



Legislative Council

Holiday Parks (Long-Term Casual Occupation) Bill

Hansard - Extract

30/10/2002

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [11.40 a.m.]: I move:

That this bill be now read a second time.

I seek leave to incorporate the second reading speech in *Hansard*.

Leave granted.

This bill deals with a very Australian way of life which generations of families have enjoyed in both coastal and inland parts of NSW. It has been a great Australian tradition for many people to leave a caravan or other moveable dwelling on location in a caravan or mobile home park for regular recreational use during the course of the year. While their principal place of residence is usually in the suburban parts of our major cities their on-site vans and dwellings give them a much-loved affordable and regular escape from the pressures of everyday life. Sites are often rented on a quarterly or yearly basis and occupants are free, within the confines of the Local Government laws, to come and go as they please during the course of the year.

There are believed to be 10,000 or more long term casual park occupancies in existence in NSW, many of them on parks situated on Crown land. Annual occupation fees vary between \$1,000 and \$5,000.

I am sure that many members will recall with nostalgic delight the carefree holiday times in the caravan by the beach or the river shared with relatives, neighbours and friends. On-site vans made it so convenient to duck away for the weekend or the school holidays. The Department of Fair Trading has come across situations where the same family has had a van located in a caravan park or mobile home village for over 20 and sometimes up to 40 years for casual occupation. The joys of the lifestyle have passed on from one generation to the next.

This bill recognises this unique way of life and, for the first time, provides appropriate rights and obligations for both occupants and park owners in long term casual occupancy arrangements. Uncertainties over the legal status of the parties are removed and sensible consumer protection is provided. The bill will extend a range of appropriate benefits to both occupants and park owners in long term casual occupancy arrangements and provide a desirable level of certainty.

In the consultation process during the development of this bill, there was a level of consensus amongst park owners and occupants that the legal uncertainties surrounding long term casual park occupancies needed to be removed for the benefit of both parties. The key issues were seen to be standardisation of the forms of contract used in occupancy arrangements, a clear dispute resolution system and the prescribing of some minimum periods of notice for fee increases and termination of occupancy agreements. The bill addresses these, and other issues.

It is important at this stage to emphasise that this bill cannot be construed as tenancy legislation. It is made quite explicit in the bill that this is general fair trading legislation which, while clarifying the respective rights of the parties, does not confer a landlord and tenant status on the relationship. This would be clearly inappropriate. Casual park occupants have a home elsewhere and their recreational vans and dwellings are not their principal form of shelter. The tenancy

laws, which quite rightly provide significant support for tenants whose rented accommodation comprises their housing, do not have the same relevance to holiday style arrangements. After all, persons who stay in hotels, lodges and resorts, while having a level of consumer protection, and avenues to pursue disputes, obviously do not have the status that a tenant has in his or her relationship with a landlord. Long term casual park occupants are in a somewhat similar situation and this position is reflected in the bill. It is important to make this distinction as any expectation that this bill will extend tenancy rights to long term casual park occupants need to be quelled at the outset. The non-tenancy nature of casual occupancies is further reflected by the fact that disputes over casual occupancies will not be dealt with in the tenancy divisions of the Consumer, Trader and Tenancy Tribunal, but in the general consumer division.

One of the main reasons for this bill is that park casuals have no specific rights under any consumer protection legislation. Their position is left uncertain by the fact that many do not have written agreements, they are not subject to any minimum notice periods for fee increases or termination of their occupancy agreements and, significantly, there is no dispute resolution forum that they have access to when things go wrong.

While most park owners do the right thing, the Department of Fair Trading has been made aware of long standing casual arrangements being brought to a sudden end over the most trivial of incidents and without any opportunity for the occupant to redress the situation or to even discuss it with the park owner or manager. There have been incidents where occupants have been denied access to their van by the park owner despite having already paid fees in advance. They could neither use their van nor obtain a refund for the money they had paid in advance. While such a situation is clearly unjust, there are few options that an occupant has available for pursuing a complaint. The bill will overcome such unconscionable actions by the minority of park owners and managers who adopt such unilateral "take it or leave it" attitudes. These people do no favours to the majority of park owners and managers who adopt a far more professional and understanding approach to the management of their businesses.

The bill will remedy each of these deficiencies and will also include other provisions to give the parties more certainty in the important aspects of their ongoing relationship.

I would like now to briefly outline the main contents of the bill.

The bill will apply to long term casual occupancies only. It will come into play where a site is occupied for the placing of a person's own van or similar moveable place of abode for casual recreational use for a period of at least 12 months. Persons who have been in a casual occupancy for 12 months already will be immediately covered. Prospective occupancies of at least 12 months will also be covered. Occupancies that have no fixed term will be covered as soon as they have been in existence for the minimum 12-month timeframe. Short term tourist and holiday occupation and arrangements where people occupy a van or dwelling owned by the park owner will not be covered.

Park owners need not fear that the bill will affect their dealings in the short-term holiday market. It is the quite discrete long-term casual recreational market where people place their own vans on site that is being targeted by this bill.

