

# NORTHERN TERRITORY OF AUSTRALIA

## CARAVAN PARKS ACT 2012

As in force at 1 May 2012

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 1 May 2012. Any amendments that commence after that date are not included.

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## CARAVAN PARKS ACT 2012

An Act about caravan parks in the Territory, and for related purposes

### **Part 1            Introductory matters**

#### **Division 1        Preliminary matters**

##### **1            Short title**

This Act may be cited as the *Caravan Parks Act 2012*.

##### **2            Commencement**

- (1) Sections 21 and 22 commence on the day on which the Administrator's assent to this Act is declared.
- (2) The remaining provisions of this Act commence on 1 May 2012.

##### **3            Main objectives**

- (1) The main objectives of this Act are to make provisions in relation to operators and residents under caravan park agreements:
  - (a) to balance their rights and duties, including by providing for terms of those agreements; and
  - (b) to improve the understanding of operators and residents of their rights and obligations in relation to occupancies; and
  - (c) to ensure operators and residents are provided with suitable mechanisms for enforcing their rights under caravan park agreements and this Act; and
  - (d) to ensure residents are provided with safe and habitable caravans under caravan and park site agreements and enjoy appropriate security of tenure; and

- (e) to facilitate operators receiving a fair rent in return for providing safe and habitable accommodation to residents under caravan park agreements.
- (2) Some provisions of this Act also apply to persons who are living in a caravan park but are not residents to whom a caravan park agreement applies.
- (3) Part 16 also makes provision for long term occupants of caravan parks.

## Division 2            Interpretation

### 4            Definitions

In this Act:

**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.*

**agent**, in relation to an operator, includes an employee of the operator.

**agreement property** means:

- (a) 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
- (b) if the agreement is a caravan and park site agreement – the 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.

**application**, for Part 14, see section 147.

**bond** means a provision of a caravan park agreement under which a resident is required to give a security deposit to ensure the resident's performance of obligations under the agreement.

**business day** means a day other than a Saturday or Sunday or a public holiday.

***caravan***, see section 5.

***caravan and park site agreement***, see section 6(4).

***caravan park*** means an area of land used in either or both of the following ways:

- (a) 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;
- (b) 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.

***caravan park agreement***, see section 6(1).

***caravan park rules*** means rules for a caravan park made under section 139 and, if amended under section 140, as amended.

***caravan park site agreement***, see section 6(2).

***caravan site***, in relation to a caravan park, includes:

- (a) the area of land on which a caravan is situated or may be placed; and
- (b) adjoining areas of land set aside or available for the exclusive use of a person occupying the caravan on, or to be placed on, the site.

***change date***, see section 178(4).

***CPRT Account*** means the fund mentioned in section 21(1).

***Commissioner*** means the Commissioner of Tenancies under section 13 of the *Residential Tenancies Act*.

***common areas***, in a 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.*

***condition report***, see section 33(1).

***conference***, for Part 14, see section 147.

**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.

**court** means:

- (a) for a matter in relation to which the Supreme Court has jurisdiction under section 149 – the Supreme Court; or
- (b) otherwise – the Local Court.

**emergency repairs**, see section 76(2)

**excluded agreement**, see section 10(6).

**fixed term occupancy** means an occupancy for a fixed term specified in the caravan park agreement.

**key**, in relation to a lock, includes a code and sensor pass.

**lock** includes any security device.

**long term occupant**, see section 178.

**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.

**notice of termination** means a notice of termination under this Act that is in the form required under section 117.

**occupancy**, in relation to a caravan park agreement, resident or operator, means:

- (a) if the agreement is a caravan park site agreement – the right of a resident to place a caravan on the caravan site and reside in the caravan and otherwise occupy the caravan site; or
- (b) if the agreement is a caravan and park site agreement – the right of a resident to reside in a caravan on the caravan site and otherwise occupy the caravan site.

**occupancy dispute** means a dispute between a resident and an operator about the occupancy under a caravan park agreement.

**operator**, see section 7.

***order for possession of agreement property***, in relation to a caravan park agreement, includes an order for the removal of a caravan placed on the agreement property other than by the operator.

***periodic occupancy*** means an occupancy that is not a fixed term occupancy.

***permitted repairs***, see section 73.

***prescribed***, in relation to information or particulars, means information or particulars as prescribed by regulation.

***prescribed account*** means an account kept at:

- (a) an ADI; or
- (b) a statutory corporation of the Territory.

***proceedings***, for Part 14, see section 147.

***rent*** means an amount payable under a 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 a resident to the operator under sections 133 and 134.

***resident***, see section 8.

***security deposit*** means an amount of money paid, or required to be paid, in accordance with a bond.

***separate charge***, see section 133(1).

## 5            **Meaning of *caravan***

- (1) A ***caravan*** is either of the following:
  - (a) a trailer designed to be:
    - (i) attached to and towed by a self-propelled vehicle; and
    - (ii) used for residential purposes;
  - (b) a self-propelled vehicle designed to be used both as a vehicle and for residential purposes.
- (2) A ***caravan*** includes an annexe designed to be used as an extension of the habitable area of the caravan.

- (3) For this Act, a reference to a caravan (other than in the definition *caravan park* in section 4) includes either of the following when situated in a caravan park:
- (a) an immovable dwelling;
  - (b) a mobile home.
- (4) In this section:  
*designed* includes modified.

## 6            **Meaning of various terms about caravan park agreements**

- (1) An agreement is a *caravan park agreement* if the agreement is:
- (a) a caravan park site agreement; or
  - (b) a caravan and park site agreement.
- (2) A *caravan park site agreement* is an agreement under which an 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.
- (3) Despite subsection (2), if a caravan is not placed on a 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 17 do not apply to it.
- (4) A *caravan and park site agreement* means an agreement under which an 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:
- (a) a site in the caravan park;
  - (b) a caravan made available on the site by the operator.
- (5) For this Act, the address for a caravan, or a caravan site, in a caravan park is the park's address unless the caravan park agreement otherwise provides an address for the caravan or site.
- (6) To avoid doubt, if a provision of this Act states that a term is a term of each caravan park agreement, the provision has effect whether the agreement is in writing or not.

## **7            Meaning of *operator***

- (1) An ***operator*** is a person who operates a caravan park including by granting rights of occupancy under caravan park agreements.
- (2) An ***operator*** includes each of the following:
  - (a) a person who is a successor in title to a person mentioned in subsection (1) and whose title is subject to a resident's right of occupancy;
  - (b) a prospective operator;
  - (c) a former operator;
  - (d) an agent of an operator including of any person mentioned in paragraphs (a) to (c).
- (3) For Part 8, ***operator*** also includes a person authorised by an operator, or an agent of the operator, for that Part.

## **8            Meaning of *resident***

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

## **Division 3            Matters relating to application of Act**

### **9            Act binds Crown**

- (1) This Act binds the Crown in right of the Territory and, in so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

- (2) Subsection (1) does not make the Crown liable to be prosecuted for an offence.

## **10        Application of Act**

- (1) This Act applies to a caravan park agreement, made on or after the commencement of this section, that specifies the period of the occupancy granted under the agreement is for the prescribed period or more.
- (2) If it is intended that a person will occupy a caravan and caravan site, or a caravan site, in a caravan park under a caravan park agreement for a period less than the prescribed period, Parts 2 to 15 do not apply to the agreement even if the person and operator enter into a further agreement and the combined periods under the agreements is a continuous period for the prescribed period or more.
- (3) If a caravan park is advertised as being for "holiday accommodation" or "tourist accommodation", Parts 2 to 15 do not apply to an agreement for an occupancy in the caravan park even if the period of the occupancy is for the prescribed period or more.
- (4) Also, Parts 2 to 15 do not apply to an agreement of the following types:
- (a) an agreement under which no rent is payable in return for the granting of a right to occupy a caravan and caravan site, or a caravan site, for the purpose of a residence;
  - (b) an agreement under which no rent is payable and services are provided in return for the granting of a right to occupy a caravan and caravan site, or a caravan site, for the purpose of a residence;
  - (c) an agreement for a caravan and a caravan site, or a caravan site, provided for the use of homeless, unemployed or disadvantaged persons for charitable purposes or for the purpose of providing emergency shelter or accommodation;
  - (d) an agreement made between family members or friends under which a nominal rent is charged if the parties do not intend to create a caravan park agreement to which this Act applies;
  - (e) an agreement under which a person occupies, or intends to occupy, an immovable dwelling or mobile home that is not located in a caravan park.
- (5) Despite subsections (1) to (4), if an agreement provides this Act or Parts 2 to 15 apply to the agreement, this Act or the Parts so apply.



(6) If, under this section, Parts 2 to 15 do not apply to an agreement in relation to a caravan and caravan site, or a caravan site, in a caravan park, the agreement is an *excluded agreement*.

(7) In this section:

*prescribed period* means 12 months.

## **11        Operator to tell person if agreement is excluded agreement**

(1) This section applies if a person intends to enter into an agreement to occupy a caravan and caravan site, or a caravan site, in a caravan park and the agreement is not a caravan park agreement but an excluded agreement.

(2) Before entering into an excluded agreement, the operator must give notice (either in writing or orally) to the person that Parts 2 to 15 do not apply to the agreement and it is not a caravan park agreement for this Act.

Maximum penalty:        10 penalty units.

(3) An offence against subsection (2) is an offence of strict liability.

(4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

(5) This section is subject to any other provision of this Act that states it applies to an excluded agreement.

## **12        Application of Act when party is only 16 or 17 years of age**

(1) Despite any other law in force in the Territory:

(a) a young person may enter into a caravan park agreement as a resident and may enforce the agreement under this Act; and

(b) the agreement may be enforced under this Act against the young person unless the Commissioner or a court considers the agreement is harsh or unconscionable.

(2) In this section:

*young person* means a person who has attained 16 years but not 18 years of age.

### **13            Exemption from all or part of the Act**

- (1) The Minister may, by *Gazette* notice:
  - (a) exempt caravan park agreements of a specified class from all or any of the provisions of this Act; or
  - (b) modify specified provisions of this Act in their application to a specified class of caravan park agreements or a specified class of residents or operators.
- (2) A provision specified in an exemption or modification under subsection (1) does not apply, or applies as so modified, in relation to a caravan park agreement, or residents or operators, within the class specified in the exemption or modification.
- (3) Before making an exemption or modifying a provision under subsection (1), the Minister must:
  - (a) give notice in a newspaper circulating in the Territory:
    - (i) that a proposal for an exemption or modification is being considered by the Minister; and
    - (ii) inviting members of the public to make written submissions within the period of not less than 21 days specified in the notice; and
  - (b) arrange for consultation with, and invite submissions from, persons whom, and organisations that, the Minister believes have an interest in the proposed exemption or modification.

## **Division 4            Criminal Code applies to offences under Act**

### **14            Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 14*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## Division 5            Liability for actions

### 15            Liability of representative

- (1) It is not a defence to a prosecution for an offence against a provision of this Act that the defendant was, at the time of the commission of the offence, another person's representative.
- (2) However, it is a defence if the defendant proves the defendant was, at the time of the commission of the offence:
  - (a) another person's representative; and
  - (b) acting as the other person's representative under the direct or indirect supervision of the other person.
- (3) In this section:

*representative*, of a person, means an employee or agent of the person.

### 16            Conduct of representative

- (1) This section applies to a prosecution for an offence against a provision of this Act.

*Note for subsection (1)*

*This section deals with prosecutions of individuals. Part IIAA, Division 5, of the Criminal Code includes provisions about corporate criminal responsibility.*

- (2) Conduct engaged in by a representative of a person within the scope of the representative's actual or apparent authority is taken to have been also engaged in by the person.
- (3) However, subsection (2) does not apply if the person proves the person took reasonable steps to prevent the conduct.
- (4) In deciding whether the person took reasonable steps to prevent the conduct, a court must consider:
  - (a) any action the person took to ensure the representative had a reasonable knowledge and understanding of the requirement to comply with the contravened provision; and
  - (b) the level of management, control or supervision that was appropriate for the person to exercise over the representative.
- (5) Subsection (4) does not limit the matters the court may consider.

- (6) If it is relevant to prove a person had a fault element in relation to a physical element of an offence, it is enough to show:
- (a) the conduct relevant to the physical element was engaged in by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the fault element in relation to the physical element.
- (7) A person may rely on section 43AX of the Criminal Code in relation to conduct by a representative that would be an offence by the person only if:
- (a) the representative was under a mistaken but reasonable belief about the facts that, had they existed, would have meant that the conduct would not have constituted an offence; and
  - (b) the person proves the person exercised due diligence to prevent the conduct.

*Note for subsection (7)*

*Section 43AX of the Criminal Code provides a person is not criminally responsible if the person engaged in conduct under a mistake of fact in relation to an offence of strict liability.*

- (8) A person (the **defendant**) may not rely on section 43BA of the Criminal Code in relation to a physical element of an offence brought about by another person if the other person is a representative of the defendant.

