

Serial 77
Residential Parks Bill 2007
Mr Wood

A Bill for an Act to regulate the relationship of residents in residential parks
and park owners and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

RESIDENTIAL PARKS ACT 2007

Act No. [] of 2007

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2007

An Act to regulate the relationship of residents in residential parks and park owners and for related purposes

[Assented to [] 2007]
[Second reading [] 2007]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

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

2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3 Interpretation

In this Act:

approved means approved by the Commissioner.

bailiff, of the Local Court, means a bailiff appointed under section 10A of the *Local Court Act*.

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 agreement or this Act.

business day means a day other than a Saturday or Sunday or other public holiday.

collateral agreement means any agreement collateral to a residential park agreement.

Commissioner means the Residential Parks Commissioner.

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.

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.

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.

motor vehicle, see the *Motor Vehicles Act*.

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.

park rules, see Part 3.

period, of a tenancy, means the recurring period for which rent is paid under the tenancy.

periodic tenancy means a tenancy of no fixed duration for which rent is payable weekly, fortnightly, monthly or for any other recurring period.

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

Registrar, of the Local Court, see the *Local Court Act*.

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 tenancy agreement – the site and dwelling for which the right of occupancy has been granted under the tenancy agreement; or
- (b) in relation to a site agreement – the site for which the right of occupancy has been granted under the 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 agreement for 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 for which rights of occupancy are conferred under various tenancy agreements, together with common area bathroom, toilet and laundry facilities and other common areas;
- (b) as a complex of sites for which rights of occupancy are conferred under various site agreements, together with common areas (which may, but need not, include bathroom, toilet and laundry facilities).

residential park agreement, see section 5.

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 Commissioner.

site agreement, see section 5(5).

statutory charges means any of the following:

- (a) rates or other charges on land payable under the *Local Government Act*;
- (b) fees or other charges collected under the *Power and Water Corporation Act*;
- (c) any charges of a kind imposed under an Act and declared by regulation to be statutory charges.

sub-tenancy agreement, see section 5(5), definition **tenancy agreement**, paragraph (b).

Tenancies Trust Account, see the *Residential Tenancies Act*.

tenancy agreement, see section 5(5).

trailer, see the *Motor Vehicles Act*.

4 Application of Act

- (1) This Act does not apply to an agreement unless the agreement is a residential park agreement.
- (2) 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* (Cth); or
 - (v) a retirement village within the meaning of the *Retirement Villages Act*; or

- (vi) 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.

5 Residential park agreements

- (1) An agreement is a residential park agreement if:
 - (a) the agreement is:
 - (i) a site agreement; or
 - (ii) a tenancy agreement; and
 - (b) the residential park which is the subject of the agreement is, or is intended to be, the person's principal place of residence.
- (2) Unless the contrary is proved, a residential park is taken to be, or intended to be, a person's principal place of residence if:
 - (a) an agreement confers on the person a right of occupancy at the park for a fixed term of 90 days or longer; or
 - (b) the person has resided at the park under an agreement for 90 days or longer.
- (3) Unless the contrary is proved, a residential park is taken not to be, or intended to be, a person's principal place of residence if an agreement confers on the person a right of occupancy at the park for a fixed term of less than 90 days.
- (4) An agreement entered into for the purpose of providing accommodation to a person while the person is on a holiday is not a residential park agreement.

(5) In this section:

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.

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 for 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.

Part 2 Residential Parks Commissioner

6 Residential Parks Commissioner

For this Act, the person holding or occupying the office of Commissioner of Tenancies mentioned in section 13 of the *Residential Tenancies Act*, has the title Residential Parks Commissioner.

7 Powers and functions of Commissioner

- (1) The Residential Parks Commissioner has the same powers and functions in relation to residential park agreements as the Commissioner of Tenancies has under the *Residential Tenancies Act* in relation to tenancy agreements.
- (2) The Commissioner may delegate in writing any of the Commissioner's powers and functions under this Act.

8 Immunity from liability

- (1) Subsection (2) applies to a person who is or has been:
 - (a) the Commissioner; or

- (b) a person authorised by the Commissioner.
- (2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.

