

**RESIDENTIAL TENANCIES (CARAVAN PARKS AND
MANUFACTURED HOME ESTATES) AMENDMENT ACT
1994 No. 94**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Residential Tenancies Act 1987 No. 26

SCHEDULE 1—AMENDMENTS

**RESIDENTIAL TENANCIES (CARAVAN PARKS AND
MANUFACTURED HOME ESTATES) AMENDMENT ACT
1994 No. 94**

NEW SOUTH WALES



Act No. 94, 1994

An Act to amend the Residential Tenancies Act 1987 with respect to agreements for the installation and use of caravans and manufactured homes in caravan parks and manufactured home estates; and for other purposes. [Assented to 12 December 1994]

The Legislature of New South Wales enacts:**Short title**

1. This Act may be cited as the Residential Tenancies (Caravan Parks and Manufactured Home Estates) Amendment Act 1994.

Commencement

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

Amendment of Residential Tenancies Act 1987 No. 26

3. The Residential Tenancies Act 1987 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) The whole Act:

Omit “movable dwelling” and “movable dwellings” wherever occurring, insert instead “moveable dwelling” and “moveable dwellings”, respectively.

(2) Section 3 (**Definitions**):

After section 3 (6), insert:

(7) Notes in the text of this Act do not form part of this Act.

(3) Section 7 (**Application of Act to moveable dwellings**):

(a) After section 7 (4), insert:

(5) Schedule 3 has effect.

(b) At the end of the section, insert:

Note: Schedule 3 contains additional provisions with respect to residential tenancy agreements relating to certain moveable dwellings. These provisions modify the other provisions of this Act in their application to those agreements.

SCHEDULE 1—AMENDMENTS—*continued*

(4) Section 16 (**Applications relating to a breach of residential tenancy agreement**):

At the end of the section, insert:

Note: Clauses 9, 10, 11, 12 and 13 of Schedule 3 allow the Tribunal to order compensation if a residential tenancy agreement to which that Schedule applies is terminated otherwise than by reason of the tenant's default or if the tenant relocates to another residential site as an alternative to having the agreement terminated.

(5) Part 3, Division 1:

After the heading to the Division, insert:

Note: Clause 3 of Schedule 3 implies additional terms into residential tenancy agreements relating to certain moveable dwellings. The additional terms relate to the privacy, peace and quiet of, and the proper use and enjoyment of a residential park by, the other residents of the residential park and to the observance of the park rules of the residential park.

(6) Part 3, Division 2:

After the heading to the Division, insert:

Note: Clause 16 of Schedule 3 makes further provision with respect to the relocation of certain moveable dwellings from one residential site to another.

(7) Section 33 (**Right to assign rights or sub-let**):

At the end of the section, insert:

Note: Clause 4 of Schedule 3 excludes from the operation of this section certain residential tenancy agreements relating to moveable dwellings. That clause implies into those agreements a modified version of the terms implied by this section.

(8) Section 53 (**Termination of residential tenancy agreements**):

In section 53 (a), after "this Part", insert "(or Part 3 of Schedule 3)".

(9) Part 5, Division 2:

After the heading to the Division, insert:

Note: Various provisions of this Division are not available to landlords under residential tenancy agreements relating to certain moveable dwellings. Alternative provisions exist in Schedule 3. Further notes occur under the provisions concerned.

SCHEDULE 1—AMENDMENTS—*continued*

(10) Section 56 (**Notice of termination on ground that premises are being sold**):

At the end of the section, insert:

Note: Clause 5 of Schedule 3 prevents landlords under residential tenancy agreements relating to certain moveable dwellings from issuing notices of termination under this section,

(11) Section 57 (**Notice of termination on ground of breach of agreement**):

At the end of the section, insert:

Note: Clause 5 of Schedule 3 prevents landlords under residential tenancy agreements relating to certain moveable dwellings from issuing notices of termination under this section. Clauses 6, 7 and 8 of Schedule 3 provide alternative grounds for the issuing of such notices.