*Note for subsection (8)*

*Section 43BA of the Criminal Code provides a person is not criminally responsible in circumstances of an intervening conduct or event.*

- (9) A person who is convicted of an offence cannot be punished by imprisonment for the offence if the person would not have been convicted of the offence without subsection (2) or (6).
- (10) In this section:

**fault element** includes intention, knowledge, recklessness, opinion, belief and purpose, but does not include negligence.

**person** means an individual.

**representative**, of a person, means an employee or agent of the person.

**17 Vicarious liability of resident**

- (1) It is a term of each caravan park agreement and excluded agreement that if:
- (a) a person (other than a resident) is at the caravan site with the consent of a resident; and
  - (b) 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 Act, the resident is responsible for the relevant conduct.

- (2) However, subsection (1) does not make a resident criminally responsible for the relevant conduct.
- (3) Subsection (1) does not apply if:
- (a) the person who engages in the relevant conduct is in a domestic relationship with the resident; and
  - (b) the relevant conduct constitutes or includes an act of domestic violence; and
  - (c) it is reasonable in all the circumstances for this Act, 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.
- (4) In this section:

*domestic violence*, see section 5 of the *Domestic and Family Violence Act*.

*domestic relationship*, see section 9 of the *Domestic and Family Violence Act*.

**Part 2 Commissioner of Tenancies****18 Functions and powers of Commissioner**

- (1) The Commissioner has the following functions:
- (a) to investigate and research matters affecting the interests of parties to caravan park agreements;

- (b) to publish reports and information to parties to caravan park agreements;
  - (c) to provide information to the public about this Act and caravan park agreements, including but not limited to the procedures relating to the Commissioner's functions under this Act;
  - (d) to investigate suspected offences against this Act and taking appropriate action to ensure enforcement of this Act;
  - (e) to report to the Minister on questions referred to the Commissioner by the Minister and other questions of importance affecting the administration of this Act;
  - (f) to produce model caravan park agreements;
  - (g) to perform other functions conferred on the Commissioner under this or another Act.
- (2) The Commissioner has the powers necessary to perform functions or exercise powers of the Commissioner under this or any other Act.

## **19 Delegation by Commissioner**

The Commissioner may, in writing, delegate to a specified person any of his or her powers and functions under this Act, other than this power of delegation.

## **20 Annual report**

- (1) The Commissioner must, on or before 31 October in each year, prepare and forward to the Minister a report on the administration of this Act for the year ending on the previous 30 June.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after the Minister receives the report.
- (3) A report under subsection (1) may be included in a report prepared by the Commissioner for the *Residential Tenancies Act* and tabled in the Legislative Assembly under that Act.

## **21 Caravan Park Residents Trust Account**

- (1) The Accountable Officer of the Agency must, within the Agency Operating Account of the Agency, maintain a fund to be known as the Caravan Park Residents Trust Account.
- (2) The Accountable Officer must pay into the CPRT Account an amount as determined from time to time under section 22(1).

- (3) The Accountable Officer may pay an amount from the CPRT Account for any of the following purposes:
- (a) to meet costs relating to administering and enforcing this Act, including operating costs of the Commissioner under this Act;
  - (b) to educate operators and residents about their statutory and contractual rights and obligations;
  - (c) to provide residents with advisory and legal services (including advocacy);
  - (d) to meet costs of industry associations and consumer bodies for developing and implementing legislative changes.
- (4) In this section:

*Accountable Officer*, see section 3(1) of the *Financial Management Act*.

## **22 Payments from Agents Licensing Fidelity Fund to CPRT Account**

- (1) The Minister responsible for administering the *Agents Licensing Act* may determine that part of the money of the Agents Licensing Fidelity Guarantee Fund established under that Act must be paid into the CPRT Account for the purposes mentioned in section 21(3).
- (2) The Minister mentioned in subsection (1) may only make a determination under that subsection after consulting with:
- (a) organisations the Minister believes represent the interests of operators; and
  - (b) organisations the Minister believes represent the interests of residents; and
  - (c) the Agents Licensing Fidelity Guarantee Fund.

## **23 Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:
- (a) the Commissioner;
  - (b) a delegate of the Commissioner;
  - (c) a person authorised by the Commissioner to exercise a power or perform a function.

(2) Subsection (1) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(3) In this section:

*exercise*, of a power, includes the purported exercise of the power.

*performance*, of a function, includes the purported performance of the function.

## 24 Commissioner is enforcement agency

The Commissioner is an enforcement agency for the *Fines and Penalties (Recovery) Act*.

## Part 3 Caravan park agreements

### 25 Caravan park agreement to be written, signed and include certain matters

(1) If an operator enters into a written caravan park agreement, the agreement should include all of the following:

- (a) the name of the resident;
- (b) the full name and address for service of the operator and, if any, the operator's agent;
- (c) an identification, in clear language, of the caravan and caravan site, or the caravan site, to which the agreement relates;
- (d) each term, or a term to the same effect as each term, that is prescribed under this Act to be a term of a caravan park agreement;
- (e) the amount of rent payable and how the rent is to be payable;
- (f) if the agreement is for a fixed term occupancy – the term of the agreement.

(2) An operator commits an offence if the operator:

- (a) invites a resident to sign a relevant form that the operator has already signed; and



- (b) after the resident signs the form, fails to give the resident a copy of the agreement as signed by both parties within a reasonable period (of not more than 2 days).

Maximum penalty: 20 penalty units.

- (3) An operator commits an offence if:

- (a) the operator gives a relevant form to a resident inviting the resident to sign it but the form has not been signed by the operator; and
- (b) the resident returns the relevant form to the operator signed by the resident; and
- (c) within 7 days after the resident returns the signed form, the operator fails to give the resident a copy of the agreement as signed by both parties.

Maximum penalty: 20 penalty units.

- (4) Strict liability applies to subsection (2)(b) and (3)(c).
- (5) It is a defence to a prosecution for an offence against subsection (2) or (3) if the defendant establishes a reasonable excuse.
- (6) In this section:

*relevant form* means a document that is not signed by both a resident and an operator but is in the form of, or otherwise purports to be, a caravan park agreement.

## **26 Caravan park agreement not complying with section 25**

- (1) If a signed written caravan park agreement is not in accordance with section 25(1) but rent is paid for a period, the following apply in relation to the agreement for this Act:
  - (a) for a contravention of section 25(1)(a) – the person who paid the rent is taken to be the resident;
  - (b) for a contravention of section 25(1)(b) – the person to whom the rent is paid is taken to be the operator or operator's agent and the place where the rent is paid is taken to be the address for service of the operator;

- (c) for a contravention of section 25(1)(c) – the caravan and caravan site, or the caravan site, to which the resident is given access (because of the payment of the rent) is taken to be the caravan and caravan site, or the caravan site, as the case may be, to which the agreement relates;
  - (d) for a contravention of section 25(1)(d) – each term specified under this Act to be a term of a caravan park agreement is taken to be a term of the agreement;
  - (e) for a contravention of section 25(1)(e) – the amount of the rent paid for the period, and the way it is paid, is taken to be the amount of rent payable for the period and how the rent is to be payable;
  - (f) for a contravention of section 25(1)(f) – the agreement is taken to be a periodic occupancy for periods equal to the period for which the rent is paid.
- (2) If a written caravan park agreement is not signed by all parties to the agreement but is signed by one of the parties and rent is paid for a period, for this Act:
- (a) the agreement has no effect in relation to the parties; and
  - (b) the following is the caravan park agreement between the parties:
    - (i) the person who paid the rent is taken to be the resident under the agreement;
    - (ii) the person to whom the rent is paid is taken to be the operator or operator's agent and the place where the rent is paid is taken to be the address for service of the operator;
    - (iii) the caravan and caravan site, or caravan site, to which the resident is given access (because of the payment of the rent) is taken to be the caravan and caravan site, or the caravan site, as the case may be, to which the agreement relates;
    - (iv) each term specified under this Act to be a term of a caravan park agreement is taken to be a term of the agreement;
    - (v) the amount of the rent paid for the period, and the way it is paid, is taken to be the amount of rent payable for the period and how the rent is to be payable;

- (vi) the agreement is taken to be a periodic occupancy for periods equal to the period for which the rent is paid.
- (3) If an agreement is made that should be a written caravan park agreement but it is not in writing and rent is paid for a period, a written caravan park agreement is taken to have been made and signed for this Act and the following apply:
- (a) the person who paid the rent is taken to be the resident under the agreement;
  - (b) the person to whom the rent is paid is taken to be the operator or operator's agent and the place where the rent is paid is taken to be the address for service of the operator;
  - (c) the caravan and caravan site, or caravan site, to which the resident is given access (because of the payment of the rent) is taken to be the caravan and caravan site, or the caravan site, as the case may be, to which the agreement relates;
  - (d) each term specified under this Act to be a term of a caravan park agreement is taken to be a term of the agreement;
  - (e) the amount of the rent paid for the period, and the way it is paid, is taken to be the amount of rent payable for the period and how the rent is to be payable;
  - (f) the agreement is taken to be a periodic occupancy for periods equal to the period for which the rent is paid.

## **27 Forms of caravan park agreements**

- (1) The Chief Executive Officer must approve standard forms for caravan park agreements of different types.
- (2) The Chief Executive Officer must ensure:
  - (a) if, under this Act, a provision provides that a term is a term of each caravan park agreement of the type to which a standard form of caravan park agreement applies, that provision is included in the form; and
  - (b) the forms for caravan park agreements provide for the inclusion of matters mentioned in section 25(1), are not contrary to section 26 and otherwise comply with this Act.
- (3) The Chief Executive Officer must publish the standard forms for caravan park agreements on the internet and continue to publish the forms as approved from time to time.

- (4) For section 26(2)(b)(iv) and (3)(d), the Commissioner or a court may have regard to the way in which a term, specified under this Act to be a term of a caravan park agreement, is provided for by a standard form of caravan park agreement.

## **28 Contract to avoid Act prohibited**

- (1) An operator must not enter into a caravan park agreement or an arrangement relating to a caravan park agreement that does either of the following except to the extent allowed by this Act:
- (a) excludes, modifies or restricts the operation of, or waives a right under, this Act whether directly or indirectly;
  - (b) purports to exclude, modify or restrict the operation of, or to waive a right under, this Act whether directly or indirectly.
- (2) An operator commits an offence if the operator enters into a caravan park agreement or an arrangement relating to a caravan park agreement that results in a contravention of subsection (1).

Fault elements:

The operator:

- (a) intentionally enters into the agreement or arrangement; and
- (b) is reckless as to whether the agreement or arrangement would result in a contravention of subsection (1).

Maximum penalty for subsection (2): 100 penalty units.

## **29 Resident not to give false information**

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

- (2) A resident commits an offence if the resident engages in conduct that results in a contravention of the term mentioned in subsection (1).

Fault elements:

The resident:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of subsection (1).

Maximum penalty for subsection (2): 20 penalty units.

### **30 Harsh or unconscionable terms**

- (1) On application to a court by a resident under a caravan park agreement, the court may make an order rescinding or varying a term of the agreement (other than a term specified under this Act to be a term of each caravan park agreement) if satisfied the term is harsh or unconscionable.
- (2) On making an order under subsection (1), the court may make consequential changes to the caravan park agreement or another related document.

### **31 Operator not to require or receive payment for preparing agreement**

- (1) An operator commits an offence if the operator requires or receives from a resident a payment for preparation of a caravan park agreement.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

### **32 Operator cannot impose extra charges or liabilities**

- (1) An operator commits an offence if the operator requires or receives from a resident a payment (other than a payment of rent or a security deposit):
- (a) for an occupancy or continuation of an occupancy; or

(b) for an option to enter into a caravan park agreement.

Fault elements:

The operator:

(a) intentionally requires or receives the payment; and

(b) is reckless as to circumstances of the payment.

Maximum penalty: 20 penalty units.

(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that he or she required or received the payment from a resident because of:

(a) a debt, owed in relation to an occupancy, as a condition of the granting or continuation of an occupancy; or

(b) as a deposit for a key permitting access to the caravan park or common areas in the park if the amount of the deposit is reasonable and refundable to the resident on return of the key.

(3) An operator commits an offence if the operator requires a 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.

Fault elements:

The person:

(a) intentionally requires the resident to enter into the contract, guarantee or other agreement; and

(b) is reckless as to the circumstances of the payment.

Maximum penalty: 20 penalty units.

(4) It is a defence to a prosecution for an offence against subsection (3) if the defendant establishes that he or she required the resident to enter into the contract, guarantee or agreement by way of a bond.

## **Part 4            Condition reports and bonds**

### **Division 1        Condition reports**

#### **33            Condition reports generally**

- (1) A *condition report* is a report about agreement property to be occupied under a 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.
- (2) The Regulations may provide for matters relevant to the making of a condition report partly or entirely by using images.
- (3) The Regulations may modify specified provisions of this Act in their application to condition reports made partly or entirely by using images.
- (4) An image used in making a condition report may be recorded in a photograph, on video or film or by any other mechanical, electronic or similar method of making a visual record.