Part 3 Park rules and residents committees

9 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) limiting who may become residents to persons who are over the age of 50 years;
 - (k) other things prescribed by a regulation.
- (3) A park rule will be void for the purposes of this Act to the extent that it is inconsistent with this Act or any other Act or law.
- (4) Park rules are not subordinate legislation within the meaning of the *Interpretation Act*.

10 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.
- (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 right of a resident under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

11 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.

12 Application to Commissioner if park rules are considered unreasonable

- (1) An application may be made to the Commissioner 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 Commissioner about the reasonableness of park rules, the Commissioner 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 the Commissioner considers appropriate to make the rule reasonable.
- (4) A park rule is void if the Commissioner makes an order that the rule or proposed rule is unreasonable.

Part 4 Formation of residential park agreements

13 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 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 owners 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
 - (d) be signed by the parties.
- (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: 50 penalty units.

14 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: 20 penalty units.

15 Agreements incorporate park rules

The park rules for a residential park (as in force from time to time under Part 3) are 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).

16 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.

17 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 copy of an information notice in the approved form; and
 - (c) a written notice stating:
 - (i) the park owners 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.

Maximum penalty: 20 penalty units.

- (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: 20 penalty units.

- (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: 20 penalty units.

- (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: 20 penalty units.

18 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: 20 penalty units.

19 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.

20 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: 20 penalty units.

- (2) A person must not instruct a person 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: 20 penalty units.

- (3) A person must not 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: 20 penalty units.

- (4) 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 5 Mutual rights and obligations of park owners and residents

Division 1 Rents and other charges

21 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: 20 penalty units.

- (2) However, the park owner may lawfully require and receive a payment of a class the park owner is authorised to require under section 47.

22 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: 20 penalty units.

- (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: 20 penalty units.

- (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: 20 penalty units.

23 Method of payment of rent

- (1) 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.

Maximum penalty: 20 penalty units.

- (2) However, subsection (1) does not apply if a 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.

24 Variation of rent

- (1) The park owner may increase the rent payable under a residential park agreement by giving at least 60 days 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 6 months after:
 - (i) the date of the agreement; or
 - (ii) if there has been a previous increase of rent under this section – the last increase.
- (3) The rent payable under a residential park agreement may be reduced by mutual agreement between the park owner and the resident.
- (4) 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.
- (5) If the rent payable under a residential park agreement is increased or reduced under this section, the terms of the agreement are varied accordingly.
- (6) 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.
- (7) For 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 6 months have elapsed since rent for the rented property was fixed or last increased.

25 Commissioner may declare rent excessive

- (1) The Commissioner 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 Commissioner 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 Commissioner finds, on an application under this section, that the increased rent is excessive, the Commissioner may, by order:
- (a) fix the rent payable for the rented property; and
 - (b) fix a period (which cannot exceed 12 months) for which the order is to remain in force.
- (4) The Commissioner 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: 20 penalty units.

- (6) In this section:

rent includes a payment that the resident is required by the park owner to make under section 47.

26 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: 20 penalty units.

- (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: 20 penalty units.

27 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: 20 penalty units.

- (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.

28 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.

29 Abolition of distress for rent

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

Division 2 Condition reports and bonds

30 Condition reports

If a resident takes possession of rented property under a residential park agreement, Part 5, Division 1 of the *Residential Tenancies Act* applies as if:

- (a) a reference to a landlord were a reference to the park owner; and
- (b) a reference to a tenant were a reference to the resident; and
- (c) a reference to premises were a reference to the rented property; and
- (d) a reference to a tenancy agreement were a reference to the residential park agreement.

31 Bonds

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

Maximum penalty: 20 penalty units.

- (2) For subsection (1)(b), the 4 weeks rent limit on the amount of the security deposit 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).
- (3) If a security deposit is paid to a park owner for a residential park agreement, sections 31 and 32 of the *Residential Tenancies Act* apply as if:
 - (a) a reference to a landlord were a reference to the park owner; and
 - (b) a reference to a tenant were a reference to the resident; and
 - (c) a reference to premises were a reference to the rented property.

32 Bond to be held in trust

- (1) Money paid to a park owner as a security deposit under section 30 must, subject to this section, be held by the park owner in trust for the resident.
- (2) The park owner must pay the money referred to in subsection (1) into an account established for the purposes of section 50 of the *Agents Licensing Act* or an account kept by the park owner at:
 - (a) an ADI; or
 - (b) a statutory corporation of the Territory or of the Commonwealth.

