

Discussion paper

Eviction of residents of Caravan Parks not covered by Part 15 of the *Caravan Parks Act*

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1 DISPUTE RESOLUTION/EVICTIONS – CARAVAN PARKS NOT COVERED BY PART 15 OF THE CARAVAN PARKS ACT

1.1 What is the issue?

The main issue is that evictions of persons in caravan parks not covered by the dispute resolution provisions of the *Caravan Parks Act* can only be dealt with by the Supreme Court and the Local Court.

Arguably, the Courts are an inappropriate forum for dealing with these kinds of evictions.

The secondary issue is that of whether the legislation needs clarification as to how other disputes involving the owners of tourist caravan parks and residents should be handled.

1.2 Coverage of the Caravan Parks Act

The *Caravan Parks Act* (“the Act”) establishes the legal framework that provides for the rights and obligations of caravan park operators and residents in the Northern Territory. Section 10 the Act sets out that the Act applies to ‘*a caravan park agreement, made on or after the commencement of this section, that specifies the period of the occupancy granted under the agreement is for the prescribed period or more.*’

Section 10(3) of the Act provides ‘*if a caravan park is advertised as being for “holiday accommodation” or “tourist accommodation”, Parts 2 to 15 do not apply for an occupancy in the caravan park even if the period of the occupancy is for the prescribed period or more.*’ Under section 10(5) a caravan park operator and resident can enter into an agreement to ensure that the Act applies. Without any agreement Parts 2-15 of the Act does not apply to “tourist and holiday accommodation” caravan parks. Due to this provision it has become apparent that it is difficult for caravan park operators in this category to evict residents due to various breaches but in particular continuously late rental payments. One owner, through his lawyer, has advised that it has been necessary to obtain an order from the Supreme Court under the original jurisdiction of that Court.

It is noted that the Act does not affect the operation of the *Law of Property Act* or the common law.

1.3 Summary of the issues concerning eviction

Caravan Park operators that advertise the park as holiday or tourist accommodation are subject to a difficulty in evicting residents who continuously fail to pay their rent payments or otherwise breach the terms of their occupancy agreement. In absence of an agreement, under section 10(5) of the Act, between caravan park operators and residents, the Act does not apply to caravan parks that advertise as being available for tourist and holiday accommodation. This means

that the eviction/dispute resolution provisions in Part 15 do not apply. Neither owners or residents have a right to have disputes dealt with by the Northern Territory Civil and Administrative Tribunal (NTCAT)

The *Residential Tenancies Act* also does not apply. Caravan Park sites that are leased to residents do not fall within the definition of a “residential premises”. Section 6(1)(a) states that the *Residential Tenancies Act* does not apply to an agreement to occupy holiday accommodation and section 6(h) states that it does not apply to an agreement to occupy a caravan, immovable dwelling or a mobile home located at a caravan park.

The *Supreme Court Rules* in particular order 53, deals with ‘*the recovery of land which is occupied solely by a person who entered into occupation or, having been a licensee, remained in occupation without the plaintiff’s licence or consent.*’ This order is also inapplicable in the situation outlined. The *Local Court Rules* in particular Part 29 deals with a similar issue as the *Supreme Court Rules*. Order 29.01 states that ‘*where the plaintiff claims recovery of land that is occupied solely by a person who entered into occupation or having been a licensee, remained in occupation without the consent of licence of the plaintiff or the plaintiff’s predecessor in title.*’ This order is also inapplicable.

The problem is that the Act, as well as other outlined legislation, does not apply to caravan parks advertised as tourist and holiday accommodation. This makes it problematic for caravan park operators, within this category, to with the authority of a court or tribunal terminate occupancy agreements when a breach has occurred. With no relevant legislation applying to caravan parks advertised as tourist and holiday accommodation, if a resident continuously fails to pay rent the caravan park operator must apply to the Supreme Court or the Local Court to remedy the breach. This process can be very expensive and time consuming for caravan park operators who have to pay numerous fees, including filing and legal fees, to try and evict a resident and recover what may only be a few hundred dollars. The process is also likely to be relatively slow compared with that expected of NTCAT.

The Supreme Court is a superior Court and should not be dealing with minor matters such as this. The Local Court’s legislation is also currently being reformed so that the tenancy and small claims jurisdictions are being switched from the Local Court to the Northern Territory Civil and Administrative Tribunal.

There should be a more time and cost efficient process implemented to deal with breach of occupancy agreements for caravan parks that do not fall within the application of the Act. This should be implemented by legislative change to allow the NTCAT to hear all disputes involved with caravan park occupancy agreements even if the Act excludes them. However, as Part 10 does not apply (and cannot really apply if the rest of the Act does not apply) disputes will be dealt with in accordance with the terms of the lease or other agreement between the operator and the caravan park resident.

2 WHAT MIGHT BE THE OPTIONS FOR REFORM?

2.1 Apply Parts 10 and 15 of the Caravan Parks Act to the termination of Agreements

Part 10 of the Act contains numerous provisions that provide for termination of an occupancy agreement. If a breach of an occupancy agreement occurs, by either the caravan park operator or the resident, either party can give a notice of termination or apply to the Tribunal to get an order of termination. The breaches can involve numerous acts including an instance where the caravan is inhabitable to an instance of serious misconduct.