#### **34            Condition report at start of occupancy**

- (1) An operator may give a resident a signed condition report about agreement property occupied under a caravan park agreement no later than 3 business days after:
  - (a) a resident takes possession of a caravan and caravan site, or a caravan site, provided under the agreement; or
  - (b) the start of a continuation of an occupancy under the agreement.
- (2) A condition report must:
  - (a) specify the condition of the following:
    - (i) if the caravan park agreement is a caravan and park site agreement:
      - (A) the caravan site to which the agreement relates;  
and

- (B) 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;
    - (ii) otherwise – the site to which the caravan park agreement relates; and
  - (b) itemise, and specify the condition of, any fixture or chattel; and
  - (c) include other prescribed information, if any.
- (3) The operator must fill out the condition report under subsection (1) in the resident's presence unless it is not practical to do so or the resident does not appear at the agreed time.

*Note for subsection (3)*

*See section 8.*

### **35 Acceptance of condition report with or without modifications**

- (1) Within 5 business days after receiving a condition report under section 34, the resident may:
- (a) accept the report by signing and returning it to the operator; or
  - (b) 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.
- (2) If the resident does not take either action mentioned in subsection (1) within the time specified in that subsection, the resident is taken to have accepted the condition report.
- (3) Within 5 business days after an operator receives a condition report as changed by a resident as mentioned in subsection (1)(b), the operator may do any of the following:
- (a) 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;
  - (b) 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;
  - (c) make an application to the Commissioner under section 36.



- (4) If, within the 5 business days as mentioned in subsection (3), the operator does not take any of the actions mentioned in that subsection, the operator is taken to have accepted the condition report as changed by the resident.

**36            Commissioner may prepare condition report if no agreement**

- (1) This section applies if an operator and resident are unable to reach agreement under section 35(3)(b).
- (2) 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.
- (3) As soon as practicable after receipt of the application, the Commissioner may prepare a condition report about the agreement property.
- (4) For this Act, the operator and resident are taken to have accepted the condition report prepared under subsection (3).

**37            Condition report conclusive of condition at start of occupancy**

- (1) This section applies if a condition report is or is taken to have been accepted under this Division by an operator and resident unless the Commissioner determines otherwise in a particular case.
- (2) If the condition report relates to the start of an occupancy to which a 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.
- (3) If the condition report relates to the start of a continuation of an occupancy to which a 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.

**38            Condition report has effect for continuation of occupancy**

- (1) This section applies to an occupancy to which a caravan park agreement relates (the *original occupancy*) if the occupancy is continued and a condition report is not prepared under section 34 in relation to the continuation.
- (2) The condition report that had effect under this Division for the original occupancy of the agreement property continues to have effect for this Division for the continuation.

- (3) It is immaterial for subsection (2) whether either or both of the following apply:
- (a) 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;
  - (b) the residents for the new agreement or continuation of the occupancy include someone who was not previously a resident under the original occupancy as long as one of the residents for the new agreement or continuation was a resident under the original occupancy.

**39 Operator must not require resident to vacate for condition report**

- (1) An operator commits an offence if the operator requires a resident to vacate agreement property occupied under a caravan park agreement in order to make a condition report under this Division.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

**Division 2 Bonds and security deposits**

**40 Bonds**

- (1) An operator commits an offence if the operator requires the payment of:
- (a) more than one security deposit for the same caravan park agreement; or
  - (b) a security deposit of an amount greater than the rent payable under the agreement for 4 weeks.

Maximum penalty: 20 penalty units.

- (2) For subsection (1)(b), 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.
- (3) Money paid to an operator as a security deposit must be held by the operator in trust for the resident.

- (4) An operator commits an offence if the operator does not deposit an amount paid to the operator as a security deposit into:
- (a) an account established for section 50 of the *Agents Licensing Act*, or
  - (b) a prescribed account kept by the operator.
- Maximum penalty: 20 penalty units.
- (5) An offence against subsection (1) or (4) is an offence of strict liability.
- (6) It is a defence for subsection (4) if the defendant proves the defendant:
- (a) operates a prescribed account as a trust account; and
  - (b) maintains an amount of money in the trust account that is at least equal to all amounts of money the defendant may receive under subsection (1) as security deposits if all caravans and caravan sites at the caravan park were occupied under caravan park agreements.

#### **41 Increase in security deposit**

- (1) If rent payable under a caravan park agreement has been increased under this Act, 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 than the amount payable for a single week's rent at the increased rate multiplied by 4.
- (2) Subsection (1) 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 section in relation to the caravan park agreement.
- (3) If the security deposit payable under a caravan park agreement is increased under this section, the terms of the bond are varied accordingly.

#### **42 Receipt to be provided for security deposit**

- (1) If a person has paid a security deposit to the operator by cash, cheque or credit card, the operator must immediately give a receipt under subsection (4) to the person who paid the security deposit or the resident for whom the payment was made.

Maximum penalty: 20 penalty units.

- (2) 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 subsection (4) to the person who paid the security deposit or the resident for whom the payment was made.

Maximum penalty: 20 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.
- (4) A receipt for subsection (1) or (2) must be signed by the person who received the security deposit to which it relates and must specify all of the following:
- (a) the date the security deposit was received;
  - (b) the name of the resident for whom the payment was made;
  - (c) the amount paid;
  - (d) the address of the caravan or caravan site to which the payment relates.

#### **43 Statement of security deposit details to be given to resident**

- (1) This section applies if a resident has paid a security deposit to the operator and subsequently asks the operator to provide details about whether:
- (a) the amount has been paid into an account of the type mentioned in section 40(4): or
  - (b) the operator operates a trust account of the type mentioned in section 40(6).
- (2) If the amount has been paid into an account of the type mentioned in section 40(4), the operator must give the resident a written statement of the following details about the account:
- (a) the name of the account;
  - (b) whether or not the account is an account established under section 50 of the *Agents Licensing Act*;
  - (c) 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;

- (d) the amount of the security deposit in relation to the resident that was paid into the account;
- (e) the day on which the security deposit was paid into the account.

Maximum penalty: 20 penalty units.

- (3) If operator operates a trust account of the type mentioned in section 40(6), the operator must give to the resident a written statement of the following details about the account:
  - (a) the name of the account;
  - (b) the name of the financial institution where the account is held and the rate of interest;
  - (c) the total of the funds held in the account.

Maximum penalty: 20 penalty units.

- (4) An offence against subsection (2) or (3) is an offence of strict liability.

#### **44 Apportioning of security deposit between co-residents**

- (1) If there is more than one resident under a caravan park agreement, the agreement may specify the proportions of the security deposit paid in relation to each resident under the agreement.
- (2) If the 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.
- (3) Subsection (2) does not apply if either of the following applies and the operator has been notified accordingly:
  - (a) the Commissioner has determined otherwise;
  - (b) all the residents agree in writing about the proportions paid as security deposit in relation to each resident.

## **Part 5            Rent**

### **Division 1        Payment of rent**

#### **45            How and where rent to be paid**

It is a term of each caravan park agreement that the resident must pay the rent specified under the agreement in the manner and at the place:

- (a) specified in the caravan park agreement; or
- (b) agreed in writing between the operator and the resident.

#### **46            Operator to keep proper records of rent**

- (1) An operator must not fail to keep a written record, as required under subsection (2), of each instalment of rent received.

Fault element:            The operator is reckless about the circumstances of keeping the required record of each instalment of rent received.

Maximum penalty:        20 penalty units.

- (2) The record must consist of:
- (a) the amount of rent paid; and
  - (b) the date on which the rent was received; and
  - (c) the period of the occupancy to which the rent relates; and
  - (d) the address of the caravan or caravan site to which the rent relates.
- (3) The record may be in an electronic form.
- (4) For subsection (2)(c), 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.
- (5) In a record of rent received under a caravan park agreement, a person must not:
- (a) make a false entry; or

(b) falsify an entry in any other way.

Fault element:            The person has intention in relation to the result of making a false record or falsifying an entry in another way.

Maximum penalty:        100 penalty units.

(6) An operator commits an offence if:

(a) a resident asks the operator to permit the resident to examine the record of rent received by the operator from the resident under the caravan park agreement; and

(b) the operator does not permit the resident to examine the record.

Fault element:            The operator intentionally does not permit the resident to examine the record.

Maximum penalty:        20 penalty units.

#### **47            Operator to give receipt for rent**

(1) Immediately after an operator receives a cash payment for rent under a caravan park agreement from a resident, the operator must give the resident a receipt under subsection (5).

Maximum penalty:        20 penalty units.

(2) If rent is paid in cash to an operator by a person on behalf of a resident, the operator must give the resident a receipt under subsection (5) within 1 business day after the day the cash is paid.

Maximum penalty:        20 penalty units.

(3) If rent is paid by cheque by or on behalf of a resident, the operator must, at the request of the resident, give to the resident a receipt under subsection (5) within 3 business days after the day the request is made.

Maximum penalty:        20 penalty units.

(4) However, an operator is not required to give a receipt if rent is directly credited or otherwise paid into a prescribed account kept by the operator.

(5) A receipt for this section must be signed by the person receiving the rent to which it relates and must specify all of the following:

(a) the date on which the rent was received;

- (b) the name of the person paying the rent or for whom it is paid;
  - (c) the amount paid;
  - (d) the period of the occupancy to which the payment relates;
  - (e) the address of the caravan or caravan site to which the payment relates.
- (6) An offence against subsection (1), (2) or (3) is an offence of strict liability.

#### **48            Resident's goods cannot be seized to pay rent**

- (1) A person must not seize goods of a resident in order to keep or dispose of the goods because of a failure to pay rent payable under a caravan park agreement.

Fault elements:

The person:

- (a) intentionally seizes the goods; and
- (b) seizes the goods with the intention to keep or dispose of the goods because of a failure to pay rent payable under the caravan park agreement.

Maximum penalty:        100 penalty units.

- (2) It is a defence if the defendant proves the defendant was acting under the *Uncollected Goods Act*.

### **Division 2            Amount of rent payable**

#### **49            Rent in advance**

- (1) An operator commits an offence if the operator requires a resident:
- (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.

Maximum penalty:        20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.



**50            How rent accrues**

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

**51            Increases in rent**

(1) An operator may increase the rent payable under a caravan park agreement only if both of the following are specified in the agreement:

- (a) the right to increase the rent;
- (b) the amount of the increase in rent or the method of calculation of the increase in rent.

(2) A proposal to increase the rent payable under a caravan park agreement is of no effect unless at least 30 days written notice is given to the resident of:

- (a) the amount of the increase; and
- (b) the date from which the increase is to take effect.

(3) The date fixed for an increase in rent in relation to an occupancy must not be earlier than 6 months after:

- (a) the day on which the caravan park agreement starts; or
- (b) if there has been a previous increase of rent under this section 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.

(4) If the rent payable under a caravan park agreement is increased under this section, the terms of the agreement are varied accordingly.

(5) Subsections (2), (3) and (4) do not apply in relation to a provision of a 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.

**52            Commissioner may declare rent excessive**

(1) On application by a resident under a caravan park agreement, the Commissioner may declare the rent payable under it is excessive.

- (2) The Commissioner must not make the declaration unless he or she:
- (a) has given 14 days notice of the application to the operator; and
  - (b) has invited the operator to make submissions to the Commissioner about the application before a date specified in the notice; and
  - (c) has considered any submissions made by the operator.
- (3) The Commissioner may only make the declaration if he or she considers the rent paid under the caravan park agreement is excessive having regard to the following:
- (a) 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;
  - (b) the cost of any services provided in connection with the agreement by the operator or the resident;
  - (c) any reduction, to a significant extent, in the level of services provided under the agreement.
- (4) If the Commissioner declares the rent payable is excessive, he or she may, by order, specify the following:
- (a) the rent payable for the agreement property and a variation to the agreement to reduce rent payable under the agreement;
  - (b) a date (not before the date of the application) from which the variation takes effect;
  - (c) the period (of not more than 12 months) for which the order remains in force.
- (5) While an order under subsection (4) 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.

Fault elements:

The operator:

- (a) intentionally asks for or receives rent; and
- (b) is reckless as to whether the rent exceeds the amount fixed by the order.

Maximum penalty:        20 penalty units.

- (6) On further application by the operator under the caravan park agreement, the Commissioner may, as he or she thinks fit, vary or revoke an order under this section.

### **53            Commissioner may pay for valuation of caravan**

- (1) This section applies if a resident has made, or the Commissioner is satisfied the resident wishes to make, an application as mentioned in section 52(1).
- (2) 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.
- (3) 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:
- (a) whether it would cause economic hardship to the applicant or his or her family if the applicant were to pay for the valuation;
  - (b) whether the Commissioner has previously paid or undertaken to pay for a valuation under this section involving the applicant.
- (4) The amount payable for a valuation under subsection (2) is payable from the CPRT Account and, for section 21, the payment is part of meeting the costs of administering and enforcing this Act.

### **54            Repayment of rent paid in advance**

- (1) This section applies if rent under a caravan park agreement is paid in advance and the occupancy is terminated before the end of the period for which rent is paid.
- (2) 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.

Fault element:            The operator intentionally does not refund the appropriate proportion of the amount paid as rent in advance.

