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**Standard Form Agreement For the Purposes of s.27 of the *Caravan Parks Act***

I, Gregory John Shanahan, Chief Executive Officer of the Department of Justice, approve for the purposes of section 27 of the *Caravan Parks Act* (the Act)<sup>1</sup>; the agreement contained in the schedule as a standard form caravan park agreement for agreements of the kind referred to in section 10(1) of the Act<sup>2</sup>.

(Signed)

Gregory John Shanahan  
Chief Executive Officer

30 April 2012

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<sup>1</sup> Section 27 permits the Chief Executive Officer of the Agency with responsibility for the administration of the *Caravan Parks Act* (the Act) to approve standard form agreements. A standard form agreement must contain terms that are mandated under the Act. The terms also must not be contrary to any provision of the Act. The purpose of standard form agreements is set out in section 27(4) of the Act. The purpose is that a court or the Commissioner of Tenancies may have regard to a term in a standard form agreement when applying sections 26(2) (b) (iv) (dealing with agreements that have not been signed by all of the parties) and 26(3) (d) (dealing with agreements that are not in writing but for which rent has been paid) of the Act.

<sup>2</sup> This agreement does not apply to long term occupants as defined in section 178 of the Act except where such long term occupants are covered by section 10(1) of the Act in which case the termination periods specified in Part 16 of the Act apply.

## Schedule

### Part 1: Caravan park residency details

**Item 1: 1.1: Caravan Park operator**

The person to whom rent is paid under this caravan park agreement.

Address for service

The address of the caravan park to which this caravan park agreement applies.

**Item 2: 2.1 Caravan Park resident/s (the resident)**

The person who paid the rent to the operator under this caravan park agreement

Address for service (if different from address of the premises in Items 4 & 5)

**Item 3: Notices may be given to:**

**3.1 Operator** by email Yes  No  by facsimile Yes  No

**3.2 Resident** by email Yes  No  by facsimile Yes  No

**Item 4: This caravan Park (the Park)**

The name and address of the caravan park to which the resident has been given access.

Insert name, address or other description of this caravan park where the premises or site is.

**Item 5: Premises**

**5.1 Location of caravan site**

The location of the caravan and caravan site, or caravan site to which the resident is given access.

Identify where the moveable dwelling is, or is intended to be, situation, for example by its site number.

**5.2 The moveable dwelling**

The moveable dwelling located upon the caravan park site to which the resident is given access.

**5.3 Inclusions for the premises**

The inclusions located at the caravan site when the resident is given access.

Insert inclusions, for example, annexure, furniture or other household goods let with the premises. Attach list if necessary.

**Item 6: 6.1 The term of the agreement is:**

A periodic occupancy for periods equal to the periods for which rental is payable.

Insert 'fixed term agreement' or 'periodic agreement'.

**6.2 Starting on:** The date upon which the first payment of rental is made / /20

**6.3 Ending on:** The date that the periodic occupancy ends / /20

**Item 7: Rent**

The amount of rental paid by the resident to the operator for the period in respect of which the rent was paid (either weekly, fortnightly or monthly as the case maybe).

**Item 8:** Rent must be paid on the same day each week (in respect of a weekly occupancy) or fortnight (in respect of a fortnightly occupancy) or month (in respect of a monthly occupancy) as the day of the week, fortnight or month (as the case maybe) as the first rental payment in respect of the occupancy was made..

**Item 9:** Method of rent payment:

In the same manner as the first rental payment was made by the resident to the operator.

Insert the way the rent must be paid.

**Item 10:** Place of rent payment:

To the operator as directed by the operator and if no direction is given then in cash to the operator.

**Item 11:** Rent increases

Subject to section 51 of the Act (as set out in clause 25), the operator has the right to increase the rental payable under this caravan park agreement if one of the following applies:

- (a) the operator has a system in place where rents for the park as a whole increase or decrease on a particular day or days of the year (eg for seasonal reasons) – the rent may be increased in accordance with that system;
- (b) there has been an increase in the CPI (Darwin) over the period of 12 months since the rent was set – the rent may be increased by a percentage equal to that CPI increase.

**Item 12:** Security Deposit (if applicable)

If a security deposit has been paid by the resident to the operator, the amount of that payment but the amount of the security deposit shall not exceed an amount equivalent to four weeks' rental.

**Item 13:** The services supplied to the premises for which the Resident must pay:

Write 'yes' or 'no' for each of (a) to (d).

(a) electricity	(b) gas	(c) sewerage	(d) water
<input type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Yes

**Item 14:** Are there any park rules for the park?

If there are rules for the caravan park then such rules are applicable to this agreement.

**Item 15:** Nominated repairers:

Such repairers as are nominated by the operator to the resident at the time the first payment of rental is made by the resident to the operator.

(a) Electrical repairs	<input type="text"/>
Telephone	<input type="text"/>
(b) Plumbing repairs	<input type="text"/>
Telephone	<input type="text"/>
(c) Other	<input type="text"/>
Telephone	<input type="text"/>

Insert name and telephone number for each.

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## 1. DEFINITIONS

See at the end of this document.

## 2. TERMS OF CARAVAN PARK AGREEMENT (S.25 OF THE ACT)

- (a) The *Caravan Parks Act* (the Act) provides for various standard terms to apply to all caravan park agreements. These standard terms are sought to be duplicated in this agreement. However, to the extent that there may be a discrepancy (eg if the Act is amended or its application modified by regulation) the provision of the Act prevails over any provision of this agreement.
- (b) The Act also imposes duties on, and gives entitlements to, the operator and resident that are taken to be included as terms of this agreement.
- (c) The operator and resident may agree on other terms of this agreement (special terms).
- (d) If there are Caravan Park Rules (Rules), section 12 of the Act provides that those rules for the time being in force are taken to be terms of this agreement. This means that a breach of the rules is a breach of this agreement.
- (e) A duty or entitlement under the Act overrides a standard term or special term if the term is inconsistent with the duty or entitlement.
- (f) A standard term overrides a special term if they are inconsistent.

## 3. CONTRACT TO AVOID ACT PROHIBITED (S.28 OF THE ACT)

- (a) The operator must not enter into this caravan park agreement or an arrangement relating to this caravan park agreement that does either of the following except to the extent allowed by the Act:
  - (i) excludes, modifies or restricts the operation of, or waives a right under, the Act whether directly or indirectly;
  - (ii) purports to exclude, modify or restrict the operation of, or to waive a right under, this Act whether directly or indirectly.
- (b) The operator commits an offence if the operator enters into this caravan park agreement or an arrangement relating to this caravan park agreement that results in a contravention of subclause 3(a).

## 4. RESIDENT NOT TO GIVE FALSE INFORMATION (S.29 OF THE ACT)

- (a) It is a term of this caravan park agreement that the resident must not give the operator:
  - (i) information about the resident's identity that is material to the operator's decision to enter into this caravan park agreement and that is, to the knowledge of the resident, false; or
  - (ii) any other information, required under this Act to be given in relation to this caravan park agreement, that is, to the knowledge of the resident, false.

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- (b) The resident commits an offence if the resident engages in conduct that results in a contravention of the term mentioned in subclause 4(a)..

## **5. HARSH OR UNCONSCIONABLE TERMS (S.30 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to s.30 of the Act:

- (a) On application to a court by the resident under this caravan park agreement, the court may make an order rescinding or varying a term of this agreement (other than a term specified under the Act to be a term of this caravan park agreement) if satisfied the term is harsh or unconscionable.
- (b) On making an order under subclause 5(a), the court may make consequential changes to this caravan park agreement or another related document

## **6. OPERATOR CANNOT IMPOSE EXTRA CHARGES OR LIABILITIES (S.32 OF THE ACT)**

- (a) The operator and the resident both acknowledge and agree that pursuant to clause 32 of the Act the operator commits an offence if the operator requires or receives from the resident a payment (other than a payment of rent or a security deposit):
  - (i) for an occupancy or continuation of an occupancy; or
  - (ii) for an option to enter into this caravan park agreement.
- (b) The operator commits an offence if the operator requires the resident to enter into a contract of insurance, guarantee or other agreement, in relation to the agreement property, an occupancy or continuation of an occupancy.

## **7. CONDITION REPORTS GENERALLY (S.33 OF THE ACT)**

A **condition report** is a report about agreement property to be occupied under this caravan park agreement that is made:

- (a) entirely in writing and otherwise in the manner and including the information required under this Act; or
- (b) partly in writing and partly by using images; or
- (c) entirely by using images.

## **8. CONDITION REPORT AT START OF OCCUPANCY (S.34 OF THE ACT)**

- (a) The operator may give the resident a signed condition report about agreement property occupied under this caravan park agreement no later than 3 business days after:
  - (i) the resident takes possession of the caravan and caravan site, or the caravan site, provided under the agreement; or
  - (ii) the start of a continuation of an occupancy under the agreement.
- (b) A condition report must:

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- (i) specify the condition of the following:
    - A. if this caravan park agreement is a caravan and park site agreement:
      - (I) the caravan site to which the agreement relates; and
      - (II) the walls, floors and ceilings of the provided caravan and, if it has rooms, the walls, floors and ceilings of each room of the caravan;
    - B. otherwise – the site to which this caravan park agreement relates; and
  - (ii) itemise, and specify the condition of, any fixture or chattel; and
  - (iii) include other prescribed information, if any.
- (c) The operator must fill out the condition report under subclause 8(a) in the resident's presence unless it is not practical to do so or the resident does not appear at the agreed time.

## **9. ACCEPTANCE OF CONDITION REPORT WITH OR WITHOUT MODIFICATIONS (S.35 OF THE ACT)**

- (a) Within 5 business days after receiving a condition report under clause,8 the resident may:
  - (i) accept the report by signing and returning it to the operator; or
  - (ii) not accept it but mark the changes as the resident thinks appropriate on the report, initial the changes and return the report to the operator.
- (b) If the resident does not take either action mentioned in subclause (1) within the time specified in that subclause, the resident is taken to have accepted the condition report.
- (c) Within 5 business days after the operator receives a condition report as changed by the resident as mentioned in subclause 9(a)(ii), the operator may do any of the following:
  - (i) accept the report as changed by the resident by initialling the changes and, without making further changes, return a copy of the report to the resident;
  - (ii) reach agreement with the resident as to the contents of the report and accept the report by having both parties initial all changes to the report that are accepted by them;
  - (iii) make an application to the Commissioner under clause 10.
- (d) If, within the 5 business days as mentioned in subclause 9(c), the operator does not take any of the actions mentioned in that subclause, the operator is taken to have accepted the condition report as changed by the resident.

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**10. COMMISSIONER MAY PREPARE CONDITION REPORT IF NO AGREEMENT (S.36 OF THE ACT)**

- (a) This clause applies if the operator and resident are unable to reach agreement under clause 9(c)(ii) .
- (b) The operator or the resident may, within 5 business days after the operator receives the condition report as changed by the resident, apply to the Commissioner to prepare a condition report about the agreement property.
- (c) As soon as practicable after receipt of the application, the Commissioner may prepare a condition report about the agreement property.
- (d) For the purposes of this caravan park agreement and the Act, the operator and resident are taken to have accepted the condition report prepared under subclause 10(c).

**11. CONDITION REPORT CONCLUSIVE OF CONDITION AT START OF OCCUPANCY (S.37 OF THE ACT)**

- (a) This clause applies if a condition report is or is taken to have been accepted under clauses 9 or 10 by the operator and resident unless the Commissioner determines otherwise in a particular case.
- (b) If the condition report relates to the start of an occupancy to which this caravan park agreement relates, the report is evidence of the condition of the agreement property and of the provision of, and the condition of, any other property mentioned in the condition report at the start of the occupancy.
- (c) If the condition report relates to the start of a continuation of an occupancy to which this caravan park agreement relates, the report is evidence of the condition of the agreement property and of the provision of, and the condition of, any other property mentioned in the condition report at the start of the continuation.

**12. CONDITION REPORT HAS EFFECT FOR CONTINUATION OF OCCUPANCY (S.38 OF THE ACT)**

- (a) This clause applies to an occupancy to which this caravan park agreement relates (the ***original occupancy***) if the occupancy is continued and a condition report is not prepared under clause 8 in relation to the continuation.
- (b) The condition report that had effect under clauses 9 or 10 for the original occupancy of the agreement property continues to have effect for clauses 9 or 10 for the continuation.
- (c) It is immaterial for subclause 12(b) whether either or both of the following apply:
  - (i) there is a waiver of rent in relation to the period from the end of the original occupancy until a new agreement starts or the occupancy is continued;
  - (ii) the residents for the new agreement or continuation of the occupancy include someone who was not previously the

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resident under the original occupancy as long as one of the residents for the new agreement or continuation was the resident under the original occupancy.

**13. OPERATOR MUST NOT REQUIRE RESIDENT TO VACATE FOR CONDITION REPORT (S.39 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to section 39 of the Act the operator breaches this agreement if the operator requires the resident to vacate agreement property occupied under this caravan park agreement in order to make a condition report under clauses 9 or 10.

