



Long-Term Park Residents and Casual Occupation Agreements.

Dear Resident

ARPRA has been contacted by a number of park residents, whose Park Owner has provided them with an 'Occupation Agreement'. These residents have expressed concern that having such an agreement means they are not properly covered by the appropriate legislation.

This letter seeks to address this issue, providing resolution and assurance to worried residents.

There are two different pieces of legislation which cover the various types of Agreements usually found in a Caravan Park. These are –

1. The Residential Parks Act 1998 (the **RP Act**).
2. The Holiday Parks (Long-Term Casual Occupation) Act 2002 (the **HP Act**).

In order to work out which piece of legislation covers you, the only real question you need to ask yourself is, Do I live here, or do I live somewhere else? If you live in a park, then the **RP Act** covers you. If you live somewhere else, but use your van for holidays only, then the **HP Act** applies to you. It really is as simple as that, no matter what your Agreement is called.

It is very important to work out which Act you fall under. The rules and regulations for each are very different. For instance, under the HP Act, the park owner can terminate your agreement without having to give you a reason for doing so. Under the RP Act however, if you own the home you live in, the park owner has no such right, and must provide a valid reason for the termination, or the termination has absolutely no effect.

Both Acts have a section in them that is designed to help you work out which Act applies.

Section 5 of the HP Act says that it only applies to agreements in which the occupant has a 'principal place of residence' somewhere other than the park, and that these occupants must not stay in their van or home more than 180 days in any year.

Quite simply, if you have no other place you call home, and you have spent more than 180 days in any year living in the park in your home, then the Holiday Parks Act cannot possibly be applied to you, because the law says it can't.

Section 5 of the RP Act says that it only applies to residents in a park whose home in the park is their principal place of residence. These residents live in their homes all year round.

Again, if you have no other place you call home, and you have spent more than 180 days in any year living in the park, then the Residential Parks Act MUST be applied to you, because the law says it has to.

Residents have asked, “We live in the park, we have no other home anywhere else, our driver’s licence gives the park as our address, Centrelink knows we live here, and we get rent assistance. But our Park Owner has given us an Occupation Agreement. Doesn’t that force us under the HP Act instead?”

This seems to be the Big Question. Residents are convinced they should be under the RP Act, but are worried that the Occupation Agreements they’ve been given mean they’re not properly covered. They worry that these Agreements mean the Park Owner can throw them out of the Park whenever they feel like it.

The short answer to the above question is... NO. And here is why.

Both Acts contain a Section called “**contracting out prohibited**”.

In the HP Act, it is Section 49. In the RP Act, it is Section 144. Both Sections have the following lines in common –

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 ... 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.”

In other words, if you live in a park and do not live anywhere else, you are entitled to the full protection of the Residential Parks Act, and have rights under that Act. If anyone, including your Park Owner, seeks to remove those rights by making you sign a **contract outside** the RP Act and inside the HP Act or any other Act, then that person has committed an offence against the RP Act, which is punishable with a fine of up to \$2200. For each offence.

Here is a common example –

Under the Residential Parks Act, if the Park Owner wants to increase your rent, he must serve you with a Rent Increase Notice giving you at least 60 days’ notice. No earlier than 60 days. It can be 61 days, 70 days, or 80, 100, or 150 days, but it cannot be 59 days.

Under the HP Act, an occupant must be given 30 days' notice in writing if the park owner wants to increase the occupation fees. Not 29 days, not 31, not 50, and not 60.

The difference is crucial.

The RP Act says the minimum number of days is 60.

The HP Act says the exact number is 30 days.

So. How much Notice did you get with your last increase?

Bet it was 60 days. Bet it wasn't 30. If your park owner is so convinced that the HP Act applies to you, why isn't he giving you 30 day notices, when the HP Act says he can?

He is giving you 60 days' notice, because that is what the RP Act needs, and he knows that a 30 day notice would get thrown out of the Tribunal as invalid.

If the HP Act really did apply to you, then he may be guilty of committing the offence of 'contracting out' by giving you 60 days' notice. Equally, if the RP Act applies to you, he would be committing an offence under that Act by giving you only 30 days' notice.

The "Contracting Out" provisions of the Residential Parks Act gives you complete security and legislative protection, even when your park owner is wilfully trying to evade it. It doesn't even matter that you've signed an Occupation Agreement. You can sign an illegal contract a thousand times, it is not miraculously going to turn into something that is legally binding.

In 2008, the Tribunal heard and determined a case known as *Hayward v Hastings Riverside*. The case was heard by the Tribunal's Chairperson herself, Ms Kay Ransome. There was no higher authority in the Tribunal at that time. The applicants in the case tried to convince Ms. Ransome that the RP Act applied to them, even though they had never lived in the park, and the Act clearly states that residents must occupy the site as their principal place of residence. Their reasoning was based on the fact that they had already signed a Residential Site Agreement, which clearly says the RP Act applies to it. Ms. Ransome disagreed.

She said –

"The signing of the residential site agreement cannot alter the fact that they do not meet the requirements of the Residential Parks Act."

In your case, the signing of an Occupation Agreement cannot alter the fact that you do NOT meet the requirements of the Holiday Parks (Long Term Casual Occupation) Act.

That leaves only the Residential Parks Act 1998, no matter what your park owner tells you.

Are you paid rent assistance? The Government does not give rent assistance for people's holiday vans. Centrelink only provides rent assistance for the rent paid on people's homes.