Maximum penalty:        20 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes that he or she applied the rent, or a part of the rent, paid in advance towards other liabilities of the resident to the operator under this Act.
- (4) 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 this Act to pay to the operator as rent or otherwise).

## **55        Accelerated rent and liquidated damages prohibited**

- (1) An operator must not engage in conduct that involves entering into, or offering to enter into, a caravan park agreement if a term of the agreement is to the effect that, for a breach by the resident of a term of the agreement (including a term as to rent), the resident is liable to pay:
  - (a) all or any part of the rent remaining payable under the agreement; or
  - (b) rent of an increased amount; or
  - (c) 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.

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of subsection (1).

Maximum penalty:        20 penalty units.

- (2) If a caravan park agreement includes a term of the type mentioned in subsection (1), the term is void.

## **56        Commissioner may determine if penalty or liquidated damages**

- (1) On application by the operator or resident under a caravan park agreement, the Commissioner may determine whether:
  - (a) 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

- (b) 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.
- (2) If the Commissioner determines either of the following, the term to which the determination relates is not void as mentioned in section 55(2):
  - (a) a way of calculating rent (whether or not specified in the caravan park agreement) is intended to enable genuine reductions in rent rather than to function as a penalty provision;
  - (b) an amount (by way of penalty or liquidated damages) specified in the caravan park agreement is reasonably proportional to the actual loss that may be suffered because of the breach of the agreement.
- (3) The Commissioner must notify the operator and the resident of his or her determinations under this section.

#### **57            Reductions in rent by agreement**

- (1) The rent payable under a caravan park agreement may be reduced:
  - (a) under a provision of a caravan park agreement under which the rent payable changes automatically at stated intervals on a basis set out in the agreement; or
  - (b) by mutual agreement between the resident and the operator.
- (2) 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.
- (3) If the rent payable under a caravan park agreement is reduced by mutual agreement between the resident and the operator, the terms of the agreement are varied accordingly.

## **Part 6 Repairs, maintenance and related matters**

### **Division 1 Operator's responsibilities**

#### **58 Agreement property not to be let unless habitable and safe**

- (1) An operator must not enter into, or offer to enter into, a caravan park agreement unless the agreement property:
- (a) is habitable; and
  - (b) meets all health and safety requirements specified under an Act that apply to the agreement property; and
  - (c) is reasonably clean when a resident enters into occupation of the agreement property.

Fault elements:

The operator:

- (a) intentionally enters into, or offers to enter into, the agreement; and
- (b) is reckless as to the circumstances of whether the agreement property is;
  - (i) 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 a resident enters into occupation of the agreement property.

Maximum penalty: 100 penalty units.

- (2) For subsection (1), it is a health and safety requirement under this Act that a caravan provided under a caravan park agreement must be fitted with a smoke detector alarm as required by regulation.

#### **59 Agreement property to be clean and suitable for habitation**

- (1) It is a term of each caravan park agreement that the operator must ensure that, during an occupancy, the agreement property:
- (a) continues to be habitable; and

- (b) continues to meet all health and safety requirements under an Act that apply to the agreement property.

*Example for subsection (1)(b)*

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

- (2) It is not a breach of the term specified in subsection (1) if the failure to comply with the term is caused by:
  - (a) an act or omission of the resident, including a contravention of a law in force in the Territory; or
  - (b) the resident's failure to notify the operator of repairs required to the agreement property.

## **60 Keeping caravan park etc. clean**

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

- (a) keep common areas and other areas in the caravan park clean and in a safe condition; and
- (b) arrange for the collection of the household garbage of residents and other garbage from the common areas.

## **61 Keeping common areas clean and tidy and repairing, maintaining and renovating the areas**

- (1) It is a term of each 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.
- (2) When repairing, maintaining or renovating the facilities in the common areas, an operator must:
  - (a) minimise inconvenience and disruption to residents; and
  - (b) if necessary, provide temporary substitute facilities.

## **62 Caravan to be secure**

- (1) It is a term of each caravan park agreement that the operator will take reasonable steps to provide and maintain the locks that are necessary to ensure a caravan provided under the agreement is reasonably secure.

- (2) It is a term of each caravan park agreement that, without the resident's consent, the operator will not:
- (a) alter a lock on the agreement property; or
  - (b) add a lock to the agreement property; or
  - (c) remove a lock from the agreement property.
- (3) It is a term of each caravan park agreement that, if the operator engages in any conduct mentioned in subsection (2)(a) or (b), 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.
- (4) An operator must not engage in any of the conduct mentioned in subsection (2)(a) to (c) about the alteration, addition or removal of a lock without the resident's consent.

Fault elements:

The operator:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the resident consented to the alteration, addition or removal of the lock.

Maximum penalty: 100 penalty units.

- (5) It is a defence to a prosecution for an offence against subsection (4) if the defendant establishes a reasonable excuse.

### **63 If operator changes locks, key must be provided**

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

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes a reasonable excuse.



## **Division 2 Resident's responsibilities**

### **64 Cleanliness and damage**

- (1) It is a term of each caravan park agreement that a resident:
  - (a) must maintain the agreement property in a reasonably clean condition, allowing for reasonable wear and tear; and
  - (b) must notify the operator of damage or apparent potential damage to the agreement property, other than damage of a negligible kind; and
  - (c) must not intentionally or negligently cause or permit damage to the agreement property; and
  - (d) must not intentionally or recklessly cause or permit damage to common areas in the caravan park.
- (2) It is a term of each 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.
- (3) A resident is not in breach of a term of the agreement mentioned in subsection (1) or (2) if:
  - (a) the resident notified the operator that repair or maintenance of a part of the agreement property is required; and
  - (b) the operator did not repair or maintain that part of the property.
- (4) 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 by the operator and the resident; and
  - (b) if the 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 by the operator and the resident; and
  - (c) the effect of reasonable wear and tear during the occupancy.

- (5) If a condition report was not accepted under Part 4 by the operator and the resident in relation to the agreement property:
- (a) the resident is taken to have complied with the term of the agreement specified in subsection (1); and
  - (b) if the 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.

**65 Term that resident not to alter, remove or add lock to agreement property and offence**

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

Fault element: The resident has intention in relation to the result of altering, removing or adding the lock.

Maximum penalty: 100 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

**66 If resident alter locks, key to be provided to operator**

- (1) It is a term of each 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.

- (2) A 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.

Maximum penalty: 20 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes a reasonable excuse.

## **67 No illegal conduct or nuisance on agreement property**

- (1) It is a term of each caravan park agreement that a resident must not:
- (a) use the relevant property, or cause the relevant property to be used, for an illegal purpose; or
  - (b) cause or permit a nuisance on the relevant property or on land adjacent to or opposite the relevant property; or
  - (c) cause or permit ongoing or repeated interference with the reasonable peace or privacy of another person in the other person's use of a caravan, a caravan site or land or common areas in the immediate vicinity of the agreement property to which the agreement relates.
- (2) In this section:

*relevant property*, in relation to a caravan park agreement, means the agreement property and the common areas in the caravan park.

## **68 Alteration of agreement property**

- (1) It is a term of each 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.
- (2) A resident may remove a fixture affixed to agreement property by him or her unless the removal would cause damage to the agreement property.

- (3) It is a term of each caravan park agreement that if the resident causes damage to the agreement property by removing or installing a fixture, the resident must:
- (a) notify the operator; and
  - (b) at the option of the operator, have the damage repaired or compensate the operator for the reasonable cost of repairing the damage.

**69 Resident to notify if agreement property to be unoccupied for more than 30 days**

It is a term of each 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.

**Division 3 Repairs**

**70 Operator's obligation to repair**

- (1) Subject to this Part, it is a term of each caravan park agreement that the operator must:
- (a) ensure the agreement property is in a reasonable state of repair when a resident enters into occupation of the property; and
  - (b) maintain the agreement property in a reasonable state of repair, having regard to its age, character and prospective life.
- (2) An operator is not in breach of the term specified under subsection (1) unless the operator:
- (a) has notice of a defect requiring repair; and
  - (b) fails to act with reasonable diligence to have the defect repaired.
- (3) Also, an operator is not in breach of the term specified under subsection (1) if:
- (a) the repairs (other than emergency repairs) were known to the resident to be required at the time of entering into the caravan park agreement and the resident, in writing, waived the right to have them made; and

- (b) the agreement property is habitable and meets all health and safety requirements specified under any Act for the agreement property.
- (4) This section 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.

## **71 Resident to notify operator if repairs required**

- (1) It is a term of each caravan park agreement that if the agreement property requires repair or maintenance (other than repairing or maintaining of a negligible kind) a resident must, as soon as reasonably practicable after becoming aware of the need for the repairs or maintenance, notify the operator about the need.
- (2) Subsection (1) does not apply in relation to repairs if the resident waived the right to have the repairs made as mentioned in section 70(3)(a).
- (3) If the resident gives the notice under subsection (1) orally, the operator may ask the resident to give notice in writing and, for this section, the resident has not given notice under subsection (1) until the resident gives the notice to the operator in writing.
- (4) This section does not apply to vegetation in a garden that is part of the agreement property unless:
  - (a) it is a tree that poses a risk to a person's safety or property; or
  - (b) the caravan park agreement otherwise provides.

## **72 Maximum amount resident may claim from operator for repairs**

- (1) A 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 section 74 greater than the amount payable under the caravan park agreement for 2 weeks rent.
- (2) For subsection (1):
  - (a) if the rent fluctuates during the period of a 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
  - (b) if the rent increases under section 51 – 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.

### **73 When resident may make repairs**

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

- (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 the caravan park agreement by the resident; and
- (c) the resident has, under section 71, 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 section 71 or:
  - (i) the operator has not, within 7 business days after receipt of a written notice under section 71, 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 section 71.

### **74 When and how resident may claim money for permitted repairs**

- (1) If a 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:
  - (a) notified the operator of the cost of the permitted repairs;
  - (b) complied with section 75;
  - (c) given the operator appropriate documents proving the cost incurred.
- (2) A resident may request the operator:
  - (a) to pay the cost of permitted repairs directly to the repairer; or

- (b) 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.
- (3) A cost payable by an operator under this section must be paid:
- (a) in accordance with the resident's request under subsection (2)(b); or
  - (b) in the way agreed between the operator and resident; or
  - (c) as ordered under subsection (4).
- (4) On application by the operator or resident under a caravan park agreement, but subject to this Division, the Commissioner may order a party to pay for the cost of permitted repairs incurred or purporting to be incurred under this Division.

## **75 Resident to use nominated repairer**

- (1) An operator under a 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.
- (2) 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.
- (3) If the operator has nominated a person under subsection (1), a resident may have permitted repairs made by a person other than the nominated repairer only if:
  - (a) the resident cannot, despite reasonable attempts to do so, engage the nominated repairer to make the permitted repairs within a reasonable time; and
  - (b) the resident has obtained quotations for the cost of the permitted repairs from 2 repairers who are appropriately qualified to make the repairs; and
  - (c) 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.

## 76      **Emergency repairs may be ordered by Commissioner**

- (1) On application by the resident under a 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:
- (a) the repairs required are emergency repairs; and
  - (b) the agreement property is in a state of disrepair that does not arise from the resident's contravention of the agreement; and
  - (c) the resident has, under section 71, notified the operator in writing of the requirement for the repairs to be made; and
  - (d) either the repairs have not been made within 5 business days after receipt of the notice under section 71 or:
    - (i) 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
    - (ii) the repairs have not been made within 14 days after the date of the notice.

- (2) In this section:

***emergency repairs*** means work needed to repair:

- (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 a resident of agreement property.

## **Part 7 Resident's right to enjoy agreement property**

### **77 Vacant possession**

- (1) It is a term of each caravan park agreement that a resident is entitled to vacant possession of the agreement property on and after the day the occupancy begins.
- (2) Subsection (1) does not apply in relation to a part of the agreement property for which a right to exclusive possession is not given by the caravan park agreement.
- (3) It is a term of each 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.

### **78 Resident to be able to use and enjoy property**

- (1) It is a term of each caravan park agreement that:
  - (a) a 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
  - (b) the operator will not cause an interference with the reasonable peace or privacy of a resident in the resident's use of the agreement property and common areas in the caravan park.
- (2) An operator must not engage in conduct that results in a contravention of a term mentioned in subsection (1).

Fault elements:

The operator:

- (a) intentionally engages in the conduct; and

- (b) is reckless as to whether the conduct would result in a contravention of a term mentioned in subsection (1).

Maximum penalty for subsection (2): 100 penalty units.

## 79 Operator not to interfere with resident's enjoyment of caravan

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

Fault elements:

The operator:

- (a) engages in the conduct with the intention of forcing the resident to vacate the agreement property; and
- (b) is reckless as to whether the circumstances relating to the conduct amount to harassment of the resident.

Maximum penalty: 100 penalty units.

## 80 Resident's right of association

- (1) A term of 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 subsection (2):
  - (a) the agreement is or may be terminated, or may not be renewed;
  - (b) the resident will suffer some other detriment under the agreement.
- (2) Each of the following is a *prohibited activity*:
  - (a) the resident may not join or become a member of a body or association of any kind;
  - (b) the resident may not make use of the services of a body or association of any kind.
- (3) Subsection (1) applies whether the caravan park agreement is entered into before or after the commencement of this section.

