



Holiday Parks (Long-term Casual Occupation) Regulation 2003

under the

Holiday Parks (Long-term Casual Occupation) Act 2002

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Holiday Parks (Long-term Casual Occupation) Act 2002*.

JOHN AQUILINA, M.P.,
Minister for Fair Trading

Explanatory note

The objects of this Regulation are:

- (a) to set out how park owners must deal with goods abandoned in holiday parks, and
- (b) to prescribe the form for making certain applications to the Consumer, Trader and Tenancy Tribunal concerning occupation agreements and abandoned sites or goods, and
- (c) to prescribe the form of warrant for enforcement of an order for possession, and
- (d) to prescribe forms of notice concerning the storage of abandoned goods.

This Regulation is made under the *Holiday Parks (Long-term Casual Occupation) Act 2002*, including sections 26 (2), 32 (3), 33 (3), 34 (5) and 35 (5) (which provide for making applications to the Consumer, Trader and Tenancy Tribunal), section 30 (which deals with the enforcement of orders for possession), sections 34 and 35 (which deal with abandoned goods) and section 51 (the general regulation-making power).

This Regulation comprises matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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under the

Holiday Parks (Long-term Casual Occupation) Act 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Holiday Parks (Long-term Casual Occupation) Regulation 2003*.

2 Commencement

This Regulation commences on 28 February 2003.

3 Definition

In this Regulation:

the Act means the *Holiday Parks (Long-term Casual Occupation) Act 2002*.

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Clause 4 Holiday Parks (Long-term Casual Occupation) Regulation 2003

Part 2 Applications to Tribunal

Part 2 Applications to Tribunal

4 Applications to Tribunal

For the purposes of sections 26 (2), 32 (3), 33 (3), 34 (5) and 35 (5) of the Act, the form set out in Schedule 1 is prescribed.

Part 3 Warrant enforcing order for possession

5 Warrant enforcing order for possession of premises

For the purposes of section 30 (1) of the Act, the prescribed form of warrant authorising a sheriff's officer to enter premises to enforce an order for possession is that set out in Schedule 2.

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Clause 6 Holiday Parks (Long-term Casual Occupation) Regulation 2003

Part 4 Uncollected goods

Part 4 Uncollected goods

6 Meaning of “occupant”

In this Part, *occupant* includes a former occupant.

7 Uncollected goods

- (1) Goods (including any relocatable home or other moveable dwelling owned by an occupant) that have been left on site by the occupant after the occupant vacates the site become *uncollected goods* for the purposes of this Part:
 - (a) when the occupant vacates the site, or
 - (b) if the occupant vacates the site before the occupation agreement is terminated—when the agreement is terminated.
- (2) Uncollected goods may be disposed of as provided by this Part, but only if the requirements of this Part are complied with.

8 Options available to park owner when goods not collected

- (1) Uncollected goods that have not been removed from the site by the occupant within 2 working days after they become uncollected goods are to be dealt with as provided by this clause.
- (2) The goods are to be stored in a safe place by the park owner unless the goods are disposed of as authorised by this clause.
- (3) If the goods are perishable foodstuffs, the park owner may remove and destroy or otherwise dispose of the goods.
- (4) If the park owner is reasonably of the opinion that it would cost more to remove, store and sell the goods (other than any moveable dwelling) than those goods are worth, the park owner may remove and destroy or otherwise dispose of the goods (other than any moveable dwelling).
- (5) If the goods left on the site include a moveable dwelling, the park owner may store any other goods in the moveable dwelling and may store the moveable dwelling on the site.
- (6) In this clause:

working day means any day that is not a Saturday, Sunday or public holiday.

9 Notice to occupant that goods are in storage

- (1) When goods are stored by the park owner, the park owner must:
- (a) give the occupant written notice that the goods have been stored, and
 - (b) publish a notice that the goods have been stored in a newspaper circulating generally throughout the State.

