

Holiday Parks (Long-term Casual Occupation) Act 2002 No 88

[2002-88]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Statute Law \(Miscellaneous Provisions\) Act 2009 No 56](#) (not commenced — to commence on 17.7.2009)

Authorisation

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Holiday Parks (Long-term Casual Occupation) Act 2002 No 88



New South Wales

An Act to set out the rights and obligations of long-term casual occupants of holiday parks and the park owners; to amend various Acts; and for other purposes.

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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

3 Definitions

(1) In this Act:

Director-General means the Director-General of the Department of Fair Trading.

exercise a function includes perform a duty.

function includes a power, authority or duty.

holiday park means:

- (a) a caravan park (that is, land, including a camping ground, on which caravans, or caravans and other moveable dwellings, have been, are or are to be placed, installed or erected), or
- (b) a manufactured home estate (that is, land on which manufactured homes have been, are or are to be placed),

whether or not the caravan park or manufactured home estate is the subject of an approval under the *Local Government Act 1993*.

investigator means an investigator appointed under section 18 of the *Fair Trading Act 1987*.

long-term casual occupant means an occupant under an occupation agreement to which this Act applies.

manufactured home means a self-contained dwelling (that is, a dwelling that includes at least one kitchen, bathroom, bedroom and living area and that also includes toilet and laundry facilities) that comprises one or more major sections, and is not a registrable moveable dwelling, and includes any associated structures that form part of the dwelling.

moveable dwelling means:

- (a) any caravan or other van or other portable device (whether on wheels or not) other than a tent, used for human habitation, or
- (b) a manufactured home, or
- (c) any conveyance, structure or thing (other than a tent or similar structure) of a class or description prescribed by the regulations for the purposes of this definition.

occupant means a person who has the right to occupy a site under an occupation agreement.

occupation agreement means any agreement under which a person grants to another person for value a right to occupy a site:

- (a) whether or not the right is a right of exclusive occupation, and
- (b) whether the agreement is express or implied, and
- (c) whether the agreement is oral or in writing, or partly oral and partly in writing.

occupation fee means an amount payable under an occupation agreement by an occupant in respect of a period of the occupancy.

park manager, in relation to a holiday park, means the person employed or appointed as park manager under section 45.

park owner, in relation to an occupation agreement, means any person who grants the right to occupy a site under the occupation agreement.

park rules for casual occupants, in relation to a holiday park, means:

- (a) the rules made and amended under Part 6 of the [Residential Parks Act 1998](#) in relation to the holiday park (which is called a residential park in that Act), and
- (b) any amendments to those rules made under section 25 of this Act.

relocatable home means a moveable dwelling that is not:

- (a) a moveable dwelling that is a registrable vehicle within the meaning of the *Road Transport (Vehicle Registration) Act 1997*, or
- (b) a moveable dwelling of a type prescribed by the regulations for the purposes of this paragraph.

signed includes executed by a corporation in any manner permitted by law.

site means a site within a holiday park that is used, or is intended to be used, for the installation of a moveable dwelling for long-term casual occupation and includes any other part of premises (such as a parking space or storeroom) let with the site.

Tribunal means the Consumer, Trader and Tenancy Tribunal constituted by the *Consumer, Trader and Tenancy Tribunal Act 2001*.

- (2) In this Act, a reference to an occupant includes a person to whom an occupant has granted the right to occupy a site.
- (3) For the purposes of determining whether an agreement is an occupation agreement as defined in subsection (1), it does not matter that the person granted the right of occupation is a corporation if the site is occupied (or intended for occupation) by a natural person.

4 Notes

Notes included in this Act do not form part of this Act.

Part 2 Application of Act

5 Act applies to long-term casual occupants

- (1) This Act applies to any occupation agreement in relation to a site:
 - (a) entered into by an occupant who has a principal place of residence somewhere other than the site, and
 - (b) under which the occupant installs the occupant's own moveable dwelling on the site and leaves it there all of the time that the occupation agreement continues in force, and
 - (c) under which the occupant can occupy the site for no more than 180 days in any 12-month period (in a continuous or broken period), and
 - (d) under which:
 - (i) the occupant agrees, with the consent of the park owner, to be an occupant on a casual basis for at least 12 months, or
 - (ii) the occupant has, with the consent of the park owner, been an occupant on a

casual basis for at least 12 months.

- (2) This Act applies whether the relevant occupation agreement was entered into before or after the commencement of this section, unless a particular provision provides otherwise.
- (3) Subject to sections 14 and 16, if this Act applies to an occupation agreement, it so applies despite the terms of any such occupation agreement or any other contract, agreement or arrangement, whether made before or after the commencement of this section.

6 Agreements and sites to which Act does not apply

- (1) This Act does not apply to an occupation agreement of a class prescribed by the regulations for the purposes of this subsection.
- (2) This Act does not apply to:
 - (a) any site ordinarily used or intended to be used for tourist arrangements or other holiday purposes other than long-term casual occupation of the kind described in section 5 (1), or
 - (b) any site, or part of a site, prescribed by the regulations for the purposes of this paragraph.

7 Residential Parks Act 1998 has no application

- (1) The *Residential Parks Act 1998* does not apply to an agreement to which this Act applies.
- (2) Nothing in this Act has the effect of entitling an occupant under an occupation agreement to which this Act applies to be regarded as a resident under a residential tenancy agreement to which the *Residential Parks Act 1998* applies.