- (4) An operator must not include a term as mentioned in subsection (1) in a caravan park agreement relating to a prohibited activity.

Fault element: The operator is reckless as to whether the result is a caravan park agreement that includes the term relating to a prohibited activity.

Maximum penalty: 100 penalty units.

## **Part 8 Operator's right to enter agreement property**

### **81 Entry permitted only in accordance with Act**

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

### **82 Collection of rent**

An operator may enter agreement property occupied under a 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 section.

*Note for section 82*

*See section 7(3) 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 section would apply to the commercial agent.*

### **83 Inspection of agreement property**

- (1) An operator may enter agreement property occupied under a caravan park agreement to inspect the agreement property.
- (2) Subsection (1) only applies 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) after:
    - (i) 3 months after the previous entry was made to the agreement property under this section; or

- (ii) if a longer period is specified in the caravan park agreement as the interval during which an entry for inspecting the agreement property is not to be made – that longer period.

#### **84 Repairs and maintenance**

- (1) An operator may enter the agreement property occupied under a caravan park agreement for either or both of the following reasons:
  - (a) to carry out necessary repairs or maintenance, but only if:
    - (i) the operator has been notified by the resident that the repairs or maintenance are necessary; or
    - (ii) the need for the repairs or maintenance has been observed by the operator, including during an inspection under section 83;
  - (b) to determine if necessary repairs and maintenance have been satisfactorily performed or completed.
- (2) Subsection (1) only applies 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.

#### **85 Emergency or significant damage**

An operator may enter agreement property occupied under a 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.

#### **86 Preparation of condition report**

An operator may enter agreement property occupied under a caravan park agreement to prepare a condition report under section 34 or 125 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.

**87 Inspection by prospective residents or purchasers**

- (1) An operator may enter agreement property occupied under a caravan park agreement for showing the agreement property to prospective residents if the entry is made:
  - (a) between 7 am and 9 pm; and
  - (b) during the period 28 days before the termination of the caravan park agreement; and
  - (c) after 1 days notice about the time of entry is given orally or in writing to the resident.
- (2) An operator may enter agreement property occupied under a caravan park agreement for showing the caravan to prospective purchasers of the agreement property or the caravan park 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.
- (3) The operator may enter agreement property for purposes specified in subsection (1) or (2) on no more than a reasonable number of occasions.

**88 Entry with consent between 7 am and 9 pm**

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

**89 Resident to be present at entry**

- (1) An entry into, or inspection of, agreement property under this Part must be undertaken in the resident's presence.
- (2) Subsection (1) does not apply if:
  - (a) the resident refuses, other than on reasonable grounds, to be present at the time specified for the inspection; or
  - (b) the resident, in writing, waives the right to be present at the inspection; or

- (c) the resident is not at the agreement property at the time specified for the inspection by notice given under section 84, 86 or 87; or
- (d) the entry is made under section 85.

**90 Commissioner may order resident to let operator enter caravan**

- (1) If a 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.
- (2) If, under this 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.

**Part 9 Matters relating to assignment or subletting**

**91 Assignment or sublease of caravan permitted with consent**

- (1) Subject to this Part, it is a term of each 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.
- (2) It is a term of each caravan park agreement that the resident must not assign the resident's interest in the agreement or sublet the agreement property unless:
  - (a) the operator consents, in writing, to the assignment or subletting; or
  - (b) the operator is taken under section 92 to have so consented.
- (3) 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 subsection (2).

**92 Consent to assignments and subletting**

- (1) A resident under a 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:
  - (a) the name of the person to whom it is proposed to assign the interest in the agreement or sublet the property; and
  - (b) the same information in relation to the person specified under paragraph (a) that the resident was requested to give to the operator in relation to the resident's application to enter into the agreement.
- (2) 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.
- (3) The operator is taken to have consented to an assignment or subletting if the resident applied under subsection (1) but the operator did not give notice to the resident within the period specified under subsection (2) that the operator did not consent.
- (4) 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 a caravan park agreement from the person to whom it is proposed to assign or sublet the agreement property.

**93 Security deposit if lease assigned**

If an operator consents, or is taken under section 92 to have consented, to the assignment of a resident's interest under a caravan park agreement to someone else, the resident must also assign to that other person the resident's interest in the security deposit paid under the agreement.

**94 Unreasonable charges for assignment or subletting**

- (1) An operator must not require a resident to pay to the operator a charge for consenting or considering an application for consent to an assignment of the agreement or subletting of the agreement property that is more than the operator's reasonable expenses in relation to the assignment or subletting.

- (2) An operator must not engage in conduct that results in a contravention of subsection (1).

Fault elements:

The operator:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of subsection (1).

Maximum penalty for subsection (2): 20 penalty units.

## **Part 10 Termination of agreement**

### **Division 1 When termination occurs**

#### **95 When termination occurs**

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

- (a) the termination of the agreement under this 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 section 124 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) a resident gives up possession of the agreement property with the operator's consent.



**96 Fixed term occupancy becomes periodic if not terminated**

A caravan park agreement that provides 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) the 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.

**97 Application to Commissioner about purported termination**

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

**98 Termination of periodic occupancy effective despite inadequate notice**

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

- (a) the period of notice is less than would, apart from this 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.

## **Division 2 Termination by operator**

### **99 If agreement property is flooded, unsafe or uninhabitable**

- (1) An operator under a caravan park agreement may terminate the occupancy by 1 days notice if:
  - (a) access to the agreement property has not been available for more than 3 days because of flooding; or
  - (b) 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
  - (c) the agreement property has become uninhabitable.
- (2) The termination must be by notice of termination given to the resident.

### **100 If drug premises order made**

- (1) This section applies if a caravan in a caravan park is declared drug premises whether or not:
  - (a) the caravan is provided by the operator; or
  - (b) there is in existence a caravan park agreement or an excluded agreement in relation to the caravan.
- (2) The operator may terminate:
  - (a) 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
  - (b) if the caravan is not provided by the operator – the right of occupancy of the caravan site under the caravan park agreement, the excluded agreement or otherwise.
- (3) The termination must be by notice of termination given to the person with the right of occupancy under the caravan park agreement, the excluded agreement or otherwise.
- (4) 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.

(5) Divisions 5, 6 and 7 and section 181 apply in relation to a notice of termination given as mentioned in subsection (3).

(6) In this section:

*drug premises*, see section 11A of the *Misuse of Drugs Act*.

#### **101 Serious misconduct by resident of caravan park**

(1) An operator under a 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:

(a) serious damage to the agreement property or the common areas or other property in the caravan park;

(b) personal injury to the operator or a person in the caravan park or the vicinity of the caravan park;

(c) serious interference with the reasonable peace, comfort or privacy of:

(i) 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

(ii) a person residing in the immediate vicinity of the caravan park.

(2) The termination must be by notice of termination given to the resident.

(3) For subsection (1)(c), 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.

(4) The notice of termination may terminate the agreement immediately or on a later day stated in the notice.

(5) 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.

Maximum penalty: 20 penalty units.

(6) An offence against subsection (5) is an offence of strict liability.

- (7) This section does not limit the operator from taking other actions under this Act.

**102 Periodic occupancy, other than for breach**

- (1) An operator under a 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.
- (2) 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).

**103 Fixed term occupancy**

- (1) An operator under a caravan park agreement may terminate a fixed term occupancy that, under the agreement, is due to terminate on a particular day.
- (2) The termination on the particular day must be by notice of termination given to the resident at least 21 days before the particular day.

**104 Employment-related occupancy**

- (1) An operator under a caravan park agreement may terminate a right of occupancy under the agreement on and after the time and date specified in the notice of termination if:
- (a) the resident entered into the agreement as a condition or benefit associated with employment; and
  - (b) the operator (as the employer of the resident) has terminated or purported to terminate the employment; and
  - (c) the operator has given notice to the resident terminating the resident's employment.
- (2) The termination of the right of occupancy must be by notice of termination given to the resident.
- (3) The time and date specified in the notice of termination of the right of occupancy must not be earlier than:
- (a) 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

- (b) otherwise – 14 days 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.

### **Division 3 Termination by resident**

#### **105 If caravan flooded, unsafe or uninhabitable**

- (1) A resident may terminate an occupancy under a caravan park agreement if:
  - (a) access to the agreement property has not been available for more than 3 days because of flooding; or
  - (b) 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
  - (c) the agreement property has become uninhabitable.
- (2) The termination must be by notice of termination given to the operator 2 days before the termination takes effect.

#### **106 Periodic occupancy, other than for breach**

- (1) A resident under a 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.
- (2) 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).

#### **107 Fixed term occupancy**

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

## **Division 4      Notice of intention to terminate for failure to remedy breach**

### **108      Resident's failure to pay rent**

- (1) This section applies if a resident breaches a term of a caravan park agreement by failing to pay rent if the rent has been in arrears for not less than 3 days.
- (2) The operator may give the resident a notice, signed by the operator, stating the following:
  - (a) the address of the agreement property;
  - (b) the resident is in breach of the agreement by failing to pay rent in accordance with the agreement and the rent is in arrears;
  - (c) the amount of rent payable by the resident in order to remedy the breach and any prescribed information relevant to that amount;
  - (d) the resident is required to remedy the breach before the date specified in the notice (at least 7 days after the notice is given);
  - (e) if the resident does not remedy the breach 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.
- (3) The notice has effect even if the operator has not previously made a formal demand for payment of the rent.
- (4) 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:
  - (a) a demand by the operator for payment of rent;
  - (b) an application by the operator to the Commissioner for recovery of rent;
  - (c) an acceptance by the operator of a payment of rent.
- (5) If the resident does not remedy the breach as required by the notice, the operator may apply under section 115 for an order for termination of the occupancy and possession of the agreement property.

- (6) The operator must make the application no later than 14 days after the date specified in the notice under subsection (2)(d).
- (7) For subsection (2)(c), the Regulations may prescribe information that must be given in the notice, including information about any of the following:
  - (a) the method of calculation of rent arrears;
  - (b) the method of calculation of the amount of rent payable in order to remedy the breach;
  - (c) the date on which rent was last paid;
  - (d) the date on which rent will next be payable after the breach is remedied.

#### **109 Other breach by resident**

- (1) This section applies if a resident breaches a term of a caravan park agreement (other than a term relating to payment of rent) that:
  - (a) is a term of the agreement because of this Act; or
  - (b) is specified in the agreement to be a term that, if breached, permits the operator to terminate the agreement.
- (2) The operator may give the resident a notice, signed by the operator, stating the following:
  - (a) the address of the agreement property;
  - (b) the resident is in breach of the agreement;
  - (c) the nature of the breach;
  - (d) 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);
  - (e) 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.
- (3) 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 section 115 for an order for termination of the occupancy and possession of the agreement property.

- (4) The operator must make the application no later than 14 days after the date specified in the notice under subsection (2)(d).

#### **110 Breach by operator**

- (1) This section applies if an operator breaches a term of a caravan park agreement that:
- (a) is a term of the agreement because of this Act; or
  - (b) is specified in the agreement to be a term that, if breached, permits the resident to terminate the agreement.
- (2) The resident may give the operator a notice, signed by the resident, stating the following:
- (a) the address of the agreement property;
  - (b) the operator is in breach of the agreement;
  - (c) the nature of the breach;
  - (d) 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);
  - (e) 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.
- (3) 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 section 115 for an order terminating the occupancy and permitting the resident to give up possession of the agreement property.
- (4) The resident must make the application no later than 14 days after the date specified in the notice under subsection (2)(d).

### **Division 5 Termination by Commissioner or court**

#### **111 Serious breach by resident**

- (1) A court may make an order under this section on application to the court by the operator under a caravan park agreement.



- (2) If the court is satisfied of both of the following:
- (a) the resident has breached the agreement;
  - (b) the breach is sufficiently serious to justify termination of the occupancy otherwise than in accordance with Division 2;

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).

- (3) 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:
- (a) serious damage to the agreement property; or
  - (b) personal injury to:
    - (i) the operator; or
    - (ii) 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.

## **112 Serious breach by operator**

On application to a court by a resident under a 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:

- (a) the operator has committed a breach of the relevant caravan park agreement; and
- (b) the breach is sufficiently serious to justify termination of the occupancy otherwise than in accordance with Division 4.

## **113 Hardship**

- (1) On application to a court by a resident under a caravan park agreement, the court may terminate the agreement and make an order for possession of the agreement property if satisfied that:
- (a) the continuation of the occupancy would result in undue hardship to the operator or resident; and
  - (b) the circumstances of hardship had not arisen before the resident entered into the agreement.

- (2) If the court terminates an occupancy and makes an order for possession under this section, the order must include the date on and from which it has effect.

#### **114 Conduct of resident unacceptable**

- (1) On application to a court by the operator under a 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:
- (a) used relevant property, or caused or permitted the property or areas to be used, for an illegal purpose; or
  - (b) 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
  - (c) 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.
- (2) 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:
- (a) served with a copy of the application; and
  - (b) given the opportunity to be heard by the court.
- (3) 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.
- (4) An order for possession must state the date it takes effect.
- (5) In this section:

*interested person*, for an application under this section, means a person who has been adversely affected by the conduct described in the application.