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

- (2) The notice referred to in subclause (1) (a) may (in addition to any other way in which it may be given) be given to the occupant by being sent by post to the occupant at the last forwarding address known to the park owner.
- (3) The notice referred to in subclause (1) (a) may, instead of being given to the occupant, be given to a representative nominated by the occupant before the occupant vacated the site.
- (4) The notice referred to in subclause (1) (a) must contain the following:
- (a) the park owner's name and address, or an address at which the goods can be claimed,
 - (b) the occupant's name,
 - (c) the address of the site (including the site number, where appropriate),
 - (d) a brief description of the goods and, if the goods are or include a moveable dwelling, a description of the moveable dwelling,
 - (e) a statement that, on or after a specified date the goods (other than any moveable dwelling) will be sold by public auction unless they are first claimed, and any reasonable costs of removal, storage, notice of storage and sale (including the cost of advertising the sale) are paid,
 - (f) 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 moveable dwelling, unless the dwelling is first claimed, and any reasonable costs of removal, storage, notice of storage, application to the Tribunal and sale (including the cost of advertising the sale) are paid,
 - (g) a statement that the park owner will retain out of the proceeds of any sale of the goods any reasonable costs of removal,

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Part 4 Uncollected goods

storage, notice of storage, application to the Tribunal and sale (including the cost of advertising the sale),

- (h) a statement that the occupant is entitled to the balance of the proceeds of any sale of the goods.
- (5) The notice referred to:
- (a) in subclause (1) (a) is to be in the form set out in Schedule 3, and
 - (b) in subclause (1) (b) is to be in the form set out in Schedule 4.

10 Order of Tribunal required for disposal of uncollected moveable dwelling

- (1) As soon as practicable after uncollected goods, being a moveable dwelling, have been stored by the park owner in accordance with this Part for 30 days, the park owner is to apply to the Tribunal for an order under section 34 of the Act authorising the removal, destruction, disposal or sale of the moveable dwelling.
- (2) The park owner may not dispose of a moveable dwelling unless the Tribunal has made such an order.
- (3) The park owner is to dispose of or otherwise deal with the moveable dwelling in the manner authorised by the Tribunal as soon as practicable after the Tribunal makes the order.
- (4) The park owner is required to account to the occupant for the balance of the proceeds of the sale (if any) of the moveable dwelling after deduction of the reasonable costs of removal, storage, notice of storage, application to the Tribunal and sale of the dwelling (including the cost of advertising the sale).
- (5) If the park owner has not located the occupant, after making reasonable attempts to do so, for the purpose of accounting to the occupant for the balance of the proceeds of any sale, the balance of the proceeds is to be dealt with as if it were unclaimed money under the *Unclaimed Money Act 1995*.
- (6) Nothing in this Part prevents a park owner from making an application to the Tribunal under section 34 of the Act without first taking the steps set out in this Part.

11 Uncollected goods (other than moveable dwelling) may be auctioned

- (1) As soon as practicable after uncollected goods (other than a moveable dwelling) have been stored by the park owner in accordance with this Part for 30 days, the park owner is to cause them to be sold by public auction.
- (2) The park owner is required to account to the occupant for the balance of the proceeds of the sale of the goods after deduction of the reasonable costs of removal, storage, notice of storage and sale of the goods, including the cost of advertising the sale.
- (3) If the park owner has not located the occupant, after making reasonable attempts to do so, for the purpose of accounting to the occupant for the balance of the proceeds of any sale, the balance of the proceeds is to be dealt with as if it were unclaimed money under the *Unclaimed Money Act 1995*.

12 Claiming uncollected goods

- (1) A person who is entitled to possession of goods left on site may claim the goods at any time before they are destroyed, sold or otherwise disposed of under this Part.
- (2) The park owner must deliver up the goods to a person who claims them if the park owner is satisfied that the person is entitled to claim them.
- (3) The park owner is entitled to require payment of the park owner's costs and expenses actually incurred in the removal and storage of goods, in the notification of storage and in advertising the sale of the goods (not exceeding a reasonable amount for those costs and expenses), before delivering goods to a person under this clause.
- (4) If a claim is for some but not all of the goods, and the remaining goods are worth enough to cover the reasonable costs of removal, storage and notice of storage of all of the goods and advertising the sale, the park owner must deliver up the claimed goods to the claimant without requiring payment of the park owner's reasonable costs of removal, storage, notice of storage and advertising of the sale of the claimed goods.

