

Compliance Issues under the Caravan Parks and Camping Grounds Act 1995

By Madeline Madvad

Introduction

Caravan parks and camping grounds can create an enormous headache for local governments from a compliance perspective. Regulating caravan parks requires an analysis of health, building, and planning issues, in addition to the respective requirements imposed under the *Caravan Parks and Camping Grounds Act 1995* (**Act**) and the *Caravan Parks and Camping Grounds Regulations 1997* (**Regulations**). Local governments can also become entangled in disputes between caravan park operators and their tenants, even though those disputes fall outside of local government jurisdiction.

In recent years, as more concerns arise in relation to the availability of affordable housing, we have seen a predictable surge in compliance issues relating to camping outside of licensed caravan parks. In response to these issues, the Regulations were amended in August 2024 to enable greater flexibility for persons seeking to camp on private property. While those amendments may provide some benefits to prospective campers, they are also causing some confusion as to the extent and effect of these new provisions in a wider context.

McLeods has an experienced and dedicated team of lawyers who specialise in local government compliance and we frequently advise local governments in relation to the merits and benefits of commencing appropriate prosecutions. Unfortunately, for the reasons that will be further analysed below, caravan parks and camping represent exceptions to that position – we believe prosecutions under the Act and/or Regulations are an action of absolute last resort.

Instead, there are other tools available for local governments to regulate compliance, which provide greater leverage for local governments and, ideally, negate the need for prosecutions under the Act and/or Regulations.

Camping Amendments

From September 2024, the Regulations (as amended) provide for increased flexibility for campers on private property, notably including an opportunity to camp on private property for up to 5 days without approval and for up to 24 months with local government approval.

In isolation, the purpose of those amendments is understandable, having regard to the current shortage of available housing. Subject to compliance with relevant planning, building, and health legislation, this more permissive approach can provide benefits to the community. Importantly, local governments must still ensure that their processes for assessing and determining any applications for approval address a wide range of relevant criteria and include appropriate conditions to

regulate this activity, in accordance with regulation 11A(3)(c) of the Regulations. Those conditions are particularly important, because a local government may need to cancel any approval if one or more conditions is being breached.

However, we have already seen instances where a misunderstanding of this legislation has resulted in increased compliance concerns. In particular, this permissive approach to camping has been incorrectly interpreted as a blanket exemption from all regulatory approvals for camping on private property. Putting aside the application of the Regulations, camping on private property may still give rise to the following compliance issues:

1. From a planning perspective, the use of private land for a substantial number of short-term caravan or camp sites may require development approval, even if it does not require approval under the Regulations. The Regulations do not displace the requirement for development approval for a property to be used as a camping ground.
2. From a building perspective, the placement or erection of relocatable buildings may still require a building permit.
3. From a health perspective, compliance issues may arise if (for example) an industrial shed is being used as a dwelling or if unapproved effluent disposal systems are installed.

While the Regulations have only come into effect relatively recently, local governments must ensure that they communicate with their residents to explain that an approval under the Regulations does not constitute an exemption from other statutory approval requirements.

As noted in the introduction, we are reticent to recommend that local governments take enforcement action under the Regulations themselves, as the penalties are extremely modest – despite recent increases in the amendment legislation. However, these enforcement issues will not arise under the Regulations and will, instead, arise under planning, building, or health legislation which carries more substantive deterrent penalties.

Caravan Park Prosecutions and Enforcement

In our view, prosecutions under the Act and Regulations are an option of last resort. The penalties are very low, as noted above. Furthermore, many of the definitions and concepts within the legislation (such as ‘camping’ and ‘park homes’) are somewhat contentious. In addition, local governments are often caught between competing responsibilities and interests – as there may be disputes between operators and tenants and there can be difficulties in distinguishing between which matters should be addressed by local governments and the Department of Local Government, Sport, and Cultural Industries (**DLGSC**).

