

[Act 2002 No 88]



New South Wales

## **Holiday Parks (Long-term Casual Occupation) Bill 2002**

### **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.\*

#### **Overview of Bill**

The object of this Bill is to set out the basic rights and obligations of long-term casual occupants of holiday parks (that is, caravan parks and manufactured home estates) who install their own moveable dwellings on a site in the park. The proposed Act applies only to agreements made with an occupant who has a principal place of residence somewhere other than the holiday park. (The *Residential Parks Act 1998* applies to people whose principal place of residence is a holiday park, which is called a “residential park” in that Act.)

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\* Amended in committee—see table at end of volume.

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## Outline of provisions

### **Part 1 Preliminary**

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** defines certain words and expressions used in the proposed Act.

**Clause 4** provides that notes do not form part of the proposed Act.

### **Part 2 Application of Act**

**Clause 5** provides that the proposed Act applies to occupation agreements under which the occupant installs the occupant's own moveable dwelling on a site, is permitted to occupy a site for no more than 180 days a year and (with the agreement of the park owner) has been or agrees to be an occupant for at least 12 months. The Act applies only where that occupant has a principal place of residence somewhere other than the site in the holiday park.

**Clause 6** sets out the occupation agreements and sites to which the proposed Act does not apply.

**Clause 7** makes it clear that nothing in the proposed Act has the effect of entitling an occupant under an occupation agreement to be regarded as a resident under a residential tenancy agreement to which the *Residential Parks Act 1998* applies. That Act deals with people whose principal place of residence is a holiday park (which is called a "residential park" in that Act).

**Clause 8** provides that the proposed Act binds the Crown.

### **Part 3 Rights of prospective occupants of holiday parks to be provided with information**

**Clause 9** imposes an obligation on a park owner to provide a prospective occupant with a list of questions set out in the proposed section that relate to the rights and obligations of the occupant, and with answers to those questions.

**Clause 10** imposes an obligation on a park owner to provide a prospective occupant with a copy of the park rules for casual occupants that are in force for the holiday park. (Park rules are made under Part 6 of the *Residential Parks Act 1998* and are amended under that Act or section 25 of the proposed Act.)

## **Part 4 Occupation agreements**

### **Division 1 Written agreements**

**Clause 11** provides that every written occupation agreement is taken to include every term set out in Schedule 1 to the proposed Act and every term prescribed by the regulations made under the proposed Act. A written occupation agreement can also include additional terms so long as they are consistent with the proposed Act and with the terms set out in Schedule 1 and the regulations.

**Clause 12** requires the park owner to give the occupant a signed copy of the fully executed occupation agreement for the occupant to keep.

**Clause 13** gives effect to a written occupation agreement that has not been signed.

**Clause 14** gives effect to written occupation agreements entered into before the commencement of the proposed section. Those agreements will continue in force for a maximum of 12 months.

### **Division 2 Oral agreements**

**Clause 15** imposes a penalty on a park owner who enters into an occupation agreement that is not in writing. The fact that the occupation agreement is not in writing does not mean that the agreement is void or voidable. However, an occupation agreement that is not in writing will be taken to include every term set out in proposed Schedule 1 and the regulations and any additional terms that are consistent with those terms and with the proposed Act.

**Clause 16** gives effect to oral occupation agreements entered into before the commencement of the proposed section. Those agreements will continue in force for a maximum of 12 months.

**Clause 17** prevents a park owner from being paid any costs in relation to the preparation of an oral occupation agreement.

### **Division 3      What happens to a fixed term agreement after the fixed term ends?**

**Clause 18** provides that an occupation agreement may specify that it continues after any fixed term ends.

**Clause 19** makes it clear that a park owner or an occupant can terminate a fixed term agreement after the fixed term ends.

**Clause 20** provides for the continuation of an occupation agreement that creates an occupancy for a fixed term that has continued after the time it should have terminated and that has no provision in its terms for continuation. The agreement will continue as a periodic occupancy, that is, the occupation fee is paid and accepted at regular fixed intervals and the occupancy of the occupant continues indefinitely from one period to the next until terminated by notice equal to the length of the applicable period. The agreement will continue on the same terms other than the term that set the fixed term for the agreement and the term fixing the amount of the occupation fee.

### **Part 5 Occupation fees and charges**

**Clause 21** makes it an offence for a person to require or receive any monetary consideration in relation to entering into, renewing, extending or continuing an occupation agreement other than occupation fees under the agreement, any charges that the occupant has agreed to pay and any charges or other amounts that may be prescribed by the regulations.

**Clause 22** prevents a person from demanding more than 3 months' occupation fees in advance.

**Clause 23** provides for the giving of receipts for occupation fees or charges paid.

### **Part 6 Park rules for casual occupants**

**Clause 24** provides that the park rules for a holiday park, made under Part 6 of the *Residential Parks Act 1998* and amended under that Act or the proposed Act, are terms of every occupation agreement.