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Schedule 1 Form of application to Tribunal

Schedule 1 Form of application to Tribunal

(Clause 4)

Consumer, Trader and Tenancy Tribunal

General Division

Application for an Order under the *Holiday Parks (Long-term Casual Occupation) Act 2002*

A copy of this application and any attached information will be provided to the other party.

1. How do you want your application to be decided? (The Tribunal will attempt to accommodate your request):

- On the basis of the written submissions from both parties, that is, on the papers only?
- At a Tribunal hearing where both parties (or their representatives) attend in person?
- At a Tribunal hearing conducted by a telephone conference?

2. Address of site, including name of holiday park

.....

3. Park owner's full name (as shown on the occupation agreement)

.....

Park owner's postal address for notices

.....

Park owner's daytime telephone number

.....

4. Occupant's full name (as shown on the occupation agreement)

.....

Occupant's postal address for notices

.....

Occupant's daytime telephone number

.....

5. Is an interpreter needed?.....

If so, what language should the interpreter speak?.....

Do you have any other special needs?

.....

6. List all Tribunal reference numbers (for previous applications involving the same parties and the same site):

.....
.....

7. If there are any exceptional circumstances which would prevent you from attending a hearing in the next 7 to 28 days, provide the dates when you will not be available.

.....
.....

8. Are you:?

- the park owner
- the park owner's representative
- the park manager
- the occupant
- the occupant's representative

9. What order do you want?

An order that a clause of the occupation agreement is void (under section 11 of the Act). (Either the occupant or the park owner may apply and there is no time limit.)

An order in respect of a breach of the occupation agreement (under section 26 of the Act). (Either the occupant or the park owner may apply during the currency of the agreement or within 30 days after the termination of the agreement.)

An order in respect of a disagreement about something other than an increase in the occupation fee, that could form the basis of a breach of the occupation agreement (under section 26 of the Act). (Either the occupant or the park owner may apply during the currency of the agreement or within 30 days after the termination of the agreement.)

An order that the site has been abandoned (under section 32 of the Act). (Only the park owner may apply and there is no time limit.)

An order for compensation for loss caused by abandonment of the site (under section 33 of the Act). (Only the park owner may apply and there is no time limit.)

An order for disposal of abandoned goods (under section 34 of the Act). (Only the park owner may apply and there is a time limit of 28 days after the park owner gains possession of the site.)

An order for retrieval of uncollected goods (under section 35 of the Act). (The occupant or any person having an interest in the goods may apply and there is a time limit of 28 days after the park owner gains possession of the site.)

An order allowing an extension of time to make another order. (Either the occupant or the park owner may apply and there is no time limit.)

Another order *[please specify]*:

.....
.....
.....

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Schedule 1 Form of application to Tribunal

10. What are your reasons for requesting this order? (This application will be forwarded to the other party. Therefore you must describe why you are seeking the order so that the other party can be prepared for the hearing. You must set out here full details of why you believe you are entitled to the order you are seeking. If this is not supplied by you, your application may be dismissed or adjourned. Additional information may be attached to this application. Any additional information must be lodged in triplicate.)

.....
.....
.....
.....
.....
.....

11. Your name *[print]*.....

12. Your signature.....

13. The date.....

Schedule 2 Warrant enforcing order for possession of premises

(Clause 5)

Holiday Parks (Long-term Casual Occupation) Act 2002

To all sheriff's officers:

Why is this warrant being issued?

On, the Consumer, Trader and Tenancy Tribunal sitting at made the following orders (delete whichever orders were not made):

an order terminating the occupation agreement between and

an order for possession of the site at in New South Wales

an order that the operation of the order for possession be suspended for a period of days from the date of the order

an order that the operation of the order for possession be terminated 14 days after the date of issue of this warrant.

An application was made by the person in whose favour the order was made for the enforcement of the order for possession of the site.

I am satisfied that the order has not been complied with, or that a condition of suspension of the order has not been complied with.

What does this warrant authorise?

This warrant authorises any sheriff's officer to enter the premises and take all steps that are reasonably necessary to give possession to the park owner.

Police assistance

A sheriff's officer may request that any police officer assist the sheriff's officer to enforce the order for possession.

Use of force

The sheriff's officer or police officer enforcing the order for possession is authorised to use such force as is reasonably necessary to enforce the order for possession.