The form in which a notice must take is set out in section 117. If it does not comply with this section it will have no effect. Division 5 sets out when NTCAT can make an order of termination. The caravan park operator or resident can make an application to the Tribunal that outlines the circumstances in which an order of termination is sought. The processes for terminating an agreement under these provisions are effectively straight forward and operational for parties to which they apply.

If Part 10 were to apply to caravan parks excluded under section 10(3) of the Act there would be a much more structured legislative process for caravan park operators to evict residents for breach of an agreement.

Section 108 of the Act specifically deals with a resident's failure to pay rent. The resident falls within this section if rent has been in arrears for not less than three days. The caravan park operator can issue the resident with a notice outlining the breach and asking the resident to remedy the breach. This notice can also outline the caravan park operator's intention to apply to the Tribunal for an order of termination if they do not remedy the breach.

If the resident does not remedy the breach, the caravan park operator can apply under section 115 of the Act to the Tribunal to get an order of termination. Under this provision the Tribunal has the power to terminate the occupancy as long as notice has been given to the resident and the resident has failed to remedy the breach.

This section is contained within Part 10 and therefore does not apply to caravan parks advertised as tourist and holiday accommodation.

Part 15 provides that a person affected by an order of the Commissioner made under sections 141 and 145 may apply to the Tribunal for a review of the decision. Section 141 deals with park rules that are considered unreasonable and section 145 deals with options after giving notice about relocation. This Part currently does not apply to tourist accommodation caravan parks.

The fundamental problem in applying Parts 10 and 15 is that they rely, at least in part, on obligations and requirements deemed to apply by the Act. These obligations and requirements do not apply to tourist accommodation caravan parks.

The policy intent behind the Act not applying to tourist accommodation was that there is no practical justification in applying all of the statutory rights and obligations to caravan parks. The Act is structured so that there is a clear line between the parks/residences whose agreements operate as if the Act formed part of the agreement and those that operate outside of the Act. It is not practically possible to amend the Act so as to say that the Act's provisions regarding the right to terminate and/or resits termination apply to tourist parks.

2.2 Amend Part 15 so that it gives NTCAT the power to deal with evictions/disputes in general

Part 15 could be amended to allow NTCAT to deal with evictions and disputes in general. This would extend its current power beyond application to just sections 141 and 145. This would ensure that when any disputes arise between a caravan park operator and residents, which both are and are not captured by the current Act, can have the dispute heard by NTCAT. The dispute would be based around the rights and obligations of the parties as determined in accordance with the agreement between them, common law principles and statutory principles of a general nature (eg possible rights and obligations under the Australian Consumer Law).

2.3 Amend the small claims legislation

From 1 May 2016 the new small claims jurisdiction will be operational. Small claims will now be dealt with by NTCAT with an increase in jurisdictional limit to \$25,000. The provisions of the *Small Claims Act* could be amended to give NTCAT jurisdiction to deal with tenancy disputes of any kind that are not otherwise covered by the Act or the *Residential Tenancies Act*.

2.4 Make rules under the Local Court Act

Both the current *Local Court Act* and the *Local Court Act 2015* appear to give the Local Court jurisdiction to deal with the repossession of land. There are, however, no rules of court that spell out the process to be followed for an eviction. The current rules are limited to repossession of land where the person in possession has no right to be there in the first place.

Accordingly taking action under the Local Court Act could lead to considerable expenses because the party taking the action would need to invent the process. The same problems would apply as were encountered in taking action in the Supreme Court.

The current rules (dealing with repossession) could be amended so that they apply to evictions in circumstances not regulated by the Act or the *Residential Tenancies Act*.

3 PREFERRED OPTIONS FOR FIXING THE PROBLEM?

3.1 Preferred options for reform

The main option that could be implemented to resolve this issue is as follows.

The *Caravan Parks Act* could be amended so that the NTCAT has jurisdiction to deal with all caravan park disputes regardless of whether the residents of the caravan park are subject to other parts of the Act but that the disputes be determined around the terms and conditions agreed between the operator and the resident rather than the default provisions, rights and obligations implied by the Act.

Part 15 could be amended to allow NTCAT to hear general dispute and eviction matters relating to all caravan park operators and residents. The definitions could be amended to ensure that short term occupancy agreements are captured by the Act and occupancy agreements less than the prescribed period could be dealt with in the small claims jurisdiction as personal contractual rights.

Alternative

The other option would be that the Local Court develop rules to deal with this issue.

3.2 Proposed consultation

The following are proposed to be consulted in regards to this matter:

- Department of Housing;
- Commissioner for Consumer Affairs
- Northern Territory Caravan Parks Association;
- Tourism NT;
- Department of Lands, Planning and the Environment
- Northern Territory Judiciary and Northern Territory Civil and Administrative Tribunal
- Law Society Northern Territory
- Bar Association of the Northern Territory

3.3 Submissions on the discussion paper

The closing date for the making of comments is 14 June 2016.

Comments should be sent to:
Director, Policy Coordination
Department of the Attorney-General and Justice
GPO Box 1722,
DARWIN NT 0801

Or by email to Policy.AGD@nt.gov.au

