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South Australia

Residential Parks (Miscellaneous) Amendment Act 2019

An Act to amend the *Residential Parks Act 2007*.

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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 (Miscellaneous) Amendment Act 2019*.

2—Commencement

(1) Subject to subsection (2), this Act will come into operation on the day on which it is assented to by the Governor.

(2) Sections 6 to 19 (inclusive), sections 21, 22 and 26 and clauses 3 to 6 (inclusive) of Schedule 1 will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Residential Parks Act 2007*

4—Amendment of section 3—Interpretation

(1) Section 3(1)—after the definition of ***personal documents*** insert:

personal representative of a deceased resident means a person who is entitled at law to administer the estate of the deceased resident;

(2) Section 3—after subsection (4) insert:

(5) For the purposes of this Act, a residential park agreement will be taken to be for a ***short term*** if it is for a term of 90 days or less (and all other residential park agreements will be taken to be for a long term).

(6) A reference in this Act to the ***market value*** of a dwelling or other asset is a reference to the estimated amount for which the dwelling or asset should exchange, at the relevant time, between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

5—Amendment of section 4—Presumption of periodicity in case of fixed short terms

(1) Section 4(1)—delete "short fixed" wherever occurring and substitute in each case:

fixed short

(2) Section 4(2)—delete subsection (2)

6—Amendment of section 7—Residents committees

(1) Section 7(1)—delete subsection (1) and substitute:

(1) The residents of a residential park may elect residents from at least 5 different occupied sites in the park to form a residents committee to represent the interests they have in common as residents of the park, on the basis that—

(a) only a resident may be a member of the committee; and

(b) except as provided in paragraph (c), each resident has a right to nominate for election to the residents committee and to participate in the election of members of the residents committee; and

(c) 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.

(1a) A park owner or park owner's agent who unreasonably interferes with a resident's rights under subsection (1) is guilty of an offence.

Maximum penalty: $1 250.

(1b) A park owner of a prescribed residential park must ensure that the park has a residents committee (in accordance with subsection (1) and any other requirements prescribed by the regulations).

Maximum penalty: $1 250.

(1c) It is a defence to a charge of an offence against subsection (1b) if the defendant proves that the defendant took reasonable steps to ensure that a residents committee was elected but an insufficient number of residents nominated for election to the committee.

(2) Section 7(3) and (4)—delete subsections (3) and (4) and substitute:

(3) If more than 1 body or committee (regardless of its name) purports to be the residents committee for a particular residential park, the owner of the park or a resident of the park may apply to the Tribunal for, and the Tribunal may make, an order determining which body or committee (if any) is the residents committee for the residential park.

(3) Section 7—after subsection (5) insert:

(6) If the residents committee for a residential park makes representations to the park owner in relation to a matter that has been considered by the committee, the park owner must consider the representations made and provide a written response to the residents committee as soon as practicable (and in any case within 1 month after receiving the representations or such longer period as may be agreed by the residents committee).

Maximum penalty: $1 250.

(7) For the purposes of subsection (6), a response will be taken to have been provided to a residents committee if it has been provided to any member of that committee.

(8) The regulations may make provision for or with respect to the election, term of office, functions and procedure of residents committees.

(9) In this section—

prescribed residential park means a residential park that has more than 20 fixed term residential park site agreements in force.

7—Insertion of section 9A

Before section 10 insert:

9A—Application of Part

For the avoidance of doubt, this Part applies to a residential park agreement whether it is the first agreement between the resident and the park owner or is a reissued or subsequent agreement between the parties.

8—Amendment of section 10—Residential park agreement to be in writing

(1) Section 10—after subsection (2) insert:

(2a) The Commissioner must ensure that a model residential park agreement, that may be used by park owners as a guide or template when preparing their own agreements, is published on a website determined by the Commissioner.

(2) Section 10(4)(d)—before "be signed" insert:

subject to subsection (4a),

(3) Section 10—after subsection (4) insert:

(4a) The following agreements do not need to be signed by the parties:

(a) a written agreement for a periodic tenancy that arises under section 17A;

(b) a written copy of a reissued agreement provided to a resident under section 17B(1)(b),

but an agreement referred to in paragraph (a) must include the date, or approximate date, on which the resident was first granted the right to occupy the site (if known).

(4) Section 10(5), penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

Maximum penalty: $1 250.

Expiation fee: $210.

9—Amendment of section 11—Copies of written agreements

Section 11, penalty provision and expiation fee—delete the penalty provision and expiation fee and substitute:

Maximum penalty: $1 250.