*relevant property*, in relation to a caravan park agreement, means the agreement property and the common areas in the caravan park.

**115 Failure to remedy breach after notice given**

- (1) On application to the Commissioner or a court by the operator under a caravan park agreement, the Commissioner or the court may terminate an occupancy relating to a resident and make an order for possession of agreement property if satisfied the resident:
  - (a) has been given a notice in accordance with section 108 or 109; and
  - (b) has failed to remedy the breach as required by the notice.
- (2) On application to the Commissioner or a court by a resident under a caravan park agreement, the Commissioner or the court may terminate the occupancy and permit the resident to give up possession of the agreement property if satisfied the operator:
  - (a) has been given a notice under section 110(2); and
  - (b) has failed to remedy the breach as required by the notice.
- (3) 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 section 121.

**116 Application for confirmation of notice of termination given to resident of caravan park**

- (1) This section applies if:
  - (a) an operator under a caravan park agreement has given a notice of termination to a resident; and
  - (b) 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.
- (2) In giving notice of the application to the resident as mentioned in section 150(3), the Commissioner must give the resident an opportunity to respond to the application.
- (3) If, after exercising powers under Part 14 in relation to the application as the Commissioner thinks fit, he or she:
  - (a) 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

- (b) is not so satisfied – the Commissioner must declare the termination was invalid.
- (4) 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.
- (5) 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.
- (6) In this section:

*resident* includes a person given a notice of termination even if the person has left the relevant caravan park because of the notice.

## **Division 6 Notice of termination**

### **117 Form of notice of termination**

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

**118 Notice may be withdrawn**

A notice of termination given under this Act 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.

**Division 7 Repossession of agreement property**

**119 Resident to give possession if occupancy terminates**

If a notice of termination is given to a resident under this Act and it is not withdrawn or declared to be of no effect under section 97, 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.

**120 Commissioner or court may make order for possession**

- (1) 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.
- (2) 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.
- (3) 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 section 121.

**121 Commissioner or court may suspend order for possession**

- (1) 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:
  - (a) suspend the operation of the order for up to 90 days; and
  - (b) 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.

- (2) The Commissioner or a court may only make an order under subsection (1):
  - (a) if the following matters are taken into account:
    - (i) 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;
    - (ii) incidents relating to the occupancy that have occurred during the period of the agreement;
    - (iii) the seriousness of the breach entitling the operator to the order for possession;
    - (iv) 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
  - (b) 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.
- (3) In extending the operation of the 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.
- (4) If an occupancy has been extended under this section and a 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.
- (5) A resident who receives the notice under subsection (4) must, on the date specified in the notice of termination, give up possession of the agreement property to the operator including by removing a caravan placed on the caravan site other than by the operator.

## **122 Repossession of caravan**

- (1) An operator must not enter agreement property for taking possession of the agreement property (including by removing a caravan placed on the agreement property other than by the operator) unless:
  - (a) the agreement property is abandoned or the resident voluntarily gives up its possession; or
  - (b) the operator is authorised to take possession of the agreement property under an order of the Commissioner or a court.
- (2) An operator must not engage in conduct that results in a contravention of subsection (1).

Fault elements:

The operator:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in contravention of subsection (1).

Maximum penalty for subsection (2): 100 penalty units.

## **123 Right to possession not lost by forfeiture of head occupancy**

- (1) A person is not entitled to take possession of agreement property under a 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.
- (2) Subsection (1) applies even if the entitlement is asserted under a contract for the purchase of a caravan, a mortgage or otherwise than under this Act.
- (3) If a person is entitled to possession of agreement property occupied by a resident under a 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.
- (4) An order may be made under subsection (3) on the terms and conditions the court thinks fit.

## **Division 8 Abandoned agreement property and goods**

### **124 Abandonment of caravan provided by operator**

- (1) This section applies if an operator reasonably believes that a caravan provided by an operator under a caravan and park site agreement has been abandoned.
- (2) If rent is outstanding in relation to the caravan, the operator may take possession of the caravan.
- (3) On application to the Commissioner by the operator under a caravan park agreement, the Commissioner may:
  - (a) declare the caravan was abandoned on a date stated in the declaration; and
  - (b) make an order that the operator may take immediate possession of the caravan.
- (4) If a declaration is made under subsection (3), the resident is taken to have abandoned the caravan on the date stated in the declaration.

## **Part 11 Return of security deposit at termination of occupancy**

### **Division 1 Condition reports**

#### **125 Condition report at termination of occupancy**

- (1) Within 3 business days after possession of agreement property is given up, an operator may fill out and sign a condition report and give it to the resident.
- (2) The operator must fill out the condition report under subsection (1) in the resident's presence unless it is not practical to do so or the resident does not appear at the agreed time.
- (3) Within 3 business days after forming an opinion that a 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.



- (4) A condition report must:
- (a) specify the condition of the following:
    - (i) if the agreement property included a caravan – the caravan site to which the 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;
    - (ii) if the agreement property did not include a caravan – the caravan site to which the caravan park agreement relates; and
  - (b) itemise, and specify the condition of, any fixture or chattel that is agreement property; and
  - (c) include other prescribed information, if any.
- (5) A resident may:
- (a) accept a condition report given to the resident under subsection (1) or (3) by signing the report and returning it to the operator; or
  - (b) if the parties are unable to agree as to the contents of the condition report – refuse to accept the condition report.
- (6) If, within 7 business days after the condition report has been given to a resident under subsection (1) or (3), 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.
- (7) On receipt of an application under subsection (6), the Commissioner may prepare a condition report.
- (8) For this Act, the operator and resident are taken to have accepted the condition report prepared under subsection (7).

**126 Condition report conclusive evidence of condition of agreement property at termination of occupancy**

If a condition report is accepted or is taken to have been accepted under this Division 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;

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

## **Division 2 Return of security deposit and interest**

### **127 When operator may keep security deposit**

- (1) Subject to this section, a resident under a caravan park agreement is entitled to have the resident's security deposit paid to him or her at the end of the agreement.
- (2) Within 7 business days after a 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 section.

Maximum penalty: 20 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.
- (4) At the end of a 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*):
- (a) make good damage (other than reasonable wear and tear) to the agreement property that occurred during the occupancy and was caused by a resident or a person for whose actions a resident is liable under section 17;
  - (b) replace any property lost or destroyed by the resident or by a person for whose actions the resident is liable under section 17;
  - (c) clean agreement property left unreasonably dirty by the resident or by a person for whose actions the resident is liable under section 17;
  - (d) replace locks altered, removed or added by the resident without the consent of the operator;
  - (e) pay outstanding rent or unpaid charges for electricity, gas or water payable by the resident under Part 12;
  - (f) pay an amount required to be paid under section 136;
  - (g) pay an amount ordered by the Commissioner or a court to be paid to the operator by the resident unless it has been paid.

- (5) The operator is not entitled to retain all or part of the resident's security deposit for a loss mentioned in subsection (4)(a), (b) or (c) unless:
- (a) a condition report in relation to the agreement property was accepted by the resident under Part 4; and
  - (b) 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 section 125.
- (6) Subject to section 128(2), the operator is not entitled to retain under subsection (4) 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:
- (a) 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
  - (b) 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
  - (c) attached a copy of a statutory declaration attesting that the receipts, invoices or other documents attached to the declaration relate to:
    - (i) the losses for which all or part of the resident's security deposit is being retained; or
    - (ii) the amount of outstanding rent owing under the agreement or money owing under section 136; and
  - (d) 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
  - (e) returned to the resident the proportion of the resident's security deposit not claimed by the operator or not to be retained under subsection (4).
- (7) 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 section 137 as compensation for:

- (a) 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
  - (b) a loss caused to the operator in securing new residents for the agreement property.
- (8) Subject to subsection (9), the resident's security deposit held by an operator under subsection (4) must be held on trust for the resident until:
- (a) the Commissioner determines the distribution of the security deposit under section 137; or
  - (b) if the Commissioner is satisfied that all losses mentioned in subsection (4) 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.
- (9) The operator is not entitled to claim under section 137 all or part of an amount as a loss mentioned in subsection (4) unless:
- (a) the Commissioner receives an application to determine the distribution of the resident's security deposit; or
  - (b) the loss is claimed under section 137;

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.

- (10) If the operator ceases under subsection (9) to be entitled to claim all or part of an amount for a loss mentioned in subsection (4), the resident is entitled to as much of the resident's security deposit as the operator held on trust for the resident under subsection (7) and section 131 applies accordingly.
- (11) In this section:

***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.

***resident's security deposit*** means the amount of the security deposit paid by the resident to the operator.

*retain* includes continue to hold.

## 128 Commissioner may deal with dispute about security deposit

- (1) A 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 section 129:
  - (a) after the resident has received a notice from the operator under section 127(6); or
  - (b) if the resident has not received notice under section 127(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.
- (2) Despite section 127(6), the Commissioner may permit an operator to retain an amount of a security deposit for a loss specified in section 127(4)(d), (e), (f) or (g), although the operator has not given the resident a notice under section 127(6) 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.

## 129 Interest on security deposit

If interest accrues in relation to the security deposit held in an interest-bearing trust account, other than an account established under section 50 of the *Agents Licensing Act*, the operator must ensure that the interest is paid:

- (a) to the person specified in the caravan park agreement as the person to whom the interest must be paid; or
- (b) if a caravan park agreement does not specify to whom the interest must be paid – to the parties to the caravan park agreement who, at the end of the occupancy, are entitled under this Act to receive the greater part of the amount paid as the security deposit.

## 130 Claims on behalf of co-residents

- (1) A resident who is authorised in writing to do so by another resident under the same caravan park agreement (a *co-resident*) may claim the co-resident's proportion of the security deposit on that co-resident's behalf.
- (2) An operator must return to a resident authorised by a co-resident under subsection (1) the proportion of the security deposit the co-resident is entitled to have returned to him or her.

**131 If person owed security cannot be found**

- (1) If all or part of a security deposit to which a 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.
- (2) On application to the Commissioner by the operator or a resident under a caravan park agreement in relation to a security deposit placed in the CPRT Account under this section, the Commissioner may determine:
  - (a) the proportion of the security deposit paid into the CPRT Account to which the resident or operator is entitled; and
  - (b) 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.
- (3) 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 subsection (2).

**Part 12 Financial liabilities**

**Division 1 Rates and charges relevant to caravan park agreements**

**132 Payment of electricity, gas or water charges**

- (1) An operator must not require a 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.

Maximum penalty: 20 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

**133      No charge payable unless specified in caravan park agreement**

- (1) A 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:
  - (a) the resident is required to pay the separate charge to the operator under the caravan park agreement; and
  - (b) the agreement property is individually metered for the service or facility to which the separate charge relates.
- (2) An operator must not request from a resident an amount for a separate charge unless it is payable by the resident under subsection (1) and calculated in accordance with the caravan park agreement.

Maximum penalty:      20 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

**134      Commissioner may determine charges payable**

- (1) On application to the Commissioner by the operator or resident under a caravan park agreement, the Commissioner may make a determination in relation to a separate charge payable by the resident.
- (2) For subsection (1), the Commissioner may order:
  - (a) an amount be paid by the operator to the resident; or
  - (b) an amount previously paid by the resident to the operator to be refunded to the resident by the operator.

**Division 2      Compensation**

**135      Duty of mitigation**

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

**136      Compensation if resident fails to give possession of agreement property**

- (1) If a resident fails to give to the operator possession of agreement property occupied under a caravan park agreement after the resident is required under this Act to do so, the operator is entitled to receive from the resident:
  - (a) compensation for any loss or expense incurred by the operator by the failure; and
  - (b) 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.
- (2) On application to the Commissioner by the operator under the agreement, the Commissioner may make an order requiring a resident to pay to the operator the amount the Commissioner considers is payable under subsection (1).

**137      Compensation and civil penalties**

- (1) On application of an operator or a resident under a 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:
  - (a) the other party has failed to comply with the agreement or an obligation under this Act relating to the agreement; or
  - (b) the applicant has paid to the other party more than the applicant is required to pay to that other party under this Act and the agreement.
- (2) Despite subsection (1), an operator or a resident may not apply under that subsection for:
  - (a) compensation payable under section 136; or
  - (b) loss or damage suffered by reason of a breach of the operator's duty to repair, unless notification under section 71(1) has been given.



- (3) In determining whether to order the payment of compensation to a party, the Commissioner must take into account each of the following:
- (a) whether the person from whom the compensation is claimed has taken all reasonable steps to comply with his or her obligations under this Act and the caravan park agreement, being obligations in relation to which the claim is made;
  - (b) for a breach of a caravan park agreement or this Act – whether the applicant has consented to the failure to comply with obligations in relation to which the claim is made;
  - (c) 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 the caravan park agreement;
  - (d) whether a reduction or refund of rent or other allowance has been made to or by the applicant in relation to the caravan park agreement;
  - (e) whether an action was taken by the applicant to mitigate the loss or damage;
  - (f) any tender of compensation;
  - (g) 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.
- (4) If a party to a caravan park agreement is found guilty of an offence against this 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.
- (5) The Commissioner must not make an order under subsection (1):
- (a) for the payment of compensation in relation to death, physical injury, pain or suffering; or
  - (b) for a failure to pay rent unless:
    - (i) the rent has been unpaid for at least 3 days after it is due and payable; or

- (ii) 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.