**Clause 25** provides for the amendment of the park rules with specific application to casual occupants.

## **Part 7 What if something goes wrong?**

### **Division 1 Disputes**

**Clause 26** provides for a park owner or an occupant under an occupation agreement to apply to the Consumer, Trader and Tenancy Tribunal for an order in respect of an alleged breach of a term of the agreement or any disagreement between the park owner and the occupant concerning a matter that could form the basis of a breach of an occupation agreement but not, for example, a disagreement about an increase in the occupation fee that the occupant considers excessive.

**Clause 27** sets out the orders that the Tribunal can make on such an application.

### **Division 2 Recovery of possession**

**Clause 28** makes it clear that a person may recover possession of a site in accordance with the proposed Act or an occupation agreement without necessarily obtaining an order of the Tribunal.

**Clause 29** prohibits entry onto a site for the purpose of recovery of possession of the site otherwise than in accordance with an occupation agreement or the Act.

**Clause 30** provides for the enforcement of orders for possession of a site to be carried out by sheriff's officers after a warrant has been issued by the Chairperson or other member of the Tribunal. A sheriff's officer enforcing an order for possession is empowered to seek the assistance of a police officer and to take all reasonably necessary steps to enforce the order. The clause makes it an offence to hinder or obstruct a sheriff's officer in the exercise of functions conferred by the clause.

## **Part 8 Abandoned sites and goods**

**Clause 31** defines *goods* so as to make it clear that a reference in the proposed Part to goods abandoned by an occupant includes any moveable dwelling owned by the occupant and abandoned on the site in relation to which the occupation agreement was entered into.

**Clause 32** enables the Tribunal to make an order, on application by a park owner, declaring that a site was abandoned by an occupant.

**Clause 33** entitles a park owner to apply to the Tribunal for compensation from the occupant for any loss caused to the park owner by the occupant's abandonment of the site.

**Clause 34** enables a park owner to apply to the Tribunal for orders as to goods abandoned by an occupant. A purchaser of the goods acquires a good title to the goods and the park owner is not liable in respect of the removal, destruction, disposal or sale of the goods, if done in accordance with the clause.

**Clause 35** enables an occupant to apply to the Tribunal for orders for the delivery of goods left behind by the occupant but not abandoned, after an occupation agreement is terminated.

**Clause 36** specifies the time within which an application for an order in relation to abandoned goods, or goods left by the occupant, can be made.

## **Part 9 Investigations**

**Clause 37** provides for the appointment of investigators.

**Clause 38** sets out the powers of investigators, including powers to obtain information and require the production of documents and other evidence.

**Clause 39** provides for the inspection of documents produced in accordance with a notice under the proposed Act.

**Clause 40** exonerates the Director-General, investigators and certain other officers from personal liability incurred in respect of any act done or omitted to be done in good faith for the purposes of the proposed Act.

## **Part 10 Enforcement**

**Clause 41** makes it an offence, except in certain circumstances, to disclose any information obtained in connection with the administration or execution of the proposed Act or the regulations.

**Clause 42** makes it clear that a breach of the Act constitutes an offence only if a penalty is specified in relation to the breach.

**Clause 43** provides that proceedings for offences against the proposed Act must be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Clause 44** makes directors and managers of corporations liable for contraventions of the proposed Act by those corporations in certain circumstances, but does not affect the liability of the corporations. The clause does not apply to directors and managers of statutory corporations.

## **Part 11 Miscellaneous**

**Clause 45** provides for the employment or appointment of a park manager.

**Clause 46** provides for the establishment of a Consultative Committee for a holiday park, with the function of dealing with issues raised by or on behalf of long-term casual occupants of the holiday park.

**Clause 47** sets out the manner of service of documents on occupants, park owners and the Tribunal under the proposed Act.

**Clause 48** provides for the Tribunal to extend the period of time for making an application, or for doing any other thing, under the proposed Act.

**Clause 49** stops people from contracting out of the proposed Act. It provides that no occupation agreement, contract or other agreement or arrangement, whether oral or wholly or partly in writing, and whether made or entered into before or after the commencement of the clause, operates to annul, vary or exclude any of the provisions of the proposed Act. It makes it an offence to enter into an agreement, contract or arrangement with the intention of defeating, evading or preventing the operation of the proposed Act or the regulations.

**Clause 50** provides that nothing in the proposed Act limits the operation of the *Contracts Review Act 1980*.

**Clause 51** sets out the regulation-making power under the proposed Act.

**Clause 52** gives effect to the amendments, required as a consequence of the enactment of the proposed Act, to the Acts set out in Schedule 2.

**Clause 53** gives effect to Schedule 3 (the Schedule of savings and transitional provisions).

**Clause 54** provides for Ministerial review of the proposed Act.

## **Schedule 1 Terms that are taken to be in every occupation agreement**

**Schedule 1** sets out the terms that are taken to be included in every occupation agreement. Those terms include terms relating to occupation fees and charges, the rights and obligations of parties to the agreement, the ending of the agreement and other matters.

## **Schedule 2 Amendments**

**Schedule 2** amends certain Acts as a consequence of the enactment of the proposed Act.

## **Schedule 3 Savings and transitional provisions**

**Schedule 3** contains a power to make savings and transitional regulations.