(12) Section 58 (**Notice of termination by landlord without any ground**):

At the end of the section, insert:

Note: Clause 5 of Schedule 3 prevents landlords under residential tenancy agreements relating to certain moveable dwellings from issuing notices of termination under this section.. Clauses 9 and 10 of Schedule 3 provide alternative grounds for issuing such notices. However, this section still applies to those residential tenancy agreements relating to moveable dwellings to which Schedule 3 does not apply.

(13) Section 60 (**Notice of termination of fixed term agreement without any ground**):

At the end of the section, insert:

Note: Clause 5 of Schedule 3 prevents landlords under residential tenancy agreements relating to certain moveable dwellings from issuing notices of termination under this section. However, this section still applies to those residential tenancy agreements relating to moveable dwellings to which Schedule 3 does not apply.

(14) Section 61 (**Notice of termination where agreement frustrated**):

At the end of the section, insert:

Note: Clause 5 of Schedule 3 prevents landlords under residential tenancy agreements relating to certain moveable dwellings from issuing notices of termination under this section. Clause 11 of Schedule 3 provides alternative grounds for issuing such notices.

SCHEDULE 1—AMENDMENTS—*continued*

(15) Section 64 (**Application to Tribunal by landlord for termination and order for possession**):

- (a) In section 64 (1) (a) and (3), after “this Part” wherever occurring, insert “(or Part 3 of Schedule 3)”.
- (b) From section 64 (2) (a), omit “in the case of a notice given by the landlord on a ground referred to in section 56 (which relates to termination on the ground that the residential premises are being sold), section 57 (which relates to termination on the ground of breach of the agreement) or section 61 (which relates to termination where the agreement is frustrated)”, insert instead “in the case of a notice given by the landlord on a ground referred to in section 56, 57 or 61 or clause 6, 7, 8, 9, 10 or 11 of Schedule 3”.

(16) Section 69 (**Tribunal may terminate residential tenancy agreement where landlord would otherwise suffer undue hardship**):

At the end of the section, insert:

Note: Clause 5 of Schedule 3 prevents the Tribunal from terminating residential tenancy agreements relating to certain moveable dwellings on application by a landlord under this section. Clause 12 of Schedule 3 provides alternative grounds for terminating such agreements.

(17) Section 85 (**Orders of the Tribunal**):

At the end of the section, insert:

Note: Clause 14 of Schedule 3 excludes certain compensation awards from the limit imposed by subsection (3).

(18) Section 137:

Omit the section, insert instead:

Savings, transitional and other provisions

137. Schedules 2 and 4 have effect.

SCHEDULE 1—AMENDMENTS—*continued*

(19) Schedules 3 and 4:

After Schedule 2, insert:

**SCHEDULE 3—APPLICATION OF ACT TO
CERTAIN MOVEABLE DWELLINGS**

(Sec. 7)

PART 1—PRELIMINARY**Definitions**

1. In this Schedule:

“Crown reserve” has the meaning given to “reserve” in section 78 of the Crown Lands Act 1989;**“dwelling”** means:

(a) a relocatable home; or

(b) a registrable moveable dwelling with a rigid annexe attached to it;

“National Parks and Wildlife reserve” means land that is reserved or dedicated under the National Parks and Wildlife Act 1974;**“residential park”** means a caravan park or manufactured home estate within the meaning of the Local Government Act 1993, whether or not the subject of an approval under that Act;**“residential site”** means a site within a residential park that is used, or is intended to be used, for the installation of a dwelling;**“residential site agreement”** means a residential tenancy agreement under which the landlord grants to the tenant a right to install a dwelling on a residential site (being a dwelling owned by the tenant) and to use the dwelling as a residence, whether or not the right is a right of exclusive occupation.

SCHEDULE 1—AMENDMENTS—*continued*

Application of Schedule

2. (1) This Schedule applies to all residential site agreements (other than those referred to in subclause (2)) and so applies whether they were entered into before or after the commencement of this Schedule.

(2) This Schedule does not apply to the following residential site agreements:

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

PART 2—ADDITIONAL TERMS FOR RESIDENTIAL SITE AGREEMENTS

Offensive behaviour

3. (1) It is an implied term of every residential site agreement to which this Schedule applies that the tenant must not unreasonably restrict or interfere with:

- (a) the privacy, peace and quiet of; or
- (b) the proper use and enjoyment of the residential park by,

the other residents of the residential park.

