

For information and help on fair trading issues call NSW Fair Trading

General enquiries

13 32 20

Language assistance

13 14 50

TTY for hearing impaired

1300 723 404

Aboriginal enquiry officer

1800 500 330

Consumer, Trader & Tenancy Tribunal

1300 135 399

Registry of Co-operatives & Associations

1800 502 042

Or visit a Fair Trading Centre at:

- Albury • Armidale • Bathurst • Blacktown • Broken Hill • Coffs Harbour
- Dubbo • Gosford • Goulburn • Grafton • Hurstville • Lismore • Liverpool
- Newcastle • Orange • Parramatta • Penrith • Port Macquarie
- Queanbeyan • Sydney • Tamworth • Tweed Heads • Wagga Wagga
- Wollongong

Visit our website for details

www.fairtrading.nsw.gov.au

13 32 20



NSW Fair Trading

1 Fitzwilliam St, Parramatta NSW 2150

PO Box 972 Parramatta NSW 2124

9895 0111



Residential park living

Laws about living in a manufactured home estate, relocatable home park, mobile home village or caravan park in New South Wales

www.fairtrading.nsw.gov.au

Contents

Role of NSW Fair Trading	2
The law and you	3
Signing up	5
Moving in	9
Money issues	13
Living there	16
When things go wrong	23
Selling your home	26
Moving out	28
Abandonment	36
Where to get more information	40

ISBN 0 7347 6095 7

This publication can be viewed or printed from the Publications page of our website at www.fairtrading.nsw.gov.au

Disclaimer

This publication is a plain language guide to your rights and responsibilities. It must not be relied on as legal advice. For more information please refer to the appropriate legislation or seek independent legal advice.

Copyright

You may copy, distribute, display, download and otherwise freely deal with this information provided you attribute NSW Fair Trading as the owner. However, you must obtain permission from NSW Fair Trading if you wish to 1) modify, 2) charge others for access, 3) include in advertising or a product for sale, or 4) obtain profit, from the information.

Important: For full details, see NSW Fair Trading's copyright policy at www.fairtrading.nsw.gov.au/copyright.html or email publications@services.nsw.gov.au

© State of New South Wales through NSW Fair Trading.

January 2011

Role of NSW Fair Trading

NSW Fair Trading administers the laws which set out the rights and responsibilities of residents and residential park owners.

Our role includes the following activities:

- providing information about the laws
- handling complaints about possible breaches of the legislation
- providing mediation to help resolve disputes
- administering the Consumer, Trader & Tenancy Tribunal Registry
- conducting education campaigns
- producing educational resources
- reviewing and amending the legislation to ensure it remains relevant
- monitoring the marketplace to detect unfair practices
- processing and holding rental bonds.

Important

Reading this booklet and referring to your Agreement is a good way of finding out about your rights and responsibilities. If you have other questions about them, call Fair Trading on 13 32 20.

The law and you

This section tells you what the laws are and how they relate to you as a resident in a residential park.

What is a 'residential park'?

Residential parks include caravan parks, manufactured home estates and establishments often called 'mobile home villages' or 'relocatable home parks'.

Which Fair Trading laws apply?

The laws governing the operation of residential parks in NSW are:

- *Residential Parks Act 1998*
- Residential Parks Regulation 2006
- *Landlord and Tenant (Rental Bonds) Act 1977*
- *Consumer, Trader & Tenancy Tribunal Act 2001.*

When are you covered by the laws?

Subject to certain exceptions explained in more detail later in this booklet, you are covered immediately if you sign an Agreement to rent:

- a site only, or
- a site and dwelling (a trial period sometimes applies – see following page).

When do the laws not apply?

In the following instances these laws do not apply:

- If the park is not your principal place of residence (you do not lose your rights if you have to leave the park for a period to go into nursing or medical care)
- When you are renting a site or a home for holidays.

Tenancies on Crown reserves and National Parks and Wildlife reserves

Many reserves are located in coastal areas and may be leased to private sector operators or managed by local councils, or private trusts. Both the Residential Parks Act and Regulation apply although there are some exceptions for these tenancies such as restrictions on selling your home on-site and in transferring your tenancy agreements to others.

Trial period

A trial period applies only if you rent a site for your caravan or campervan (without a rigid annex) or you occupy a dwelling of this type belonging to the park owner. You may use this period to check out whether the park facilities and the site are what you want. The park owner may also want to have a trial period before deciding to accept you as a resident.

You are not generally covered by the laws for the first 30 days of your tenancy. The trial period may be extended for another 30 days if you or the park owner notifies the other person. If you continue to remain after 60 days, the law will apply automatically. After the 60 days, a *Moveable dwelling agreement* must be signed by you both.

By agreement between you and the park owner, the laws may apply from the first day of occupation. This agreement should be in writing and a *Moveable dwelling agreement* must be signed by you both.

Signing up

The law requires you and the park owner to sign an agreement if you are going to be a permanent resident of the park. You should read the agreement before the beginning of the tenancy to help you understand your rights and responsibilities. This may help to minimise problems between you and the park owner throughout your tenancy.

Which agreement?

You should sign a ***Moveable dwelling agreement*** if you rent:

- a site for your caravan without a rigid annex or
- a home and site from the park owner.

You should sign a ***Residential site agreement*** if you rent:

- a site for your caravan with a rigid annex or
- a site for your manufactured home.

In some cases you may be assigned an agreement when you take over another resident's site or a park dwelling with the approval of the park owner.