**14. BONDS (S.40 OF THE ACT)**

- (a) The resident shall pay to the operator at the commencement of this caravan park agreement a security deposit (if any) as provided for or identified in Item 12.
- (b) The operator and the resident both acknowledge and agree that pursuant to section 40 of the Act the operator breaches this agreement if the operator requires the payment of:
  - (i) more than one security deposit for the same caravan park agreement; or
  - (ii) a security deposit of an amount greater than the rent payable under the agreement for 4 weeks.
- (c) For subclause 14(b)(ii), the money payable under the agreement as rent for 4 weeks is the lowest amount payable for a single week under the agreement, at the time it was made, multiplied by 4.
- (d) Money paid to the operator as a security deposit must be held by the operator in trust for the resident.
- (e) The operator breaches this agreement if the operator does not deposit an amount paid to the operator as a security deposit into:
  - (i) an account established for section 50 of the *Agents Licensing Act*; or
  - (ii) a prescribed account kept by the operator.
- (f) The operator does not breach clause 14(e) if the operator proves the operator:
  - (i) operates a prescribed account as a trust account; and
  - (ii) maintains an amount of money in the trust account that is at least equal to all amounts of money the operator may receive under clause 14(b) as security deposits if all caravans and caravan sites at the caravan park were occupied under caravan park agreements.

**15. INCREASE IN SECURITY DEPOSIT (S.41 OF THE ACT)**

- (a) If the rent payable under this caravan park agreement has been increased under this caravan park agreement, the operator may, by written notice, require the resident to pay a further amount by way of security deposit that will increase the total of all amounts paid by the resident as security deposit in relation to the occupancy to not more



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than the amount payable for a single week's rent at the increased rate multiplied by 4.

- (b) Subclause 15(a) only applies if the notice is given after 2 years after a security deposit was given or a security deposit was last increased under this clause in relation to this caravan park agreement.
- (c) If the security deposit payable under this caravan park agreement is increased under this clause, the terms of the bond are varied accordingly.

**16. RECEIPT TO BE PROVIDED FOR SECURITY DEPOSIT (S.42 OF THE ACT)**

- (a) If a security deposit is stated in Item 12 the resident must pay to the operator the security deposit and if a person has paid a security deposit as provided in Item 12 to the operator by cash, cheque or credit card, the operator must immediately give a receipt under subclause 16(c) to the person who paid the security deposit or the resident for whom the payment was made.
- (b) If a person has paid a security deposit to the operator other than by cash, cheque or credit card, within 2 business days after receiving the security deposit, the operator must give a receipt under subclause 16(c) to the person who paid the security deposit or the resident for whom the payment was made.
- (c) A receipt for subclause 16(a) or 16(b) must be signed by the person who received the security deposit to which it relates and must specify all of the following:
  - (i) the date the security deposit was received;
  - (ii) the name of the resident for whom the payment was made;
  - (iii) the amount paid;
  - (iv) the address of this caravan or caravan site to which the payment relates.

**17. STATEMENT OF SECURITY DEPOSIT DETAILS TO BE GIVEN TO RESIDENT (S.43 OF THE ACT)**

- (a) This clause applies if the resident has paid a security deposit to the operator and subsequently asks the operator to provide details about whether the amount has been paid into an account of the type mentioned in clause 14(e);
- (b) If the amount has been paid into an account of the type mentioned in clause 14(e), the operator must give the resident a written statement of the following details about the account:
  - (i) the name of the account;
  - (ii) whether or not the account is an account established under section 50 of the *Agents Licensing Act*;
  - (iii) if the account is not an account established under section 50 of the *Agents Licensing Act* – the name of the financial institution where the account is held and the rate of interest;

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- (iv) the amount of the security deposit in relation to the resident that was paid into the account;
  - (v) the day on which the security deposit was paid into the account.
- (c) If the operator operates a trust account of the type mentioned in clause 14(f), the operator must give to the resident a written statement of the following details about the account:
- (i) the name of the account;
  - (ii) the name of the financial institution where the account is held and the rate of interest;
  - (iii) the total of the funds held in the account.

**18. APPORTIONING OF SECURITY DEPOSIT BETWEEN CO-RESIDENTS (S.44 OF THE ACT)**

- (a) If there is more than one resident under this caravan park agreement, the agreement may specify the proportions of the security deposit paid in relation to each resident under the agreement.
- (b) If this caravan park agreement does not specify the proportions of the security deposit paid in relation to each resident under the agreement, the security deposit is taken to have been paid in equal proportions by all the residents.
- (c) Subclause 18(b) does not apply if either of the following applies and the operator has been notified accordingly:
  - (i) the Commissioner has determined otherwise;
  - (ii) all the residents agree in writing about the proportions paid as security deposit in relation to each resident.

**19. HOW AND WHERE RENT TO BE PAID (S.45 OF THE ACT)**

It is a term of this caravan park agreement that the resident must pay the rent specified under the agreement in Item 7 in the manner and at the place specified or determined in accordance with Items 8, 9 and 10 of this agreement.

**20. OPERATOR TO KEEP PROPER RECORDS OF RENT (S.46 OF THE ACT)**

- (a) The operator must not fail to keep a written record, as required under subclause 20(b), of each instalment of rent received.
- (b) The record must consist of:
  - (i) the amount of rent paid; and
  - (ii) the date on which the rent was received; and
  - (iii) the period of the occupancy to which the rent relates; and
  - (iv) the address of this caravan or caravan site to which the rent relates.
- (c) The record may be in an electronic form.

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- (d) For subclause 20(b)(iii), the period of the occupancy is to be presumed to be the next period for which rent is payable unless the person paying the rent or on whose behalf the rent is paid specifies otherwise.
  - (e) In a record of rent received under this caravan park agreement, a person must not:
    - (i) make a false entry; or
    - (ii) falsify an entry in any other way.
  - (f) The operator commits a breach of this agreement if:
    - (i) the resident asks the operator to permit the resident to examine the record of rent received by the operator from the resident under this caravan park agreement; and
    - (ii) the operator does not permit the resident to examine the record.

## **21. OPERATOR TO GIVE RECEIPT FOR RENT (S.47 OF THE ACT)**

- (a) Immediately after the operator receives a cash payment for rent under this caravan park agreement from the resident, the operator must give the resident a receipt under subclause 21(e).
- (b) If rent is paid in cash to the operator by a person on behalf of the resident, the operator must give the resident a receipt under subclause 21(e) within 1 business day after the day the cash is paid.
- (c) If rent is paid by cheque by or on behalf of the resident, the operator must, at the request of the resident, give to the resident a receipt under subclause 21(e) within 3 business days after the day the request is made.
- (d) However, the operator is not required to give a receipt if rent is directly credited or otherwise paid into a prescribed account kept by the operator.
- (e) A receipt for this clause must be signed by the person receiving the rent to which it relates and must specify all of the following:
  - (i) the date on which the rent was received;
  - (ii) the name of the person paying the rent or for whom it is paid;
  - (iii) the amount paid;
  - (iv) the period of the occupancy to which the payment relates;
  - (v) the address of this caravan or caravan site to which the payment relates.

## **22. RESIDENT'S GOODS CANNOT BE SEIZED TO PAY RENT (S.48 OF THE ACT)**

The operator must not seize goods of the resident in order to keep or dispose of the goods because of a failure to pay rent payable under this caravan park agreement.

## **23. RENT IN ADVANCE (S.49 OF THE ACT)**

- (1) The operator must not require the resident:
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- (a) to pay for more than one rental payment period before the end of the first rental payment period of the occupancy; or
  - (b) to pay rent before the end of the last rental period for which rent has been paid; or
  - (c) to give a post-dated cheque or other post-dated negotiable instrument in payment of rent.

**24. HOW RENT ACCRUES (S.50 OF THE ACT)**

The rent payable under this caravan park agreement accrues from day-to-day.

**25. INCREASES IN RENT (S.51 OF THE ACT)**

- (a) The operator may increase the rent payable under this caravan park agreement as provided in Item 11 but the parties agree that the operator may only increase the rent if both of the following are specified in this agreement:
  - (i) the right to increase the rent;
  - (ii) the amount of the increase in rent or the method of calculation of the increase in rent.
- (b) A proposal to increase the rent payable under this caravan park agreement is of no effect unless at least 30 days written notice is given to the resident of:
  - (i) the amount of the increase; and
  - (ii) the date from which the increase is to take effect.
- (c) The date fixed for an increase in rent in relation to an occupancy must not be earlier than 6 months after:
  - (i) the day on which this caravan park agreement starts; or
  - (ii) if there has been a previous increase of rent under this clause in relation to one or more of the same residents and the same caravan or caravan site (as the case may be) – the last increase.
- (d) If the rent payable under this caravan park agreement is increased under this clause, the terms of the agreement are varied accordingly.
- (e) Subclauses 25(b), 25(c) and 25(d) do not apply in relation to a provision of this caravan park agreement in relation to an occupancy under which the rent payable changes automatically on a stated date on the basis that all rents for that caravan park change on that date.

**26. COMMISSIONER MAY DECLARE RENT EXCESSIVE (S.52 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to s.52 of the Act:

- (a) On application by the resident under this caravan park agreement, the Commissioner may declare the rent payable under it is excessive.
- (b) The Commissioner must not make the declaration unless he or she:
  - (i) has given 14 days notice of the application to the operator; and

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- (ii) has invited the operator to make submissions to the Commissioner about the application before a date specified in the notice; and
    - (iii) has considered any submissions made by the operator.
  - (c) The Commissioner may only make the declaration if he or she considers the rent paid under this caravan park agreement is excessive having regard to the following:
    - (i) the general level of rents for comparable caravans and caravan sites or caravan sites (as the case may be) in the same or similar localities;
    - (ii) the cost of any services provided in connection with the agreement by the operator or the resident;
    - (iii) any reduction, to a significant extent, in the level of services provided under the agreement.
  - (d) If the Commissioner declares the rent payable is excessive, he or she may, by order, specify the following:
    - (i) the rent payable for the agreement property and a variation to the agreement to reduce rent payable under the agreement;
    - (ii) a date (not before the date of the application) from which the variation takes effect;
    - (iii) the period (of not more than 12 months) for which the order remains in force.
  - (e) While an order under subclause 26(d) remains in force, the operator must not ask for or receive rent exceeding the amount specified by the order as the rent payable for the agreement property.
  - (f) On further application by the operator under this caravan park agreement, the Commissioner may, as he or she thinks fit, vary or revoke an order under this clause.

## **27. COMMISSIONER MAY PAY FOR VALUATION OF CARAVAN (S.53 OF THE ACT)**

- (a) This clause applies if the resident has made, or the Commissioner is satisfied the resident wishes to make, an application as mentioned in clause 26(a).
  - (b) If the Commissioner considers it appropriate to do so, he or she may pay or undertake to pay for a valuation about the agreement property in relation to the resident's application or proposed application.
  - (c) In considering whether it is appropriate to pay or undertake to pay for a valuation but without limiting the Commissioner's discretion, the Commissioner may have regard to either or both of the following:
    - (i) whether it would cause economic hardship to the applicant or his or her family if the applicant were to pay for the valuation;
    - (ii) whether the Commissioner has previously paid or undertaken to pay for a valuation under this clause involving the applicant.
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**28. REPAYMENT OF RENT PAID IN ADVANCE (S.54 OF THE ACT)**

- (a) This clause applies if rent under the caravan park agreement is paid in advance and the occupancy is terminated before the end of the period for which rent is paid.
- (b) The operator must not fail to refund to the resident the appropriate proportion of the amount paid as rent in advance as soon as possible (but no later than 7 days) after the termination.
- (c) On application by the resident, the Commissioner may, as he or she thinks fit, order the operator to refund to the resident the proportion of the amount paid as rent in advance (not being money for which the resident is liable under the Act to pay to the operator as rent or otherwise).

**29. ACCELERATED RENT AND LIQUIDATED DAMAGES PROHIBITED (S.55 OF THE ACT)**

- (a) The operator must not engage in conduct that involves entering into, or offering to enter into, the caravan park agreement if a term of the agreement is to the effect that, for a breach by the resident of a term of this agreement (including a term as to rent), the resident is liable to pay:
  - (i) all or any part of the rent remaining payable under this agreement; or
  - (ii) rent of an increased amount; or
  - (iii) an amount by way of penalty or liquidated damages that is not reasonably proportional to the actual loss that may be suffered as a consequence of the breach.
- (b) If this caravan park agreement includes a term of the type mentioned in subclause 29(a), the term is void.

**30. COMMISSIONER MAY DETERMINE IF PENALTY OR LIQUIDATED DAMAGES (S.56 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to s.56 of the Act:

- (a) On application by the operator or resident under this caravan park agreement, the Commissioner may determine whether:
  - (i) a way of calculating rent (whether or not specified in the agreement) is intended to enable genuine reductions in rent rather than to function as a penalty provision; or
  - (ii) an amount (by way of penalty or liquidated damages) specified in the agreement is reasonably proportional to the actual loss that may be suffered because of the breach of the agreement.
- (b) If the Commissioner determines either of the following, the term to which the determination relates is not void as mentioned in clause 29(b):
  - (i) a way of calculating rent (whether or not specified in this caravan park agreement) is intended to enable genuine reductions in rent rather than to function as a penalty provision;

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- (ii) an amount (by way of penalty or liquidated damages) specified in this caravan park agreement is reasonably proportional to the actual loss that may be suffered because of the breach of the agreement.
  - (c) The Commissioner must notify the operator and the resident of his or her determinations under this clause.

### **31. REDUCTIONS IN RENT BY AGREEMENT (S.57 OF THE ACT)**

- (a) The rent payable under this caravan park agreement may be reduced:
  - (i) under a provision of this caravan park agreement under which the rent payable changes automatically at stated intervals on a basis set out in the agreement; or
  - (ii) by mutual agreement between the resident and the operator.
- (b) Rent may be reduced on a temporary basis so that, at the end of a specified period, the rent reverts to the level the rent would have been before the temporary reduction.
- (c) If the rent payable under this caravan park agreement is reduced by mutual agreement between the resident and the operator, the terms of the agreement are varied accordingly.