Maximum penalty: 20 penalty units.

- (3) If the park owner intends to leave the Territory for a period of more than 14 days, the park owner must, before leaving the Territory:
 - (a) pay the money to a real estate agent or to a person approved in writing by the Commissioner (a **recipient**); and
 - (b) notify the resident of the name of the recipient.

Maximum penalty: 20 penalty units.

- (4) If money is paid under subsection (3) to a recipient:
 - (a) subsection (1) ceases to apply to the park owner;
 - (b) subject to this section, the money must be held by the recipient in trust for the resident; and
 - (c) subsection (2) and section 33 applies to the recipient as if the recipient were the park owner; and
 - (d) section 32 of the *Residential Tenancies Act* applies to the recipient as if:
 - (i) a reference to a landlord were a reference to the recipient; and
 - (ii) a reference to a tenant were a reference to the resident; and
 - (iii) a reference to premises were a reference to the rented property; and

- (e) if the money has not been returned to the resident at the expiry of the residential park agreement – the recipient must, at the request of the park owner under subsection (5), return the money to the park owner.
- (5) The park owner may, within 14 days after returning to the Territory, request the recipient holding the money under subsection (4) to return the money to the park owner.
- (6) If money is returned to the park owner under subsection (4)(e):
 - (a) subsections (1) and (2) apply to the park owner; and
 - (b) subsection (4) ceases to apply in relation to the recipient.

33 Repayment of bond

- (1) This section applies if:
 - (a) a security payment has been made in relation to a residential park agreement under section 30; and
 - (b) the resident has:
 - (i) given up vacant possession of the rented property; or
 - (ii) apparently abandoned the rented property.
- (2) Part 12 and sections 121 and 122, as applied by that Part, of the *Residential Tenancies Act* apply as if:
 - (a) a reference to a tenancy agreement were a reference to the residential park agreement; and
 - (b) a reference to a landlord were a reference to the park owner; and
 - (c) a reference to a tenant were a reference to the resident; and
 - (d) a reference to the premises to which the tenancy agreement relates were a reference to the rented property to which the residential park agreement relates.

Division 3 Terms of residential park agreements

Subdivision 1 Resident's entitlement to possession and quiet enjoyment

34 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 from the day the right of occupancy under the agreement begins.
- (2) However, subsection (1) does not apply to a part of the rented property for which a right of exclusive occupation is not given by the agreement.
- (3) 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.

35 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.
- (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: 20 penalty units.

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

Subdivision 2 Park owner's obligations

36 Tenancy agreement – security of dwelling

- (1) It is a term of a 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: 20 penalty units.

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

37 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: 20 penalty units.

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

38 Park owner's responsibility for 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.

39 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, the park owner will not be regarded as being in breach of the obligation to repair unless:
- (a) the park owner has notice of the defect requiring repair; and
 - (b) the park owner fails to act with reasonable diligence to have the defect repaired.
- (4) A resident is entitled to recover from the park owner the reasonable costs of having repairs carried out 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.
- (5) 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.

Subdivision 3 Resident's obligations

40 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: 20 penalty units.

- (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.

41 Tenancy agreement – alteration of rented property

It is a term of a 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:
 - (i) notify the park owner; and
 - (ii) 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.

42 Site agreement – alterations on site

It is a term of a 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.

43 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.

Subdivision 4 Right of entry

44 Tenancy agreement – right of entry

It is a term of a 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 section 47 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.

45 Site agreement – right of entry

It is a term of a 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 section 47 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 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.

46 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 Subdivision:

- (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.

Subdivision 5 Other terms

47 Statutory and other charges for rented property

- (1) Without limiting the effect of section 21, it is a term of a residential park agreement that the park owner must bear all statutory charges imposed for the rented property.
- (2) However, the park owner may, by a term of the residential park agreement:
 - (a) if water, electricity or gas consumption at the rented property is separately metered, require the resident to pay charges payable under the *Power and Water Corporation Act* based on the level of the water, electricity or gas consumption (as the case may be) at the rented property; and
 - (b) 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
 - (c) 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 for which the payment is sought.

- (4) If water, electricity or gas consumption at the rented property is not separately metered, the park owner must include in the agreement:
- (a) the amount of rent charged by the park owner to cover the cost of the consumption; and
 - (b) the basis of calculating that amount.