You should sign a ***Schedule 5 Standard form agreement*** if your site is in a park on a National Parks and Wildlife reserve.

What is in the agreement?

The agreement consists of two parts:

- Part one – the terms of the agreement
- Part two – the condition report.

What is meant by a 'fixed term' and 'continuing agreement'?

A fixed term is the set period of time that the park owner will allow you to stay on a site or in a dwelling or both. The fixed term ends on a specified date. The length of the fixed term may be weeks, months or years as negotiated between the park owner and resident. After the fixed term has ended, the agreement automatically becomes a continuing agreement. Your tenancy and the terms of the agreement will still continue until the tenancy comes to an end.

What additional terms can be added to the standard agreement?

Additional terms may be added to your agreement as long as:

- they are placed in the correct part of the agreement, on a separately labelled page signed by the resident and the park owner, otherwise they may not be valid
- they don't conflict with the standard terms
- they don't conflict with the laws applying to residential parks or any other laws, and
- both you and the park owner agree to the terms.

If you have doubts about whether an additional term is binding, you should seek advice from one of the services listed in *Where to get more information* on page 40.

Agreements for more than 3 years

If you sign an agreement for a tenancy of more than 3 years the park owner must register it with the Land and Property Management Authority. Your agreement must be in the proper form for it to be registered under the *Real Property Act 1900*. You may have to pay the registration charges yourself. The front page of the moveable dwelling and residential site

agreements should state clearly that the tenancy is for more than 3 years.

Can the previous owner's site agreement be assigned to me?

An alternative to signing a new agreement with the park owner is to have the previous resident's site rental agreement assigned to you. For more information see *Transferring tenancy agreements* on page 27.

The condition report

A condition report is a written record that shows the condition of the dwelling or site at the start of your tenancy. When your tenancy begins, a condition report must be completed by both you and the park owner.

There are two types of condition reports:

- Residential premises condition report for moveable dwelling agreements
- Residential site condition report for residential site agreements.

The park owner should give you two copies of the condition report before you sign the agreement. You must complete both copies of the condition report and return one to the park owner within 7 days of signing the agreement. The terms of the agreement and the condition report together form the agreement.

The condition report includes a space where facilities provided in the park, the amount of electricity supply to the site and quantity of gas where cylinders are provided by the park owner can be listed. You should check that the level of supply available is sufficient to operate your appliances, air conditioning etc.

Buying a manufactured home

Many residents buy a manufactured home or other type of moveable dwelling to place on a rented site in a residential park, or the dwelling may already be on-site at the time of sale.

A contract to purchase a home is separate to the residential site agreement, and is not covered by the Residential Parks Act.

It is important to get appropriate independent legal and financial advice before entering into any contracts for the purchase of a home.

Important

If any of these items are not provided, you should first approach the park owner. Do not sign the agreement until you have received each of the above items. If there is something you don't understand, you should seek help.

Moving in

Before your tenancy begins, it is important to be clear about your rights and obligations. The laws are designed to ensure that both you and the park owner know what to expect from each other right from the start. Making the rules clear from day one helps to avoid disputes down the track.

What paperwork is necessary before you sign up?

Before you sign an agreement, the park owner must give you the following items:

- an agreement which includes a premises or site condition report. The terms of the agreement and the condition report must be already filled out by the park owner, so you may read it and seek advice before signing. See *Where to get more information* on page 40.
- a copy of this booklet
- a list of park rules
- a list of all fees and charges (eg. entry costs) that you will have to pay upon signing the agreement
- a statement that occupation is on a tenancy basis which may be terminated in certain circumstances and no ownership of land is involved
- the answers to a set of questions listed below.

You should make sure that you have the right kind of agreement for your tenancy. See *Signing up* on page 5 for details about the different types of agreements. Before you sign, read thoroughly the terms and conditions of the agreement.

Questions and answers you must be given

The purpose of these questions and answers is to highlight important details for you as a prospective park resident. It enables you to make a quick comparison between what is being offered by a number of residential parks in the area you want to live.

Before you enter into either a residential site agreement or moveable dwelling agreement, the park owner must give you written questions and answers about the following:

1. What restrictions are there about:
 - having someone else live in the premises
 - having visitors, including overnight or short-stay guests
 - car parking
 - pets
 - other?
2. Are there any restrictions on the type of home I might like to put in the park?
3. What can I put on the site besides my home eg. a carport or garden shed? The answer to this should take into account:
 - what the owner allows
 - what the local council allows
 - what the Local Government regulations allow.
4. If the park is sold, what protection do I have?
5. Will I have to pay any additional charges and, if so, what are they?

6. If I wish to sell my home at a later date, will there be any restrictions on the sale process?
7. Is the park currently authorised under the Local Government Act and, if so, are there any restrictions?
8. What facilities are available for the delivery of my mail?
9. Are there any restrictions on the use of common facilities? If so, what hours are they available and who may use them? Are there any other restrictions on the use of these facilities?
10. Is the park owner aware of any arrangement or restriction on the use of the park by the owner or resident either now or in the future?
11. What is the size of the relevant residential site?
12. Has any development application been made during the past 5 years under the *Environmental Planning and Assessment Act 1979* for the redevelopment of the park or for change of use of the land on which the park is situated?
13. Have notices of termination been given to any residents during the past 12 months in connection with any proposed redevelopment of the park or any proposed change of use of the land on which the park is situated?
14. Would the park owner be prepared to buy the resident's moveable dwelling if the resident were to decide to live elsewhere?
15. Is the park situated within a Crown reserve or a National Parks and Wildlife reserve?
16. What arrangements exist for the supply of energy to the residential site, and at what cost to the resident will energy be supplied?