## **Part 13 Further provisions relevant to caravan parks and caravan park agreements**

### **Division 1 Caravan park rules**

#### **138 Agreements incorporate caravan park rules**

- (1) The caravan park rules for a caravan park (as made or amended from time to time) are taken to constitute terms of every caravan park agreement relating to the park.
- (2) It is irrelevant for subsection (1) as to how a caravan park agreement is formed.
- (3) Despite subsection (1), caravan park rules must be consistent with each term of a caravan park agreement as prescribed under this Act.

#### **139 Caravan park rules**

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

Maximum penalty: 10 penalty units.

- (3) An offence against subsection (2) is an offence of strict liability.

#### **140 Amendment of caravan park rules**

- (1) An operator may amend the caravan park rules of the caravan park.
- (2) In this section:

*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.

#### **141 Application if park rules are considered unreasonable**

- (1) A person who is or was a resident of a caravan park may apply to the Commissioner for a declaration under this section about a caravan park rule.
- (2) The Commissioner must consider the application in a way the Commissioner considers appropriate.
- (3) After considering the application, the Commissioner may make:
  - (a) an order declaring a caravan park rule is or was reasonable; or
  - (b) an order declaring a caravan park rule is or was unreasonable; or
  - (c) 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.
- (4) A caravan park rule is or was invalid if the Commissioner makes an order declaring the rule to be or to have been unreasonable.

### **Division 2 Obligations of operators**

#### **142 Enforcing caravan park rules**

It is a term of each 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.

#### **143 Access to caravan park**

It is a term of each 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 paragraph (b).

### **Division 3 Relocation of caravan sites or caravans**

#### **144 Changing caravan or caravan site within caravan park**

- (1) This section applies if an operator is reasonably satisfied it is necessary to relocate a resident from a caravan site or caravan within the caravan park to another caravan site or caravan within the park:
  - (a) to allow work to be carried out in the park; or
  - (b) because of an emergency; or
  - (c) for health or safety reasons; or
  - (d) for the efficient management of the caravan park; or
  - (e) for another reason under a law in force in the Territory.
- (2) The operator must give the resident written notice about the decision for the relocation including the following:
  - (a) the reasons for the relocation;
  - (b) the date proposed for the relocation to take place;
  - (c) the operator is responsible for the cost of the relocation unless the caravan park agreement provides otherwise;
  - (d) the 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;
  - (e) 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.

- (3) 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.*

#### **145 Options after giving notice about relocation**

- (1) This section applies if an operator has given a resident a notice under section 144.
- (2) 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.
- (3) If the resident wishes to terminate the 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.
- (4) 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 section 144 is given, the operator may apply to the Commissioner for an order about the relocation.
- (5) The Commissioner must consider the application in a way the Commissioner considers appropriate.
- (6) After considering the application, the Commissioner may:
- (a) 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
  - (b) otherwise – make an order declaring the resident need not relocate to another caravan site or caravan in the caravan park.

## **Division 4      Sale of caravans on caravan site**

### **146      Sale of caravan on caravan site**

- (1) It is a term of each caravan park site 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.
- (2) An operator must not do either of the following if the resident acts in accordance with a term of the caravan park agreement as mentioned in subsection (1):
  - (a) hinder the sale of the resident's caravan;
  - (b) prevent the display of a "for sale" sign in or on a caravan or caravan site for the purpose of selling the caravan.

Maximum penalty:      50 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.
- (4) Without limiting subsection (2), an operator is taken to hinder the sale of a caravan if the operator stops potential buyers from inspecting the caravan.
- (5) An operator does not contravene subsection (2) in relation to the proposed sale of a caravan placed on a caravan site if:
  - (a) the operator imposes conditions relating to potential buyers entering or remaining in the caravan park that are reasonable in the circumstances; or
  - (b) 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.
- (6) 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:
  - (a) the right to occupy the caravan site has been assigned under section 91(1); or
  - (b) the operator has entered into a caravan park agreement with the new owner.
- (7) The Regulations may prescribe the maximum size for a "for sale" sign.

## **Part 14            Dispute resolution**

### **Division 1        Preliminary matters**

#### **147            Definitions**

In this Part:

*application* means an application under this Act to the Commissioner.

*conference* means a preliminary conciliation conference or a conciliation conference.

*proceedings* means any of the following:

- (a) a preliminary conciliation conference;
- (b) a conciliation conference;
- (c) an inquiry.

#### **148            Jurisdiction of Commissioner**

- (1) Subject to this Act, the Commissioner has jurisdiction to hear and determine an application.
- (2) Despite subsection (1), the Commissioner is not to hear and determine an application for a monetary claim if the amount claimed exceeds \$10 000, unless the parties to the proceedings consent to the application being heard and determined by the Commissioner.
- (3) Consent given under subsection (2) is irrevocable.

#### **149            Jurisdiction of court**

- (1) If a monetary claim in relation to an occupancy exceeds \$10 000, proceedings in relation to the claim and any other claims related to the same occupancy may be brought in:
  - (a) if the claim would, as a claim founded on contract, be within the jurisdiction of the Local Court – the Local Court; or
  - (b) if the claim would, as a claim founded on contract, be within the jurisdiction of the Supreme Court – the Supreme Court.
- (2) A court in which proceedings are brought under subsection (1) may exercise the powers of the Commissioner under this Act in addition to any other powers it may have.

- (3) If the plaintiff in proceedings brought in a court under this section recovers less than \$10 000, the plaintiff is not entitled to costs unless the court is satisfied there were reasonable grounds for the plaintiff to believe the plaintiff was entitled to \$10 000 or more.

### **150      Application to Commissioner**

- (1) Subject to this Act, an operator or resident may apply, in writing, to the Commissioner if:
- (a) a breach of the caravan park agreement or of a provision of this Act is alleged to have occurred; or
  - (b) a provision of this Act permits the application to be made to the Commissioner; or
  - (c) an occupancy dispute has arisen between the parties to a caravan park agreement or between residents.
- (2) The application must:
- (a) include a brief summary of the matter to which the application relates; and
  - (b) include the prescribed particulars, if any; and
  - (c) be accompanied by the fee prescribed under section 151.
- (3) Notice of the application must be given by the Commissioner to the other parties to the application.
- (4) The application may be withdrawn at any time by notice in writing to the Commissioner and to the other parties to the application.

### **151      Fees for application**

- (1) The Minister may, by *Gazette* notice, prescribe the fees payable under this Act in relation to an application.
- (2) The Commissioner may waive a fee payable under this Act in relation to an application and, if a fee is so waived, the person to whom the waiver relates is not required to pay the fee.

### **152      Commissioner to determine appropriate proceedings**

If the Commissioner receives an application, he or she must determine:

- (a) if a preliminary conciliation conference may assist in resolving the matter the subject of the application; or



- (b) if a conciliation conference may assist in resolving the matter the subject of the application (whether or not the Commissioner is of the opinion that a preliminary conciliation conference will assist in resolving the matter); or
- (c) if an inquiry should be held without first holding a preliminary conciliation conference or a conciliation conference.

**153      Conduct of proceedings on Commissioner's behalf**

- (1) The Commissioner or a delegate of the Commissioner under section 19 must conduct a proceeding.
- (2) The Commissioner must ensure that, in relation to an application, the same delegate does not personally conduct more than one of the following:
  - (a) a preliminary conciliation conference;
  - (b) a conciliation conference;
  - (c) an inquiry.
- (3) If a conciliation conference is to be conducted by a person other than the Commissioner, the Commissioner must ensure that, wherever practicable, the person has the qualifications prescribed by regulation.
- (4) If an inquiry is to be conducted by a person other than the Commissioner, the Commissioner must ensure that, wherever practicable, the person is a lawyer who has been admitted to the legal profession for at least 5 years.
- (5) A conference or an inquiry in relation to a matter is not to be conducted by a person who has conducted or taken part in an investigation for determining whether an offence against this Act has been committed in relation to the matter by a party to the matter.

**154      Notice of proceedings to be given**

If the Commissioner determines a preliminary conciliation conference, a conciliation conference or an inquiry is to take place under this Part, he or she must:

- (a) give the applicant notice in writing setting out the time and place at which it is to take place; and

- (b) give to the other parties to the application:
  - (i) notice in writing setting out the time and place at which it is to take place; and
  - (ii) notice of the nature of the application as the Commissioner thinks fit.

## **Division 2      Conferences**

### **155      Preliminary conciliation conferences**

- (1) The following persons are entitled to attend a preliminary conciliation conference:
  - (a) the applicant;
  - (b) any other party to the application;
  - (c) a representative of a party to the application permitted to attend under section 172;
  - (d) the Commissioner.
- (2) At a preliminary conciliation conference, the person conducting the conference must:
  - (a) give information to ensure the parties to the dispute are fully aware of their rights and obligations under this Act; and
  - (b) encourage full and open communication between the parties about the dispute, on a without prejudice basis; and
  - (c) encourage the parties to attempt to determine the relevant facts and to propose solutions to, and resolve by agreement between the parties, the matters at issue between the parties.

### **156      Conciliation conferences**

- (1) The following persons are entitled to attend a conciliation conference:
  - (a) the applicant;
  - (b) any other party to the application;
  - (c) a representative of a party to the application permitted to attend under section 172;
  - (d) the Commissioner.

- (2) At a conciliation conference, the parties to the application are, between themselves and with the assistance of the person conducting the conference, to attempt to achieve a negotiated settlement.

**157      Procedure for each type of conference**

- (1) This section applies to each of the following conferences:
- (a) a preliminary conciliation conference;
  - (b) a conciliation conference.
- (2) Unless the person conducting a conference determines otherwise, the conference is to be held in private.
- (3) The person conducting a conference may exclude from the conference a person other than the parties and the representatives, if any, permitted under section 172 to attend.
- (4) A settlement to which a party agrees at a conference is binding on the party.
- (5) The person conducting a conference may refer for determination a question of law arising at a conference to a legal practitioner approved by the Minister.
- (6) The person conducting a conference may record a settlement reached at a conference and may make a declaration or order to give effect to the settlement.
- (7) A declaration or order made under subsection (6) has effect as if it were an order made at an inquiry under this Part.

**158      Restriction on evidence**

Evidence of anything said or done in the course of a conference is inadmissible in other proceedings under this Part or before a court, except with the consent of all parties to the proceedings.

**159      Confidentiality**

A person who conducts a conference must not disclose to another person, including the Commissioner, information obtained in the course of the conference, except with the consent of all parties to the conference or in the course of his or her duties under this Act.

Fault element:            The person intentionally discloses the information.

Maximum penalty:        100 penalty units.

## **Division 3      Inquiries**

### **160      Inquiries**

- (1) The Commissioner may conduct an inquiry in relation to a matter the subject of an application.
- (2) The Commissioner must conduct an inquiry in relation to the matter the subject of the application if:
  - (a) he or she has not referred the matter to a conference; or
  - (b) the matter has not been settled between the parties at or after a conference.

### **161      Inquiries generally to be open to public**

- (1) Subject to subsection (2), an inquiry of the Commissioner must be open to the public.
- (2) The Commissioner may, if he or she thinks fit, order that an inquiry be held in private.

### **162      Powers of Commissioner at inquiry**

At an inquiry the Commissioner may do any of the following:

- (a) declare that all or part of money paid by a resident as a security deposit, as excess rent or under section 136, be returned to the resident or may be retained by an operator;
- (b) order that an amount for rent, or payable under section 136, be paid by a resident;
- (c) require payment of rent, or money payable under section 136, to the Commissioner until conditions stipulated by the Commissioner have been complied with;
- (d) require that rent, or money under section 136, paid to the Commissioner be paid to someone else and applied as directed by the Commissioner;
- (e) order that particular repairs or maintenance be carried out by an operator in accordance with the conditions specified in the order;
- (f) declare that, at a date specified, the agreement property was abandoned by a resident;
- (g) declare that an occupancy has, or has not, been validly terminated;

- (h) order that an occupancy is terminated;
- (i) require a resident to give up the possession of agreement property to the operator or require an operator to give up the possession of property previously provided under the caravan park agreement to a resident;
- (j) make orders to give effect to rights and liabilities arising from the assignment of a caravan park agreement;
- (k) exercise any other power conferred on the Commissioner under this Act;
- (l) require a person to comply with a requirement of this Act;
- (m) do anything else necessary or desirable to resolve a matter to which an application relates.

### **163      Reasons for decisions**

The Commissioner must state in writing the reasons for a determination, decision or order made by him or her during an inquiry under this Act.