48 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.

49 Harsh or unconscionable terms

- (1) The Commissioner 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 Commissioner may make consequential changes to the residential park agreement or another related document.

50 Accelerated rent and liquidated damages

- (1) A residential park agreement must not provide 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.
- (2) If a residential park agreement contains a provision mentioned in subsection (1):
 - (a) the provision is void; and
 - (b) the park owner is guilty of an offence.

Maximum penalty: 50 penalty units.

- (3) 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.

Division 4 Duty of mitigation

51 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 6 Assignments and sub-tenancy agreements

Division 1 Assignment of resident's interest

52 Assignment of resident's interest permitted with consent

- (1) Subject to this Part, it is a term of a residential park agreement that the resident may assign the resident's interest in the agreement.
- (2) It is a term of a residential park agreement that the resident must not assign the resident's interest in the agreement unless:
 - (a) the park owner gives written consent; or
 - (b) the park owner is taken, under section 53(2), to have consented to the assignment.
- (3) If the park owner consents or is taken to consent to an assignment after the assignment occurs, the resident is not taken to be or to have been in breach of subsection (2).

53 Consent to assignment

- (1) A resident (the **assignor**) may apply to the park owner for consent to an assignment of the resident's interest in the agreement by:
 - (a) giving the park owner written notice of the assignment setting out the full name and contact details of the proposed assignee; and
 - (b) requesting that the park owner consent to the assignment by signing and returning the notice to the resident.
- (2) A park owner is taken to have consented to an assignment if:
 - (a) the resident has given notice of the assignment under

subsection (1)(a); and

- (b) the park owner:
 - (i) has unreasonably refused to consent to the assignment;
or
 - (ii) has not given consent to the resident within 7 days after the receipt of the notice given under subsection (1).
- (3) The park owner may, within 7 days after the park owner first became aware of the assignment, notify the resident that the park owner does not consent to the assignment.
- (4) The Commissioner may, on the application of the park owner or the resident, declare that the consent of the park owner to an assignment was reasonably or unreasonably refused.

54 Effect of assignment

- (1) The effect of an assignment under this Division is that the assignee is substituted for the assignor as resident under the residential park agreement.
- (2) The 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.
- (3) The assignor remains responsible for liabilities that accrued before the date of assignment.
- (4) However, if the park owner does not consent, and is not taken to consent, to the assignment, the assignor remains liable to the park owner under the residential park agreement (together with the assignee who is jointly and severally liable).
- (5) The continuing liability of an assignor under subsection (4) does not apply if:
 - (a) the assignment is for a residential park agreement for a periodic tenancy; and
 - (b) the liability accrued more than 21 days after the park owner became aware, or ought reasonably to have become aware, of the assignment (whichever is the earlier).
- (6) If the resident assigns the resident's interest, an amount paid by the resident and held as 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.

55 Termination of agreement

- (1) If the park owner's consent to the 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.
- (2) 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.
- (3) However, the park owner may only terminate an agreement under subsection (2) if the park owner:
 - (a) has not unreasonably withheld consent; and
 - (b) serves the notice of termination within 21 days after the park owner became aware, or ought reasonably to have become aware, of the assignment (whichever is the earlier).

Division 2 Sub-tenancy agreements

56 Sub-tenancy agreements

- (1) A resident under a residential park agreement may enter into a sub-tenancy agreement with another person in respect of:
 - (a) the site to which the residential park agreement relates; and
 - (b) 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) Subsection (5) applies 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.
- (5) 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:
- (a) the park owner acting as managing agent for the resident in relation to the sub-tenancy agreement; and
 - (b) the resident.

Part 7 Termination of residential park agreements

Division 1 Termination generally

57 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 Commissioner 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 Commissioner 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.

58 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 period of the tenancy 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.

59 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.

