that the order should not continue in operation.
- (3) A person must not contravene a restraining order.  
Maximum penalty: Imprisonment for 1 year.

### **119—Conditional and alternative orders**

- (1) The Tribunal may make orders under this Act on conditions the Tribunal considers appropriate.
- (2) The Tribunal may make orders under this Act in the alternative so that a particular order takes effect, or does not take effect, according to whether stipulated conditions are complied with.

## **120—Enforcement of orders**

- (1) An order of the Tribunal under this Act may be registered in the appropriate court and enforced as an order of that court.
- (2) A person who contravenes an order of the Tribunal under this Act (other than an order for the payment of money) is guilty of an offence.

Maximum penalty: \$10 000.

- (3) In this section—

*appropriate court* means—

- (a) if the order of the Tribunal is for a monetary amount above the jurisdictional limit of the Magistrates Court for a monetary claim founded on contract—the District Court;
- (b) in any other case—the Magistrates Court.

## **121—Application to vary or set aside order**

- (1) A party to proceedings before the Tribunal under this Act may apply to the Tribunal for an order varying or setting aside an order made in the proceedings.
- (2) An application to vary or set aside an order must be made within 3 months of the making of the order (unless the Tribunal allows an extension of time).

## **122—Costs**

The Governor may, by regulation, provide that in proceedings of a prescribed class the Tribunal will not award costs unless—

- (a) all parties to the proceedings were represented by legal practitioners; or
- (b) the Tribunal is of the opinion that there are special circumstances justifying an award of costs.

## **Division 8—Obligation to give reasons for decisions**

### **123—Reasons for decisions**

The Tribunal must, if asked by a person affected by a decision or order under this Act, state in writing the reasons for its decision or order.

## **Division 9—Reservation of questions of law and appeals**

### **124—Reservation of questions of law**

- (1) The Tribunal may reserve a question of law arising in proceedings under this Act for determination by the Supreme Court.
- (2) If a question of law is reserved, the Supreme Court may decide the question and make consequential orders and directions appropriate to the circumstances of the case.

### **125—Appeals**

- (1) An appeal lies to the Administrative and Disciplinary Division of the District Court from a decision or order of the Tribunal made in the exercise (or purported exercise) of its powers under this Act.

- (2) The appeal must be commenced within 1 month of the decision or order appealed against unless the District Court allows an extension of time.
- (3) If the reasons of the Tribunal are not given in writing at the time of making a decision or order under this Act and the appellant then requests the Tribunal to state its reasons in writing, the time for commencing the appeal runs from the time when the appellant receives the written statement of the reasons.

## **Division 10—Representation in proceedings before Tribunal**

### **126—Representation in proceedings before Tribunal**

- (1) A party to a residential park dispute may only be represented in proceedings before the Tribunal under this Act as allowed by this section.
- (2) A party to a residential park dispute may be represented by a lawyer if—
  - (a) all parties to the proceedings agree to the representation and the Tribunal is satisfied that it will not unfairly disadvantage a party who does not have a professional representative; or
  - (b) the Tribunal is satisfied that the party is unable to present the party's case properly without assistance; or
  - (c) another party to the dispute is a lawyer, or is represented by a professional representative; or
  - (d) the Commissioner has intervened in, or is a party to, the proceedings.
- (3) A party to a residential park dispute may be represented by a person who is not a lawyer if—
  - (a) the party is a body corporate and the representative is an officer or employee of the body corporate; or
  - (b) all parties to the proceedings agree to the representation and the Tribunal is satisfied that it will not unfairly disadvantage an unrepresented party; or
  - (c) the Tribunal is satisfied that the party is unable to present the party's case properly without assistance.
- (4) In this section—

*professional representative* means a lawyer, a law clerk, or a person who holds or has held legal qualifications under the law of the State or another place.