What are the entry costs?

You may be asked to pay the following fees and charges when you enter into an agreement:

- a reservation fee – no more than 1 week's rent to reserve the dwelling or site before you commit to an agreement. This fee becomes your first week of rent if the tenancy goes ahead
- up to 2 weeks rent in advance
- half the cost of preparing your agreement, to a maximum of \$15
- fees for any boom gate key or other park entrance security device if you have not paid a rental bond (a maximum of \$25 per key or device)
- security deposits or rent in advance, for use of any gas, electricity, or telephone service supplied by the park owner
- registration costs payable to Land and Property Information NSW on agreements for longer than 3 years
- stamp duty charges on agreements for longer than 5 years.

Do you have to pay a rental bond?

This is up to the park owner but if a bond is payable you should not pay more than:

- an amount equivalent to 4 weeks rent for renting a site or unfurnished dwelling
- an amount equivalent to 6 weeks rent for renting a furnished dwelling.

The park owner must lodge your bond money with Fair Trading within 7 days after you give it to them. Once the bond is lodged you will receive a notice from Fair Trading showing your rental bond number and the amount of money paid.

Money issues

There are certain other fees and costs that, apart from rent, you may have to pay. These include visitors fees, electricity, gas, telephone and water usage.

Rent

Rent is the main charge that you have to pay on a regular basis. The amount you pay should be agreed upon before your tenancy begins and the figure should be written in the space provided on the front page of your agreement.

Rent receipts

The park owner must always give you a rent receipt if you pay the rent in person. Receipts for rent **must** show:

- the name and address of the park/estate
- your site number
- the amount of rent paid
- the period the rent covers
- the date you paid rent, and
- whether you are in front or behind in rent on that date.

The park owner must keep copies of these receipts for at least 12 months.

Rent increases

If the park owner wants to increase your rent, you must first be given at least 60 days notice in writing. The notice must show the new rent amount you must pay and the day you must begin to pay it. The letter should say something like this: "...the rent increase is payable from 10 October, 2010".

For rent to increase during the fixed term period, there must be an additional term in your agreement showing

Important

The amount of rent that you pay is a set amount, and should not rise or fall when the number of persons living in your home changes.

Important

The park owner must not use rent payments to be applied to other charges such as water or electricity charges without your permission.

the amount and date of the increase or the method of calculating it. The method must be clear and not something like 'according to prevailing market values'. Otherwise the rent increase can only start after the fixed term has ended. 60 days written notice must still be provided under these circumstances.

Challenging rent increases

If you think that a proposed rent increase is too high, you should consider the following options:

Negotiate with the park owner to reduce or withdraw the increase before it begins. If the park owner agrees on a lesser amount, it must be put in writing. You must pay the agreed lower amount of increase from the day the higher amount was due.

If this doesn't work you may apply to the Consumer, Trader & Tenancy Tribunal to have the proposed increase reduced or withdrawn. You must make your application within 30 days of receiving the rent increase notice. You have to prove that the increase is too much. The Tribunal may consider a number of issues including rents for similar sites and dwellings in your park and other parks, the frequency and amount of past rent increases, and a general price index such as the CPI. However the Tribunal has no power to hear your case if the increase is less than the CPI (except if there is a withdrawal or reduction in service facilities).

Visitors fees

You can only be charged visitors fees when a friend or relative visits if **all** of the following circumstances apply:

- your dwelling does not have its own shower and toilet
- the park's bathroom facilities are not operated by coin or another 'user pays' method

Important

Applications to the Tribunal must be made within 30 days of receiving the rent increase notice.

Important

A park owner cannot charge you for the installation costs of water, gas, or electricity meters.

Important

Residents who have to pay for water consumption separately from their rent for the first time are able to apply to the Tribunal for a rent deduction.

- your guest stays overnight
- the visitors fee is reasonable
- the fee charged is no more than the amount specified in the agreement.

Electricity and gas charges

Your agreement will usually require you to pay the park owner for electricity or gas if your site has its own meter. In the case of electricity, the amount you pay should not be more than the regulated retail tariff of the local standard retail supplier, as required under the *Electricity Supply Act 1995* (section 72(3)(b)). If your electricity is provided by the park owner, you must be given regular electricity accounts showing the amount payable, the number of days in the period, meter readings and the charge per unit of electricity used. A Customer Service Standard applies to arrangements where the park owner provides electricity to residents. The amount that residents have to pay for electricity will depend on the number of amps received.

Water usage

You can only be charged for water usage if:

- your dwelling or site has its own meter which meets the prescribed standard
- there is no minimum charge payable by you.

You may also have to pay some water and sewerage availability charges. Excess water charges are not payable by residents unless the site is metered directly by the relevant supply authority. The park owner must give you regular accounts setting out the meter readings, the amount of water used and the charge per unit of water.

Living there

Agreement terms and conditions

In addition to the terms and conditions covered in this booklet, there are several others which are outlined in your agreement. They concern:

- peace, quiet and privacy
- the behaviour of residents and their guests
- the park management's access to your site or home
- alterations, additions and repairs to your site or home
- security and access to the park
- other items.

These terms and conditions are in the law and cannot be changed. You should read your tenancy agreement for more details about them. It is an offence for the park owner not to give you a written agreement.