60 Limitation of right to terminate

- (1) This section applies if an order is in force under section 25 for rented property or proceedings for such an order have been commenced.
- (2) 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 Commissioner authorises the notice of termination.
- (3) 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.
- (4) The Commissioner 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 Termination by park owner

61 Termination for breach of agreement

- (1) If the resident breaches a residential park agreement, the park owner may give the resident a written notice in the approved form:
 - (a) specifying the breach; and
 - (b) informing the resident that if the breach is not remedied within the prescribed period, 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 for a residential park 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 Commissioner for an order:
 - (a) declaring:
 - (i) the resident is not in breach of the residential park agreement; or
 - (ii) the resident has remedied the breach of the agreement, and the agreement is not liable to be terminated under this section; or
 - (b) reinstating the agreement.
- (5) If the Commissioner is satisfied that a residential park 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 Commissioner may make an order reinstating the agreement.

- (6) An order reinstating the agreement under this section may be made on conditions that the Commissioner considers appropriate.
- (7) On an application for an order reinstating the agreement, the Commissioner 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.
- (8) In this section:

prescribed period means:

- (a) for a tenancy agreement – a period of at least 14 days from the date the notice under subsection (1) is given; or
- (b) for a site agreement – a period of at least 28 days from the date the notice under subsection (1) is given.

62 Termination where successive breaches of agreement

- (1) A park owner may, by notice of termination given to the resident, terminate a residential park 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 61 for each of those breaches.
- (2) Subject to subsection (3), the period of notice given under this section must be:
 - (a) for a tenancy agreement – at least 14 days; or
 - (b) for a site agreement – 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; and
- (c) the period of notice given must be at least 7 days.

63 Termination where serious misconduct by resident

- (1) A park owner may, by notice of termination given to the resident, terminate a residential park 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.

64 Termination where periodic tenancy and sale of rented property

- (1) A park owner may, by notice of termination given to the resident, terminate a 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: 100 penalty units.

(4) A park owner who recovers possession of rented property under this section must not, without the consent of the Commissioner, enter into a tenancy agreement with any person in relation to the same rented property within 6 months after recovering possession.

Maximum penalty: 100 penalty units.

65 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 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 25 for the rented property or proceedings for such an order have been commenced.

(3) The period of notice under this section must be:

(a) for a tenancy agreement – at least 60 days or a period equivalent to a single period of the tenancy (whichever is the longer); or

(b) for a site agreement – at least 90 days.

66 Termination at end of fixed term

(1) A park owner may, by notice of termination given to the resident, terminate a residential park 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 park owner may, by notice of termination given to the resident, terminate a residential park 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.

Division 3 Termination by resident

68 Termination for breach of agreement

- (1) If the park owner breaches a residential park agreement, the resident may give the park owner a written notice, in the approved form:
 - (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 Commissioner for an order:
 - (a) declaring:
 - (i) the park owner is not in breach of the residential park agreement; or
 - (ii) the park owner has remedied the breach of the agreement, and the agreement is not liable to be

terminated under this section; or

- (b) reinstating the agreement.
- (3) If the Commissioner is satisfied that a residential park 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 Commissioner may make an order reinstating the agreement.
- (4) An order reinstating the agreement under this section may be made on conditions that the Commissioner considers appropriate.

69 Termination where successive breaches of agreement

- (1) A resident may, by notice of termination given to the park owner, terminate a residential park 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 68 for each of those breaches.
- (2) The period of notice given under this section must be at least 14 days.

70 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 tenancy agreement for a periodic tenancy without specifying a ground of termination.
- (2) The period of notice under this section must be:
 - (a) for a tenancy agreement – at least 21 days or a period equivalent to a single period of the tenancy (whichever is longer); or
 - (b) for a site agreement – at least 28 days or a period equivalent to a single period of the tenancy (whichever is longer).

71 Termination at end of fixed term

- (1) A resident may, by notice of termination given to the park owner, terminate a residential park 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.

72 Termination where agreement frustrated

- (1) A resident may, by notice of termination given to the park owner, terminate a residential park 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 4 Termination by Commissioner

73 Termination on application by park owner

The Commissioner 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.

74 Termination on application by resident

The Commissioner 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.

75 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 Commissioner may, on application by the park owner or the resident, terminate the agreement from a date specified in the Commissioner's order and make an order for possession of the rented property as from that day.

- (2) The Commissioner 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

76 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 approved form; 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 approved form; 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

77 Order for possession

- (1) The Commissioner 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 Commissioner in the order, being a date not more than 14 days after the date of the order.
- (3) However, if the Commissioner, 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 Commissioner 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 Commissioner may make modifications to the agreement that it considers appropriate.
- (5) However, a modification made by the Commissioner under subsection (4) 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.
- (6) 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.
- (7) The Commissioner 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).