8 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

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

9 Prospective occupants have a right to certain information

- (1) A park owner who proposes to enter into an occupation agreement under which a person will be the occupant of a site must prepare, or arrange for the preparation of, a document that includes the following questions, and any other questions that may be prescribed by the regulations, and correct written answers to those questions:

- (a) What occupation fees will be charged under the occupation agreement?
 - (b) Will there be any extra occupation fees charged during school holidays or any other busy periods?
 - (c) Will there be any extra occupation fees charged for additional occupants or visitors?
 - (d) Will the occupant have to pay any additional or extraordinary charges (other than occupation fees), for instance any gas or water charges? If the occupant does have to pay, for what purposes does the occupant have to pay?
 - (e) What are the costs of preparing the occupation agreement?
 - (f) How much notice will the occupant get before occupation fees go up?
 - (g) How much notice will the occupant get before he or she is asked to leave the site or otherwise end the agreement?
 - (h) How will any disputes about the occupation agreement be sorted out, or any other disagreements?
 - (i) Can an occupant sell the occupant's moveable dwelling while it is in the holiday park? What restrictions are there on an occupant regarding the sale of the occupant's moveable dwelling while it is in the holiday park? What are the commission arrangements if the park owner sells the occupant's moveable dwelling?
 - (j) Is there any restriction on the types of moveable dwellings allowed at the park?
 - (k) What can the occupant put on the site besides the moveable dwelling (such as a carport or garden shed)? The answer to this should take into account:
 - (i) what the park owner will permit, and
 - (ii) what the local council will permit, and
 - (iii) what regulations made under the [Local Government Act 1993](#) will permit.
 - (l) Are there restrictions on the use of common facilities? If so, what hours are the facilities available and who may use the facilities? Are there any other restrictions on the use of these facilities?
 - (m) Who pays for the cost of an occupant's dwelling being relocated within the park during the term of the occupation agreement?
- (2) The park owner must not enter into an occupation agreement in relation to a site unless the prospective occupant under that agreement has first been provided with a copy of the document referred to in subsection (1).

Maximum penalty: 2 penalty units.

10 Prospective occupants have a right to be provided with the park rules for casual occupants

A park owner must not enter into an occupation agreement in relation to a site within a holiday park with a prospective long-term casual occupant unless the prospective occupant under that agreement is provided, before or at the time of entering into the agreement, with a copy of the park rules for casual occupants that are in force for the holiday park.

Maximum penalty: 2 penalty units.

Part 4 Occupation agreements

Division 1 Written agreements

11 What are the terms of a written occupation agreement?

- (1) Every occupation agreement that is wholly or partly in writing is taken to include the following standard terms:
 - (a) every term set out in Schedule 1 (with the blank spaces filled in with appropriate details), and
 - (b) every term prescribed by the regulations,whether or not the term appears in the written agreement.
- (2) An occupation agreement that is wholly or partly in writing may include additional terms only if:
 - (a) they are consistent with this or any other Act, and
 - (b) they are consistent with the standard terms of the agreement included in the agreement by subsection (1).
- (3) Any additional terms must be set out in a separate and clearly labelled part of the agreement.
- (4) A term (including an additional term) of an occupation agreement is void to any extent to which it is inconsistent with this or any other Act or any term included in the agreement by subsection (1).
- (5) An additional term is void if the Tribunal so orders, on application by an occupant or a park owner, on being satisfied that the additional term contravenes subsection (2).

12 Park owner to give occupant copy of occupation agreement

If the occupation agreement is wholly or partly in writing, the park owner must give the

occupant a copy of the signed occupation agreement for the occupant to keep, as soon as is reasonably practicable after it is signed by all the parties.

Maximum penalty: 5 penalty units.

13 What if the occupation agreement is not signed?

- (1) If an occupation agreement has been signed by an occupant and given to the park owner or accepted by a person on the park owner's behalf and has not been signed by the park owner:
 - (a) acceptance of occupation fees by or on behalf of the park owner without reservation, or
 - (b) any act of part performance of the agreement by or on behalf of the park owner,gives the document the same effect it would have if it had been signed by the park owner on the first day in respect of which occupation fees were accepted or on the day on which such an act was first performed.
- (2) This section applies despite section 54A (which requires certain contracts in relation to land to be in writing) of the [Conveyancing Act 1919](#).

14 What happens to current occupants under existing written agreements?

- (1) In this section, **relevant agreement** means an agreement that, if this Act had been in force at the time the agreement was made, would be an occupation agreement.
- (2) If a written relevant agreement was in force before the commencement of this section, that agreement continues in force until a new occupation agreement is made under this Act.
- (3) If a new occupation agreement is not made within 12 months after the commencement of this section, and the relevant agreement continues in force, the occupation agreement is taken, from a date that is 12 months after the commencement of this section, to include every term set out in Schedule 1 (except clause 25) and the regulations (with the blank spaces filled in with the appropriate details). A term of such an occupation agreement is void to any extent to which it is inconsistent with this or any other Act or any term included in the agreement by Schedule 1 and the regulations.

Division 2 Oral agreements

15 What if there is no written agreement?

- (1) A park owner who, after the commencement of this section, knowingly enters into an occupation agreement that is not in writing or that is only partly in writing is guilty of an offence.

Maximum penalty: 5 penalty units.

- (2) The fact that an occupation agreement is not in writing does not by itself mean that the agreement is void or voidable.
- (3) An occupation agreement that is not in writing is taken to include the following standard terms:
 - (a) every term set out in Schedule 1 (with the blank spaces filled in with appropriate details), and
 - (b) every term prescribed by the regulations.
- (4) An occupation agreement that is not in writing may include additional terms only if:
 - (a) they are consistent with this Act and every other Act, and
 - (b) they are consistent with the standard terms of the agreement included in the agreement by subsection (3).
- (5) A term of an occupation agreement is void to any extent to which it is inconsistent with this or any other Act or any term included in the agreement by subsection (3).
- (6) An additional term is void if the Tribunal so orders, on application by an occupant or a park owner, on being satisfied that the additional term contravenes subsection (4).
- (7) This section applies despite section 54A (which requires certain contracts in relation to land to be in writing) of the [Conveyancing Act 1919](#).