Production of this warrant

The sheriff's officer or police officer enforcing the order for possession must produce this warrant if asked.

Issue details

Date of issue of warrant:

This warrant must be executed within 28 days of its issue.

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Schedule 2 Warrant enforcing order for possession of premises

Signature

Signed by me:

Chairperson/Deputy Chairperson/Member/Registrar/Deputy Registrar *[delete whichever is not applicable]* of the Consumer, Trader and Tenancy Tribunal.

.....

[Print name]

.....

[Signature]

Case information

Consumer, Trader and Tenancy Tribunal Registry

Phone No:

Name and address of park owner/park manager:

Phone No of park owner/park manager:

Occupant's Phone No:

File No:

Schedule 3 Form of notice to occupant that goods are in storage

(Clause 9 (5) (a))

Notice that goods have been placed in storage

..... *[insert full name of occupant]* is notified that you have left goods at

.....
.....

[insert address of site, including site number, where appropriate]

The goods consist of:

.....
.....
.....

[insert brief description of goods]

(if the goods are or include a moveable dwelling, insert a description of the dwelling, such as make, registration or serial number, size, colour or other identifying details)

These goods were placed in storage on *[insert date]* by (or on behalf of) the owner of the park, *[insert name and address of park owner]*

You can collect the goods from *[insert address at which goods can be claimed]* on payment of the park owner's allowable costs.

Goods other than moveable dwelling

[delete if not applicable]

If the goods are not collected on or before *[insert date*]*, the goods (except any moveable dwelling) will be sold by public auction unless you first claim the goods and pay any reasonable costs of removal, storage, notice of storage and sale, including the cost of advertising the sale, incurred by the park owner up to the time that the goods are claimed.

Moveable dwelling

[delete if not applicable]

If the moveable dwelling is not collected on or before *[insert date*]*, the park owner intends to apply to the Tribunal for an order authorising the removal, destruction, disposal or sale of the moveable dwelling, unless you first claim the dwelling and pay any reasonable costs of removal, storage, notice of storage, application to the Tribunal and sale, including the cost of advertising the sale, incurred by the park owner up to the time that the moveable dwelling is claimed.

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Schedule 3 Form of notice to occupant that goods are in storage

Proceeds of sale

You are entitled to the proceeds of any sale of the goods less any amount retained by the park owner to cover any reasonable costs incurred by the park owner for removal, storage, notice of storage, application to the Tribunal (if any) and sale of the goods, including the cost of advertising the sale.

Claiming some but not all of the goods

You are not required to pay any costs incurred by the park owner in relation to the goods if you claim some but not all of the goods, and the remaining goods are worth enough to cover any reasonable costs incurred by the park owner for removal, storage, notice of storage and advertising of any sale of the goods.

** The date must be no earlier than 30 days after the goods were placed in storage.*

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Schedule 4 Form of newspaper notice that goods are in storage

Schedule 4 Form of newspaper notice that goods are in storage

(Clause 9 (5) (b))

Notice to occupant that goods have been placed in storage

..... *[insert full name of occupant]* is notified that you have left goods at

.....
.....

[insert address of site, including site number, where appropriate]

The goods consist of:

.....
.....
.....

[insert brief description of goods]

[if the goods are or include a moveable dwelling, insert a description of the dwelling, such as make, registration or serial number, size, colour or other identifying details]

These goods were placed in storage on *[insert date]* by (or on behalf of) the owner of the park,..... *[insert name and address of park owner]*

You can collect the goods from

.....
.....

[insert address at which goods can be claimed] on payment of the park owner's allowable costs.

Goods other than moveable dwelling

[delete if not applicable]

If the goods are not collected on or before *[insert date*]*, the goods (except any moveable dwelling) will be sold by public auction unless you first claim the goods and pay the park owner's allowable costs.

Moveable dwelling

[delete if not applicable]

If the moveable dwelling is not collected on or before *[insert date*]*, the park owner intends to apply to the Tribunal for an order authorising the removal, destruction, disposal or sale of the moveable dwelling, unless you first claim the dwelling and pay the park owner's allowable costs.

* *The date must be no earlier than 30 days after the goods were placed in storage.*

BY AUTHORITY