Alterations or additions to your home

As a general rule, you cannot make any alterations or additions without the consent of the park owner. However, if you live in your own dwelling, you can make alterations to the inside of your home without needing the consent of the park owner, though you may need local council approval. If there is a dispute the matter can be decided by the Consumer, Trader & Tenancy Tribunal. The Tribunal can not make an order allowing an alteration or addition which would be in breach of local government and planning laws.

Sub-letting your home and transferring your agreement

You may sub-let your home provided you have prior consent from the park owner. If you rent the site for your own

manufactured home or caravan with a rigid annex, the park owner cannot unreasonably refuse consent to a sub-letting arrangement or transferring your tenancy. The park owner must have good reasons for not giving consent. If there is a dispute about the refusal being unreasonable, it may be heard in the Tribunal. Under the Act, owners of parks on Crown reserves or in National Parks and Wildlife reserves have the right to refuse to transfer a tenancy agreement.

If you have a moveable dwelling agreement, the park owner may refuse you consent to sub-let or transfer your tenancy. In this situation, you don't have the right to apply to the Tribunal.

If you are given permission to sub-let your home you will become a landlord to the new resident. As a landlord, your responsibility is to provide your prospective resident with information on all the rights and responsibilities that the law provides to all residents.

If the park owner breaks a term of the agreement

If you have evidence that the park owner has broken one of the agreement terms, you should first try to resolve the matter yourself by talking to him/her. You should follow up your conversation in writing and clearly indicate any settlement you come to.

If this doesn't work, it may be necessary for you to take the matter to the Park Liaison Committee or Residents Committee, otherwise you may need to make an application to the Tribunal. The Tribunal has the power to order the owner to carry out the agreement. Your other option is to serve a termination notice, however the circumstances must justify you terminating the agreement.

Contact NSW Fair Trading for information about applying to the Tribunal.

If a resident breaks a term of the agreement

If you break a term of your agreement, the park owner has the right to give you a termination notice. If the park owner does not want to end your tenancy, they may apply to the Tribunal for an order that you stop breaking the agreement.

Choosing trades people

The park owner has no right to restrict your choice of trades person. However, trades people and service providers may not be allowed to enter the park if they have disturbed the peace and quiet of the park or broken a park rule in the past.

Participation in residents organisations

You have the right to belong to any park residents organisation. It is an offence for this right to be restricted in any way by the park owner. Internal residents committees are recognised by law.

Trees

The park owner is responsible for pruning and maintenance of trees growing in the park.

Noticeboard

The park owner must install and maintain a noticeboard in an accessible location in the park. The park owner must not interfere with a resident reading the noticeboard or placing notices on it.

Access by emergency service vehicles

The park owner has to take all reasonable steps to ensure that emergency and home care persons can gain vehicle access to the park at all times. Residents must be consulted about the arrangements.

Park Liaison Committee

What is a Park Liaison Committee and what is its purpose?

A Park Liaison Committee may be established where the majority of residents want one for the purpose of improving the lifestyle of residents and helping to avoid problems arising in the park. The committee is to help the park owner with park rules, develop standards of behaviour and to discuss other items like mail and office facilities, caring for trees in the park and the use of the noticeboard.

Every park with 20 or more sites occupied by permanent residents must have a Park Liaison Committee if the majority of residents vote for one. If a committee is formed, residents have representatives on the committee as does the owner. The residents have majority membership. Guidelines about Park Liaison Committees are available from the Fair Trading website or any Fair Trading Centre.

Residents Committee

As an alternative or addition to the Park Liaison Committee, a Residents Committee may be established to enable discussion between residents and the park owner to take place. The park owner must not discourage, prevent or obstruct such a committee and must allow the committee to use suitable facilities, available to residents generally.

Mail facilities

Can residents ask the park owner for private mail facilities if they are not available in the park?

If a majority of the permanent residents agree that they want individual mail facilities, they can make a request to the park owner.

The park owner must then install the mail boxes in a central location in accordance with Australia Post requirements.

Guidelines relating to the process to request the installation of private mail facilities are available from the Fair Trading website or any Fair Trading Centre.

Who pays for the private mail boxes?

The park owner may pass on the cost of buying and installing the mail boxes to residents with a one-off charge. The park owner is responsible for the cost of maintaining the mail facilities.

How secure must the mail facilities be?

The mail boxes must allow the fitting of individual locks by residents. It is an offence for park owners to interfere or gain access to private mail boxes without the prior consent of the resident.

How are disputes about mail facilities resolved?

The Tribunal may deal with disputes including disputes about charges made by park owners for private mail boxes.

Park rules

Park rules are a necessary part of life in most residential parks. The Residential Parks Act ensures that these rules are made clear to you from the beginning of your tenancy. They also ensure that, if the park owner wishes to change a park rule, it must be done fairly.

What are the rules about park rules?

The park owner may make park rules about the use, enjoyment, control and management of the park. All park rules must be in writing, and the law requires the park owner to give you a copy of any park rules at or before the time you sign the agreement.

Park rules may be about:

- noise limits
- motor vehicle speed limits within the park
- parking
- garbage disposal
- pets
- playing games and other sporting activities
- the use and operation of park facilities
- maintenance standards for a home you own yourself
- reasonable landscaping rules for the site
- waste recycling
- safety of persons and property within the park
- storage and repair of motor vehicles, boats and trailers
- means of transportation within the park.

When can a park owner change a park rule?

The park owner, from time to time, may wish to change the park rules by, for example, adding one, amending an existing rule or deleting it altogether. The proposed change should first go to the Park Liaison Committee. It is in the owner's interest to consult with you before giving notice about any change to the park rules.