16 What happens to current occupants under existing oral agreements?

- (1) In this section, **relevant agreement** means an agreement that, if this Act had been in force at the time that the agreement was made, would be an occupation agreement.
- (2) If a relevant agreement that is not in writing or that is only partly in writing was in force before the commencement of this section, that agreement continues in force until a new occupation agreement is made under this Act.
- (3) If a new occupation agreement is not made within 12 months after the commencement of this section, and the relevant agreement continues in force, the agreement is taken, from a date that is 12 months after the commencement of this section, to include every term set out in Schedule 1 (except clause 25) and the regulations (with the blank spaces filled in with the appropriate details). A term of an occupation agreement is void to any extent to which it is inconsistent with this or any other Act or any term included in the agreement by section 15 (3).

17 No costs payable for oral agreement

A park owner is not entitled to any costs in relation to the preparation of an occupation agreement that is not in writing.

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

18 Fixed term agreement may specify that it continues

If an occupation agreement that creates an occupancy for a fixed term includes a provision for its continuation after the fixed term ends, that provision has effect.

19 Park owner or occupant may terminate agreement when fixed term ends

If an occupation agreement creates an occupancy for a fixed term and the fixed term ends, the park owner or the occupant may terminate the occupation agreement in accordance with the terms of the agreement relating to termination.

20 Continuation of fixed term agreements if park owner or occupant does not terminate

(1) This section applies if:

- (a) an occupation agreement creates an occupancy for a fixed term, and
- (b) the occupation agreement has no provision in it for continuation after the fixed term ends, and
- (c) neither the park owner nor the occupant has terminated the occupation agreement when the fixed term ends.

(2) An occupation agreement to which this section applies is to continue to apply on the same terms as those applying immediately before the day on which the fixed term ends, other than the term that set the fixed term for the agreement and the term fixing the amount of the occupation fee.

(3) The occupation agreement continues on the basis that the occupant is holding over under a periodic occupancy, that is, on the basis that 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.

Part 5 Occupation fees and charges

21 Nature of amounts to be paid for agreement

A person must not demand, require or receive from an occupant or prospective occupant any monetary consideration for or in relation to entering into, renewing, extending or continuing an occupation agreement other than:

- (a) occupation fees, and
- (b) any other charges that the occupant agrees or has agreed to pay under the occupation agreement, and
- (c) any charges or other amounts that may be prescribed by the regulations.

Maximum penalty: 20 penalty units.

22 Occupation fees in advance

- (1) A person must not demand or require another person to pay, as occupation fees in advance under an occupation agreement, more than 3 months' occupation fees.

Maximum penalty: 5 penalty units.

- (2) A person must not demand or require the payment of any occupation fees (other than the first payment) under an occupation agreement for a period of the occupancy to be made before the end of the previous period for which occupation fees have been paid.

Maximum penalty: 5 penalty units.

23 Receipts for occupation fees and charges

- (1) If occupation fees or other charges under an occupation agreement are paid in person, any person who receives payment of the fees or charges must, without delay, give to the person making the payment a receipt for the payment.

Maximum penalty: 5 penalty units.

- (2) If occupation fees or charges under an occupation agreement are not paid in person, the park owner or the park manager must, on receipt of the fees or charges, prepare or cause to be prepared a receipt for the fees or charges and make the receipt available for collection by the occupant or post it to the occupant.

Maximum penalty: 5 penalty units.

- (3) A receipt for occupation fees or charges is not a receipt for the purposes of this section unless it includes the following particulars:

- (a) the name and address of the holiday park, and the number of the site,
- (b) the period for which the fees or charges are paid,
- (c) the date on which the fees or charges are received,
- (d) the amount of fees or charges paid.

- (4) This section does not apply to occupation fees paid in accordance with an agreement between the park owner and the occupant into an account at an authorised deposit-

taking institution nominated by the park owner.

Part 6 Park rules for casual occupants

24 Park rules for casual occupants form part of occupation agreements

- (1) The park rules for casual occupants for a holiday park, as in force from time to time, are terms of every occupation agreement in respect of a site in the holiday park.
- (2) However, a park rule:
 - (a) that is inconsistent with this or any other Act, or
 - (b) that is inconsistent with a term of an occupation agreement,is not a term of that agreement, to the extent of the inconsistency.

25 Amendment of park rules for casual occupants

- (1) A park owner may make written amendments to any park rules for casual occupants made in relation to a holiday park. Those amendments may deal only with occupation agreements to which this Act applies, occupants under such agreements and their guests.
- (2) Notice of a proposed amendment must be given to each long term casual occupant of the holiday park at least 7 days before the day on which the amendment is to have effect.
- (3) On the day on which an amendment to the park rules for casual occupants takes effect, the park rules for casual occupants are amended in accordance with the amendment.
- (4) For the purposes of this section, an **amendment** of park rules for casual occupants includes:
 - (a) a variation of a park rule for casual occupants, and
 - (b) the addition to the park rules for casual occupants of a new rule, and
 - (c) the repeal of an existing park rule for casual occupants, and
 - (d) the repeal of all existing park rules for casual occupants and their replacement by new rules.

Part 7 What if something goes wrong?

Division 1 Disputes

26 Applications to the Tribunal relating to a breach of an occupation agreement or to a

disagreement

(1) If:

- (a) a park owner or an occupant under an occupation agreement claims that a breach of a term of the agreement has occurred, or
- (b) a disagreement occurs between a park owner and an occupant concerning a matter that could form the basis of a breach of the occupation agreement (other than an increase in the occupation fee or any other matter of a kind prescribed by the regulations),

the park owner or the occupant may, not later than 30 days after becoming aware of the breach or the disagreement, apply to the Tribunal for an order in respect of the breach or disagreement.

(2) An application under this section must be made in the form prescribed by the regulations.

(3) An application under this section may be made during the currency of or within 30 days after the termination of an occupation agreement. In addition, an application may be made whether or not the occupation agreement was executed.