## **Division 11—Miscellaneous**

### **127—Entry and inspection of property**

- (1) The Tribunal may enter land or a building and carry out an inspection the Tribunal considers relevant to a proceeding before the Tribunal under this Act.
- (2) The Tribunal may authorise a person to enter land or a building and carry out an inspection the Tribunal considers relevant to a proceeding before the Tribunal under this Act.

- (3) A person who obstructs the Tribunal, or a person authorised by the Tribunal, in exercising a power of entry or inspection under this section commits a contempt of the Tribunal.

### **128—Contempt of Tribunal**

A person who—

- (a) interrupts the proceedings of the Tribunal under this Act or misbehaves before the Tribunal in such proceedings; or
- (b) insults the Tribunal or an officer of the Tribunal acting in the exercise of official functions under this Act; or
- (c) refuses, in the face of the Tribunal, to obey a direction of the Tribunal under this Act,

is guilty of a contempt of the Tribunal.

### **129—Punishment of contempt**

- (1) The Tribunal may punish a contempt as follows:
- (a) it may impose a fine not exceeding \$2 000; or
  - (b) it may commit to prison until the contempt is purged subject to a limit (not exceeding 6 months) to be fixed by the Tribunal at the time of making the order for commitment.
- (2) The powers conferred by this section may only be exercised by a member of the Tribunal who is legally qualified.

### **130—Fees**

- (1) The Governor may, by regulation, prescribe and provide for the payment of fees in relation to proceedings in the Tribunal under this Act.
- (2) The registrar may remit or reduce a fee if the party by whom the fee is payable is suffering financial hardship, or for any other proper reason.

### **131—Procedural rules**

- (1) The Governor may, by regulation—
- (a) prescribe matters relevant to the practice and procedures of the Tribunal under this Act; and
  - (b) provide for the service of any process, notice or other document relevant to proceedings before the Tribunal under this Act (including circumstances where substituted service in accordance with the regulations or an order of the Tribunal will constitute due service); and
  - (c) deal with other matters necessary for the effective and efficient operation of the Tribunal.
- (2) The Presiding Member of the Tribunal may make Rules of the Tribunal relevant to the practice and procedure of the Tribunal under this Act, or to assist in the effective and efficient operation of the Tribunal, insofar as those matters are not dealt with by the regulations.

- (3) Rules of the Tribunal take effect as from the date of publication in the Gazette or a later date specified in the rules.
- (4) The *Subordinate Legislation Act 1978* does not apply to Rules of the Tribunal.

## **Part 12—Commissioner for Consumer Affairs and administration of Act**

### **132—Administration of Act**

The Commissioner is responsible for the administration of this Act.

### **133—Ministerial control of administration**

The Commissioner is, in the administration of this Act, subject to control and direction by the Minister.

### **134—Commissioner's functions**

The Commissioner has the following functions:

- (a) investigating and researching matters affecting the interests of parties to residential park agreements;
- (b) publishing reports and information on subjects of interest to the parties to residential park agreements;
- (c) giving advice (to an appropriate extent) on the provisions of this Act and other subjects of interest to the parties to residential park agreements;
- (d) investigating suspected infringements of this Act and taking appropriate action to enforce the Act;
- (e) making reports to the Minister on questions referred to the Commissioner by the Minister and other questions of importance affecting the administration of this Act.

### **135—Immunity from liability**

No liability attaches to the Commissioner, or any other person acting in the administration of this Act, for an honest act or omission in the exercise or purported exercise of functions under this Act.

### **136—Annual report**

- (1) The Commissioner must, on or before 31 October in each year, prepare and forward to the Minister a report on the administration of this Act for the year ending on the preceding 30 June.
- (2) The Minister must, within 6 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

## Part 13—Miscellaneous

### 137—Contract to avoid Act

- (1) An agreement or arrangement that is inconsistent with this Act or purports to exclude, modify or restrict the operation of this Act, is (unless the inconsistency, exclusion, modification or restriction is expressly permitted under this Act) to that extent void.
- (2) A purported waiver of a right under this Act is void.
- (3) A person who enters into an agreement or arrangement to defeat, evade or prevent the operation of this Act (directly or indirectly) is guilty of an offence.