### **32. AGREEMENT PROPERTY NOT TO BE LET UNLESS HABITABLE AND SAFE (S.58 OF THE ACT)**

- (a) The operator must not enter into, or offer to enter into, this caravan park agreement unless the agreement property:
  - (i) is habitable; and
  - (ii) meets all health and safety requirements specified under an Act that apply to the agreement property; and
  - (iii) is reasonably clean when the resident enters into occupation of the agreement property.
- (b) For subclause 32(a), it is a health and safety requirement under this Act that a caravan provided under this caravan park agreement must be fitted with a smoke detector alarm as required by regulations under the *Fire and Emergency Act*.

### **33. AGREEMENT PROPERTY TO BE CLEAN AND SUITABLE FOR HABITATION (S.59 OF THE ACT)**

- (a) It is a term of this caravan park agreement that the operator must ensure that, during an occupancy, the agreement property:
  - (i) continues to be habitable; and
  - (ii) continues to meet all health and safety requirements under an Act that apply to the agreement property.

*Example for subclause 33(a)(ii)*

*See regulations under the Fire and Emergency Act that specifically refer to caravans.*

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- (b) It is not a breach of the term specified in subclause 33(a) if the failure to comply with the term is caused by:
    - (i) an act or omission of the resident, including a contravention of a law in force in the Territory; or
    - (ii) the resident's failure to notify the operator of repairs required to the agreement property.

**34. KEEPING CARAVAN PARK ETC. CLEAN (S.60 OF THE ACT)**

- (a) It is a term of this caravan park agreement that the operator must:
  - (i) keep common areas and other areas in the caravan park clean and in a safe condition; and
  - (ii) arrange for the collection of the household garbage of residents and other garbage from the common areas.

**35. KEEPING COMMON AREAS CLEAN AND TIDY AND REPAIRING, MAINTAINING AND RENOVATING THE AREAS (S.61 OF THE ACT)**

- (a) It is a term of this caravan park agreement that the operator must keep clean and tidy and, as required, repair, maintain and renovate facilities in the common areas in the caravan park, including bathrooms, toilets and laundries.
- (b) When repairing, maintaining or renovating the facilities in the common areas, the operator must:
  - (i) minimise inconvenience and disruption to residents; and
  - (ii) if necessary, provide temporary substitute facilities.

**36. CARAVAN TO BE SECURE (S.62 OF THE ACT)**

- (a) It is a term of this caravan park agreement that the operator will take reasonable steps to provide and maintain the locks that are necessary to ensure the caravan provided under the agreement is reasonably secure.
- (b) It is a term of this caravan park agreement that, without the resident's consent, the operator will not:
  - (i) alter a lock on the agreement property; or
  - (ii) add a lock to the agreement property; or
  - (iii) remove a lock from the agreement property.
- (c) It is a term of this caravan park agreement that, if the operator engages in any conduct mentioned in subclauses 36(b)(i) or 36(b)(ii), the operator will give the resident a key to the altered or added lock as soon as practicable after the alteration or addition, unless the resident, in writing, waives his or her right to the key.
- (d) The operator must not engage in any of the conduct mentioned in subclause 36(b)(i) to 36(b)(iii) about the alteration, addition or removal of a lock without the resident's consent.



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**37. IF OPERATOR CHANGES LOCKS, KEY MUST BE PROVIDED (S.63 OF THE ACT)**

If the operator who has altered a lock on, or added a lock to, agreement property occupied under this caravan park agreement must not fail to give the resident, immediately after the alteration or addition, a key for the lock.

**38. CLEANLINESS AND DAMAGE (S.64 OF THE ACT)**

- (a) It is a term of this caravan park agreement that the resident:
  - (i) must maintain the agreement property in a reasonably clean condition, allowing for reasonable wear and tear; and
  - (ii) must notify the operator of damage or apparent potential damage to the agreement property, other than damage of a negligible kind; and
  - (iii) must not intentionally or negligently cause or permit damage to the agreement property; and
  - (iv) must not intentionally or recklessly cause or permit damage to common areas in the caravan park.
- (b) It is a term of this caravan park agreement that, at the termination of the occupancy, the resident must return the agreement property to the operator in a reasonably clean condition, and state of repair, allowing for reasonable wear and tear.
- (c) The resident is not in breach of a term of the agreement mentioned in subclause 38(a) or 38(b) if:
  - (i) the resident notified the operator that repair or maintenance of a part of the agreement property is required; and
  - (ii) the operator did not repair or maintain that part of the property.
- (d) The operator and the resident both acknowledge and agree that pursuant to s.64 of the Act:
  - (i) In deciding whether the agreement property is in a reasonably clean condition or state of repair, the operator, the Commissioner or a court must take into account:
    - A. the condition of the agreement property at the time the resident took possession of the property, as determined by a condition report, if any, accepted under Part 4 of the Act by the operator and the resident; and
    - B. if this caravan park agreement has terminated or the resident has, in the opinion of the operator, apparently abandoned the agreement property – the condition of that property, as determined by a condition report, if any, accepted under Part 11 of the Act by the operator and the resident; and
    - C. the effect of reasonable wear and tear during the occupancy.
- (e) If a condition report was not accepted under Part 4 of the Act by the operator and the resident in relation to the agreement property:

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- (i) the resident is taken to have complied with the term of the agreement specified in subclause 38(a); and
  - (ii) if this caravan park agreement has terminated or the resident has, in the opinion of the operator, apparently abandoned the agreement property – the agreement property is taken to have been (at the time when the resident took possession of it) in the condition it is in when the termination takes effect or the property is apparently abandoned.

**39. TERM THAT RESIDENT NOT TO ALTER, REMOVE OR ADD LOCK TO AGREEMENT PROPERTY AND OFFENCE (S.65 OF THE ACT)**

- (a) It is a term of this caravan park agreement that, without reasonable excuse or without the consent of the operator, the resident will not:
  - (i) alter a lock on the agreement property; or
  - (ii) add a lock to the agreement property; or
  - (iii) remove a lock from the agreement property.
- (b) The resident must not engage in any conduct that results in any of the following without the consent of the operator to do so:
  - (i) altering a lock on, or removing a lock from, the agreement property or common areas in the park;
  - (ii) adding a lock to the agreement property or the common areas.

**40. IF RESIDENT ALTER LOCKS, KEY TO BE PROVIDED TO OPERATOR (S.66 OF THE ACT)**

- (a) It is a term of this caravan park agreement that, if the resident alters a lock on agreement property or relating to common areas in the caravan park, or adds a lock to the agreement property or the common areas, without the consent of the operator, the resident will give the operator a key for the lock as soon as practicable after making the alteration or addition, unless the operator consents to the resident doing otherwise.
- (b) The resident who has altered a lock on, or added a lock to, agreement property or common areas in a caravan park must not fail to give the operator, within 2 business days after the alteration or addition, a key for the lock.

**41. NO ILLEGAL CONDUCT OR NUISANCE ON AGREEMENT PROPERTY (S.67 OF THE ACT)**

- (a) It is a term of this caravan park agreement that the resident must not:
  - (i) use the relevant property, or cause the relevant property to be used, for an illegal purpose; or
  - (ii) cause or permit a nuisance on the relevant property or on land adjacent to or opposite the relevant property; or
  - (iii) cause or permit ongoing or repeated interference with the reasonable peace or privacy of another person in the other

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person's use of the caravan, the caravan site or land or common areas in the immediate vicinity of the agreement property to which the agreement relates.

- (b) In this clause:
  - (i) **relevant property**, in relation to the caravan park agreement, means the agreement property and the common areas in the caravan park.

#### **42. ALTERATION OF AGREEMENT PROPERTY (S.68 OF THE ACT)**

- (a) It is a term of this caravan park agreement that the resident must not, without the operator's written consent or otherwise than in accordance with this Act, make an alteration or addition to the agreement property.
- (b) The resident may remove a fixture affixed to agreement property by him or her unless the removal would cause damage to the agreement property.
- (c) It is a term of this caravan park agreement that if the resident causes damage to the agreement property by removing or installing a fixture, the resident must:
  - (i) notify the operator; and
  - (ii) at the option of the operator, have the damage repaired or compensate the operator for the reasonable cost of repairing the damage.

#### **43. RESIDENT TO NOTIFY IF AGREEMENT PROPERTY TO BE UNOCCUPIED FOR MORE THAN 30 DAYS (S.69 OF THE ACT)**

It is a term of this caravan park agreement that the resident must notify the operator before the agreement property is to be left unoccupied for more than 30 days or, if the resident is not able to give notice before leaving the agreement property, as soon as is reasonably practicable after leaving it.

#### **44. OPERATOR'S OBLIGATION TO REPAIR (S.70 OF THE ACT)**

- (a) Subject to this clause and clauses 45 to 50, it is a term of this caravan park agreement that the operator must:
  - (i) ensure the agreement property is in a reasonable state of repair when the resident enters into occupation of the property; and
  - (ii) maintain the agreement property in a reasonable state of repair, having regard to its age, character and prospective life.
- (b) The operator is not in breach of the term specified under subclause 44(a) unless the operator:
  - (i) has notice of a defect requiring repair; and
  - (ii) fails to act with reasonable diligence to have the defect repaired.
- (c) Also, the operator is not in breach of the term specified under subclause 44(a) if:
  - (i) the repairs (other than emergency repairs) were known to the resident to be required at the time of entering into this caravan

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park agreement and the resident, in writing, waived the right to have them made; and

- (ii) the agreement property is habitable and meets all health and safety requirements specified under any act for the agreement property.
- (d) This clause does not apply to vegetation in a garden that is part of the agreement property unless it is a tree that poses a risk to a person's safety or property.

#### **45. RESIDENT TO NOTIFY OPERATOR IF REPAIRS REQUIRED (S.71 OF THE ACT)**

- (a) It is a term of this caravan park agreement that if the agreement property requires repair or maintenance (other than repairing or maintaining of a negligible kind) the resident must, as soon as reasonably practicable after becoming aware of the need for the repairs or maintenance, notify the operator about the need.
- (b) Subclause 45(a) does not apply in relation to repairs if the resident waived the right to have the repairs made as mentioned in clause 44(c)(i) .
- (c) If the resident gives the notice under subclause 45(a) orally, the operator may ask the resident to give notice in writing and, for this clause, the resident has not given notice under subclause 45(a) until the resident gives the notice to the operator in writing.
- (d) This clause does not apply to vegetation in a garden that is part of the agreement property unless:
  - (i) it is a tree that poses a risk to a person's safety or property; or
  - (ii) this caravan park agreement otherwise provides.

#### **46. MAXIMUM AMOUNT RESIDENT MAY CLAIM FROM OPERATOR FOR REPAIRS (S.72 OF THE ACT)**

- (a) The resident is not entitled to receive, or to request the operator to pay to a repairer (and the operator is not required to pay), an amount under clause 48 greater than the amount payable under this caravan park agreement for 2 weeks rent.
- (b) For subclause 46(a):
  - (i) if the rent fluctuates during the period of this caravan park agreement – the amount payable under the agreement for 2 weeks rent is taken to be the lowest rent payable for a 2 week period under the agreement; or
  - (ii) if the rent increases under clause 25 – the amount payable under the agreement for 2 weeks rent is taken to be the increased rent payable for a 2 week period under the agreement.

#### **47. WHEN RESIDENT MAY MAKE REPAIRS (S.73 OF THE ACT)**

The resident may make repairs (*permitted repairs*) to the agreement property occupied under this caravan park agreement if:

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- (a) the property is uninhabitable, unsafe or, if the repairs are not made, there is a reasonable possibility:
    - (i) of damage occurring to the agreement property or property of the resident; or
    - (ii) that the agreement property is likely to become unsafe, uninhabitable or insecure; and
  - (b) the property is in a state of disrepair that does not arise from contravention of this caravan park agreement by the resident; and
  - (c) the resident has, under clause 45, notified the operator in writing of the requirement for the repairs to be made; and
  - (d) either the repairs have not been made within 7 business days after receipt of a written notice under clause 45 or:
    - (i) the operator has not, within 7 business days after receipt of a written notice under clause 45, made arrangements for the repairs to be made and notified the resident accordingly; and
    - (ii) the repairs have not been made within 21 days after the date of the written notice under clause 45.

**48. WHEN AND HOW RESIDENT MAY CLAIM MONEY FOR PERMITTED REPAIRS (S.74 OF THE ACT)**

- (a) If the resident made permitted repairs, the resident may recover from the operator the cost of having the permitted repairs made only if the resident has done each of the following:
    - (i) notified the operator of the cost of the permitted repairs;
    - (ii) complied with clause 49;
    - (iii) given the operator appropriate documents proving the cost incurred.
  - (b) The resident may request the operator:
    - (i) to pay the cost of permitted repairs directly to the repairer; or
    - (ii) if the resident has paid the cost – to pay the amount to the resident or to deduct the amount from rent payable by the resident.
  - (c) A cost payable by the operator under this clause must be paid:
    - (i) in accordance with the resident's request under subclause 48(b)(ii); or
    - (ii) in the way agreed between the operator and resident; or
    - (iii) as ordered under subclause 48(d).
  - (d) On application by the operator or resident under this caravan park agreement, but subject to Division 3 of Part 6 of the Act, the Commissioner may order a party to pay for the cost of permitted repairs incurred or purporting to be incurred under that Division of the Act.
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#### 49. RESIDENT TO USE NOMINATED REPAIRER (S.75 OF THE ACT)

- (a) The operator under this caravan park agreement may nominate a person (including the operator) to be the nominated repairer for a type of repair by a provision in the agreement or by written notice to the resident. The nominated repairers under this agreement are specified in Item 15.
- (b) If the repairs are permitted repairs and the operator has specified a nominated repairer who may make repairs of that type, the resident must take all reasonable steps to engage the nominated repairer to make the permitted repairs.
- (c) If the operator has nominated a person under subclause 49(a), the resident may have permitted repairs made by a person other than the nominated repairer only if:
  - (i) the resident cannot, despite reasonable attempts to do so, engage the nominated repairer to make the permitted repairs within a reasonable time; and
  - (ii) the resident has obtained quotations for the cost of the permitted repairs from 2 repairers who are appropriately qualified to make the repairs; and
  - (iii) the resident has chosen the repairer offering the lowest quotation, unless the repairer offering the lowest quotation would not be able to make the permitted repairs within a reasonable time.