27 What orders can the Tribunal make?

(1) The Tribunal may, on application by a person under section 26, make one or more of the following orders:

(a) an order that:

- (i) restrains any action in breach of the occupation agreement or the cause of the disagreement, or
- (ii) requires any action in performance of the agreement or to resolve the disagreement,

(b) an order for the payment of an amount of money,

(c) an order that the park owner give the occupant the correct notice of termination of the occupation agreement,

(d) an order that a party to the occupation agreement perform any work or take any other steps that the order specifies to remedy a breach of the agreement or to resolve the disagreement,

(e) an order as to compensation, including (without limiting the Tribunal's power to make such an order):

- (i) compensation for loss of occupation fees, and

- (ii) compensation where a park owner withholds or refuses consent to the removal of any fixture owned by the occupant, and
 - (iii) compensation for any other breach of the occupation agreement or for any other loss,
- (f) an order terminating the occupation agreement and an order for possession of the site.
- (2) An order under subsection (1) (a) may be made even though it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such a remedy would not otherwise be available.

Division 2 Recovery of possession

28 Recovery of possession does not require a Tribunal order

A person may recover possession of a site in accordance with this Act or an occupation agreement without the need to obtain an order of the Tribunal.

29 Recovery of possession of site is prohibited unless it is authorised by an occupation agreement or this Act

- (1) A person must not, except in accordance with an occupation agreement or this Act, enter a site or part of a site occupied by another person:
- (a) under an occupation agreement, or
 - (b) as a former occupant holding over after termination of an occupation agreement, for the purpose of recovering possession of the site or part of the site.

Maximum penalty: 50 penalty units.

- (2) This section applies to a person who enters a site or any part of a site, whether on his or her own behalf or on behalf of another person.
- (3) A court before which proceedings for an offence under subsection (1) are brought may (in addition to any other penalty) order the person who committed the offence or any person on whose behalf that person acted to pay to the person against whom the offence was committed any compensation that it thinks fit.

30 Enforcement of orders for possession

- (1) If an order for possession of a site is made by the Tribunal, then the Chairperson of the Tribunal, any other member of the Tribunal, the Registrar of the Tribunal or a Deputy Registrar of the Tribunal may:
- (a) on the application of the person in whose favour the order was made, and

(b) if satisfied that the order for possession or a condition of suspension of the order has not been complied with,

issue a warrant, in or to the effect of the form prescribed by the regulations, authorising a sheriff's officer to enter a site and to give possession to the person in whose favour the order was made.

- (2) A sheriff's officer enforcing an order for possession of a site may enter the site and take all steps that are reasonably necessary to enforce the order and must produce the warrant authorising the enforcement.
- (3) A police officer may, at the request of a sheriff's officer, assist the sheriff's officer to enforce the order for possession.
- (4) A sheriff's officer enforcing an order for possession may use any force that is reasonably necessary for that purpose.
- (5) A person must not hinder or obstruct a sheriff's officer in the exercise of the functions conferred by this section.
- (6) No matter or thing done or omitted to be done by a sheriff's officer or police officer, in the exercise or purported exercise of functions conferred by this section, if the matter or thing was done or omitted to be done in good faith for the purposes of enforcing an order for possession, subjects a sheriff's officer or police officer so doing personally to any action, liability, claim or demand.

Part 8 Abandoned sites and goods

31 Meaning of "goods"

In this Part:

goods includes a relocatable home or other moveable dwelling owned by an occupant.

32 Abandoned site

- (1) The Tribunal may, on application by a park owner under an occupation agreement with respect to a site, make an order that declares that the site was abandoned by the occupant on a day specified by the Tribunal.
- (2) The occupant is taken for the purposes of this Act to have abandoned the site on that day.
- (3) An application under this section must be made in the form prescribed by the regulations.

33 Right of park owner to compensation where occupant abandons site

- (1) If an occupant under an occupation agreement abandons the site, the occupant is

liable to pay compensation to the park owner for any loss (including loss of occupation fees) caused by the abandonment.

- (2) The park owner must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by taking those steps.
- (3) The Tribunal may, on application by the park owner in the form prescribed by the regulations, order an occupant to pay to the park owner any compensation (including compensation for loss of occupation fees) that it thinks fit.

34 Goods abandoned by occupant after occupation agreement is terminated

- (1) If an occupation agreement is terminated and goods are left by the occupant on the site, the person who was the park owner under that agreement may:
 - (a) apply to the Tribunal for an order under this section, or
 - (b) remove, store, sell or otherwise dispose of the goods in accordance with any provision made by the regulations,or both.
- (2) The Tribunal may, on application under this section by the person who was the park owner under an occupation agreement, make any one or more of the following orders:
 - (a) an order authorising the removal, destruction, sale or other disposal of goods left on the site,
 - (b) an order authorising the sale of abandoned goods,
 - (c) an order directing that notice of any action or proposed action in relation to abandoned goods be given to the former occupant or any other person,
 - (d) an order as to the manner of sale of abandoned goods,
 - (e) an order as to the proceeds of sale of abandoned goods,
 - (f) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (3) A purchaser of abandoned goods sold by a park owner in accordance with an order of the Tribunal or the regulations who acquires a good title to the goods defeats the interest of the former occupant or any other person who has an interest in the goods.
- (4) A person who was the park owner under an occupation agreement does not incur any liability in respect of the removal, destruction, sale or other disposal of goods in accordance with an order of the Tribunal or the regulations.
- (5) An application under this section must be made in the form prescribed by the regulations.

35 Goods left by occupant, but not abandoned, after occupation agreement is terminated

- (1) If an occupation agreement is terminated and goods are left by the occupant on the site:
 - (a) the occupant, or
 - (b) any other person having an interest in the goods,may apply to the Tribunal for an order for the delivery of the goods into the occupant's or other person's possession.
- (2) The Tribunal may, on application under this section, make any one or more of the following orders:
 - (a) an order for the delivery of the goods into the occupant's or other person's possession,
 - (b) an order requiring the occupant or other person to pay any reasonable costs incurred by the park owner in connection with the removal, storage or delivery of the goods,
 - (c) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.
- (3) A person who was a park owner under an occupation agreement does not incur any liability in respect of the disposal of goods in accordance with an order of the Tribunal under this Part.
- (4) To avoid doubt, an application may be made under subsection (1) even though, when the application is made, the goods are no longer on the site because the park owner has removed and stored the goods.
- (5) An application under this section must be made in the form prescribed by the regulations.