Expiation fee: $210.

10—Amendment of section 12—Agreements incorporate park rules

(1) Section 12—delete "(but need not be set out in a written residential park agreement)"

(2) Section 12—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) A park owner must ensure—

(a) that a written residential park agreement, or a document recording its terms, includes a copy of any park rules in force for the residential park at the time of the agreement; and

(b) if the rules included in an agreement are later amended in accordance with Part 2—that the resident is notified of the amendment and provided with a written copy of the amendment.

Maximum penalty: $1 250.

Expiation fee: $210.

11—Amendment of section 14—Information to be provided by park owners to residents

(1) Section 14(1)—delete ", before or at the time the park owner and resident enter into a residential park agreement—" and substitute:

the following material in accordance with this section:

(2) Section 14(1)(e)—delete paragraph (e) and substitute:

(e) an information notice;

(f) in the case of a residential park site agreement—a disclosure statement;

(g) in the case of a residential park site agreement—a site condition report;

(h) educational publications prescribed by the regulations.

(3) Section 14(1), (2), (3) and (4), penalty provisions and expiation fees—delete the penalty provision and expiation fee in each subsection

(4) Section 14—after subsection (1) insert:

(1a) The material referred to in subsection (1) must be given to the resident—

(a) in the case of a residential park site agreement—at least 14 days before the park owner and resident enter into the agreement; or

(b) in the case of a residential park tenancy agreement—before or at the time the park owner and resident enter into the agreement.

(1b) Despite subsection (1a)(a), material referred to in subsection (1) relating to a residential park site agreement may be given to a resident less than 14 days before the park owner and resident enter into the agreement if—

(a) the agreement is for a short term; and

(b) the resident has, by notice in writing, waived the entitlement under subsection (1a)(a).

(1c) A document of a kind referred to in subsection (1)(b) to (g) (inclusive) must be in a form approved by the Commissioner.

(5) Section 14—after subsection (4) insert:

(5) A park owner who refuses or fails to provide information as required by this section is guilty of an offence.

Maximum penalty: $1 250.

Expiation fee: $210.

(6) A park owner must not knowingly make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided to a person under this section.

Maximum penalty: $1 250.

12—Insertion of Part 3 Division 3

After section 17 insert:

Division 3—Continuation or reissue of certain agreements

17A—Agreement for fixed term continues as periodic agreement if not terminated

If a residential park agreement for a fixed term has not terminated at or before the end of the fixed term, and is not required to be reissued in accordance with section 17B, 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.

17B—Certain site agreements to be reissued

(1) If a prescribed fixed term agreement has not terminated at or before the end of the fixed term and no notice has been given by either party to the agreement in accordance with subsection (2)—

(a) the agreement will, at the end of that fixed term, be taken to have been reissued as a residential park site agreement for the same fixed term and 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; and

(b) the park owner must, within 28 days after the end of that fixed term, give the resident a copy of the reissued agreement in writing in accordance with Division 1.

(2) If the park owner or resident under a prescribed fixed term agreement does not want the agreement to be reissued on the same terms in accordance with subsection (1)—

(a) the park owner or resident may give written notice to the other party to the agreement that a variation of terms is sought; and

(b) the park owner must, in consultation with the resident, undertake a review of the agreement (in accordance with any requirements prescribed by the regulations); and

(c) following such a review, the park owner must reissue the agreement (as a written agreement that complies with the requirements of this Act) for such a term and on such other terms of agreement as may be agreed with the resident.

(3) The period of notice under subsection (2) must be at least 90 days.

(4) A party to an agreement that is the subject of a review under subsection (2) must not unreasonably withhold consent to a variation of terms sought by the other party to the agreement and an application may be made to the Tribunal for an order or orders if the other party thinks consent has been unreasonably withheld.

(5) If a review of a residential park site agreement for a fixed term required under subsection (2) is not undertaken or is not completed before the end of the fixed term, the fixed term is taken to be extended until the review is completed and the agreement is reissued.

(6) If a resident who occupies a residential park site under a periodic residential park site agreement has held a right of occupancy within the residential park for a period of 5 years or more—

(a) the park owner must, in consultation with the resident, undertake a review of the agreement (in accordance with any requirements prescribed by the regulations); and

(b) following such a review, the park owner must reissue the agreement (as a written agreement that complies with the requirements of this Act) for a fixed term agreed with the resident.