78 Abandonment of rented property

- (1) The Commissioner 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 Commissioner considers relevant.
- (3) A resident is 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 Commissioner 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.

79 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 Commissioner.

Maximum penalty: 100 penalty units.

80 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 Commissioner.
- (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 Commissioner, 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 Commissioner considers just.

81 Enforcement of orders for possession

- (1) If an order for possession of rented property has been made by the Commissioner but has not been complied with, the Registrar of the Local Court 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 Local Court to enforce the order.
- (2) A bailiff of the Local Court 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 for 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.
- (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: 100 penalty units.
- (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: 100 penalty units.
- (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 7 Retaliatory action by park owner

82 Retaliatory action by park owner

- (1) This section applies to proceedings before the Commissioner:
- (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 Commissioner 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 Commissioner may, if the Commissioner 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 Commissioner considers appropriate.

- (3) If the resident alleges retaliatory action on the part of the park owner and the Commissioner 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 8 Resident to give forwarding address

83 Resident to give forwarding address

- (1) This section applies 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.
- (2) 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: 20 penalty units.

Division 9 Abandoned property

84 Definition

In this Division:

abandoned property means property left on a site by the resident after termination of the residential park agreement.

85 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: 100 penalty units.

86 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 the 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 88 if the abandoned property consists of, or includes, a dwelling installed or located on the site under a site agreement or an item of property of a value or kind prescribed by regulation.
- (4) The park owner may, at any the 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 approved form, to the resident if the park owner has a forwarding address for the resident; or
 - (ii) if the park owner does not have a forwarding address for the resident – publish notice, in the approved form, in a newspaper circulating generally throughout the Territory; or
 - (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 approved form, 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 any balance to:
 - (i) the owner of the property; or
 - (ii) 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 Tenancies Trust Account for purposes of meeting the costs of administering and enforcing this Act.
- (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 Commissioner may, on application by either party to the dispute, make orders resolving the matters in dispute.

87 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 88 if the abandoned property also includes a dwelling installed or located on the site under a 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 approved form, 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.

88 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 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 Commissioner 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 Commissioner for an order for possession of the site.
- (4) If the Commissioner has made an order for possession of the site, the provisions of sections 86 and 87 apply in relation to the abandoned property, but in the application of section 86 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 8 Acquisition of park or site

89 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:
 - (i) on which a person has installed a dwelling under a site agreement for a term exceeding 12 months; or
 - (ii) which is the site forming part of the rented property under a tenancy 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 site or tenancy agreement.
- (2) Notwithstanding the provisions of the *Land Title Act*, the new owner's title to the land is subject to the resident's interest under the agreement.
- (3) However, the new owner may, by notice of termination given to the resident, terminate the 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) specify the day on which the agreement is terminated.
- (5) The day specified under subsection (4)(b) must not be earlier than whichever is the earlier of:
- (a) the end of the term of the agreement as fixed by the agreement; and
 - (b) 12 months from the date of the new owner's acquisition of title to the land.
- (6) If the new owner gives notice of termination to the resident under this section, the resident is not necessarily bound by the 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 7, 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 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 9 Sale of dwelling on site

90 Sale of dwelling on site

- (1) It is a term of a 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 residents 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 must not:
- (a) hinder, or attempt to hinder, the sale of a dwelling by a resident in accordance with the term of a site agreement arising under subsection (1)(a); or
 - (b) prevent, or attempt 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 site agreement arising under that subsection.

Maximum penalty: 100 penalty units.

- (3) Without limiting subsection (2), a park owner or park owner's agent is 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 site agreement relating to the site.

Part 10 Dispute resolution

91 Application to Commissioner

- (1) Subject to this Act, a park owner or resident may apply to the Commissioner if:
 - (a) a breach of the residential park agreement or of a provision of this Act is alleged to have occurred; or
 - (b) a provision of this Act permits the application to be made to the Commissioner; or
 - (c) a dispute has arisen between the parties to a residential park agreement or between residents in relation to the residency.
- (2) An application under this Act must:
 - (a) be in writing; and
 - (b) contain a brief summary of the matter to which the application relates; and
 - (c) contain the prescribed particulars, if any; and
 - (d) be accompanied by the fee prescribed under section 127 of the *Residential Tenancies Act*.
- (3) Notice of an application under this Act is to be given by the Commissioner to the other parties to the application.
- (4) An application under this Act to the Commissioner may be withdrawn at any time by notice in writing to the Commissioner and to the other parties to the application.