#### 50. EMERGENCY REPAIRS MAY BE ORDERED BY COMMISSIONER (S.76 OF THE ACT)

The operator and the resident both acknowledge and agree that pursuant to s.76 of the Act:

- (a) On application by the resident under this caravan park agreement, the Commissioner may order the operator to ensure that repairs specified in the order to agreement property are made within a period specified in the order if:
  - (i) the repairs required are emergency repairs; and
  - (ii) the agreement property is in a state of disrepair that does not arise from the resident's contravention of the agreement; and
  - (iii) the resident has, under clause 45, notified the operator in writing of the requirement for the repairs to be made; and
  - (iv) either the repairs have not been made within 5 business days after receipt of the notice under clause 45 or:
    - A. the operator has not, within that period of 5 business days, made arrangements for the repairs to be made and notified the resident of the arrangements; and
    - B. the repairs have not been made within 14 days after the date of the notice.
- (b) In this clause:
  - (i) **emergency repairs** means work needed to repair:

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- A. a water service, that provides water to agreement property, that has burst; or
  - B. a blocked or broken lavatory system on agreement property; or
  - C. a serious roof leak; or
  - D. a gas leak; or
  - E. a dangerous electrical fault; or
  - F. flooding or serious flood damage; or
  - G. serious storm, fire or impact damage; or
  - H. a failure or breakdown of the gas, electricity or water supply to agreement property; or
  - I. a failure or breakdown of an essential service or appliance on agreement property for water or cooking; or
  - J. a fault or damage that makes the agreement property unsafe or insecure; or
  - K. a fault or damage likely to injure a person, damage property or unduly inconvenience the resident of agreement property.

**51. VACANT POSSESSION (S.77 OF THE ACT)**

- (a) It is a term of this caravan park agreement that the resident is entitled to vacant possession of the agreement property on and after the day the occupancy begins.
- (b) Subclause 51(a) does not apply in relation to a part of the agreement property for which a right to exclusive possession is not given by this caravan park agreement.
- (c) It is a term of this caravan park agreement that there is no legal impediment to the resident's occupation of the agreement property as a place of residence for the period of the occupancy that the operator knew of, or ought to have known of, when entering into the agreement.

**52. RESIDENT TO BE ABLE TO USE AND ENJOY PROPERTY (S.78 OF THE ACT)**

- (a) It is a term of this caravan park agreement that:
  - (i) the resident is entitled to quiet enjoyment of the agreement property without interruption by the operator, a person claiming under the operator or a person with superior title to the operator's title; and
  - (ii) the operator will not cause an interference with the reasonable peace or privacy of the resident in the resident's use of the agreement property and common areas in the caravan park.
- (b) The operator must not engage in conduct that results in a contravention of a term mentioned in subclause 52(a).

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**53. OPERATOR NOT TO INTERFERE WITH RESIDENT'S ENJOYMENT OF CARAVAN (S.79 OF THE ACT)**

The operator must not engage in conduct the result of which is to force the resident to vacate agreement property occupied under this caravan park agreement in circumstances that amount to harassment of the resident

**54. RESIDENT'S RIGHT OF ASSOCIATION (S.80 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to s.80 of the Act:

- (a) A term of this caravan park agreement is void to the extent it includes a term to the following effect in relation to a prohibited activity as mentioned in subclause 54(b):
  - (i) the agreement is or may be terminated, or may not be renewed;
  - (ii) the resident will suffer some other detriment under the agreement.
- (b) Each of the following is a **prohibited activity**.
  - (i) the resident may not join or become a member of a body or association of any kind;
  - (ii) the resident may not make use of the services of a body or association of any kind.
- (c) Subclause 54(a) applies whether this caravan park agreement is entered into before or after the commencement of this clause.
- (d) The operator must not include a term as mentioned in subclause 54(a) in this caravan park agreement relating to a prohibited activity.

**55. ENTRY PERMITTED ONLY IN ACCORDANCE WITH ACT (S.81 OF THE ACT)**

It is a term of this caravan park agreement that the operator may only enter the agreement property in accordance with this Act.

**56. COLLECTION OF RENT (S.82 OF THE ACT)**

The operator may enter agreement property occupied under this caravan park agreement to collect rent only if the entry is made:

- (a) between 7 am and 9 pm and at a time previously arranged with the resident not less than 7 days before the entry is made; and
- (b) not earlier than 7 days after the last time entry was made under this clause.

*Note for clause 56*

*See clause 124(c) for use of operator in this Part. Therefore, if the operator authorised a commercial agent (as defined in section 3(1) of the Commercial and Private Agents Licensing Act) to collect rent, this clause would apply to the commercial agent.*



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## **57. INSPECTION OF AGREEMENT PROPERTY (S.83 OF THE ACT)**

- (a) The operator may enter agreement property occupied under this caravan park agreement to inspect the agreement property.
- (b) Subclause 57(a) only applies if the entry is made:
  - (i) between 7 am and 9 pm and at a time previously arranged with the resident not less than 7 days before the entry is made; and
  - (ii) after:
    - A. 3 months after the previous entry was made to the agreement property under this clause; or
    - B. if a longer period is specified in this caravan park agreement as the interval during which an entry for inspecting the agreement property is not to be made – that longer period.

## **58. REPAIRS AND MAINTENANCE (S.84 OF THE ACT)**

- (a) The operator may enter the agreement property occupied under this caravan park agreement for either or both of the following reasons:
  - (i) to carry out necessary repairs or maintenance, but only if:
    - A. the operator has been notified by the resident that the repairs or maintenance are necessary; or
    - B. the need for the repairs or maintenance has been observed by the operator, including during an inspection under clause 57;
  - (ii) to determine if necessary repairs and maintenance have been satisfactorily performed or completed.
- (b) Subclause 58(a) only applies if the entry is made:
  - (i) between 7 am and 9 pm; and
  - (ii) after 1 days notice about the time of entry is given orally or in writing to the resident.

## **59. EMERGENCY OR SIGNIFICANT DAMAGE (S.85 OF THE ACT)**

The operator may enter agreement property occupied under this caravan park agreement without notice:

- (a) in an emergency; or
- (b) if the operator reasonably suspects significant damage has been, is being, or is about to be, caused to the property.

## **60. PREPARATION OF CONDITION REPORT (S.86 OF THE ACT)**

The operator may enter agreement property occupied under this caravan park agreement to prepare a condition report under clause 8 or 99 if the entry is made:

- (a) between 7 am and 9 pm; and
- (b) after 1 days notice about the time of entry is given orally or in writing to the resident.

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**61. INSPECTION BY PROSPECTIVE RESIDENTS OR PURCHASERS (S.87 OF THE ACT)**

- (a) The operator may enter agreement property occupied under this caravan park agreement for showing the agreement property to prospective residents if the entry is made:
  - (i) between 7 am and 9 pm; and
  - (ii) during the period 28 days before the termination of this caravan park agreement; and
  - (iii) after 1 days notice about the time of entry is given orally or in writing to the resident.
- (b) The operator may enter agreement property occupied under this caravan park agreement for showing the caravan to prospective purchasers of the agreement property or the caravan park if the entry is made:
  - (i) between 7 am and 9 pm; and
  - (ii) after 1 days notice about the time of entry is given orally or in writing to the resident.
- (c) The operator may enter agreement property for purposes specified in subclause 61(a) or 61(b) on no more than a reasonable number of occasions.

**62. ENTRY WITH CONSENT BETWEEN 7 AM AND 9 PM (S.88 OF THE ACT)**

The operator may, with the consent of the resident given at or immediately before the time of entry, enter the agreement property occupied under this caravan park agreement between 7 am and 9 pm.

**63. RESIDENT TO BE PRESENT AT ENTRY (S.89 OF THE ACT)**

- (a) An entry into, or inspection of, agreement property under clauses 55 to 62 must be undertaken in the resident's presence.
- (b) Subclause 63(a) does not apply if:
  - (i) the resident refuses, other than on reasonable grounds, to be present at the time specified for the inspection; or
  - (ii) the resident, in writing, waives the right to be present at the inspection; or
  - (iii) the resident is not at the agreement property at the time specified for the inspection by notice given under clause 58, 60 or 61; or
  - (iv) the entry is made under clause 59.

**64. COMMISSIONER MAY ORDER RESIDENT TO LET OPERATOR ENTER CARAVAN (S.90 OF THE ACT)**

- (a) If the resident unreasonably impedes, or fails to permit, the lawful entry of the operator to the agreement property, on the application by the operator to the Commissioner, he or she may make an order permitting the operator to enter the agreement property as specified in the order.

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- (b) If, under the Act, an operator has entered agreement property occupied under a caravan park agreement, the resident must not unreasonably impede the operator in carrying out the purpose for which entry lawfully occurred.

**65. ASSIGNMENT OR SUBLEASE OF CARAVAN PERMITTED WITH CONSENT (S.91 OF THE ACT)**

- (a) Subject to clauses 66 to 68, it is a term of this caravan park agreement that the resident may assign the resident's interest in the agreement or sublet the agreement property to someone else with the oral or written consent of the operator.
- (b) It is a term of this caravan park agreement that the resident must not assign the resident's interest in the agreement or sublet the agreement property unless:
  - (i) the operator consents, in writing, to the assignment or subletting; or
  - (ii) the operator is taken under clause 66 to have so consented.
- (c) If the operator consents or is taken to have consented to an assignment or subletting after the assignment or subletting occurs, the resident is not to be taken to be, or to have been, in breach of subclause 65(b).

**66. CONSENT TO ASSIGNMENTS AND SUBLETTING (S.92 OF THE ACT)**

- (a) The resident under this caravan park agreement may apply to the operator for consent to an assignment of the resident's interest in the agreement, or to sublet agreement property, by giving the operator:
  - (i) the name of the person to whom it is proposed to assign the interest in the agreement or sublet the property; and
  - (ii) the same information in relation to the person specified under paragraph (i) that the resident was requested to give to the operator in relation to the resident's application to enter into the agreement.
- (b) Within 28 days after the resident applies to the operator for the assignment or subletting, the operator may notify the resident that the operator does not consent to the assignment or subletting.
- (c) The operator is taken to have consented to an assignment or subletting if the resident applied under subclause 66(a) but the operator did not give notice to the resident within the period specified under subclause 66(b) that the operator did not consent.
- (d) In deciding whether to consent to an assignment or subletting, the operator is in the same position the operator would be in if the operator were considering an offer to enter into this caravan park agreement from the person to whom it is proposed to assign or sublet the agreement property.

**67. SECURITY DEPOSIT IF LEASE ASSIGNED (S.93 OF THE ACT)**

If the operator consents, or is taken under clause 66 to have consented, to the assignment of the resident's interest under this caravan park agreement to

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someone else, the resident must also assign to that other person the resident's interest in the security deposit paid under this agreement.

**68. UNREASONABLE CHARGES FOR ASSIGNMENT OR SUBLETTING (S.94 OF THE ACT)**

- (a) The operator must not require the resident to pay to the operator a charge for consenting or considering an application for consent to an assignment of this agreement or subletting of the agreement property that is more than the operator's reasonable expenses in relation to the assignment or subletting.
- (b) The operator must not engage in conduct that results in a contravention of subclause 68(a)..

**69. WHEN TERMINATION OCCURS (S.95 OF THE ACT)**

An occupancy under this caravan park agreement is terminated when any of the following occurs:

- (a) the termination of the agreement under the Act by the operator, the resident, the Commissioner or a court;
- (b) abandonment of the agreement property before the end of the agreement either on and from the date on which rent was due and payable in relation to the property or the date specified in a declaration under clause 98 as the date on which the property was abandoned, whichever is sooner;
- (c) a person with superior title to the operator's title becomes entitled to possession of the agreement property under an order of the Commissioner or a court;
- (d) a sole resident dies without leaving in occupation of the agreement property a spouse, de facto partner or dependants, of whose occupation and relationship to the sole resident the operator has been notified before the death;
- (e) the resident gives up possession of the agreement property with the operator's consent.

**70. FIXED TERM OCCUPANCY BECOMES PERIODIC IF NOT TERMINATED (S.96 OF THE ACT)**

The term of this caravan park agreement is the term stated in Item 6. If this caravan park agreement provides that for a fixed term occupancy continues to apply to the agreement property on the same terms on which it applied immediately before the day the term ends but as a periodic occupancy, if:

- (a) this agreement does not provide for the continuance of the occupancy after the day the term ends; and
- (b) a notice of termination has not been given under this Act in relation to the agreement property; and
- (c) the resident remains in occupation of the agreement property after the day the term ends.

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**71. APPLICATION TO COMMISSIONER ABOUT PURPORTED TERMINATION (S.97 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to s.97 of the Act:

- (a) The resident or operator under this caravan park agreement may apply to the Commissioner for a declaration that a purported termination of the occupancy under this agreement is of no effect.
- (b) The application may be made whether or not a notice of termination is given or has taken effect.
- (c) The application does not operate to stop the termination unless the Commissioner otherwise orders.
- (d) After considering the application, the Commissioner may declare the purported termination is of no effect.