What rights do residents have when a park rule changes?

The park owner must give you and the other residents written notice of any proposed park rule change. The change can take effect only if the following notice is given:

- 7 days written notice if the change to the park rule affects the recreational facilities such as a pool or tennis court
- 60 days written notice if the change affects any other park rules.

How can residents dispute a park rule change?

A park rule change may be disputed if a resident disagrees with the park rule change.

If you are not happy with a park rule change you may apply to the Tribunal.

The Tribunal has the power to:

- set aside the rule change
- alter the rule
- uphold the rule change.

The Tribunal can also hear disputes about the legal validity of existing park rules.

Important

Park rules form part of the agreement. Like any other additional terms they must not conflict with the standard terms of the agreement or the residential parks laws.

When things go wrong

From time to time disputes may arise between you and the park owner over matters such as park rules, rent, noise and repairs to name a few. Whenever possible it is best that you discuss the matter with the park owner first to see if the problem can be resolved.

Resolving problems

Often the best way to solve a problem between you and the park owner is to discuss it in person and try to come to a solution you both agree to. Before you do this, it is best to know your rights. In particular you should carefully read the terms of your agreement.

If you are still unclear about them after reading the agreement and this booklet, you may get assistance from:

- NSW Fair Trading, or
- your local Tenants' Advice and Advocacy Service (TAAS).
See *Where to get more information* on page 40.

Other options

If your dispute is still unresolved, you may apply to the Consumer, Trader & Tenancy Tribunal to hear your case. The Tribunal has the power to resolve the matter and make a binding decision. If you are in dispute with the park owner about electricity charges or electricity supply, you can also apply to the Energy and Water Ombudsman NSW (EWON).

Consumer, Trader & Tenancy Tribunal

The Consumer, Trader & Tenancy Tribunal is an independent, decision-making body which hears and decides on applications for orders from both residents and park owners. The Tribunal hears matters in a quick, cheap and relatively

informal way. During your hearing the Tribunal will try to get you and the park owner to settle your differences so that, if possible, you work out your own solution. If this cannot be done, the Tribunal will make a final decision (order) which is binding on both parties.

Tribunal orders

Among others, the Tribunal can make orders that:

- you and/or the park owner comply with a term of the agreement
- compensation be paid to you or the park owner
- your rent increase is excessive
- your agreement be ended
- your rent be reduced and/or paid to the Tribunal until the park owner stops breaking the agreement
- the park owner carry out repairs to the home or site you rent.

Tribunal hearings

The person who hears your case is called a Tribunal member. You may be asked by the Tribunal member hearing your case to talk to the park owner to try and reach a settlement before your hearing begins. The Tribunal may, with the consent of yourself and the park owner, refer the issue for alternative dispute resolution. At the start of a Tribunal hearing, the member will allow both of you, in turn, to tell your side of the story and present any supporting evidence. After all the information has been presented, the member will make a decision, usually at the end of the hearing. In some cases the hearing may be adjourned (eg. to allow more time for evidence to be presented) and a decision may be reserved (eg. the member needs more time to study all the evidence

and information presented during the hearing). Any orders made by the Tribunal are legally binding on both parties.

Hearings are usually informal, however, formal hearings can be held on request. At formal hearings, witnesses can be called and evidence is given under oath.

What should you do if an application is made against you

You should first approach the park owner and try to resolve the problem. If you come to a compromise, you should check that the park owner has withdrawn the application. If you need assistance with this information, call the Tribunal Registry on Freecall 1300 135 399. If you are unable to resolve the problem this way, you should prepare and gather as much information as you can which relates to the matter. You may need to present records or statements to the Tribunal to help support your case.

Attending hearings

It is important that you attend the hearing so you can present your case. If you cannot attend, you must inform the Tribunal Registry as soon as possible (Freecall 1300 135 399). This must be done in writing. Your letter should state the reason why and ask that the hearing be put back to a later date. You must have a very good reason to do this. If this is not accepted by the Registrar of the Tribunal or the Tribunal member, the hearing may proceed without you and an order be made in your absence.

Selling your home

If you own your dwelling, you may wish to sell it at some point. In order to help this process run as smoothly as possible, it is important that any restrictions on selling your home are made clear at the beginning of your tenancy. These should be spelt out in your agreement and in the information given to you before you move in. If there are no restrictions included in your agreement and in the pre-disclosed information, you are entitled to sell your dwelling on site (other than for parks in Crown reserves and National Parks and Wildlife reserves). Conflicts can be avoided if both you and the park owner are clear on the process before the sale takes place.

'For sale' signs

First you must inform the park owner that you want to sell your home before you put up a 'for sale' sign. You should read your agreement to know what restrictions there are regarding how and where a 'for sale' sign can be displayed. Generally, 'for sale' signs must be on or in the home itself and not on the site. If there is nothing in your agreement, the Park Liaison Committee may have negotiated some restrictions about the size of 'for sale' signs that are placed on the site.

Sale of home to the park owner

If you and the park owner enter into negotiations where the park owner is buying your home but you cannot agree on a fair price, either you or the park owner may apply to the Tribunal for a ruling. While any decision is advisory only, it may help to resolve a dispute of this nature.

Transferring tenancy agreements

Unless you live in a National Park or on a Crown reserve, the park owner cannot without good reason prevent you from transferring (or assigning) your agreement (ie. where you own a caravan with rigid annex or a manufactured home).