(2) It is an implied term of every residential site agreement to which this Schedule applies that the tenant

SCHEDULE 1—AMENDMENTS—*continued*

must not contravene any park rules for the residential park, as referred to in Division 3 of Part 3 of this Act.

(3) It is an implied term of every residential site agreement to which this Schedule applies that the landlord must take all reasonable steps to ensure that the landlord's other tenants in the same residential park comply with their obligations under this clause.

Right to assign rights or sub-let

4. (1) It is an implied term of every residential site agreement to which this Schedule applies that:

- (a) the tenant may, with the prior consent of the landlord:
 - (i) assign the whole or part of the tenant's interest under the agreement; or
 - (ii) sub-let the residential site; and
- (b) the landlord must not make any charge for giving such a consent, otherwise than for the landlord's reasonable expenses in giving consent.

(2) It is an implied term of every residential site agreement to which this Schedule applies that the landlord may not unreasonably withhold or refuse consent referred to in subclause (1).

(3) It is not unreasonable for a landlord to withhold or refuse consent to the assignment of the residential site agreement or the sub-letting of the residential site on grounds that would allow the landlord to give a notice of termination of the agreement to the tenant under clause 9.

(4) Section 33 does not apply to a residential site agreement to which this Schedule applies.

PART 3—TERMINATION OF RESIDENTIAL SITE AGREEMENTS BY LANDLORD**Division 1—General****General**

5. (1) A landlord may not issue a notice of termination under section 56, 57, 58, 60 or 61 in relation to a residential site agreement to which this Schedule applies.

SCHEDULE 1—AMENDMENTS—*continued*

(2) A residential site agreement to which this Schedule applies may not be terminated by the Tribunal on the application of the landlord under section 69.

Division 2—Termination for breach of agreement by tenant**Termination by landlord for non-payment of rent**

6. (1) A landlord may give notice of termination of a residential site agreement to the tenant on the ground that the tenant is in breach of the agreement for non-payment of rent.

(2) A notice of termination must not specify a date for vacating the residential site earlier than 14 days after the day on which the notice is given.

(3) For the purposes of this clause, a tenant is not in breach of a residential site agreement for non-payment of rent unless the rent has remained unpaid for at least 14 days.

Termination by landlord because dwelling is dilapidated

7. (1) A landlord may give notice of termination of a residential site agreement to the tenant on the ground that the tenant is in breach of the agreement because of the dilapidated condition of the dwelling installed on the residential site.

(2) A notice of termination may not be given unless:

- (a) the breach is serious; and
- (b) the landlord has given the tenant a direction requiring the condition of the dwelling to be rectified; and
- (c) the tenant has failed to comply with the direction within 90 days after it was given; and
- (d) the landlord has (after the expiry of the 90-day period referred to in paragraph (c)) given the tenant a further direction requiring the condition of the dwelling to be rectified; and

SCHEDULE 1—AMENDMENTS—*continued*

(e) the tenant has failed to comply with the further direction within 30 days after it was given.

(3) A notice of termination must not specify a date for vacating the residential site earlier than 60 days after the day on which the notice is given.

(4) A tenant to whom a notice of termination is given may, within 60 days after receiving the notice, apply to the Tribunal for an order rescinding the notice or postponing the date for vacating the residential site.

Termination by landlord for serious or persistent breach of agreement

8. (1) A landlord may give notice of termination of a residential site agreement to the tenant on the ground that the tenant is in breach of the agreement otherwise than:

- (a) for non-payment of rent; or
- (b) because of the dilapidated condition of the dwelling.

(2) A notice of termination may not be given unless the alleged breach is either serious or persistent.

(3) A notice of termination must not specify a date for vacating the residential site earlier than 14 days after the day on which the notice is given.

Division 3—Termination otherwise than for breach of agreement by tenant**Termination by landlord for repairs and upgrading**

9. (1) A landlord may give notice of termination of a residential site agreement to the tenant on the ground that the landlord requires vacant possession of the residential site in order to comply with an obligation imposed by or under an Act to carry out works (including works in the nature of repairs or upgrading) within the residential site or the residential park.