**72. TERMINATION OF PERIODIC OCCUPANCY EFFECTIVE DESPITE INADEQUATE NOTICE (S.98 OF THE ACT)**

A notice terminating this caravan park agreement for which a periodic occupancy applies under the Act has effect even though:

- (a) the period of notice is less than would, apart from the Act, have been required by law; or
- (b) the date, stated in the notice, on which the occupancy is to terminate is not the last day of a period of the occupancy.

**73. IF AGREEMENT PROPERTY IS FLOODED, UNSAFE OR UNINHABITABLE (S.99 OF THE ACT)**

- (a) The operator under this caravan park agreement may terminate the occupancy by 1 days notice if:
  - (i) access to the agreement property has not been available for more than 3 days because of flooding; or
  - (ii) continued occupation of the agreement property by the resident is a threat to the health or safety of the resident or members of the public or a threat to the safety of the operator's property; or
  - (iii) the agreement property has become uninhabitable.
- (b) The termination must be by notice of termination given to the resident.

**74. IF DRUG PREMISES ORDER MADE (S.100 OF THE ACT)**

- (a) This clause applies if the caravan in the caravan park is declared drug premises whether or not:
  - (i) the caravan is provided by the operator; or
  - (ii) there is in existence the caravan park agreement or an excluded agreement in relation to the caravan.
- (b) The operator may terminate:

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- (i) if the caravan is provided by the operator – the right of occupancy of the caravan and caravan site under the caravan park agreement, the excluded agreement or otherwise; or
  - (ii) if the caravan is not provided by the operator – the right of occupancy of the caravan site under this caravan park agreement, the excluded agreement or otherwise.
- (c) The termination must be by notice of termination given to the person with the right of occupancy under this caravan park agreement, the excluded agreement or otherwise.
  - (d) The date stated in the notice of termination by which the person is required to give up vacant possession of the caravan and caravan site, or the caravan site, (as the case may be) must not be earlier than 14 days after the date of the notice of termination.
  - (e) Divisions 5, 6 and 7 of Part 10 of the Act and section 178 of the Act apply in relation to a notice of termination given as mentioned in subclause 74(c).
  - (f) In this clause:
    - (i) **drug premises**, see section 11A of the *Misuse of Drugs Act*.

## **75. SERIOUS MISCONDUCT BY RESIDENT OF CARAVAN PARK (S.101 OF THE ACT)**

- (a) The operator under this caravan park agreement may terminate the agreement on the ground the resident, or a person while in the caravan park with the resident's consent, has intentionally or recklessly caused or permitted, or is likely to cause or permit, any of the following:
    - (i) serious damage to the agreement property or the common areas or other property in the caravan park;
    - (ii) personal injury to the operator or a person in the caravan park or the vicinity of the caravan park;
    - (iii) serious interference with the reasonable peace, comfort or privacy of:
      - A. another resident (including the operator if the operator resides in the caravan park) in the other resident's use of the caravan park including common areas; or
      - B. a person residing in the immediate vicinity of the caravan park.
  - (b) The termination must be by notice of termination given to the resident.
  - (c) For subclause 75(a)(iii), the serious interference may occur because of serious verbal abuse by the resident or a person while in the caravan park with the resident's consent.
  - (d) The notice of termination may terminate the agreement immediately or on a later day stated in the notice.
  - (e) Within 3 business days after the day the notice of termination is given to the resident, the operator must give written notice to the Commissioner about the termination, including the reasons for it.
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**76. PERIODIC OCCUPANCY, OTHER THAN FOR BREACH (S.102 OF THE ACT)**

- (a) The operator under this caravan park agreement may, by notice of termination to the resident, terminate a periodic occupancy without specifying a ground for the termination in the notice.
- (b) Subject to clause 76(c), The notice of termination must specify a particular day for the termination to take effect (that must be at least 42 days after the date the notice is given to the resident);
- (c) If a resident is a long term occupant within the meaning of s.178 of the Act, the period is 3 months

**77. FIXED TERM OCCUPANCY (S.103 OF THE ACT)**

- (a) The operator under this caravan park agreement may terminate a fixed term occupancy that, under this agreement, is due to terminate on a particular day.
- (b) Subject to clause 77(c) the termination on the particular day must be by notice of termination given to the resident at least 21 days before the particular day.
- (c) If a resident is a long term occupant within the meaning of s.178 of the Act, the period is 42 days.

**78. EMPLOYMENT-RELATED OCCUPANCY (S.104 OF THE ACT)**

- (a) The operator under this caravan park agreement may terminate a right of occupancy under this agreement on and after the time and date specified in the notice of termination if:
  - (i) the resident entered into the agreement as a condition or benefit associated with employment; and
  - (ii) the operator (as the employer of the resident) has terminated or purported to terminate the employment; and
  - (iii) the operator has given notice to the resident terminating the resident's employment.
- (b) The termination of the right of occupancy must be by notice of termination given to the resident.
- (c) The time and date specified in the notice of termination of the right of occupancy must not be earlier than:
  - (i) if the employment of the resident was terminated for breach of an employment agreement – 2 days after notice of termination for the breach of the employment agreement is given; or
  - (ii) otherwise – 14 days notice after notice of termination for the breach of the employment agreement is given to the resident or, if a period for giving notice terminating the employment agreement is specified in the conditions of employment, the end of that period.

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**79. IF CARAVAN FLOODED, UNSAFE OR UNINHABITABLE (S.105 OF THE ACT)**

- (a) The resident may terminate an occupancy under this caravan park agreement if:
  - (i) access to the agreement property has not been available for more than 3 days because of flooding; or
  - (ii) continued occupation of the agreement property by the resident is a threat to the health or safety of the resident or members of the public or a threat to the safety of the operator's property; or
  - (iii) the agreement property has become uninhabitable.
- (b) The termination must be by notice of termination given to the operator 2 days before the termination takes effect.

**80. PERIODIC OCCUPANCY, OTHER THAN FOR BREACH (S.106 OF THE ACT)**

- (a) The resident under this caravan park agreement may, by notice of termination to the operator, terminate a periodic occupancy without specifying a ground for the termination in the notice.
- (b) The notice of termination must specify a particular day for the termination to take effect (that must be at least 14 days after the date the notice is given to the operator).

**81. FIXED TERM OCCUPANCY (S.107 OF THE ACT)**

- (a) The resident under this caravan park agreement may terminate a fixed term occupancy that, under the agreement, is due to terminate on a particular day.
- (b) The termination on the particular day must be by notice of termination given to the operator at least 14 days before the particular day.

**82. RESIDENT'S FAILURE TO PAY RENT (S.108 OF THE ACT)**

- (a) This clause applies if the resident breaches a term of this caravan park agreement by failing to pay rent if the rent has been in arrears for not less than 3 days.
- (b) The operator may give the resident a notice, signed by the operator, stating the following:
  - (i) the address of the agreement property;
  - (ii) the resident is in breach of this agreement by failing to pay rent in accordance with this agreement and the rent is in arrears;
  - (iii) the amount of rent payable by the resident in order to remedy the breach and any prescribed information relevant to that amount;
  - (iv) the resident is required to remedy the breach before the date specified in the notice (at least 7 days after the notice is given);
  - (v) if the resident does not remedy the breach as required, the operator intends to apply to the Commissioner or a court for an



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order for termination of the occupancy and possession of the agreement property.

- (c) The notice has effect even if the operator has not previously made a formal demand for payment of the rent.
- (d) If any of the following occurs after the operator becomes aware of the resident's breach or has given the resident the notice to pay the rent in arrears, the occurrence does not operate as a waiver of the breach or notice:
  - (i) a demand by the operator for payment of rent;
  - (ii) an application by the operator to the Commissioner for recovery of rent;
  - (iii) an acceptance by the operator of a payment of rent.
- (e) If the resident does not remedy the breach as required by the notice, the operator may apply under clause 89 for an order for termination of the occupancy and possession of the agreement property.
- (f) The operator must make the application no later than 14 days after the date specified in the notice under subclause 82(b)(iv).
- (g) For subclause 82(b)(iii), the Regulations provide information that must be given in the notice, including information about any of the following:
  - (i) the method of calculation of rent arrears;
  - (ii) the method of calculation of the amount of rent payable in order to remedy the breach;
  - (iii) the date on which rent was last paid;
  - (iv) the date on which rent will next be payable after the breach is remedied<sup>3</sup>.

### **83. OTHER BREACH BY RESIDENT (S.109 OF THE ACT)**

- (a) This clause applies if the resident breaches a term of this caravan park agreement (other than a term relating to payment of rent) that:
  - (i) is a term of the agreement because of the Act; or
  - (ii) is specified in the agreement to be a term that, if breached, permits the operator to terminate the agreement.
- (b) The operator may give the resident a notice, signed by the operator, stating the following:
  - (i) the address of the agreement property;
  - (ii) the resident is in breach of the agreement;

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<sup>3</sup> Regulation 10 of the Caravan Parks Regulations provides that a notice under section 108 of the Act must include, in addition to any other information required by that section the date the obligation to pay rent commenced, the current rent payable; the frequency that rent is payable; the date on which rent was last paid; (e) the amount of rent that was last paid; and the date on which rent will next be payable after the breach is remedied.

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- (iii) the nature of the breach;
  - (iv) the resident is required to remedy the breach, or take steps to the operator's satisfaction to do so, before the date specified in the notice (at least 7 days after the notice is given);
  - (v) if the resident does not remedy the breach or take steps to the operator's satisfaction to do so, as required, the operator intends to apply to the Commissioner or a court for an order for termination of the occupancy and possession of the agreement property.
- (c) If the resident does not remedy the breach or take steps to the operator's satisfaction to do so, as required by the notice, the operator may apply under clause 89 for an order for termination of the occupancy and possession of the agreement property.
  - (d) The operator must make the application no later than 14 days after the date specified in the notice under subclause 83(b)(iv).

#### **84. BREACH BY OPERATOR (S.110 OF THE ACT)**

- (a) This clause applies if the operator breaches a term of this caravan park agreement that:
  - (i) is a term of the agreement because of the Act; or
  - (ii) is specified in the agreement to be a term that, if breached, permits the resident to terminate the agreement.
- (b) The resident may give the operator a notice, signed by the resident, stating the following:
  - (i) the address of the agreement property;
  - (ii) the operator is in breach of the agreement;
  - (iii) the nature of the breach;
  - (iv) the operator is required to remedy the breach, or take steps to the resident's satisfaction to do so, before the date specified in the notice (at least 7 days after the notice is given);
  - (v) if the operator does not remedy the breach or take steps to the resident's satisfaction to do so, as required, the resident intends to apply to the Commissioner or a court for an order for termination of the occupancy and permitting the resident to give up possession of the agreement property.
- (c) If the operator does not remedy the breach or take steps to the resident's satisfaction to do so, as required by the notice, the resident may apply under clause 89 for an order terminating the occupancy and permitting the resident to give up possession of the agreement property.
- (d) The resident must make the application no later than 14 days after the date specified in the notice under subclause 84(b)(iv).

#### **85. SERIOUS BREACH BY RESIDENT (S.111 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to s.111 of the Act:

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- (a) A court may make an order under this clause on application to the court by the operator under this caravan park agreement.
  - (b) If the court is satisfied of both of the following:
    - (i) the resident has breached the agreement;
    - (ii) the breach is sufficiently serious to justify termination of the occupancy otherwise than in accordance with clauses 73 to 78;the court may terminate the occupancy and make an order for possession of the agreement property on or after the date specified in the order (a date at least 7 days after the date of the order).
  - (c) If the court is satisfied the resident or a person while on the agreement property with the resident's consent, has intentionally or recklessly caused or permitted or is likely to cause or permit:
    - (i) serious damage to the agreement property; or
    - (ii) personal injury to:
      - A. the operator; or
      - B. a person in the vicinity of the agreement property;the court may terminate the occupancy and make an order for immediate possession of the agreement property.

## **86. SERIOUS BREACH BY OPERATOR (S.112 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to s.112 of the Act:

- (a) On application to a court by the resident under this caravan park agreement, the court may terminate the occupancy and make an order for possession of the agreement property on or after a date specified in the order (at least 7 days after the date of the order) if satisfied:
  - (i) the operator has committed a breach of the relevant caravan park agreement; and
  - (ii) the breach is sufficiently serious to justify termination of the occupancy otherwise than in accordance with clauses 82 to 84.

## **87. HARDSHIP (S.113 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to s.113 of the Act:

- (a) On application to a court by the resident under this caravan park agreement, the court may terminate the agreement and make an order for possession of the agreement property if satisfied that:
  - (i) the continuation of the occupancy would result in undue hardship to the operator or resident; and
  - (ii) the circumstances of hardship had not arisen before the resident entered into the agreement.
- (b) If the court terminates an occupancy and makes an order for possession under this clause, the order must include the date on and from which it has effect.

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## 88. CONDUCT OF RESIDENT UNACCEPTABLE (S.114 OF THE ACT)

The operator and the resident both acknowledge and agree that pursuant to s.114 of the Act:

- (a) On application to a court by the operator under this caravan park agreement or an interested person, the court may terminate the occupancy and make an order for possession of agreement property if satisfied the resident has:
  - (i) used relevant property, or caused or permitted the property or areas to be used, for an illegal purpose; or
  - (ii) repeatedly caused a nuisance on or to escape from the relevant property or repeatedly permitted a nuisance to be caused on or escape from the property or areas; or
  - (iii) repeatedly caused or repeatedly permitted an interference with the reasonable peace or privacy of a person residing in the immediate vicinity of the relevant property.
- (b) If the application is made by an interested person, the court may make an order for possession of the agreement property only if the operator has been:
  - (i) served with a copy of the application; and
  - (ii) given the opportunity to be heard by the court.
- (c) If the operator objects to the court making an order for possession, the court may make the order only if satisfied exceptional circumstances justify it.
- (d) An order for possession must state the date it takes effect.
- (e) In this clause:
  - (i) **interested person**, for an application under this clause, means a person who has been adversely affected by the conduct described in the application.
  - (ii) **relevant property**, in relation to this caravan park agreement, means the agreement property and the common areas in the caravan park.