In many instances, non-compliant caravan parks will also find themselves in breach of other related legislation – typically planning, building, and health. If we are tasked with assisting local governments with caravan park compliance, those other legislative options are likely to be a more effective basis for enforcement action, as the legislation is less ambiguous and the penalties are more significant. For example, we prosecuted a regional caravan park operator in 2023 for a planning offence, which resulted in a \$50,000 penalty, payable to the local government.

A local government still has a duty to administer the Act and Regulations and to deal with any compliance issues that arise in that context. From a risk management perspective, a local government will be liable if it fails to take action in respect of a known risk, where there is a head of power to do so. However, there will be limited circumstances where a serious or urgent breach of those provisions does not give rise to other compliance issues – especially from a building and health perspective.

For example, where a building is dangerous or unfit for habitation, building and health legislation provide a far stronger basis for compliance action than the Act and Regulations. Where there are technical breaches of the Act and Regulations which do not give rise to any risks or other legislative breaches, in some cases those may be matters which should be referred to DLGSC rather than becoming the subject of local government intervention.

Caravan Park Licences and Conditions

While we would prefer to address any serious caravan park compliance issues through other related legislation, it will not always be possible to do so. For example, an operator who fails to comply with approved site numbers (or types) or does not provide appropriate fire safety protection may require compliance action under the Act or Regulations.

The Regulations are extremely prescriptive in relation to matters affecting all caravan parks. However, effective regulation of caravan parks is intrinsically connected to appropriate registration and licensing of caravan parks, as a local government can impose specifically adapted conditions to deal with the unique requirements of a given caravan park.

The most common compliance issue we encounter with caravan parks derives from operators exceeding the limit of occupiers authorised by their licence and/or not using sites in accordance with their site plan. In each case, these requirements can only be enforced if the relevant licence clearly establishes the permitted number, type, and location of sites for a caravan park. A licence which is light on detail in this respect is likely to be less capable of enforcement.

The majority of a local government's enforcement powers derive from the implementation and enforcement of conditions of a caravan park licence, as the failure to comply with those conditions can give rise to an offence and, perhaps more significantly, the issue of a prohibition notice under the Act.

In our experience, prohibition notices are used rather infrequently, which is unsurprising given their effect. A prohibition notice will prevent an operator from admitting new occupiers or collecting rent or hirings during the period of the notice. In that respect, it is likely to have a greater impact than a prosecution under the Act and Regulations.

While a prohibition notice represents a rather escalated approach to dealing with caravan park enforcement, local governments also have an intermediate option for ensuring compliance and accountability. We understand that a caravan park licence typically is issued on an annual basis, which is a sensible approach. However, there is nothing to prevent a local government from issuing a licence for a shorter term, especially where there has been a history of compliance issues at a caravan park.

While a prohibition notice may be perceived as an extreme response in some instances, a local government can still exercise some leverage over operators by only providing short-term licence renewals which are contingent upon ongoing compliance or improvement towards compliance. For example, where a park requires a series of upgrades to its infrastructure, a local government might prefer to grant a 3-month or 6-month licence renewal on the basis that further renewals will only be granted if those upgrades are progressed or completed. That option allows for a more measured means of addressing compliance, which allows for the local government to retain its leverage while pursuing a collaborative approach with the operator.

Recommendations

Local governments have very onerous obligations under the Act and Regulations, as reflected by the amount of detail addressed above. For ease of reference, our fundamental recommendations can be summarised as follows:

In relation to camping under the Regulations (as amended), remind residents that these new arrangements do not negate the need to obtain other statutory approvals.

In relation to caravan parks:

1. Prosecutions under the Act and Regulations are a last resort but other legislation may provide greater assistance.
2. Ensure that licences and site plans are clear and detailed, to provide maximum accountability.
3. Do not provide long-term caravan park licences to operators who persistently fall short of their statutory obligations.

The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case. For any comments or questions on this article please contact Madeline Madvad (mmadvad@mcleods.com.au).

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