36 Time within which application is to be made

An application under section 34 or 35 may not be made more than 28 days after the date on which the park owner gains possession of the site concerned, whether as a result of the occupant delivering up vacant possession of the site to the park owner, the occupant abandoning the site or the park owner recovering possession of the premises.

Part 9 Investigations

37 Investigators must show identification

- (1) An investigator may not exercise in any place a function conferred by section 38 unless the investigator produces his or her certificate of identification if requested to do so by a person apparently in charge of that place or apparently in charge of any

work being performed at that place.

- (2) A person is not required to give to an investigator information or evidence, or to produce a document, in compliance with a notice under section 38 unless the investigator produces, if requested to do so, his or her certificate of identification.

38 Power of investigator to obtain information, documents and evidence

- (1) If the Director-General believes on reasonable grounds that a person is capable of giving information, producing documents or other items or giving evidence in relation to a matter that constitutes, or may constitute, an offence against this Act or the regulations, an investigator may, by notice in writing given to the person, require the person:
- (a) to provide an investigator, in writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and given to the investigator within the time and in the manner specified in the notice, with any such information, or
 - (b) to produce to an investigator, in accordance with the notice, any such documents or items, or
 - (c) to appear before an investigator at a time and place specified in the notice and give any such evidence, either orally or in writing, and produce any such documents or items.
- (2) If the Director-General believes on reasonable grounds that a person has engaged, or is engaging, in conduct that constitutes, or may constitute, an offence against this Act or the regulations, an investigator may, for the purpose of ascertaining by the examination of documents in the possession or under the control of the person whether the person has engaged, or is engaging, in that conduct:
- (a) enter and remain in any holiday park, site or other premises, and
 - (b) inspect any documents or items in the possession or under the control of the person, and
 - (c) make copies or photographs of, or take extracts from, those documents or items.
- (3) A person must not:
- (a) without reasonable excuse, refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it, or
 - (b) in purported compliance with such a notice, provide information, or give evidence, that the person knows is false or misleading, or
 - (c) hinder or obstruct an investigator exercising his or her functions under subsection

(2).

Maximum penalty: 5 penalty units.

- (4) A natural person is excused from providing information, giving evidence or producing or permitting the inspection of a document or item in accordance with this section on the ground that the information, evidence, document or item may tend to incriminate the person.
- (5) This section does not authorise any person to enter a part of any site that is being used only for residential purposes or is physically occupied without the consent of the occupier of that part of the site.

39 Inspection of documents and other items by Director-General and others

- (1) The Director-General, an authorised officer or an investigator may inspect a document or any other item produced in accordance with a notice under section 38 and may make copies of, or take photographs of, or take extracts from, the document or item.
- (2) For the purposes of this Act or the regulations, the Director-General, an authorised officer or an investigator may:
 - (a) take possession, and
 - (b) retain possession for as long as is necessary for those purposes,of a document or item produced in accordance with a notice under section 38.
- (3) A person who is otherwise entitled to possession of a document or item retained under this section is entitled to be supplied, as soon as practicable, with a copy certified by an authorised officer to be a true copy.
- (4) In this section:

authorised officer means a person authorised in writing by the Director-General as an authorised officer for the purposes of this section.

40 Exclusion of personal liability

No matter or thing done or omitted to be done by the Director-General, an investigator or an authorised officer (within the meaning of section 39) subjects the Director-General, investigator or other officer to any action, liability, claim or demand if the matter or thing was done or omitted to be done in good faith for the purposes of administering this Act or the regulations.

Part 10 Enforcement

41 Disclosure of information

A person must not disclose any information obtained in connection with the administration or execution of this Act or the regulations, unless that disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act or the regulations, or
- (c) for the purposes of any legal proceedings arising out of this Act or the regulations or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty: 5 penalty units.

42 Offences and penalties

A contravention or failure to comply with a provision of this Act for the breach of which a penalty is not specified does not give rise to an offence.

43 Proceedings for offences

- (1) Proceedings for an offence against this Act or the regulations are to be dealt with summarily by the Local Court.
- (2) Proceedings for an offence against this Act or the regulations may be brought within the period of 12 months after the commission of the offence or, only with the consent of the Attorney General, at any time.

44 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision and to be liable to the same extent as the corporation in respect of the contravention unless the person satisfies the court that:
 - (a) the corporation contravened the provision without the person's knowledge, or
 - (b) the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (c) the person, being in such a position, used all due diligence to prevent the contravention by the corporation.

- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.
- (4) This section does not apply to or in respect of a person who is a director, or who is concerned in the management, of a statutory corporation.

Part 11 Miscellaneous

45 Park owner may employ or appoint park manager

- (1) A park owner may employ or appoint a person as the park manager of the holiday park, with responsibility for the day to day management of the holiday park, including entering into occupation agreements to which this Act applies.
- (2) An appointment under this section may be revoked at any time by the park owner.
- (3) An occupant, or the Tribunal, may give to the park manager, until the time that the person stops being the park manager, any notices or other documents required by the occupation agreement or this Act to be given to the park owner who employed or appointed the park manager.
- (4) A notice or other document that is permitted by this section to be given to a person employed or appointed as a park manager and that is so given is taken to have been given to the park owner who employed or appointed the park manager.
- (5) A person appointed as park manager under section 143 of the *Residential Parks Act 1998* is, for the purposes of this Act, taken to have been appointed under this section.

46 Consultative Committees

- (1) A park owner may establish a Consultative Committee for the holiday park.
- (2) The function of a Consultative Committee is to deal with issues raised by or on behalf of long-term casual occupants.
- (3) Any Consultative Committee must include representatives of long-term casual occupants.