Maximum penalty: \$10 000.

### 138—Notice by park owner not waived by acceptance of rent

A demand for, any proceeding for the recovery of, or acceptance of, rent by a park owner after the park owner has notice of a breach of the agreement by the resident or has given the resident notice of termination under this Act does not operate as a waiver of the breach or the notice.

### 139—Exemptions

- (1) The Tribunal may, on application by an interested person, if the Tribunal considers it necessary or desirable in the circumstances, order that a provision of this Act will not apply in relation to an agreement or prospective agreement or to particular rented property, or will apply in a modified manner (and the order will have effect accordingly).
- (2) An order may be made on conditions that the Tribunal considers appropriate.
- (3) A person must not contravene a condition of an order.

### 140—Service

- (1) A notice or document required or authorised to be given to a person under this Act may be—
  - (a) given to the person, or an agent of the person, personally; or
  - (b) sent by post addressed to the person, or an agent of the person, at the last known place of residence, employment or business of the person or agent; or
  - (c) left in a letterbox or other place where it is likely to come to the attention of the person, or an agent of the person, at the last known place of residence, employment or business.
- (2) If the whereabouts of a person is unknown, the notice or document may be given by publishing it in a newspaper circulating generally throughout the State.
- (3) If 2 or more persons are the park owners or residents under a residential park agreement, a notice or other document is duly given if given to any 1 of them.

### 141—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.

- (2) The regulations may—
- (a) be of general or limited application; and
  - (b) provide that a matter or thing is to be determined, dispensed with or regulated by the Minister; and
  - (c) impose penalties, not exceeding \$2 500, for offences against the regulations; and
  - (d) fix expiation fees, not exceeding \$210, for alleged offences against the regulations.

## **Schedule 1—Transitional provisions**

### **1—Application to existing residential park agreements**

This Act applies to a residential park agreement whether the agreement was entered into before or after the commencement of this clause.

### **2—Application to existing park rules**

Part 2 applies to rules that—

- (a) have been made by the park owner of a residential park; and
- (b) are binding on residents of the park under the terms of the residential park agreements to which the park owner and the residents are parties,

whether the rules were made before or after the commencement of this clause.

### **3—Exemption by Minister**

The Minister may, by notice published in the Gazette, grant an exemption (which may be conditional or unconditional) from the application of this Act, or specified provisions of this Act, in relation to—

- (a) agreements entered into before the commencement of this clause; or
- (b) a specified agreement, or class of agreements, entered into before the commencement of this clause; or
- (c) rules (to which clause 2 applies) made before the commencement of this clause; or
- (d) a specified rule, or class of rules, (to which clause 2 applies) made before the commencement of this clause.

### **4—Existing residential park agreements need not comply with formal requirements**

A residential park agreement in force at the commencement of this clause need not be in writing nor comply with any other requirement of section 10.

### **5—Existing bond to be paid to Commissioner**

A person who holds any amount by way of a bond at the commencement of this clause must pay the amount of the bond to the Commissioner within 7 days after that commencement.

Maximum penalty: \$1 250.

Expiation fee: \$160.

## **Schedule 2—Amendment of *Residential Tenancies Act 1995***

### **1—Amendment of *Residential Tenancies Act 1995***

*Residential Tenancies Act 1995*, section 5(1)—after paragraph (a) insert:

(ab) an agreement to which the *Residential Parks Act 2007* applies; or

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2007	19	<i>Residential Parks Act 2007</i>	14.6.2007	5.11.2007 ( <i>Gazette</i> 25.10.2007 p4044) except ss 18 & 43—14.6.2009 (s 7(5) <i>Acts Interpretation Act 1915</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 130 (s 298)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)