

Victorian Caravan Parks Association

Submission to the Australian Consumer Law Review



26 May 2016

The Victorian Caravan Parks Association Inc. (VicParks) is the peak industry body for owners, managers and lessees of caravan parks in Victoria. Its members are predominantly regionally based, and the industry forms an important component in the supply of both regional tourism and regional residential accommodation.

The caravan park industry provides economic benefits and employment to regional towns and cities across the state; current state and federal government research indicates that there is significant opportunity for increased tourism visitation, and a subsequent increase in regional economic growth and employment as a result.

VicParks members employ more than 2500 staff in regional locations. The Victorian caravan park industry is estimated to contribute more than \$475 million annually to the Victorian state economy.

The Strategic Plan of the Victoria Caravan Parks Association that was developed in 2013 identified that caravan parks hold more than 54% of all accommodation capacity in Victoria. However, there is an average vacancy rate of about 49-52% across the entire year, for all but the peak summer weeks in late December-January during the summer school holidays.

By and large VicParks members conduct their businesses within the framework of, and in compliance with, the Australian Consumer Law. There is, however, one issue that has in recent times had a significant impact on several VicParks members. The issue relates to the rights of the parties to a frustrated contract.

The provisions in question are found not in the Australian Consumer Law but in Part 3.2 of the *Australian Consumer Law and Fair Trading Act 2012 (Vic)* ("ACLFTA"). However given that the current review is being undertaken on a national basis by officials from federal, state and territory consumer law regulators, it is an appropriate forum for it to be raised and considered.

The issue

Section 35(1)(a) effectively defines a discharged contract as one where the parties are discharged from the further performance of the contract because performance of the contract becomes impossible.

Section 36(1) of ACLFTA provides that all amounts paid to any party under a discharged contract before the time of discharge are recoverable.

Whilst VicParks does not suggest that these provisions are, in principle at least, unfair, the catastrophic bushfires that occurred along the Great Ocean Road on Christmas Day 2015 and in the days following brought into sharp focus the practical difficulty faced by many VicParks members in meeting their obligations under section 36.

For these members the period from Boxing Day until the end of January represents their peak period and they rely on the income generated during that period to get them by over the winter months in which, typically, their caravan parks are very quiet.

The fires effectively closed the area for a number of weeks. Patrons who had booked to stay in these members' parks were unable to access the area and stayed away thereby depriving the park operators of critical cashflow through no fault of either the patrons or the park operators. The loss of

that income coupled with the legal obligation to refund deposits paid put considerable pressure on the financial resources of a number of VicParks members.

Whilst it is possible for park operators to insure against income lost in this way, claims take time to be processed and at least one member was faced with reluctance by an insurer to pay a claim because the insurer claimed that it would have been possible for patrons to delay arrival at the caravan park and/or travel to the park by a route not affected by the fires which would have added several hours to the trip. That attitude ignored the practical reality that many of those patrons were locked into periods of recreational leave and were simply unable to defer their visits to the affected caravan parks.

VicParks submits that it would be appropriate for the Review Panel to consider ways in which the practical effect on park operators in these circumstances could be taken into account in assisting them to meet their obligations under section 36 without imposing significant financial stress.

Thank you for your consideration of these comments.

Yours sincerely



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