47 Service of documents

- (1) A notice or other document required to be given to an occupant under this Act may be given:
 - (a) by delivering it personally to the occupant or a person apparently of or above the age of 16 years by whom the occupation fees payable by the occupant are

ordinarily paid, or

- (b) by delivering it to the site occupied by the occupant and by leaving it there with some person apparently of or above the age of 16 years for the occupant, or
 - (c) by sending it by post to the site occupied by the occupant and to the principal place of residence of the occupant, or
 - (d) in any other manner that may be prescribed by the regulations for the purposes of this section or approved by the Tribunal.
- (2) A notice or other document required to be given to a park owner under this Act may be given:
- (a) by delivering it personally to the park owner, the park manager or a person apparently of or above the age of 16 years to whom the occupation fees payable to the park owner are ordinarily paid, or
 - (b) by sending it by post to the park owner's, or park manager's, usual place of residence, business or employment, or
 - (c) by sending it by facsimile transmission to the park owner's, or park manager's, usual place of residence, business or employment, or
 - (d) in any other manner that may be prescribed by the regulations for the purposes of this section or approved by the Tribunal.
- (3) A document given or an application made to the Tribunal may be given or made to the Tribunal or lodged with the Registrar of the Tribunal by leaving it at, by sending it by facsimile transmission or by sending it by post to:
- (a) the office of the Tribunal, or
 - (b) if it has more than one office, any one of its offices, or
 - (c) any other place prescribed by the regulations.
- (4) This section does not apply to a notice of termination given under an occupation agreement.

48 Extension of time

- (1) The Tribunal may, on its own motion or on application by any person, extend the period of time for the doing of anything under this Act or the regulations.
- (2) Such an application may be made even though the relevant period of time has expired.

49 Contracting out prohibited

- (1) The provisions of this Act and the regulations have effect despite any stipulation to the contrary in any agreement, contract or other arrangement and 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 this section, operates to annul, vary or exclude any of the provisions of this Act or the regulations.
- (2) A person must not enter into any agreement, contract or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act or the regulations.

Maximum penalty: 20 penalty units.

50 Contracts Review Act 1980

Nothing in this Act limits the operation of the *Contracts Review Act 1980*.

51 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 2 penalty units.

52 (Repealed)

53 Savings and transitional provisions

Schedule 3 has effect.

54 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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

(Sections 11, 14, 15 and 16)

Part 1 Introduction

1 Date of this agreement

[Fill in date on which both the park owner and the occupant signed the agreement, or, if one signed on one date and the other on a later date, fill in the later date].

2 Who is making this agreement?

This agreement is made between:

- (a) the park owner, *[fill in the name and address of the park owner]*, and
- (b) the occupant or each of the occupants, *[fill in the name and address of the occupant or occupants]*.

3 Where is the site?

- (1) This park owner gives the occupant the right to occupy site number *[fill in the site number]* at *[fill in the name and address of the holiday park]* and the following parking space and storeroom *[fill in details of any parking space or storeroom]*.
- (2) The size of the site is *[fill in the dimensions of the site or its area in square metres]*.

4 Who can occupy the site?

No more than *[fill in number]* persons may ordinarily occupy the site at any one time.

5 How long does this agreement last?

The fixed term of this agreement is for *[fill in the length of time that this agreement is for]*, beginning on *[fill in start date]* and ending on *[fill in end date]*.

6 What happens when this agreement ends?

When the time for this agreement ends:

- (a) the occupant can stay on the site at the same occupation fee (or at an increased fee if the fee is increased in accordance with this agreement) and otherwise under the same terms unless or until this agreement is ended in accordance with this agreement, or
- (b) *[fill in what else is agreed will happen when the time for this agreement ends]*.

7 Agreement to comply with the terms of this agreement

The park owner and occupant agree to comply with the terms of this agreement.

Part 2 Occupation fees and charges

8 Amount of occupation fees

The occupation fees payable are *[fill in amount]* payable every *[specify whether the fees are payable every week, fortnight, month or quarter]* starting on *[fill in date]*.

9 Amount of other charges (such as water, electricity or gas charges)

The occupant agrees to pay, in connection with the site, for *[fill in the things that the occupant agrees to pay for, such as water charges, electricity charges, gas charges etc]*.

10 Payment of council rates and other charges by park owner

The park owner agrees to pay, in connection with the holiday park on which the site is situated, for:

- (a) Council rates, and
- (b) land taxes, and
- (c) *[fill in the things that the park owner agrees to pay for, such as water charges, electricity charges, gas charges etc]*.

11 Occupation fees are payable in advance and on time

- (1) The occupant agrees to pay the occupation fees in advance on the *[fill in day or date]* of every *[specify whether the fees are payable every week, fortnight, month or quarter]*.
- (2) The occupant agrees to pay the occupation fees on time.

12 How to pay occupation fees

The occupation fees may be paid in the following ways *[fill in any way that occupation fees may be paid]*. These methods of paying may be changed during the term of this agreement if both the park owner and the occupant agree.

13 Manner of paying occupation fees

Occupation fees must be paid *[cross out whichever does not apply]*:

- (a) to the park owner, or the park manager, at *[fill in address of park owner or park manager]*, or
- (b) at any other reasonable place the park owner names to the occupant in writing, or
- (c) into the following account *[fill in account details]*, or any other account nominated to the occupant by the park owner.

14 Receipts for occupation fees or other charges

- (1) The park owner agrees to provide a receipt for any occupation fees or other charges under this agreement paid to the park owner or to make sure that the park manager provides a receipt for the occupation fees or charges paid to the park manager. If the occupation fees or charges are not paid in person, the park owner agrees only to make the receipt available for collection by the occupant or to post it to the occupant.
- (2) The park owner agrees that any receipt for occupation fees or charges must include the following particulars:
 - (a) the name and address of the holiday park, and the number of the site,
 - (b) the period for which the fees or charges are paid,
 - (c) the date on which the fees or charges are received,
 - (d) the amount of fees or charges paid.
- (3) The park owner is not required to provide or make available a receipt if occupation fees or other charges are paid, in accordance with an agreement between the park owner and the occupant, into an account at an authorised deposit-taking institution (such as a bank, building society or credit union) nominated by the park owner.