If you find a buyer who also wishes to rent the site, you should ask the park owner to transfer your agreement to them. This can be done whether or not the fixed term period of your agreement has expired. If the owner won't let you, you may take the dispute to the Consumer, Trader & Tenancy Tribunal but it is better to have the position clear, if possible, before you begin the sale process.

Commission upon selling

You cannot be charged commission by the park owner when your home is sold on site unless you specifically employed the park owner or manager as a selling agent. Commission arrangements must be in writing and no commission is payable to the park owner if the park owner is not responsible for the home being sold. Any dispute about the sale of the home or over commission may be heard by the Tribunal. The park owner must not restrict potential buyers or interfere in the sale, unless sale on site is not allowed.

Moving out

When you decide to move out of the residential park you've been living in, you should be clear about the steps you need to take or it could cost you money. There are some differences between ending a moveable dwelling agreement and ending a residential site agreement.

The following rules apply to both moveable dwelling agreements and residential site agreements. See below for specific rules that apply to each type of agreement.

Ending an agreement

Your agreement can be ended if you give a written valid termination notice to the park owner and you leave the site. The park owner can give notice to a resident in certain circumstances.

Termination notice

A termination notice is a document that tells the other party when the tenancy will be ended and why. There are strict rules about what must be written in a termination notice to make it effective.

A notice of termination must:

- be in writing
- state the address of the site/premises
- be signed and dated
- allow the required period of time (see below)
- give the date on which you intend to move out or the park owner wants you to move out
- give reasons for ending your agreement (where applicable).

Serving a termination notice

It is very important that you serve your notice correctly, otherwise it may be considered invalid. You must not put the notice under a door, pin it to a door, or put it in the park owner's letter box. You must serve the notice in one of the following ways:

- give it personally to the park owner, manager or the person to whom rent is usually paid. This person must appear to be at least 16 years old. It is advisable to take a witness with you when serving a termination notice
- send it by fax to the park owner or manager
- post the notice (allow 4 working days for posting).

Reasons for giving notice

A resident or park owner can give notice to terminate an agreement for a range of reasons. Different rules may apply depending on whether the agreement is for a dwelling or a site.

Breach of agreement

Either a resident or park owner can give 14 days notice if the other party has seriously breached a term of the agreement. The notice must state which term has been broken. This 14 day notice can be given regardless of whether your fixed term has ended or not.

If you receive a notice and are certain that you are not at fault, you may approach the park owner and discuss the matter in order to resolve the problem. If this is unsuccessful the Tribunal may have to settle the matter. In this situation you should get some advice about your rights from one of the services listed in *Where to get more information* on page 40.

If you are behind in rent

If you fall behind in rent payments for 14 days or more, the park owner may serve you notice of at least 14 days to terminate your agreement. If this happens, talk to the park owner to try to reach an agreement to catch up.

Moving out before the fixed term of an agreement ends

Moveable dwelling and residential site agreements are legally binding contracts which cannot be easily broken.

If you believe that you cannot stay in the premises or site for the full term of the agreement or continue to pay the rent, you should notify the park owner or manager as soon as possible. You may also apply to the Tribunal to end the agreement early if you are facing personal hardship, but you may have to pay compensation to the park owner.

If you break an agreement early you must pay:

- the rent until another resident is found and begins their tenancy or until your agreement ends, whichever occurs first
- reasonable advertising costs.

The park must take reasonable steps to keep these costs at a minimum.

Termination of moveable dwelling agreements

Read this section if you have a moveable dwelling agreement (where you rent a park-owned dwelling and site, or a site to put your own caravan or campervan without a rigid annex).

As well as the rules on pages 28-30, the following specific rules apply to terminating a moveable dwelling agreement.

Can notice be given without a reason?

At the end of the fixed term period

If it is just before your fixed term is about to end, you can give at least 14 days notice to end your moveable dwelling agreement with no reason. The notice can be served on the park owner up to and including the day your fixed term ends.

The last day of your notice should not end before the last day of the fixed term. For example, if you had a 6 months fixed term agreement which ends on 1 December, the date you put on your termination notice as the day you want to end the tenancy cannot be before this date. It must be on or after 1 December.

The park owner can give a resident 30 days notice.

After the fixed term period

If you serve your termination notice after the fixed term period has ended, you must give at least 21 days notice. The park owner in this case must give you at least 60 days notice if wishing to end your agreement.

What happens if the park owner sells the park in which I am a resident?

If the park is sold and the sale contract requires that the dwelling should be empty before the settlement can take place, the park owner must give you at least 30 days notice (after the contracts of sale have been entered into). This notice can apply only **after** the fixed term has ended.

Termination of residential site agreements

This section applies to you if you have a residential site agreement (an agreement to rent a site for your own manufactured home, or caravan or campervan with a rigid annex). As well as the rules on pages 28-30, the following specific rules apply to terminating a residential site agreement.

Can I give notice without reason?

Once the fixed term has expired, you can end your agreement by giving at least 30 days notice without stating a reason.

How can the park owner end our agreement?

The park owner can only end your residential site agreement for the reasons outlined below. It is important that you know and understand your rights if this happens.

If you have seriously or repeatedly broken the agreement

You may be given 14 days notice.

If your home is badly run-down

If you allow the condition of your dwelling to deteriorate, the park owner may give you a notice directing you to fix the problem as follows:

1. firstly, a notice directing you to repair your home within 90 days
2. a further notice of 30 days if you have not fixed the problem
3. if the dwelling has still not been improved you may receive a termination notice of at least 60 days.