## 89. FAILURE TO REMEDY BREACH AFTER NOTICE GIVEN (S.115 OF THE ACT)

The operator and the resident both acknowledge and agree that pursuant to s.115 of the Act:

- (a) On application to the Commissioner or a court by the operator under this caravan park agreement, the Commissioner or the court may terminate an occupancy relating to the resident and make an order for possession of agreement property if satisfied the resident:
  - (i) has been given a notice in accordance with clause 82 or 83; and
  - (ii) has failed to remedy the breach as required by the notice.
- (b) On application to the Commissioner or a court by the resident under this caravan park agreement, the Commissioner or the court may terminate

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the occupancy and permit the resident to give up possession of the agreement property if satisfied the operator:

- (i) has been given a notice under clause 84(b) ; and
  - (ii) has failed to remedy the breach as required by the notice.
- (c) An order for possession has effect on the date specified in the order (at least 5 business days after the date of the order), unless the operation of the order is suspended under clause 95.

## **90. APPLICATION FOR CONFIRMATION OF NOTICE OF TERMINATION GIVEN TO RESIDENT OF CARAVAN PARK (S.116 OF THE ACT)**

- (a) This clause applies if:
  - (i) the operator under this caravan park agreement has given a notice of termination to the resident; and
  - (ii) within 3 business days after the day the notice of termination is given to the resident, the operator has applied to the Commissioner for an order confirming the termination.
- (b) In giving notice of the application to the resident as mentioned in section 150(3) of the Act, the Commissioner must give the resident an opportunity to respond to the application.
- (c) If, after exercising powers under Part 14 of the Act in relation to the application as the Commissioner thinks fit, he or she:
  - (i) is satisfied there were grounds for the operator to give the notice of termination to the resident and it was reasonable in the circumstances for the owner to give that notice – the Commissioner must confirm the termination; or
  - (ii) is not so satisfied – the Commissioner must declare the termination was invalid.
- (d) If the Commissioner declares a termination invalid and considers the resident incurred expenses for accommodation, food and moving expenses that would not otherwise have been incurred, the Commissioner may, as he or she considers appropriate, order the operator to pay all or part of the expenses of the resident and others who lived with the resident in the agreement property.
- (e) Despite anything to the contrary, the Commissioner must not extend the time for making an application for confirmation of a termination by notice of termination.
- (f) In this clause:
  - (i) **resident** includes a person given a notice of termination even if the person has left the relevant caravan park because of the notice.

## **91. FORM OF NOTICE OF TERMINATION (S.117 OF THE ACT)**

- (a) A notice of termination given by the operator must be signed by the operator and specify:
  - (i) the address of the agreement property; and

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- (ii) the date on which the resident is required to give up possession of the agreement property to the operator; and
  - (iii) the prescribed information, if any; and
  - (iv) the ground for the termination, if any.
- (b) A notice of termination given by the resident must be signed by the resident or, if there is more than one resident, by each of them and specify:
- (i) the address of the agreement property; and
  - (ii) the date on which the resident must give up possession of the agreement property to the operator; and
  - (iii) the prescribed information, if any; and
  - (iv) the ground for the termination, if any.
- (c) A notice of termination that does not comply with this clause is of no effect.

**92. NOTICE MAY BE WITHDRAWN (S.118 OF THE ACT)**

A notice of termination given under this caravan park agreement may be withdrawn if a notice about the withdrawal is signed by the person who gave the notice and the person to whom the notice was given.

**93. RESIDENT TO GIVE POSSESSION IF OCCUPANCY TERMINATES (S.119 OF THE ACT)**

If a notice of termination is given to the resident hereunder or under this caravan park agreement and it is not withdrawn or declared to be of no effect under clause 71, the resident ceases to be entitled to possession of the agreement property on the date specified in the notice as the date on which the occupancy terminates.

**94. COMMISSIONER OR COURT MAY MAKE ORDER FOR POSSESSION (S.120 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to s.120 of the Act:

- (a) If an occupancy is terminated by a notice of termination, the operator may apply to the Commissioner or a court for an order for possession of the agreement property.
- (b) If the Commissioner or the court is satisfied the occupancy is terminated, the Commissioner or the court may make an order for possession of the agreement property.
- (c) The order for possession has effect on a date specified in the order (at least 5 business days after the date of the order), unless the operation of the order is suspended under clause 95.

**95. COMMISSIONER OR COURT MAY SUSPEND ORDER FOR POSSESSION (S.121 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to s.121 of the Act:

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- (a) If the Commissioner or a court is satisfied the operator is entitled to an order for possession of the agreement property but making the order would cause severe hardship to the resident, the Commissioner or the court may:
    - (i) suspend the operation of the order for up to 90 days; and
    - (ii) extend the operation of the agreement until the operator obtains possession of the agreement property from the resident or the resident fails to pay rent within 7 days after the rent is due.
  - (b) The Commissioner or a court may only make an order under subclause 95(a):
    - (i) if the following matters are taken into account:
      - A. whether the resident has, during the occupancy, caused a nuisance or threatened or harassed neighbouring residents or visitors within the locality of the agreement property or caused damage to the property of the neighbouring residents or visitors;
      - B. incidents relating to the occupancy that have occurred during the period of the agreement;
      - C. the seriousness of the breach entitling the operator to the order for possession;
      - D. whether an unacceptable risk would be posed to neighbouring residents or visitors within the locality of the agreement property, or the property of those residents or visitors, if the order for possession was to be suspended; and
    - (ii) if satisfied there are no circumstances that make it likely the resident will be unable to pay all outstanding and future rent in relation to the agreement property.
  - (c) In extending the operation of this caravan park agreement, the Commissioner or the court may make modifications to the agreement that the Commissioner or court thinks fit, other than modifications that reduce the resident's financial obligations under the agreement.
  - (d) If an occupancy has been extended under this clause and the resident fails to pay rent within 7 days after the rent is due, the operator may, by notice of termination, give at least 7 days notice to the resident to give up possession of the agreement property.
  - (e) The resident who receives the notice under subclause 95(d) must, on the date specified in the notice of termination, give up possession of the agreement property to the operator including by removing the caravan placed on the caravan site other than by the operator.

## **96. REPOSSESSION OF CARAVAN (S.122 OF THE ACT)**

- (a) The operator must not enter agreement property for taking possession of the agreement property (including by removing the caravan placed on the agreement property other than by the operator) unless:
    - (i) the agreement property is abandoned or the resident voluntarily gives up its possession; or
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- (ii) the operator is authorised to take possession of the agreement property under an order of the Commissioner or a court.
  - (b) The operator must not engage in conduct that results in a contravention of subclause 96(a).

**97. RIGHT TO POSSESSION NOT LOST BY FORFEITURE OF HEAD OCCUPANCY (S.123 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to s.123 of the Act:

- (a) A person is not entitled to take possession of agreement property under this caravan park agreement so as to defeat the resident's right to occupy the property, unless an order for possession of the agreement property is made by a court.
- (b) Subclause 97(a) applies even if the entitlement is asserted under a contract for the purchase of a caravan, a mortgage or otherwise than under the Act.
- (c) If a person is entitled to possession of agreement property occupied by the resident under this caravan park agreement, the court before which proceedings for possession of the property are brought may, on application of an interested person, vest the operator's interest under the agreement in the person who would, but for the agreement, be entitled to possession of the property so the resident holds the caravan directly from that person as operator.
- (d) An order may be made under subclause 97(c) on the terms and conditions the court thinks fit.

**98. ABANDONMENT OF CARAVAN PROVIDED BY OPERATOR (S.124 OF THE ACT)**

- (a) This clause applies if the operator reasonably believes that the caravan provided by the operator under this agreement has been abandoned.
- (b) If rent is outstanding in relation to this caravan, the operator may take possession of this caravan.
- (c) On application to the Commissioner by the operator under this caravan park agreement, the Commissioner may:
  - (i) declare the caravan was abandoned on a date stated in the declaration; and
  - (ii) make an order that the operator may take immediate possession of the caravan.
- (d) If a declaration is made under subclause 98(c), the resident is taken to have abandoned the caravan on the date stated in the declaration.

**99. CONDITION REPORT AT TERMINATION OF OCCUPANCY (S.125 OF THE ACT)**

- (a) Within 3 business days after possession of agreement property is given up, the operator may fill out and sign a condition report and give it to the resident.



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- (b) The operator must fill out the condition report under subclause 99(a) in the resident's presence unless it is not practical to do so or the resident does not appear at the agreed time.
  - (c) Within 3 business days after forming an opinion that the resident has apparently abandoned agreement property, the operator may fill out and sign a condition report and give it to the resident by posting it to his or her last known residential, business or postal address.
  - (d) A condition report must:
    - (i) specify the condition of the following:
      - A. if the agreement property included the caravan – the caravan site to which this caravan park agreement relates, the walls, floors and ceilings of the caravan and, if the caravan has rooms, the walls, floors and ceilings of each room;
      - B. if the agreement property did not include the caravan – the caravan site to which this caravan park agreement relates; and
    - (ii) itemise, and specify the condition of, any fixture or chattel that is agreement property; and
    - (iii) include other prescribed information, if any.
  - (e) The resident may:
    - (i) accept a condition report given to the resident under subclause 99(a) or 99(c) by signing the report and returning it to the operator; or
    - (ii) if the parties are unable to agree as to the contents of the condition report – refuse to accept the condition report.
  - (f) If, within 7 business days after the condition report has been given to the resident under subclause 99(a) or 99(c), both parties have not accepted the report, the operator or resident may apply to the Commissioner to prepare a condition report about the agreement property.
  - (g) On receipt of an application under subclause 99(f), the Commissioner may prepare a condition report.
  - (h) For purposes of the Act, the operator and resident are taken to have accepted the condition report prepared under subclause 99(g).

**100. CONDITION REPORT CONCLUSIVE EVIDENCE OF  
CONDITION OF AGREEMENT PROPERTY AT  
TERMINATION OF OCCUPANCY (S.126 OF THE ACT)**

If a condition report is accepted or is taken to have been accepted under Division 1 of Part 11 of the Act by the operator and resident, the condition report is (to the extent it relates to the end of the occupancy) conclusive evidence of the following unless the Commissioner determines otherwise in a particular case:

- (a) the condition of the agreement property;

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- (b) the condition of any agreement property mentioned in the condition report at the termination of the occupancy.

#### **101. WHEN OPERATOR MAY KEEP SECURITY DEPOSIT (S.127 OF THE ACT)**

- (a) Subject to this clause, the resident under this caravan park agreement is entitled to have the resident's security deposit paid to him or her at the end of this agreement.
- (b) Within 7 business days after the resident gives up possession of the agreement property or has, in the opinion of the operator, apparently abandoned the property, the operator must pay the resident's security deposit to the resident, less an amount the operator is entitled to retain under this clause.
- (c) At the end of this caravan park agreement, the operator is entitled to retain an amount from the resident's security deposit necessary for the following (each of which is a **loss**):
  - (i) make good damage (other than reasonable wear and tear) to the agreement property that occurred during the occupancy and was caused by the resident or a person for whose actions the resident is liable under clause 127;
  - (ii) replace any property lost or destroyed by the resident or by a person for whose actions the resident is liable under clause 127;
  - (iii) clean agreement property left unreasonably dirty by the resident or by a person for whose actions the resident is liable under clause 127;
  - (iv) replace locks altered, removed or added by the resident without the consent of the operator;
  - (v) pay outstanding rent or unpaid charges for electricity, gas or water payable by the resident under Part 12 of the Act;
  - (vi) pay an amount required to be paid under clause 110;
  - (vii) pay an amount ordered by the Commissioner or a court to be paid to the operator by the resident unless it has been paid.
- (d) The operator is not entitled to retain all or part of the resident's security deposit for a loss mentioned in subclause 101(c)(i), 101(c)(ii) or 101(c)(iii) unless:
  - (i) a condition report in relation to the agreement property was accepted by the resident under Part 4 of the Act; and
  - (ii) if the resident has given up possession of the agreement property or has, in the opinion of the operator, apparently abandoned the property – a condition report has been given to the resident under clause 99.
- (e) Subject to clause 102(b), the operator is not entitled to retain under subclause 101(c) all or part of the resident's security deposit unless, within 7 business days after the resident gives up possession of the agreement property or has, in the opinion of the operator, apparently abandoned the property, the operator has:

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- (i) given written notice of his or her intention to retain so much of the security deposit as is specified in the notice because of a loss specified in the notice; and
  - (ii) attached a copy of a statutory declaration attesting to the truth of the claim that the retention is required for the loss specified in the notice; and
  - (iii) attached a copy of a statutory declaration attesting that the receipts, invoices or other documents attached to the declaration relate to:
    - A. the losses for which all or part of the resident's security deposit is being retained; or
    - B. the amount of outstanding rent owing under the agreement or money owing under clause 110; and
  - (iv) for agreement property that is damaged or unreasonably dirty – attached copies of receipts, invoices or other documents, including orders of the Commissioner or a court, specifying the amount required to make good the damage or clean the property; and
  - (v) returned to the resident the proportion of the resident's security deposit not claimed by the operator or not to be retained under subclause 101(c) .
- (f) If, in the opinion of the operator, the resident has abandoned the agreement property, the operator may continue to hold on trust for the resident so much of the resident's security deposit as is necessary to ensure the security deposit will be available for payment to the operator in accordance with clause 111 as compensation for:
- (i) a loss of the rent that the resident would have been liable to pay under the agreement if he or she had not abandoned the agreement property; and
  - (ii) a loss caused to the operator in securing new residents for the agreement property.
- (g) Subject to subclause 101(h), the resident's security deposit held by the operator under subclause 101(c) must be held on trust for the resident until:
- (i) the Commissioner determines the distribution of the security deposit under clause 111; or
  - (ii) if the Commissioner is satisfied that all losses mentioned in subclause 101(c) may be calculated in relation to the occupancy to which the deposit relates – the Commissioner determines the distribution of the security deposit on application under this Act by the resident.
- (h) The operator is not entitled to claim under clause 111 all or part of an amount as a loss mentioned in subclause 101(c) unless:
- (i) the Commissioner receives an application to determine the distribution of the resident's security deposit; or
  - (ii) the loss is claimed under clause 111;
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as soon as practicable after the amount can be calculated and, in any case, within 3 months from the date on which the resident apparently abandoned the agreement property.