15 Fee increases

- (1) The park owner cannot increase the occupation fees during the fixed term of this agreement unless [*fill in any circumstances in which the occupation fees can be increased*].
- (2) The occupant must be given 30 days' notice in writing if the park owner wants to increase the occupation fees, if an increase is permitted by subclause (1). This applies even when this agreement provides for, or permits, an occupation fee increase. Where a notice of an increase has been given and the park owner and occupant subsequently agree to a lesser increase than that set out in the notice, the park owner does not need to give a further 30 days' notice.

16 Refund of occupation fees

The park owner agrees to refund any fees paid in advance if the occupancy is ended by the park owner before the end of the fixed term agreement.

Part 3 Rights and obligations

Division 1 Obligations of the occupant

17 Offensive behaviour

The occupant agrees not to interfere with or cause or permit interference with, or allow

any person that the occupant invites into the holiday park to interfere with:

- (a) the reasonable peace, comfort or privacy of any neighbour of the occupant or any other person lawfully in the holiday park, or
- (b) the proper use and enjoyment of the holiday park by the other occupants or residents of the holiday park.

18 Use of the site

The occupant agrees:

- (a) not to use the site, or cause or permit the site to be used, for any illegal purpose, and
- (b) not to cause or permit a nuisance.

19 Cleanliness of and damage to the site

The occupant agrees:

- (a) to keep the site reasonably clean, and
- (b) to notify the park owner as soon as practicable of any damage to the site, and
- (c) not to intentionally or negligently cause or permit any damage to the site or any other part of the holiday park, and
- (d) when this agreement ends, to leave the site as nearly as possible in the same condition (fair wear and tear excepted) as when this agreement started.

20 Alterations and additions to the site

The occupant agrees not to attach any fixture or renovate, alter or add to the moveable dwelling or the site without the park owner's prior written permission.

21 Occupant's responsibility for the actions of others

The occupant agrees to be responsible to the park owner for any act or omission by any person the occupant allows on the site, or elsewhere in the holiday park, who breaks any of the terms of this agreement (including any park rules for casual occupants that are terms of this agreement).

22 Keys and opening devices

The occupant agrees to return any key or other opening device provided to the occupant, when this agreement is terminated.

23 Selling the moveable dwelling

The occupant agrees not to sell the occupant's moveable dwelling while it is on the site without the prior written permission of the park owner or a Consumer, Trader and Tenancy

Tribunal order.

24 Agreement not to transfer without consent

- (1) The occupant agrees not to transfer the whole or part of the occupant's interest under this agreement without the park owner's prior written permission.
- (2) The occupant agrees that the park owner may require a new occupation agreement to be entered into.

25 Moveable dwellings must comply with law

The occupant agrees to make sure that the moveable dwelling complies with any regulations under the [Local Government Act 1993](#) with which it is required to comply.

26 Condition of moveable dwelling and other structures

The occupant agrees to make sure that the moveable dwelling and any other structure that the occupant is permitted to erect is kept in a condition allowing it to be moved.

Division 2 Obligations of the park owner

27 Possession of the site

The park owner agrees:

- (a) to make sure the site is vacant so the occupant can move in on the date agreed, and
- (b) that there is no legal reason that the park owner knows about, or should know about when signing this agreement, why the site cannot be used as the site of a residence for the term of this agreement.

28 Occupant's right to no interruption

The park owner agrees that the occupant will have use of the site without undue interruption by the park owner.

29 Cleanliness

The park owner agrees to make sure the site, everything provided with the site for use by the occupant, and the common areas of the holiday park, are reasonably clean and fit to occupy or use.

30 Tradespeople allowed to come in

The park owner and occupant agree that any tradespeople that the occupant reasonably requests should be allowed into the holiday park will be allowed in without unreasonable interference.

31 Permitting family members of occupant and others to temporarily occupy a site

- (1) The park owner agrees to allow any family member of the occupant or any other person to temporarily occupy the site if he or she has the prior permission of the occupant and the park owner.
- (2) The park owner and occupant agree that the park owner may demand proof that the family member of the occupant or any other person has the permission of the occupant to occupy the site. That proof may be given in person, in writing or over the telephone.

Part 4 Agreement to minimise loss

32 Parties to minimise loss from breach of agreement

The park owner and the occupant agree that the rules of law relating to mitigation of loss or damage on breach of a contract apply to a breach of this agreement. (For example, if the occupant breaches this agreement the park owner will not be able to claim damages for loss that could have been avoided by reasonable effort by the park owner.)

Part 5 When can someone else come onto the site?

33 Park owner's access to the site

The park owner agrees that the park owner, the park manager or any person authorised in writing by the park owner, during the currency of this agreement, may enter the site only in the following circumstances:

- (a) in an emergency (including entry for the purpose of carrying out urgent repairs),
- (b) if the Consumer, Trader and Tenancy Tribunal so orders,
- (c) if there is good reason for the park owner to believe the site is abandoned,
- (d) if electricity, water or gas is supplied to the occupant by the park owner, to inspect and read an electricity, water or gas meter situated on the site,
- (e) to carry out regular maintenance and caretaking of the site, such as by mowing the lawn,
- (f) to carry out functions required under any legislation,
- (g) if the occupant agrees,
- (h) *[fill in any additional circumstances]*.

Part 6 Obligations of the park owner relating to park rules for casual

occupants

34 Park rules for casual occupants

The park owner agrees to give the occupant a copy of any park rules for casual occupants that are in force for the holiday park, before or at the time they enter into this agreement.