(2) A notice of termination must not specify a date for vacating the residential site earlier than:

- (a) 90 days after the day on which the notice is given; or

SCHEDULE 1—AMENDMENTS—*continued*

- (b) in the case of an agreement that creates a tenancy for a fixed term, the day following the date on which the fixed term ends,

whichever is the later.

(3) A tenant whose residential site agreement is terminated under this clause is entitled to compensation in accordance with clause 14.

Termination by landlord for change of use

10. (1) A landlord may give notice of termination of a residential site agreement to the tenant on the ground that the residential site is to be used (whether by the landlord or some other person) for a purpose other than that of a residential site.

(2) A notice of termination in respect of a residential site (other than a residential site within a Crown reserve the subject of a residential site agreement entered into after the commencement of this Schedule) must not specify a date for vacating the residential site earlier than:

- (a) 180 days after the day on which the notice is given; or

- (b) in the case of an agreement that creates a tenancy for a fixed term, the day following the date on which the fixed term ends,

whichever is the later.

(3) A tenant to whom a notice of termination referred to in subclause (2) is given may, within 60 days after receiving the notice, apply to the Tribunal for an order postponing the date for vacating the residential site.

(4) A notice of termination in respect of a residential site within a Crown reserve the subject of a residential site agreement entered into after the commencement of this Schedule must not specify a date for vacating the residential site earlier than:

- (a) 12 months after the day on which the notice is given; or

SCHEDULE 1—AMENDMENTS—*continued*

- (b) in the case of an agreement that creates a tenancy for a fixed term, the day following the date on which the fixed term ends,

whichever is the later.

(5) A tenant whose residential site agreement is terminated under this clause is entitled to compensation in accordance with clause 14.

(6) Compensation is not payable in respect of a residential site agreement for a residential site situated within a Crown reserve (being an agreement entered into after the commencement of this Schedule) if:

- (a) the tenant is informed (when the agreement is entered into) that there is no right of compensation in the event that the agreement is terminated under this clause; and
- (b) the purpose for which the agreement is terminated is for the residential site to be used for a public purpose other than that of a residential site.

Notice of termination where agreement frustrated

11. (1) A landlord may give notice of termination of a residential site agreement to the tenant on the ground that the residential site:

- (a) has become wholly or partly uninhabitable, otherwise than as a result of a breach of the agreement; or
- (b) is not lawfully useable for the purposes of a residential site; or
- (c) has been acquired by any authority by compulsory process.

(2) A notice of termination may specify any date as the date for vacating the residential site.

(3) Any rent payable in connection with the residential site agreement abates as from the date for vacating the residential site.

SCHEDULE 1—AMENDMENTS—*continued*

(4) A tenant whose residential site agreement is terminated under this clause is entitled to compensation in accordance with clause 14, but only if:

- (a) the agreement is terminated on the ground that the residential site is not lawfully useable for the purposes of a residential site; and
- (b) unknown to the tenant, the residential site was not lawfully useable for the purposes of a residential site when the agreement was entered into.

Tribunal may terminate residential site agreement where landlord would otherwise suffer undue hardship

12. (1) The Tribunal may, on the application of the landlord, make an order terminating a residential site agreement if it is satisfied that the landlord would and the tenant would not, in the special circumstances of the case, suffer undue hardship if the landlord:

- (a) were to take steps to terminate the agreement under any other provision of this Part; or
- (b) were otherwise unable to terminate the agreement.

(2) If the Tribunal makes an order terminating a residential site agreement under this clause, the Tribunal:

- (a) must also make an order for the possession of the residential site, specifying the day on which the order takes effect; and
- (b) may make such other orders as it thinks fit.

(3) An application under this clause may be made whether or not notice of termination has been given.

(4) A tenant whose residential site agreement is terminated under this clause is entitled to compensation in accordance with clause 14.

Relocation of tenant

13. (1) Instead of issuing a notice of termination under this Division, the landlord under a residential site agreement may, by notice in writing, require the tenant to

SCHEDULE 1—AMENDMENTS—*continued*

relocate to a different residential site, whether within the same residential park or some other residential park within a reasonable distance operated by the same landlord.