- (i) If the operator ceases under subclause 101(h) to be entitled to claim all or part of an amount for a loss mentioned in subclause 101(c), the resident is entitled to as much of the resident's security deposit as the operator held on trust for the resident under subclause 101(f) and clause 105 applies accordingly.
- (j) In this clause:
  - (i) **end of a caravan park agreement** means, if there is a continuation of the occupancy to which the caravan park agreement relates, at the end of the continuation.
  - (ii) **resident's security deposit** means the amount of the security deposit paid by the resident to the operator.
  - (iii) **retain** includes continue to hold.

## **102. COMMISSIONER MAY DEAL WITH DISPUTE ABOUT SECURITY DEPOSIT (S.128 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to s.128 of the Act:

- (a) The resident may apply to the Commissioner for the return of some or all of the money paid as a security deposit and the return of the interest to which the resident is entitled under clause 103:
  - (i) after the resident has received a notice from the operator under clause 101(e) ; or
  - (ii) if the resident has not received notice under clause 101(6) within 7 business days after the resident gave up possession of the agreement property or, in the opinion of the operator, apparently abandoned the agreement property.
- (b) Despite clause 101(e) , the Commissioner may permit the operator to retain an amount of a security deposit for a loss specified in clause 101(c)(iv), 101(c)(v), 101(c)(vi) or 101(c)(vii), although the operator has not given the resident a notice under clause 101(e) in relation to that loss, if the Commissioner is satisfied the circumstances of the failure to give the notice are such that the operator ought, despite the failure, be permitted to retain such an amount.

## **103. INTEREST ON SECURITY DEPOSIT (S.129 OF THE ACT)**

The operator and the resident both acknowledge and agree that for the purposes of section 129 of the Act interest accrued in relation to a security deposit shall be paid to the operator at the end of the occupancy<sup>4</sup>.

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<sup>4</sup> Clause 11 of the Caravan Parks regulations modifies section 129 of the Act to the extent that, unless the caravan park agreement provides otherwise, the interest that accrues in relation to the security deposit is distributed to the operator.

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#### **104. CLAIMS ON BEHALF OF CO-RESIDENTS (S. 130 OF THE ACT)**

- (a) The resident who is authorised in writing to do so by another resident under this caravan park agreement (a **co-resident**) may claim the co-resident's proportion of the security deposit on that co-resident's behalf.
- (b) The operator must return to the resident authorised by a co-resident under subclause 104(a) the proportion of the security deposit the co-resident is entitled to have returned to him or her.

#### **105. IF PERSON OWED SECURITY CANNOT BE FOUND (S.131 OF THE ACT)**

- (a) If all or part of a security deposit to which the resident is entitled under this Act has not been returned by the operator to the resident within 6 months after the date the occupancy is terminated, the operator must ensure that, within 28 days after that period expires, the money is placed in the CPRT Account to be held on trust for the resident.
- (b) The parties hereto acknowledge and agree that pursuant to clause 131 of the Act on application to the Commissioner by the operator or the resident under this caravan park agreement in relation to a security deposit placed in the CPRT Account under this clause, the Commissioner may determine:
  - (i) the proportion of the security deposit paid into the CPRT Account to which the resident or operator is entitled; and
  - (ii) the person to whom interest on the security deposit is payable in accordance with this Act and the amount of the interest, which is to be determined as prescribed.
- (c) The Accountable Officer within the meaning of the *Financial Management Act* of the Agency allotted the administration of this Act must pay to the resident or operator the amount determined by the Commissioner under subclause 105(b).

#### **106. PAYMENT OF ELECTRICITY, GAS OR WATER CHARGES (S.132 OF THE ACT)**

The operator must not require the resident to pay for charges, levies, rates or taxes, other than a charge payable by the resident for electricity, gas or water supplied to the agreement property during the resident's occupancy.

#### **107. NO CHARGE PAYABLE UNLESS SPECIFIED IN CARAVAN PARK AGREEMENT (S.133 OF THE ACT)**

- (a) It is a term of this caravan park agreement that the resident must pay to the operator for electricity and/or gas and/or water supplied to the caravan park site as stated in Item 6.
  - (b) The resident is only required to pay the operator for a charge payable by the operator for electricity, gas or water supplied to the agreement property during the resident's occupancy (a **separate charge**) if:
    - (i) the resident is required to pay the separate charge to the operator under this caravan park agreement; and
    - (ii) the agreement property is individually metered for the service or facility to which the separate charge relates.
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- (c) The operator must not request from the resident an amount for a separate charge unless it is payable by the resident under subclause 107(b) and calculated in accordance with this caravan park agreement.

**108. COMMISSIONER MAY DETERMINE CHARGES PAYABLE (S.134 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to s.134 of the Act:

- (a) On application to the Commissioner by the operator or resident under this caravan park agreement, the Commissioner may make a determination in relation to a separate charge payable by the resident.

**109. DUTY OF MITIGATION (S.135 OF THE ACT)**

The rules of the law of contract about mitigation of loss or damage on breach of a contract apply to a breach of this caravan park agreement.

**110. COMPENSATION IF RESIDENT FAILS TO GIVE POSSESSION OF AGREEMENT PROPERTY (S.136 OF THE ACT)**

- (a) If the resident fails to give to the operator possession of agreement property occupied under this caravan park agreement after the resident is required under the Act to do so, the operator is entitled to receive from the resident:

- (i) compensation for any loss or expense incurred by the operator by the failure; and
- (ii) an amount equivalent to the rent that would have been payable by the resident for the agreement property for the period the resident remains in possession after termination of the agreement.

- (b) The operator and the resident both acknowledge and agree that pursuant to s.136 of the Act on application to the Commissioner by the operator under the agreement, the Commissioner may make an order requiring the resident to pay to the operator the amount the Commissioner considers is payable under subclause 110(a).

**111. COMPENSATION AND CIVIL PENALTIES (S.137 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to s.137 of the Act:

- (a) On application of the operator or the resident under this caravan park agreement, the Commissioner may order compensation for a loss or damage suffered by the applicant must be paid to the applicant by the other party because:
  - (i) the other party has failed to comply with the agreement or an obligation under the Act relating to the agreement; or

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- (ii) the applicant has paid to the other party more than the applicant is required to pay to that other party under the Act and this agreement.
  - (b) Despite subclause 111(a), an operator or a resident may not apply under that subclause for:
    - (i) compensation payable under clause 110; or
    - (ii) loss or damage suffered by reason of a breach of the operator's duty to repair, unless notification under clause 45(a) has been given.
  - (c) The operator and the resident hereto acknowledge and agree that pursuant to section 137(3) of the Act in determining whether to order the payment of compensation to a party, the Commissioner must take into account each of the following:
    - (i) whether the person from whom the compensation is claimed has taken all reasonable steps to comply with his or her obligations under the Act and this caravan park agreement, being obligations in relation to which the claim is made;
    - (ii) for a breach of this caravan park agreement or the Act – whether the applicant has consented to the failure to comply with obligations in relation to which the claim is made;
    - (iii) whether money has been paid to or recovered by the applicant by way of compensation, including any money recovered or entitled to be recovered from the security deposit paid under this caravan park agreement;
    - (iv) whether a reduction or refund of rent or other allowance has been made to or by the applicant in relation to this caravan park agreement;
    - (v) whether an action was taken by the applicant to mitigate the loss or damage;
    - (vi) any tender of compensation;
    - (vii) if the claim is made for damages to the agreement property – any action taken by the person from whom the compensation is claimed to repair the damage at his or her own expense.
  - (d) If a party to this caravan park agreement is found guilty of an offence against the Act by a court, that court or another court may, on application of the other party to the agreement, order the person that is found guilty to pay to the applicant compensation for any loss or damage suffered by the applicant because of the commission of the offence.
  - (e) The operator and the resident hereto acknowledge and agree that pursuant to section 137(5) of the Act the Commissioner must not make an order under subclause 111(a) :
    - (i) for the payment of compensation in relation to death, physical injury, pain or suffering; or
    - (ii) for a failure to pay rent unless:
      - A. the rent has been unpaid for at least 3 days after it is due and payable; or
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- B. the resident has failed on at least 2 previous occasions to pay rent under the same agreement within 3 days after that rent was due and payable.

## **112. AGREEMENTS INCORPORATE CARAVAN PARK RULES (S.138 OF THE ACT)**

The operator and the resident both acknowledge and agree that pursuant to s.138 of the Act and Item 14:

- (a) The caravan park rules for this caravan park (as made or amended from time to time) are taken to constitute terms of every caravan park agreement relating to the park.
- (b) It is irrelevant for subclause 112(a) as to how this caravan park agreement is formed.
- (c) Despite subclause 112(a), caravan park rules must be consistent with each term of this caravan park agreement as prescribed under the Act.

## **113. CARAVAN PARK RULES (S.139 OF THE ACT)**

- (a) The operator may make rules about the use, enjoyment, control and management of the caravan park.
- (b) The operator must not fail to have the rules on display when:
  - (i) the operator and resident enter into this caravan park agreement; or
  - (ii) the operator gives the form of this caravan park agreement to the resident whether or not the operator has signed the agreement.

## **114. AMENDMENT OF CARAVAN PARK RULES (S1.40 OF THE ACT)**

- (a) The operator may amend the caravan park rules of the caravan park.
- (b) In this clause:
  - (i) **amend**, in relation to caravan park rules, includes:
    - A. vary a caravan park rule; and
    - B. add a new rule to the caravan park rules; and
    - C. revoke an existing caravan park rule.

## **115. APPLICATION IF PARK RULES ARE CONSIDERED UNREASONABLE (S.141 OF THE ACT)**

- (a) The resident may apply to the Commissioner for a declaration under this clause about a caravan park rule.
- (b) The Commissioner must consider the application in a way the Commissioner considers appropriate.
- (c) After considering the application, the Commissioner may make:
  - (i) an order declaring a caravan park rule is or was reasonable; or
  - (ii) an order declaring a caravan park rule is or was unreasonable; or



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- (iii) an order declaring a caravan park rule is or was unreasonable and an order to change the rule in a way the Commissioner considers appropriate to make it reasonable.
  - (d) A caravan park rule is or was invalid if the Commissioner makes an order declaring the rule to be or to have been unreasonable.

#### **116. ENFORCING CARAVAN PARK RULES (S.142 OF THE ACT)**

It is a term of this caravan park agreement that the operator must:

- (a) take all reasonable steps to ensure the caravan park rules are observed by all residents and other persons occupying agreement property; and
- (b) ensure the caravan park rules are reasonable and are enforced and interpreted consistently and fairly.

#### **117. ACCESS TO CARAVAN PARK (S.143 OF THE ACT)**

It is a term of this caravan park agreement that the operator must provide each resident with:

- (a) 24 hour vehicular access to the caravan site occupied by the resident; and
- (b) 24 hour access to the agreement property and the toilet and bathroom facilities in the common areas within designated areas of the park; and
- (c) access, during all reasonable hours, to the facilities in the common areas other than those mentioned in subclause 117(b).

#### **118. CHANGING CARAVAN OR CARAVAN SITE WITHIN CARAVAN PARK (S.144 OF THE ACT)**

- (a) This clause applies if the operator is reasonably satisfied it is necessary to relocate the resident from a caravan site or caravan within the caravan park to another caravan site or caravan within the park:
  - (i) to allow work to be carried out in the park; or
  - (ii) because of an emergency; or
  - (iii) for health or safety reasons; or
  - (iv) for the efficient management of the caravan park; or
  - (v) for another reason under a law in force in the Territory.
- (b) The operator must give the resident written notice about the decision for the relocation including the following:
  - (i) the reasons for the relocation;
  - (ii) the date proposed for the relocation to take place;
  - (iii) the operator is responsible for the cost of the relocation unless this caravan park agreement provides otherwise;
  - (iv) this caravan park agreement is to be amended to include the details of the relocation or, at the election of the resident, may be terminated on or before the date proposed for the relocation;

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- (v) what the resident may do if he or she does not wish to be relocated as stated in the notice, including the time by which the resident must act.
  - (c) The operator must give the notice to the resident within a reasonable period before the date proposed for the relocation having regard to the reason for giving the notice.