In line with other fair trading legislation dealing with entering into long-term relationships with a trader, park owners will be required to provide advance information to prospective long-term casuals on the important aspects of occupying a site within the park. This is one way of eliminating later disputes about the nature of the arrangement and will help to reduce the prospect of possible misunderstandings over the respective expectations of the parties. The required information will relate to a number of important items including:

- the amount of the occupation fees
- whether the fee will vary during peak holiday periods
- whether there will be extra charges for visitors
- how much notice occupants will receive for fee increases
- whether occupants are permitted to sell their van on site and the details of any associated commission arrangements; and
- who pays for the cost of relocating a van within the park.

One of the major initiatives of the bill is to provide for a consistent form of occupancy agreement. The lack of written contracts applying to existing arrangements

is one of the identified problem areas. If a dispute arises it is difficult for both parties, but particularly occupants, to pursue their cause as the terms of the agreement have often never been formalised on paper. The bill provides a standard form of agreement which will deal with the main issues arising in the relationship between the occupant and park owner. Included in the agreement will be the length of the agreement and any provision for holding over, the occupancy fee and other fees, the period of notice to be given for fee increases and termination of the agreement and who is entitled to occupy the site. The agreement will also include obligations on occupants in regard to payment of fees on time, behaviour and proper use of their site. Obligations on park owners will include the issuing of receipts for payment of fees, allowing occupants to use their sites without undue interruption and ensuring that tradespeople engaged by occupants are given access. There is also room in the agreement for provisions to be included about selling vans on-site and any associated commission arrangements.

There will be flexibility for park owners to add clauses to their agreements to deal with issues arising in their park although some matters may not be changed. For instance, the minimum period of notice that a park owner may give to an occupant to terminate the agreement, that is where there is no breach of agreement by the occupant, is 3 months. This will allow occupants an adequate time to move their van or to make other arrangements. Of course, the 3 months notice cannot take effect during a fixed term agreement. Where there is a breach of an agreement, either party can give the other 7 days notice of termination.

Occupation fee increases will have to be preceded by at least 30 days written notice. Casuals will not be required to pay occupation fees more than 3 months in advance. If fees have been paid in advance and the park owner terminates the agreement, the balance of any fees paid in advance will have to be refunded.

The bill provides for a clear dispute resolution process. This is a major improvement to the current situation where the opportunity to have a disagreement or dispute resolved in connection with a casual occupancy relationship is extremely limited. The Consumer, Trader and Tenancy Tribunal will provide the circuit breaker. By having access to this forum, legal costs, formalities and delays will be minimised and the parties will quickly know where they stand should difficulties arise in their contractual relationship.

The Tribunal's main role will be to adjudicate disputes on issues arising under occupancy contracts and whether a breach by either party has occurred and whether an order should be made in relation to the breach. I would hope that in most cases the outcome will be that the parties can resume their relationship in a positive manner. The Tribunal will not have the same powers as it has for residential tenancy matters. It will not be able to rule on whether a fee increase is unreasonable as it can for rents on residential tenancies, nor will park owners be required to obtain an order from the Tribunal before taking possession of a site from an occupant whose agreement has come to an end. These are important jurisdictional differences and further highlight the fundamental dissimilarities between accommodation used on a recreational basis and that used as a permanent and primary place of abode.

While a park owner will not have to go to the Tribunal to take possession of a site from a casual occupant after giving the correct notice, there will be a stiff penalty for any park owner who dispossesses a person incorrectly. The bill includes a maximum penalty of \$5,500 for incorrect termination. I am sure that this will discourage park owners from taking arbitrary action.

In addition the Tribunal will have the power to order the park owner to give the correct notice before proceeding with a termination. If in the process of dealing with a breach, the Tribunal considers that it is appropriate to do so, it may terminate an occupancy agreement.

The bill will ensure an orderly process when the time comes for a park owner to sever his or her relationship with their casual occupants. It is only fair and reasonable that a person who has been a casual occupant of a park for many years and who would often have an emotive attachment to the park, its location and fellow occupants, is provided with a dignified conclusion to the arrangement. Some of them are pensioners or otherwise on limited incomes and there needs to be time to sort out their affairs after the park owner elects not to renew the occupancy. The van probably has to be moved or sold and this obviously takes a little time. The 3 months is considered to be reasonable to both parties in this situation.

The Government recognises that park owners will sometimes make a business choice to no longer provide sites for long term casual occupation purposes. This bill does not interfere in these commercial decisions. But it does ensure that occupants affected are given a reasonable time to make the necessary arrangements to sell or move their moveable dwellings.

The Tribunal will not have the same compensation awarding powers as it does for the termination of permanent park tenancies. In those situations, the permanent residents have to make provision for a new principal place of residence which may involve moving their dwelling to another park with all the consequential costs of connection to services. While a long term casual occupant may also have expenses in moving a dwelling from its site, the fact that it is not their main home and that it is not essential for them to retain the dwelling is of significance.

The bill provides for a number of other matters. It allows for the making of park rules for casual occupancies, it makes provision for the formation of a consultative committee comprised of park management and casual occupants and processes to deal with items of common interest are included to deal with goods left behind or abandoned by casual occupants.

This bill is a balanced piece of fair trading legislation. It provides surety to the parties without interfering unreasonably in the business operations of park owners nor occupation rights of those in long-term casual arrangements. I am proud to present this bill today.

My appreciation is extended to Darrell O'Connor, a foundation member of the Recreational Van and Home Owners Association for his tireless work in the interests of long term park casuals and the Caravan and Camping Industry Association which has taken a constructive approach in the consultation process on this bill.

I commend the bill to the House.