(2) A notice to relocate must specify the date by which the tenant must relocate, being a date not earlier than:

- (a) 90 days after the notice is given; or
- (b) in the case of a residential site agreement that creates a tenancy for a fixed term, the day following the date on which the fixed term ends,

whichever is the later.

(3) A tenant who is required to relocate, or who has relocated, in accordance with the requirements of a notice under this clause is entitled to compensation in accordance with clause 14.

(4) The period of notice that must be given under clause 9 (2) (a) or 10 (2) (a) or (4) (a) is reduced by the period of notice given under this clause in the event that a notice of termination is given under clause 9 or 10 as a result of the tenant failing to relocate as required by the notice.

Compensation for termination or relocation

14. (1) In the case of a tenant who vacates a residential site and relocates to a new residential site in compliance with a notice to relocate under clause 13, the amount of compensation to which the tenant is entitled is to be calculated having regard to the following matters:

- (a) the reasonable costs of removing the dwelling from the old residential site (including the costs of disconnecting any services);
- (b) the reasonable costs of transporting the dwelling and the possessions of its residents to the new residential site;
- (c) the reasonable costs of installing the dwelling at the new residential site (including the costs of connecting to the available services);

SCHEDULE 1—AMENDMENTS—*continued*

- (d) the reasonable costs of repairing any damage to the dwelling arising from the relocation;
- (e) the reasonable costs of landscaping the new residential site so as to bring it up to the condition of the old residential site.

(2) In the case of a tenant who vacates a residential site in compliance with a notice of termination under this Division, the amount of compensation to which the tenant is entitled is to be calculated having regard to the following matters:

- (a) the reasonable costs of removing the dwelling from the old residential site (including the costs of disconnecting any services);
- (b) the reasonable costs of transporting the dwelling to its new location or disposing of the dwelling;
- (c) the reasonable costs of transporting the possessions of the residents of the old residential site to their new place of residence;
- (d) the reasonable costs of repairing any damage to the dwelling arising from the relocation.

(3) Compensation is not payable under subclause (1) (d) or (2) (d) for an amount in excess of the value of the dwelling.

(4) Compensation is not payable under subclause (2) (b) or (c) for a distance of travel of more than 300 kilometres.

(5) Section 85 (3) does not apply to compensation to which a person is entitled under this clause.

PART 4—GENERAL**Relocation of tenant by agreement**

15. The landlord and tenant under a residential site agreement may agree to the relocation of the tenant to a different residential site, whether within the same residential park or some other residential park operated by the same landlord.

SCHEDULE 1—AMENDMENTS—*continued***Effect of relocation generally**

16. (1) If a tenant relocates:
- (a) in accordance with a notice to relocate, as referred to in clause 13; or
 - (b) by agreement, as referred to in clause 15,
- the residential site agreement is taken to be varied by substituting the new residential site for the old.
- (2) The rent payable under a residential site agreement that is varied may be reduced, but (in the case of a relocation resulting from a notice to relocate under clause 13) may not be increased, by reason of the relocation.

**SCHEDULE 4—SAVINGS, TRANSITIONAL AND
OTHER PROVISIONS CONSEQUENT ON
ENACTMENT OF AMENDING LEGISLATION**

(Sec. 137)

PART 1—PRELIMINARY

Regulations

1. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Residential Tenancies (Caravan Parks and Manufactured Home Estates) Amendment Act 1994

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

SCHEDULE 1—AMENDMENTS—*continued*

**PART 2—PROVISIONS CONSEQUENTIAL ON
ENACTMENT OF RESIDENTIAL TENANCIES
(CARAVAN PARKS AND MANUFACTURED
HOME ESTATES) AMENDMENT ACT 1994**

**Continuation of unamended Act in certain
circumstances**

2. Schedule 3 does not apply to any action taken under this Act in relation to a residential site agreement that was in force immediately before the commencement of that Schedule and any such action may be continued or completed as if that Schedule had not been enacted.

*[Minister's second reading speech made in—
Legislative Council on 23 November 1994
Legislative Assembly on 2 December 1994]*