(7) Despite any other provision of this section, an agreement is not required to be reviewed or reissued under this section if—

(a) in the case of a prescribed fixed term agreement—the resident notifies the park owner, in writing, that the resident does not wish to continue to occupy the site under a fixed term agreement; or

(b) in the case of a periodic residential park site agreement to which subsection (6) applies—the resident notifies the park owner, in writing and in compliance with any certification requirements prescribed by the regulations, that the resident waives the right to have the agreement reissued under this section; or

(c) in any case—either party to the agreement has given the other party a notice of termination in accordance with this Act.

(8) If a resident notifies a park owner in accordance with subsection (7)(a), the prescribed fixed term agreement continues as a residential park agreement for a periodic tenancy (in accordance with section 17A) and this section will not apply in relation to the agreement unless—

(a) the resident later notifies the park owner, in writing, that the resident now wishes this section to apply to the agreement (in which case subsection (6) applies as if the resident had held a right of occupancy within the residential park for a period of 5 years or more); or

(b) the agreement is assigned in accordance with section 48 (in which case this section applies to the assigned agreement as if the resident under the assigned agreement had held a right of occupancy within the residential park for a period of 5 years or more).

(9) If a resident notifies a park owner in accordance with subsection (7)(b), the periodic residential park site agreement will continue and this section will not apply in relation to the agreement unless—

(a) the resident later notifies the park owner, in writing, that the resident now wishes this section to apply to the agreement (in which case subsection (6) once again applies to the agreement); or

(b) the agreement is assigned in accordance with section 48 (in which case this section applies to the assigned agreement as if the resident under the assigned agreement had held a right of occupancy within the residential park for a period of 5 years or more).

(10) Without limiting the regulations that may be made for the purposes of subsection (2)(b) or subsection (6)(a), the regulations may prescribe limitations on the terms of agreement that may be varied, or the manner in which such terms may be varied, as a result of a review under this section.

(11) A park owner who refuses or fails to comply with a requirement of this section is guilty of an offence.

Maximum penalty: $1 250.

Expiation fee: $210.

(12) In this section—

prescribed fixed term agreement means a residential park site agreement for a fixed term—

(a) of 5 years or more; or

(b) of less than 5 years if the resident has held a right of occupancy within the residential park for a period of 5 years or more.

13—Amendment of section 43—Statutory and other charges in respect of rented property

(1) Section 43(2)(b)—delete paragraph (b)

(2) Section 43—after subsection (3) insert:

(4) A resident is not required to pay the park owner any amount for, or in relation to, the supply of electricity to the rented property unless the park owner has provided the resident (at no cost) with an account specifying how much the resident is being charged for the supply of electricity (and how that amount was calculated) and, if the resident is being charged for any other related matters, itemising those matters and specifying the amount of the charge in relation to each item.

14—Amendment of section 48—Assignment of residential park agreement

Section 48—after subsection (11) insert:

(12) A resident under a residential park site agreement, or a person authorised to act on behalf of such a resident in relation to assignment of the resident's interest, must, at least 14 business days before any assignment of the resident's interest to another person, advise that other person to contact the park owner to request the prescribed information.

Maximum penalty: $1 250.

Expiation fee: $160.

(13) It is a defence to a charge of an offence against subsection (12) for the defendant to prove that the defendant believed on reasonable grounds that the other person had already contacted the park owner to request the prescribed information.

(14) A park owner must, within 7 business days after receiving a request for prescribed information from a person to whom a residential park site agreement may be assigned (or such longer period as may be agreed by the person making the request), provide the person with the prescribed information.

Maximum penalty: $1 250.

Expiation fee: $160.

(15) A failure to comply with subsection (12) or (14) does not invalidate an assignment.

15—Amendment of section 49—Residential park site agreement—acquisition of park or site

Section 49(3) to (9)—delete subsections (3) to (9) (inclusive)

16—Insertion of section 50A

After section 50 insert:

50A—Sale of dwelling following death of resident

(1) If—

(a) a resident under a residential park site agreement dies; and

(b) the personal representative of the deceased, or a person who has inherited property of the deceased, intends to sell a dwelling that is on the site,

the personal representative or other person must inform the park owner, in writing, of the intention to offer the dwelling for sale and give the park owner a first option to purchase the dwelling (for a market value agreed between the personal representative or other person selling the dwelling and the park owner).

(2) If no agreement is reached as to the sale of the dwelling within the period of 28 days after the park owner is informed of the intention to sell, the park owner's option to purchase will lapse and the dwelling may be offered for sale to other parties (and, if the dwelling is to be sold on site, the requirement to inform the park owner of the intention to offer the dwelling for sale under section 50(1)(b) does not apply).