*Examples of a reasonable period*

*If there is a health and safety reason, 24 hours may be reasonable. But if the reason is carrying out programmed maintenance, 30 days may be reasonable.*

## **119. OPTIONS AFTER GIVING NOTICE ABOUT RELOCATION (S.145 OF THE ACT)**

- (a) This clause applies if the operator has given the resident a notice under clause 118.
- (b) The operator and resident may enter into an agreement (a **relocation agreement**) about the relocation including, for example, the proposed date for the relocation, how the relocation is to be undertaken and the type of caravan to be made available.
- (c) If the resident wishes to terminate this caravan park agreement, the resident may give the operator written notice (a **relocation termination notice**) terminating the agreement on or before the date proposed for the relocation.
- (d) If a relocation agreement is not entered into, or a relocation termination notice is not given, within the period of 30 days after the notice under clause 118 is given, the operator may apply to the Commissioner for an order about the relocation.
- (e) The Commissioner must consider the application in a way the Commissioner considers appropriate.
- (f) After considering the application, the Commissioner may:
  - (i) if the Commissioner considers there was sufficient grounds for the operator to be satisfied it was necessary to relocate the resident from a caravan site or caravan in the caravan park to another caravan site or caravan in the park – make an order declaring the resident must relocate, the date for relocation and the place to which the resident must relocate; or
  - (ii) otherwise – make an order declaring the resident need not relocate to another caravan site or caravan in the caravan park.

## **120. SALE OF CARAVANS ON CARAVAN SITE (S.146 OF THE ACT)**

- (a) If this agreement is a caravan site agreement it is a term of this caravan park agreement that, if the resident intends to offer the caravan for sale, the resident must inform the operator about that intention before the resident displays a sign in or on the caravan or caravan site about the sale.
- (b) The operator must not do either of the following if the resident acts in accordance with a term of this caravan park agreement as mentioned in subclause 120(a):
  - (i) hinder the sale of the resident's caravan;

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- (ii) prevent the display of a "for sale" sign in or on a caravan or caravan site for the purpose of selling the caravan.
  - (c) Without limiting subclause 120(b), the operator is taken to hinder the sale of a caravan if the operator stops potential buyers from inspecting the caravan.
  - (d) The operator does not contravene subclause 120(b) in relation to the proposed sale of a caravan placed on the caravan site if:
    - (i) the operator imposes conditions relating to potential buyers entering or remaining in the caravan park that are reasonable in the circumstances; or
    - (ii) the operator has reasonably refused to consent to a proposed assignment of the resident's interest in the caravan park site agreement relating to the caravan site.
  - (e) If the caravan is sold, the new owner must remove the caravan from the caravan site within 5 days after the sale or within such further time as agreed by the operator unless:
    - (i) the right to occupy this caravan site has been assigned under clause 91(a); or
    - (ii) the operator has entered into this caravan park agreement with the new owner.
  - (f) The parties hereto acknowledge and agree that pursuant to section 144 of the Act the Regulations may prescribe the maximum size for a "for sale" sign.

## 121. DEFINITIONS (S.148 OF THE ACT)

In this agreement:

- (a) **1 days notice** means notice for a period that includes at least 1 business day.

### *Example*

*If a notice is given on a Saturday and the following Monday is a public holiday, in order for the period of the notice to include 1 business day, the notice would have to include the following Tuesday. Therefore even though the notice is given on a Saturday, if a provision requires 1 days notice, the notice does not take effect until the following Wednesday.*

- (b) **Act** means the *Caravan Parks Act*;
- (c) **ADI** means authorised deposit taking Institutions and corporations that are authorised under the *Banking Act 1959*.
- (d) **agent**, in relation to the operator, includes an employee of the operator.
- (e) **agreement property** means:
  - (i) if the agreement is a caravan park site agreement – the site provided under the agreement and things on the site, including, for example, any garden and garden watering system; or
  - (ii) if the agreement is a caravan and park site agreement – a caravan (including any chattels and fixtures), the site provided under the agreement and things on the site, including, for example, any garden and garden watering system.

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- (f) **bond** means a provision of this caravan park agreement under which the resident is required to give a security deposit to ensure the resident's performance of obligations under the agreement.
- (g) **business day** means a day other than a Saturday or Sunday or a public holiday.
- (h) **caravan**, see clause 122.
- (i) **caravan and park site agreement**, see clause 123(d) .
- (j) **caravan park** means an area of land identified in Item 4 used in either or both of the following ways:
- (i) as a complex of sites and caravans, for which rights of occupancy are conferred under various caravan park agreements, together with common areas including bathrooms, toilets and laundry facilities;
  - (ii) as a complex of sites for which rights of occupancy are conferred under various caravan park agreements, together with common areas that may, but need not, include bathrooms, toilets and laundry facilities.
- (k) **caravan park agreement**, see clause 123(a).
- (l) **caravan park rules** means rules for a caravan park made under clause 113 and, if amended under clause 114, as amended.
- (m) **caravan park site agreement**, see clause 123(b).
- (n) **caravan site**, in relation to a caravan park, includes:
- (i) the area of land on which a caravan is situated or may be placed as identified in Item 5; and
  - (ii) adjoining areas of land set aside or available for the exclusive use of a person occupying a caravan on, or to be placed on, the site.
- (o) **Commissioner** means the Commissioner of Tenancies under section 13 of the *Residential Tenancies Act*.
- (p) **common areas**, in this caravan park, means the facilities, buildings, roads or other areas in the park provided for common use by persons living or staying in the park.

*Examples of facilities for common use*

*Bathrooms, laundries, recreational areas, BBQ areas and swimming pools.*

- (q) **condition report**, see clause 7(a).
- (r) **continuation**, in relation to an occupancy to which a caravan park agreement relates, includes an extension or renewal of the occupancy (however described) and whether the continuation is a fixed term occupancy or periodic occupancy.
- (s) **court** means:
- (i) for a matter in relation to which the Supreme Court has jurisdiction under section 149 of the Act – the Supreme Court; or
  - (ii) otherwise – the Local Court..
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- (t) **CPRT** means the Caravan Park Residents Trust account maintained by the Agency in accordance with section 21 of the Act.
- (u) **emergency repairs**, see clause 50(b)
- (v) **fixed term occupancy** means an occupancy for a fixed term specified in this caravan park agreement.
- (w) **key**, in relation to a lock, includes a code and sensor pass.
- (x) **lock** includes any security device.
- (y) **mobile home** means a type of a structure designed for use for residential purposes but not designed to be required to be permanently attached to land.
- (z) **notice of termination** means a notice of termination under this Act that is in the form required under clause 91.
- (aa) **occupancy**, in relation to this caravan park agreement, resident or operator, means:
- (i) if the agreement is a caravan park site agreement – the right of the resident to place a caravan on the caravan site and reside in the caravan and otherwise occupy the caravan site; or
  - (ii) if the agreement is a caravan and park site agreement – the right of the resident to reside in the caravan on the caravan site and otherwise occupy the caravan site.
- (bb) **occupancy dispute** means a dispute between the resident and the operator about the occupancy under this caravan park agreement.
- (cc) **Operator** means the operator specified in Item 1, see clause 124.
- (dd) **order for possession of agreement property**, in relation to this caravan park agreement, includes an order for the removal of a caravan placed on the agreement property other than by the operator.
- (ee) **periodic occupancy** means an occupancy that is not a fixed term occupancy.
- (ff) **permitted repairs**, see clause 47.
- (gg) **prescribed**, in relation to information or particulars, means information or particulars as prescribed by regulation.
- (hh) **prescribed account** means an account kept at:
- (i) an ADI; or
  - (ii) a statutory corporation of the Territory.
- (ii) **rent** means an amount payable under this caravan park agreement in relation to the occupancy of a caravan, caravan site or both for a period specified in the agreement, including, for example, payments payable by the resident to the operator under clauses 107 and 108.
- (jj) **Resident** the resident specified in Item 2, see clause 125.
- (kk) **security deposit** means an amount of money paid, or required to be paid, in accordance with a bond as stated in Item 12.
- (ll) **separate charge**, see clause 107(b).
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## 122. MEANING OF *CARAVAN* (S.5 OF THE ACT)

- (a) A caravan is either of the following:
  - (i) a trailer designed to be:
    - A. attached to and towed by a self-propelled vehicle; and
    - B. used for residential purposes;
  - (ii) a self-propelled vehicle designed to be used both as a vehicle and for residential purposes.
- (b) A caravan includes an annexe designed to be used as an extension of the habitable area of a caravan.
- (c) For the purposes of this caravan park agreement and for the purposes of the Act, a reference to a caravan (other than in the definition ***caravan park*** in clause 121) includes either of the following when situated in a caravan park:
  - (i) an immovable dwelling;
  - (ii) a mobile home.
- (d) In this clause:
  - (i) ***designed*** includes modified.

## 123. MEANING OF VARIOUS TERMS ABOUT CARAVAN PARK AGREEMENTS (S.6 OF THE ACT)

- (a) An agreement is a caravan ***park agreement*** if the agreement is:
  - (i) a caravan park site agreement; or
  - (ii) a caravan and park site agreement.
- (b) A caravan ***park site agreement*** is an agreement under which the operator grants another person, for valuable consideration, a right (that may, but need not, be an exclusive right) of occupancy of a caravan site in the operator's caravan park, for the purpose of placing a caravan on the caravan site, for residential purposes.
- (c) Despite subclause 123(b), if a caravan is not placed on the caravan site in accordance with the agreement but a tent is erected on the site, on the day the tent is erected, the agreement stops being a caravan park site agreement and Parts 2 to 16 of the Act and clause 18 to 120 of this Caravan Park Agreement do not apply to it.
- (d) A ***caravan and park site agreement*** means an agreement under which the operator grants another person, for valuable consideration, a right (that may, but need not, be an exclusive right) of occupancy of both of the following for residential purposes:
  - (i) a site in the caravan park;
  - (ii) a caravan made available on the site by the operator.
- (e) For this caravan park agreement and for the purposes of the Act, the address for a caravan, or a caravan site, in a caravan park is the park's address unless this caravan park agreement otherwise provides an address for the caravan or site.

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- (f) To avoid doubt, if a provision of this caravan park agreement or of the Act states that a term is a term of this caravan park agreement, the provision has effect whether the agreement is in writing or not.

#### **124. MEANING OF *OPERATOR* (S.7 THE ACT)**

- (a) The ***operator*** is a person who operates a caravan park including by granting rights of occupancy under caravan park agreements.
- (b) The operator includes each of the following:
- (i) a person who is a successor in title to a person mentioned in subclause 124(a) and whose title is subject to the resident's right of occupancy;
  - (ii) a prospective operator;
  - (iii) a former operator;
  - (iv) an agent of the operator including of any person mentioned in paragraphs (a) to (c).
- (c) For sections 81-90 inclusive of the Act, ***operator*** also includes a person authorised by the operator, or an agent of the operator, for those sections.

#### **125. MEANING OF *RESIDENT* (S.8 OF THE ACT)**

- (a) The resident is a person (but not the operator) who has a right of occupancy under this caravan park agreement or otherwise because of the operation of this Act in relation to this caravan park agreement.
- (b) The resident includes each of the following:
- (i) a prospective resident;
  - (ii) a former resident;
  - (iii) a person acting on behalf of the resident, prospective resident or former resident (but not the operator or operator's agent).

#### **126. APPLICATION OF ACT WHEN PARTY IS ONLY 16 OR 17 YEARS OF AGE (S.12 OF THE ACT)**

- (a) Despite any other law in force in the Territory:
- (i) a young person may enter into this caravan park agreement as the resident and may enforce the agreement under the Act; and
  - (ii) the agreement may be enforced under the Act against the young person unless the Commissioner or a court considers the agreement is harsh or unconscionable.
- (b) In this clause:
- (i) ***young person*** means a person who has attained 16 years but not 18 years of age.

#### **127. VICARIOUS LIABILITY OF RESIDENT (S.17 OF THE ACT)**

- (a) It is a term of this caravan park agreement that if:

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- (i) a person (other than the resident) is at the caravan site with the consent of the resident; and
  - (ii) the person engages in conduct (the **relevant conduct**) that, if it had been engaged in by the resident, would be a breach of the agreement;
- for the agreement and this caravan park agreement, the resident is responsible for the relevant conduct.
- (b) However, subclause 127(a) does not make the resident criminally responsible for the relevant conduct.
  - (c) Subclause 127(a) does not apply if:
    - (i) the person who engages in the relevant conduct is in a domestic relationship with the resident; and
    - (ii) the relevant conduct constitutes or includes an act of domestic violence; and
    - (iii) it is reasonable in all the circumstances for this caravan park agreement, including but not limited to the number of times that an act of domestic violence has been engaged in by the person at the caravan site to which the agreement relates, for the resident not to be taken to be responsible for the relevant conduct.
  - (d) In this clause:
    - (i) **domestic violence**, see section 5 of the *Domestic and Family Violence Act*.
    - (ii) **domestic relationship**, see section 9 of the *Domestic and Family Violence Act*.

## 128. SERVICE NOTICES

The address for services of the operator are specified in Item 1 and the addresses for services of the resident are specified in Item 2 and the methods of service are specified in Item 3.

Unless the contrary is provided:

- (a) A notice left at an address a notice left at an address for service is taken to have been received by the party to whom the address relates when the notice was left at the address; and
  - (b) a notice sent by post is taken to have been received by the person to whom it was addressed when it would have been delivered in the ordinary course of post; and
  - (c) a notice sent by facsimile is taken to have been received at the place where the facsimile was sent when the sender's facsimile machine produces a transmission report indicating all pages of the notice have been successfully sent; and
  - (d) a notice sent by email is taken to have been received by the resident when the email enters the resident's email server.
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