35 Obligation to promote compliance with park rules for casual occupants

The park owner agrees to take all reasonable steps to make sure that the park owner's other occupants do not contravene any park rules for casual occupants for the holiday park.

Part 7 Ending this agreement

Division 1 When can this agreement be ended?

36 Ending this agreement

The park owner and the occupant agree that this agreement can be terminated in one or more of the following circumstances:

- (a) if the park owner or the occupant gives notice of termination under this Part,
- (b) if the Consumer, Trader and Tenancy Tribunal makes an order terminating this agreement,
- (c) if a person having superior title to that of the park owner becomes entitled to possession of the site,
- (d) if a person succeeding to the title of the park owner (for example, a purchaser) becomes entitled to possession of the site to the exclusion of the occupant,
- (e) if a mortgagee in respect of the site becomes entitled to possession of the site to the exclusion of the occupant,
- (f) if the occupant abandons the site,
- (g) if the occupant delivers up vacant possession of the site with the prior permission of the park owner, whether or not that permission is subsequently withdrawn,
- (h) by merger (that is, where the interests of the park owner and the occupant become vested in the one person),
- (i) by disclaimer (for example, on repudiation by the occupant accepted by the park owner),
- (j) if the fixed term ends, there is no provision for a continuing agreement and the park owner or the occupant has terminated the agreement after the expiry of the next

period for which the occupation fee was payable.

Division 2 When can the occupant end this agreement?

37 Termination by occupant on breach of agreement

- (1) The park owner and the occupant agree that the occupant may give the park owner a notice of termination of this agreement if the park owner has breached a term of this agreement.
- (2) The park owner and the occupant agree that a notice of termination given under this clause must give at least 7 days' notice as to the day on which vacant possession of the site will be delivered up to the park owner.
- (3) If this agreement creates an occupancy for a fixed term, the park owner and the occupant agree that a notice of termination given under this clause is not ineffective merely because the day specified as the day on which vacant possession of the site will be delivered up to the park owner is earlier than the day the term ends.

38 Notice of termination by occupant without any reason (but not for a fixed term agreement that has not finished)

- (1) The park owner and the occupant agree that the occupant may give notice of termination of this agreement without having to give any reason.
- (2) The park owner and the occupant agree that a notice of termination given under this clause must give at least 30 days' notice as to the day on which vacant possession of the site will be delivered up to the park owner.
- (3) This clause does not apply if the agreement creates an occupancy for a fixed term and that term has not finished.

Division 3 When can the park owner end this agreement?

39 Termination on breach of agreement

- (1) The park owner and the occupant agree that the park owner may give notice of termination of this agreement to the occupant if the occupant has breached a term of this agreement.
- (2) The park owner and the occupant agree that a notice of termination given under this clause must not specify a day earlier than 7 days after the day on which the notice is given as the day on which vacant possession of the site is to be or will be delivered up to the park owner.
- (3) The park owner and the occupant agree that a notice of termination given by a park owner on the ground of a breach of the agreement to pay occupation fees has no effect unless the fees have remained unpaid in breach of this agreement for not less

than 14 days before the notice is given.

- (4) The park owner and the occupant agree that a notice of termination given by a park owner on the ground of a breach of the agreement to pay occupation fees is not ineffective merely because of any failure of the park owner or the park manager to make a prior formal demand for payment of the fees.
- (5) If this agreement creates an occupancy for a fixed term, the park owner and the occupant agree that a notice of termination given under this clause is not ineffective because the day specified as the day on which vacant possession of the site is to be or will be delivered up to the park owner is earlier than the day the term ends.

40 Notice of termination by park owner without any reason (but not for a fixed term agreement that has not finished)

- (1) The park owner and the occupant agree that the park owner may give notice of termination of this agreement without having to give any reason.
- (2) The park owner and the occupant agree that a notice of termination given under this clause must give at least 3 months' notice as to the day on which vacant possession of the site will be delivered up to the park owner.
- (3) This clause does not apply if the agreement creates an occupancy for a fixed term and the notice of termination specifies that it takes effect before that term finishes.

Division 4 Notices of termination

41 Notices of termination

The park owner and the occupant agree that a notice of termination must:

- (a) be in writing, and
- (b) state the address and site number of the site, and
- (c) be signed by the person giving it, and
- (d) be dated, and
- (e) allow the required period of time, and
- (f) give the date the occupant intends to, or is required to, give vacant possession, and
- (g) give the reasons for ending this agreement (if any), and
- (h) be properly given.

42 How notices are properly given

- (1) The park owner and the occupant agree that a notice of termination given to the

occupant may be:

- (a) posted to the occupant's site and to the occupant's principal place of residence, or
 - (b) given to the occupant personally, or
 - (c) given to a person aged over 16 who normally pays the occupation fees, or
 - (d) given to a person aged over 16 who occupies the site to pass on to the occupant.
- (2) The park owner and the occupant agree that a notice of termination given to a park owner may be:
- (a) posted to the park owner's residence, or
 - (b) given to the park owner or to the park manager personally, or
 - (c) posted or faxed to the park owner's, or park manager's, place of business, or
 - (d) given to a person aged over 16 who normally collects the occupation fees.

Division 5 Miscellaneous

43 Apportionment and recovery of occupation fees on termination

The park owner and the occupant agree that the occupation fees payable under this agreement accrue from day to day and on termination any outstanding occupation fee is payable.

44 Breach or notice of termination not waived by acceptance of occupation fees

The park owner and the occupant agree that a demand for, any proceedings for the recovery of, or acceptance of, occupation fees payable under this agreement by the park owner:

- (a) does not operate as a waiver of:
 - (i) any breach of this agreement, or
 - (ii) any notice of termination on the ground of breach of this agreement given by the park owner, and
- (b) is not evidence of the creation of a new occupancy.

Schedule 2 (Repealed)

Schedule 3 Savings and transitional provisions

(Section 53)

1 Regulations

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

 this Act

- (2) Any such provision 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 any such provision 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.