(3) For the avoidance of doubt, nothing in this section obliges the personal representative or other person who has inherited property of the deceased to sell the dwelling to the park owner.

17—Amendment of section 52—Termination of residential park agreement

(1) Section 52(d)—before "a mortgagee" insert:

except in the case of a residential park site agreement for a fixed term—

(2) Section 52(da)—delete "tenancy" and substitute:

agreement

(3) Section 52(f)—before "the resident" insert:

the agreement is a residential park tenancy agreement and

(4) Section 52—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

(2) For the avoidance of doubt, except as provided in subsection (1)(f) a residential park agreement does not terminate on the death of the resident but may be assigned, terminated or otherwise dealt with in accordance with this Act by the resident's personal representative on behalf of the resident's estate.

18—Repeal of section 53

Section 53—delete the section

19—Insertion of section 70A

After section 70 insert:

70A—Termination where change of use or redevelopment

(1) A park owner may, by notice of termination given to the resident, terminate a residential park site agreement on the ground that—

(a) the residential park will no longer be used as a residential park; or

(b) the residential park, or a part of the residential park, is undergoing redevelopment that cannot be completed in a safe and efficient way unless the resident vacates the residential park site.

(2) For the avoidance of doubt, the fact that a residential park is being sold or otherwise transferred to new ownership does not, of itself, constitute grounds for termination of an agreement under subsection (1).

(3) A park owner may not exercise the right to terminate an agreement on a ground specified in subsection (1) unless the park owner has first offered the resident—

(a) a residential park site agreement for a site—

(i) in the same residential park; or

(ii) in another residential park owned by the same owner,

to be entered into in substitution for the residential park site agreement that is being terminated and an agreement to relocate the resident to that site at the expense of the park owner (and the proposed new residential park site agreement must constitute a reasonable offer in the circumstances); or

(b) an agreement for the purchase, by the park owner, of a dwelling owned by the resident on termination of the residential park site agreement; or

(c) an agreement for the relocation, at the expense of the park owner, of a dwelling owned by the resident on termination of the residential park site agreement,

and the resident has accepted that offer.

(4) The resident must not unreasonably refuse an offer made by a park owner in accordance with subsection (3).

(5) If the resident and park owner are not able to reach an agreement in relation to an offer made by the park owner in accordance with subsection (3), the park owner or the resident may apply to the Tribunal for resolution of the dispute.

(6) Subject to any order of the Tribunal or any agreement between the park owner and the resident to the contrary, the period of notice under subsection (1) must be at least 365 days.

(7) A park owner may, by notice in writing, agree to waive the right to terminate a residential park site under subsection (1) (and in such a case this section will not apply to the residential park site agreement).

(8) Nothing in this section affects the power of a park owner to terminate a periodic tenancy under section 71.

20—Amendment of section 71—Termination where periodic tenancy and no specified ground of termination

Section 71(2)—delete subsection (2) and substitute:

(2) However, an agreement cannot be terminated under this section if—

(a) an order is in force under section 22 in respect of the rented property or proceedings for such an order have been commenced; or

(b) the resident has held a right of occupancy within the residential park for a period of 5 years or more.

21—Amendment of section 72—Termination at end of fixed term

Section 72—after subsection (2) insert:

(3) This section does not apply to a residential park site agreement for a fixed term—

(a) of 5 years or more; or

(b) of less than 5 years if the resident has held a right of occupancy within the residential park for a period of 5 years or more.

22—Insertion of section 78A

After section 78 insert:

78A—Termination where notice given under section 70A

(1) If a park owner gives notice of termination to a resident under section 70A, 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 owner, terminate the agreement without specifying a ground of termination.

(2) The period of the resident's notice to the owner must be at least 28 days.

23—Amendment of section 116—General powers of Tribunal to resolve disputes

Section 116(1)(c)—delete "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"

24—Amendment of section 134—Commissioner's functions

(1) Section 134—after paragraph (d) insert:

(da) maintaining the register under section 135;

(2) Section 134—after its present contents (now to be designated as subsection (1)) insert:

(2) The Commissioner may, if of the opinion that it is in the public interest to do so, publish information (in such manner as the Commissioner thinks fit) relating to any action taken by the Commissioner to enforce this Act.

25—Insertion of section 135

After section 134 insert:

135—Commissioner to maintain register

(1) The Commissioner must establish and maintain a register including the following information:

(a) the name and address of each residential park in the State;

(b) the name of, and contact details for, each park owner;

(c) any other particulars prescribed by the regulations.