92 Application of Parts 14 and 15 of *Residential Tenancies Act*

Parts 14 (except section 126) and 15 of the *Residential Tenancies Act* apply in relation to an application made under section 103 as if:

- (a) a reference to an application under that Act were a reference to the application; and
- (b) a reference to a tenancy were a reference to the right to occupy rented property under a residential park agreement; and
- (c) a reference to a landlord were a reference to a park owner; and
- (d) a reference to a tenant were a reference to a resident; and

- (e) a reference to a tenancy agreement were a reference to a residential park agreement; and
- (f) a reference to the *Residential Tenancies Act* were a reference to this Act.

Part 11 Notices

93 Service of notices

- (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 Territory.
- (3) If two 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 one of them.

94 Right to be notified of change of park owner's name or address

- (1) If a name or address that a park owner or a park owner's agent is required under section 13(4)(c) to specify in a residential park agreement changes, the park owner must ensure that the resident is notified in writing of the change of the new name or address within 14 days after the change.

Maximum penalty: 20 penalty units.

- (2) Within 14 days after a person succeeds another as the park owner under a residential park agreement, the new park owner must ensure that the resident is notified in writing of the full name and address for service of:
 - (a) the new park owner or, if an agent has been engaged to act on behalf of the new owner for the rented property, the full name and address of the agent; and

(b) any person with superior title to the new park owner.

Maximum penalty: 20 penalty units.

95 Notice or payment to park owner's agent sufficient

If under this Act a resident is required to give notice or a document to a park owner or to pay money to a park owner, it is sufficient if the resident:

- (a) gives notice or the document to, or pays the money to, the park owner's agent; or
- (b) if the resident has no notice of a new park owner – gives notice or the document to, or pays the money to, the last-known park owner.

Part 12 Miscellaneous matters

96 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: 500 penalty units.

97 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.

98 Exemptions

- (1) The Commissioner may, on application by an interested person, if the Commissioner 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 Commissioner considers appropriate.
- (3) A person must not contravene a condition to an order.

Part 13 Regulations

99 Regulation making power

- (1) The Administrator may make regulations under this Act.
- (2) Without limiting the generality of subsection (1), the regulations may:
 - (a) prescribe that provisions of this Act do not apply to a specified class of residential park agreements or a specified class of rented property; and
 - (b) modify specified provisions of this Act in their application to a specified class of residential park agreements or a specified class of rented property; and
 - (c) prescribe terms that are to be implied, or expressly included, in residential park agreements or a class of residential park agreements; and
 - (d) prescribe a penalty of not more than 20 penalty units for breach of a regulation; and
 - (e) prescribe an offence against the regulations to be a regulatory offence; and
 - (f) provide for the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act or regulations made under this Act and for the service of a notice relating to payment of the amount on a person alleged to have committed the offence and the particulars to be included in that notice; and
 - (g) prescribe the service of notices on persons alleged to have infringed this Act or the regulations and particulars to be included in such notices.

Part 14 Transitional matters

100 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 section.

101 Application to existing park rules

- (1) Part 3 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.
- (2) Part 3 applies to those whether the rules were made before or after the commencement of this section.

102 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 section; or
- (b) a specified agreement, or class of agreements, entered into before the commencement of this section; or
- (c) rules (to which section 101 applies) made before the commencement of this section; or
- (d) a specified rule, or class of rules, (to which section 101 applies) made before the commencement of this section.

103 Existing residential park agreements need not comply with formal requirements

A residential park agreement in force at the commencement of this section need not be in writing nor comply with any other requirement of section 13.

104 Existing bond to be held in trust

A person who holds any amount by way of a bond at the

commencement of this section must, within 7 days after that commencement, pay the bond into an account established for the purposes of section 50 of the *Agents Licensing Act* or an account kept by the park owner at:

- (a) an ADI; or
- (b) a statutory corporation of the Territory or of the Commonwealth.

Maximum penalty: 50 penalty units.