If the site you are renting is no longer fit to live on (eg. flooded) or the site is not lawfully useable for living on

Immediate notice may be given by either the park owner or resident. You may be paid compensation if your agreement is terminated because the site is no longer lawfully useable for a residence, providing you were not aware that the site was not lawfully useable when your agreement started.

If the site you rent is no longer to be used as a residential site ('change of use')

If the park owner wants to use your site for something other than for a residential site, you can be given 12 months notice.

Even after receiving a notice of termination, you cannot be made to move until you have been ordered to do so by the Tribunal.

If you receive a notice of termination you should get immediate advice on what to do next. See *Where to get more information* on page 40.

You are entitled to compensation if your agreement is terminated for this reason. However, you can't get compensation if your site is within a Crown reserve and

- you entered into your agreement after 16 December 1994, and
- you were told when you signed your agreement that you couldn't get compensation if this happened, and
- your residential site in a Crown reserve will be used for a public purpose.

When the park owner has been ordered to carry out repairs and upgrading to the site

A minimum 90 day termination notice may be given to you if the park owner has been told by the local council to make your site available for repairs or upgrading. You cannot, however, be asked to move out before the end of the remaining fixed term period of your agreement. You are entitled to compensation if the park owner gives you notice to leave the site for this reason.

When the park owner wants you to relocate but does not give you notice of termination

Instead of a termination notice, the park owner may give you a notice asking you to relocate to a different site within the park or to some other park he/she operates. At least **90 days** notice must be given to you in this situation.

What if I agree to relocate?

If you come to an agreement with the park owner for you to move to another site within the park or to another park operated by the same owner, you may be entitled to compensation similar to the amount you may receive after getting a notice of termination.

How will moving sites affect my original agreement?

Once you move to another site your old agreement transfers and applies to your occupation of the new site. The rent you pay under the new agreement may be reduced but should not be more than the amount you paid for the first site.

Compensation

The park owner may have to pay you compensation if the Tribunal makes an order for you to leave the site following a termination notice for any of these reasons:

- change of use
- repairs and upgrading
- relocation
- the park owner's hardship, or
- where the site is not lawfully useable as a residential site.

The amount of compensation will depend on the 'reasonable costs' of:

- removing your home from the site (including the cost to disconnect telephone, electricity, etc.)
- transporting your home and possessions to the new site (relocation), or to your new location (up to 500 kms), or disposing of it
- repairing any damage to your home that happened during the relocation (up to its original value)
- landscaping your new site to the same condition as your old one
- installing your home on the new site and connecting any services.

You do not have to move until compensation has been paid to you. Instead of the Tribunal deciding on compensation you can come to a settlement with the park owner.

Abandonment

Abandoned premises

If the residential premises appear to have been abandoned by the resident, a landlord may enter the property to determine if it really is abandoned. In this situation, the park owner can secure it immediately. An application to the Consumer, Trader & Tenancy Tribunal is not necessary if there is sufficient information to be certain that the premises have been abandoned.

If there is any uncertainty that it has been abandoned the park owner may apply to the Consumer, Trader & Tenancy Tribunal for an order to have the premises declared abandoned. The park owner must present evidence to the Tribunal to support their claim that the premises have been abandoned. This may include statements from witnesses, notices of disconnection of electricity, telephone or gas, empty premises etc. Once such an order is given, the premises are considered abandoned from the date specified on the order.

Uncollected goods

Items that have been left in the residential premises by the tenant after vacating become 'uncollected goods'. If these goods remain in the premises for 2 working days after the tenant has vacated, they may be disposed of by the park owner if their value is estimated not to be higher than the cost of removal and storage. Otherwise they must be stored in a safe place. Goods may be stored inside the dwelling and the dwelling may be 'stored' on the site. If the goods are perishable foodstuffs, they may be disposed of immediately.

'Goods' may include any relocatable home or other dwelling owned by the resident. This type of uncollected item can only be disposed of or otherwise dealt with by Tribunal order.

The park owner will not incur any liability if they deal with uncollected goods in accordance with an order/s of the Tribunal or the Regulation.

Residents may apply to the Tribunal for orders that the park owner deliver to them the goods left behind. Persons other than residents and park owners who may have an interest in the goods also have the right to apply to the Tribunal (eg. an appliance hire company).

Auctioning of goods

Once the uncollected goods (other than a moveable dwelling) have been stored for 30 days, the park owner may sell the goods by public auction. Any person entitled to possession of the goods may claim them before the auction but only after payment of any costs incurred by the park owner for removal, storage or sale. This person could be the resident, a sub-tenant, hire company or anyone else who has a legal interest in the goods.

The park owner is required to account to the resident for the balance of the proceeds of the sale after the deduction of the reasonable costs of removal, storage and sale of the goods. If the park owner is unable to locate the resident, the balance of the proceeds is to be dealt with as if it were unclaimed money under the *Unclaimed Money Act 1995*.

Notice to resident required

If the uncollected goods are stored, a park owner or their agent must take the following steps within 7 days of placing the goods into storage:

- provide the resident with a written notice that the goods are in storage, and
- publish the notice in a statewide newspaper.

The notices must be given and published within 7 days after the goods are stored.

The notice may be given to the resident by posting it to the last forwarding address known to the park owner. It may also be given to a person who was nominated by the resident before the resident vacated the premises.