(2) A park owner must, by notice in writing, provide the Commissioner with such particulars relating to the residential park as are required to be entered in the register under this section and must, if there is a change in any of those particulars, advise the Commissioner, by notice in writing, of the change within 10 business days after the change occurs (or such longer period as the Commissioner may allow).

(3) The Commissioner must ensure that the information included in the register is published on a website, so as to be accessible to members of the public without charge.

26—Insertion of section 138A

After section 138 insert:

138A—Park owner must have safety evacuation plan

A park owner must ensure that the park has a written plan for the safe evacuation of the park in the case of an emergency and that—

(a) the plan complies with any requirements prescribed by the regulations; and

(b) if the park has a residents committee—the residents committee is consulted in relation to the plan; and

(c) the plan is provided to park residents or is otherwise available for inspection by park residents; and

(d) the plan is reviewed at least once a year.

Maximum penalty: $2 500.

Expiation fee: $210.

27—Amendment of section 141—Regulations

Section 141(2)—delete subsection (2) and substitute:

(2) Without limiting the generality of subsection (1), the regulations may do any of the following:

(a) make provision in relation to the form or content of any document referred to in this Act;

(b) make provision in relation to the keeping of records for the purposes of this Act;

(c) require the preparation, and the provision to residents (or prospective residents), of policies relating to matters prescribed by the regulations and regulate or prescribe the contents of such policies;

(d) require the provision to residents (or prospective residents) of such other information or documents as may be prescribed by the regulations;

(e) make provisions of a saving or transitional nature consequent on the enactment of any amendment to this Act or on the commencement of specified provisions of this Act or on the making of regulations under this Act;

(f) impose penalties, not exceeding $2 500, for offences against the regulations;

(g) fix expiation fees, not exceeding $210, for alleged offences against the regulations.

(3) The regulations may—

(a) be of general or limited application; and

(b) leave any matter to be determined according to the opinion or discretion of the Minister or another specified person; and

(c) incorporate, adopt or apply, with or without modifications, a document formulated or published by any body or authority (as in force at a particular time or from time to time).

(4) A provision made by a regulation under subsection (2)(e) may, if the regulations so provide—

(a) take effect from the commencement of an amendment to, or provision of, this Act or from a later day; and

(b) have effect despite any provisions of this Act or despite any other savings or transitional provisions enacted in relation to an amendment to, or provision of, this Act.

(5) To the extent to which a provision takes effect under subsection (4) from a day earlier than the day of the publication of the regulation in the Gazette, the provision does not operate to the disadvantage of a person by—

(a) decreasing the person's rights; or

(b) imposing liabilities on the person.

Schedule 1—Transitional provisions etc

1—Interpretation

In this Schedule—

park owner has the same meaning as in the principal Act;

principal Act means the *Residential Parks Act 2007*;

residential park agreement has the same meaning as in the principal Act.

2—Application to existing residential park agreements

Except as provided in this Schedule, the amendments to the principal Act enacted by this Act apply to a residential park agreement whether the agreement was entered into before or after the commencement of this Act.

3—Residents committees: 12 month exemption

A park owner is exempt from the operation of section 7(1a) of the principal Act (as in force after the commencement of section 6(1) of this Act) for the period of 12 months after the commencement of section 6(1) of this Act.

4—Form and content of agreements entered into before commencement

(1) The requirements of the principal Act (as in force after the commencement of section 10 of this Act) relating to the form and content of a residential park agreement do not apply to a residential park agreement entered into before the commencement of section 10 of this Act and the requirements of the principal Act (as in force before the commencement of section 10 of this Act) relating to the form and content of a residential park agreement will continue to apply instead.

(2) If, after the commencement of section 12 of this Act, a residential park agreement continues as a periodic agreement under section 17A of the principal Act or is reissued as a fixed term agreement under section 17B of the principal Act, the agreement as so continued or reissued will be treated, for the purposes of this clause, as if it were an agreement entered into after the commencement of this Act.

5—Reissue of periodic agreements under section 17B

A park owner who refuses or fails to comply with the requirements of section 17B(6) of the principal Act (as inserted by section 12 of this Act) during the period of 2 years after the commencement of section 17B(6) of the principal Act does not commit an offence against section 17B(11) in respect of that refusal or failure during that period.

6—Periodic agreements under section 53

The repeal of section 53 of the principal Act does not affect a residential park agreement that continued as a periodic agreement under that section before that repeal.