The notice must contain the following:

- the park owner's name and address, or an address where the goods can be claimed
- the resident's name
- the address of the rented site/premises
- a description of the goods (including any dwelling, if left)
- a statement that, on a specified date, the goods (other than a dwelling) will be sold by public auction unless they are first claimed, and the reasonable costs of removal and storage, but not other costs (eg. outstanding rent), are paid
- if the goods are or include a moveable dwelling, a statement that the park owner intends to apply to the Tribunal for an order authorising the removal, destruction, disposal or sale of the dwelling if unclaimed
- a statement that the park owner will retain the reasonable costs of removal, storage and sale from the proceeds of the auction

- a statement that the resident is entitled to the balance of any proceeds of any sale of the goods.

Claiming uncollected goods

A person who is entitled to possession of the goods left in the premises may apply to the Tribunal (application must be made within 28 days after the due date of possession) for an order/s or claim them at any time before they are disposed of or sold, provided the park owner is satisfied that the claim is genuine.

The park owner is entitled to require payment of the actual costs of removal and storage of the goods being claimed before allowing the goods to be collected.

If the claim is for some but not all of the uncollected goods, and the remaining goods are still worth enough to cover reasonable costs of removal and storage of all of the goods, the park owner must deliver up those claimed goods without requiring payment for the costs of removal and storage of those claimed goods.

Where to get more information

Energy and Water Ombudsman NSW (EWON)

For assistance for residents who are in dispute about electricity supply or electricity charges apply to EWON:

Freecall: 1800 246 545

Freefax: 1800 812 291

www.ewon.com.au

Department of Planning

For information about site measurements, any obligations on the park owner to provide and maintain amenities or matters relating to the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 1995, contact your local council or:

Head Office

23-33 Bridge Street

GPO Box 39

Sydney NSW 2001

Tel: 9228 6111

Fax: 9228 6455

email: information@planning.nsw.gov.au

www.planning.nsw.gov.au

NSW Government Legislation

You may view or print NSW Government legislation at:

www.legislation.nsw.gov.au

To purchase State legislation

Tel: 1300 656 986

Land & Property Management Authority

For information concerning the administration and management of residential parks on Crown Land, registration fees on agreements of more than 3 years or stamp duty payments on agreements of 5 years or more, contact:

Land & Property Information

1 Prince Albert Road (cnr Macquarie Street)

Sydney NSW 2000

GPO Box 15

Sydney NSW 2001

Tel: 9228 6666 or 1300 052 637

Housing NSW

Some low income tenants may be eligible for financial assistance under Housing NSW's Rentstart Scheme. For more information on Rentstart please contact:

Housing NSW

223-239 Liverpool Road

Ashfield NSW 2131

Tel: 8753 8000

Fax: 8753 8888

General enquiries: 1300 468 746

www.housing.nsw.gov.au

Financial assistance

Financial or other assistance may also be obtained from charities, churches and other non-government organisations in your local area. Contact your local community centre to find out where you may be able to obtain such assistance.

Discrimination

Some forms of discrimination are prohibited under the NSW Anti-Discrimination Act. Tenants or prospective tenants who believe they have been unlawfully discriminated against may wish to contact the New South Wales Anti-Discrimination Board.

NSW Anti-Discrimination Board

Tel: 9268 5555

Fax: 9268 5500

TTY: 9268 5522

Toll free: 1800 670 812

Information services for tenants

Tenants' Advice and Advocacy Services are independent community based organisations funded from the interest on tenants' bonds. Their role is to help both private and public tenants by providing tenancy advice, information and advocacy.

	TAAS Service	Region	Contact
For tenants living in:	Inner Sydney	Inner Sydney, South Sydney, Botany, Leichhardt – local council areas	9698 5975
	Inner Western Sydney	Ashfield, Burwood, Concord, Drummoyne, Marrickville, Strathfield	9559 2899
	Eastern Sydney	Randwick, Waverley, Woollahra	9386 9147
	Northern Sydney	Hornsby, Hunters Hill, Ku-ring-gai, Lane Cove, Manly, Mosman, North Sydney, Ryde, Pittwater, Warringah, Willoughby	9884 9605
	Southern Sydney	Bankstown, Canterbury, Hurstville, Kogarah, Rockdale, Sutherland	9787 4679
	Western Sydney	Auburn, Baulkham Hills, Blacktown, Blue Mountains, Hawkesbury, Holroyd, Parramatta, Penrith	8833 0911
	South Western Sydney	Camden, Campbelltown, Fairfield, Liverpool, Wollondilly	4628 1678
	Central Coast	Gosford and Wyong	4353 5515
	Hunter	Greater Newcastle and Hunter Valley	1800 654 504
	Mid North Coast	Greater Taree, Hastings, Kempsey, Nambucca, Bellingen, Coffs Harbour	1800 777 722 6583 9866
	Northern Rivers	North Coast council areas	1800 649 135 6621 1022
	Illawarra/South Coast	Illawarra and South Coast	1800 807 225
	New England and Western NSW	North West of the Great Dividing Range	1800 836 268 6772 4698
	South West NSW	South West of the Great Dividing Range	1800 642 609
For Aboriginal tenants:	Greater Sydney	Sydney Metro, Hawkesbury, Wyong, Gosford, Blue Mountains, Wollondilly	9569 0222 9569 2022
	Southern NSW	Southern NSW	1800 672 185
	Western NSW	Western NSW	1800 810 233
	Northern NSW	Northern NSW	1800 248 913
Other services:	Older Persons' Tenancy Service		1800 131 310 9566 1120
	Tenants' Union Hotline www.tenants.org.au		1800 251 101 8117 3750
	Park & Village Service www.cpsa.org.au		1800 177 688 9566 1010