## **Division 4      Powers of Commissioner**

### **164      Commissioner's powers to gather evidence**

- (1) For proceedings under this Part, the Commissioner may do any of the following:
  - (a) by summons, require a person to attend before the Commissioner;
  - (b) by summons, require the production of books, papers or documents;
  - (c) inspect books, papers or documents produced before the Commissioner, retain them for a reasonable period and make copies of them or of their contents;
  - (d) take evidence on oath and for that purpose may:
    - (i) require a person appearing before the Commissioner to take an oath; and
    - (ii) administer an oath;

- (e) require a person appearing before the Commissioner, whether summoned to appear or not, to answer relevant questions put by the Commissioner or a person appearing before the Commissioner.
- (2) A person must not engage in conduct that results in any of the following:
- (a) a failure to comply with a summons under subsection (1);
  - (b) a refusal or failure to comply with a requirement of the Commissioner under subsection (1);
  - (c) misbehaviour before the Commissioner;
  - (d) insulting the Commissioner;
  - (e) interrupting proceedings before the Commissioner.

Fault element: The person intentionally engages in the conduct.

Maximum penalty: 100 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2)(a), (b) or (e) if the defendant establishes a reasonable excuse.

## **165 Procedural powers of Commissioner**

- (1) In proceedings under this Part, the Commissioner may do any of the following:
- (a) hear an application in the manner he or she thinks fit;
  - (b) decline to consider an application or adjourn an inquiry until conditions fixed by the Commissioner are fulfilled, with a view to promoting the settlement of matters in dispute between the parties;
  - (c) decline to consider an application if he or she thinks it is frivolous or vexatious;
  - (d) proceed to hear and determine an application in the absence of a party;
  - (e) extend a period prescribed under this Act within which an application or other step in relation to proceedings is to be made or taken, whether or not the period has expired;

- (f) adjourn a conference or inquiry to a time or place or to a time and place to be fixed;
  - (g) allow the amendment of an application;
  - (h) hear an application jointly with another application;
  - (i) receive in evidence a transcript of evidence in proceedings before a court and draw conclusions of fact from that evidence;
  - (j) generally give directions and do all things that he or she thinks necessary or expedient in the proceedings.
- (2) Proceedings before the Commissioner are to be conducted with the minimum of formality.
- (3) In the exercise of the Commissioner's jurisdiction, the Commissioner is not bound by evidentiary rules but may inform himself or herself as he or she thinks fit.

## 166 Entry and inspection of property

- (1) The Commissioner may:
- (a) enter any relevant property to the extent the Commissioner considers necessary for an application; or
  - (b) authorise, in writing, another person (the *authorised person*) to enter any relevant property to the extent the other person considers necessary for an application.
- (2) The Commissioner or an authorised person may do any one or more of the following:
- (a) carry out an inspection the Commissioner or authorised person considers relevant to a proceedings;
  - (b) take photographs, including video recordings, or make sketches or other records of relevant property entered under subsection (1) or things on or in the relevant caravan park;
  - (c) inspect and take copies of a document;
  - (d) open a container, cupboard, box, package or carton to inspect the contents;
  - (e) ask questions of a person on the relevant property or request the person to provide assistance in carrying out an investigation relevant to proceedings.

- (3) A person must not obstruct the Commissioner or an authorised person acting in an official capacity.

Fault elements:

The person:

- (a) knows the Commissioner or authorised person is acting in an official capacity; and
- (b) intentionally obstructs the Commissioner or authorised person.

Maximum penalty: 50 penalty units.

- (4) The Commissioner must take reasonable steps to ensure that:
- (a) at least 1 days notice of an inspection of relevant property is given to the operator and the resident; and
  - (b) an inspection carried out under subsection (1) takes place at a time and in circumstances that are as convenient as practicable for the Commissioner, the operator and the resident.

- (5) In this section:

*acting in an official capacity*, in relation to an authorised person, means the person is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

*obstruct*, includes hinder and resist.

*relevant property* means:

- (a) a caravan park; or
- (b) any agreement property or other land or building in the caravan park.

## 167 Procedural rules

The Commissioner may make rules relevant to the practice and procedure of the Commissioner or to assist in the effective and efficient handling of matters by the Commissioner.



## **Division 5 Proceedings generally**

### **168 Times and places of proceedings**

- (1) The Commissioner may conduct proceedings at any time, including a day that is not a business day.
- (2) The Commissioner may conduct proceedings at any place.

### **169 Duty to act**

The Commissioner must ensure that proceedings before the Commissioner in relation to an application are concluded within 28 days after receipt of the application by the Commissioner or as soon after that as is reasonably practicable.

### **170 Enforcement of orders**

- (1) An order of the Commissioner that is registered under this section is taken to be an order of the Local Court and may be enforced accordingly.
- (2) A Registrar within the meaning of the *Local Court Act* may, on application of the Commissioner or a party to a proceeding to which an order of the Commissioner relates, register the order as an order of the Local Court.

### **171 Costs not generally to be ordered by Commissioner**

- (1) Subject to subsection (2), the Commissioner must not make an order requiring a party to a proceeding before the Commissioner to pay an amount by way of costs.
- (2) If the Commissioner is of the opinion that an application to the Commissioner was frivolous or vexatious or brought otherwise than in good faith, the Commissioner may order the applicant to pay an amount by way of costs to another person appearing at a conference or an inquiry.
- (3) The person in whose favour an order is made under subsection (2) may recover the amount specified in the order from the person against whom it is made as a debt due and payable.

## **172 Limits on lawyers etc. representing parties**

- (1) A person may not be represented before the Commissioner by a legal practitioner, a graduate clerk, an articled clerk or a person who holds or has held legal qualifications under the law of the Territory or another place, except:
  - (a) with the agreement of the other party to the caravan park agreement to which the proceeding relates; and
  - (b) if the Commissioner is of the opinion that neither party will be disadvantaged by permitting such representation.
- (2) A party to an occupancy dispute may be represented by a person who is not a legal practitioner if:
  - (a) the party is a body corporate and the representative is an officer or employee of the body corporate; or
  - (b) the party is an operator and the representative is an agent appointed by the operator to manage the caravan park on the operator's behalf and the Commissioner is satisfied that it will not unfairly disadvantage an unrepresented party; or
  - (c) all parties to the proceedings agree to the representation and the Commissioner is satisfied that:
    - (i) it will not unfairly disadvantage an unrepresented party; or
    - (ii) if appropriate information or assistance or both were to be provided by the Commissioner to the unrepresented party, that party would not be unfairly disadvantaged; or
  - (d) the Commissioner is satisfied the party is unable to present the party's case properly without assistance.

## **173 Payment of lawyers, translators etc. for proceedings**

- (1) A person must not ask for or receive a fee for representing a party to an occupancy dispute in proceedings before the Commissioner unless the person:
  - (a) is a translator or interpreter and the fee relates to work as a translator or interpreter; or
  - (b) is a legal practitioner or an articled clerk or graduate clerk employed by a legal practitioner; or

- (c) is an officer or employee of a body corporate who represented the body corporate in the proceedings; or
  - (d) is an agent within the meaning of the *Agents Licensing Act* acting on behalf of an operator.
- (2) A person commits an offence if the person engages in conduct that results in a contravention of subsection (1).

Fault elements:

The person:

- (a) intentionally engages in the conduct; and
- (b) is reckless as to whether the conduct would result in a contravention of subsection (1).

Maximum penalty for subsection (2):            20 penalty units.

## **Part 15            Appeals**

### **174            Appeal may be made to Local Court**

- (1) An operator or a resident may appeal to the Local Court against an order, determination or decision of the Commissioner in relation to the operator or resident.
- (2) An appeal is to be an appeal de novo but the court may re-hear evidence taken before the Commissioner or take further evidence.
- (3) In an appeal, the court is not bound by the rules of evidence and may inform itself on a matter in a way it considers appropriate.
- (4) On an appeal, the court may do one or more of the following:
  - (a) confirm, vary or quash the order, determination or decision of the Commissioner;
  - (b) make an order that should have been made in the first instance by the Commissioner;
  - (c) make incidental and ancillary orders.
- (5) Subject to subsection (6), an application for appeal must be lodged:
  - (a) within 14 days after the date of the order, determination or decision appealed against, unless the court allows an extension of time; or

- (b) if the Commissioner does not give reasons for the order, determination or decision at the time of making it – within 14 days after the parties are given the reasons.
- (6) If the Commissioner's reasons are not given in writing at the time of making an order, determination or decision and the appellant then requests the Commissioner to state those reasons in writing, the time for commencing the appeal runs from the time when the appellant receives the written statement of the reasons.
- (7) This section does not prevent the Supreme Court from hearing an appeal against a decision of the Local Court under this Act.

### **175 Notice of appeal to be given to Commissioner**

- (1) If a court receives a notice of appeal under this Part, a copy of the notice must be sent to the Commissioner by the Registrar of the court.
- (2) If the Commissioner receives a copy of a notice of appeal under this Part:
  - (a) the Commissioner; or
  - (b) if the order, determination or decision to which the appeal relates was made by his or her delegate – the delegate;must provide to the court all information in his or her possession relating to the order, determination or decision, other than matters to which section 158 relates.
- (3) Subsection (2) does not apply to legal advice given or obtained by the Commissioner or delegate.

### **176 Stay of proceedings**

- (1) If an order, determination or decision has been made by the Commissioner and the Commissioner or a court is satisfied that an appeal against the order, determination or decision has been commenced, the Commissioner or the court may suspend the operation of the order, determination or decision until the determination of the appeal.
- (2) If the Commissioner suspends the operation of an order, determination or decision, he or she may terminate the suspension.
- (3) If the Commissioner or a court suspends the operation of an order, determination or decision, the court may terminate the suspension.

**177 Power to intervene**

- (1) The Commissioner may intervene in proceedings relating to a matter before a court arising under this Act.
- (2) If the Commissioner intervenes in proceedings, he or she becomes a party to the proceedings and has all the rights, including rights of appeal, of a party to the proceedings.

**Part 16 Application of Act to long term occupants****178 Meaning of long term occupant**

- (1) A person is a *long term occupant* if the person is a party to an arrangement under which he or she has resided in a caravan park for more than 5 years.
- (2) Subsection (1) applies even if the person is or was absent from the caravan park (including, for example, by taking a holiday or break) as long as the person pays or paid rent for the period of the absence.
- (3) Also subsection (1) applies whether or not:
  - (a) the person has resided in the caravan park under an arrangement started before, on or after 1 May 2012; and
  - (b) the arrangement is a caravan park agreement, an excluded agreement or otherwise; and
  - (c) the operator of the caravan park was the operator at the time the arrangement started; and
  - (d) the arrangement (whether written or not, including a caravan park agreement or an excluded agreement) provides otherwise.
- (4) The day a person becomes a long term occupant is the *change date* in relation to the long term occupant and, for some long term occupants, the change date may be 1 May 2012.

**179 Application of Act if long term occupant not resident**

- (1) If, before the change date for a long term occupant, the person was not a resident, Parts 10, 14, 15 and 17 apply to the person when he or she becomes a long term occupant as if:
  - (a) the long term occupant were a resident; and

- (b) the arrangement or excluded agreement were a caravan park agreement that is:
    - (i) if the long term occupant's rights at the change date were a right to occupy a caravan and caravan site – a caravan and park site agreement; or
    - (ii) if the long term occupant's right at the change date were a right to occupy a caravan site – a caravan park site agreement; and
  - (c) the right of occupancy is a periodic occupancy; and
  - (d) the property as occupied by the long term occupant at the change date for the occupant is the agreement property.
- (2) Subsection (1) is subject to section 179 or regulations about long term occupancies.
- (3) This section applies despite anything to the contrary in section 10.

## **180 Application of particular provisions**

- (1) In a notice of termination under section 102(1) to a long term occupant, the day specified as the particular day for the termination to take effect must be at least 3 months after the date the notice is given to the long term occupant.
- (2) In a notice of termination under section 103(1) to a long term occupant, the day specified as the particular day for the termination to take effect must be at least 42 days after the date the notice is given to the long term occupant.

## **Part 17 Miscellaneous matters**

### **Division 1 Notices**

#### **181 Notice to one resident or operator sufficient**

- (1) If 2 or more persons are the operators under a caravan park agreement, a notice or other document is duly given if given to any one of the operators.
- (2) If 2 or more persons are the residents under a caravan park agreement, a notice or other document is duly given if given to any one of the residents.

**182      Right to be notified of change of operator's name or address**

- (1) If a name or address that an operator is required, under section 25, to specify in a caravan park agreement changes, the operator must ensure the resident is notified in writing of the change and the new name or address within 14 days after the change.

Maximum penalty:      20 penalty units.

- (2) Within 14 days after a person succeeds another as the operator under a caravan park agreement, the new operator must ensure the resident is notified in writing of the full name and address for service of:

- (a) the new operator or, if an agent has been engaged to act on behalf of the new operator of the caravan park, the full name and address of the agent; and
- (b) any person with superior title to the new operator.

Maximum penalty:      20 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

**183      Notice or payment to operator's agent sufficient**

If under this Act a resident is required to give notice or a document to an operator or to pay money to an operator, it is sufficient if the resident:

- (a) gives notice or the document to, or pays the money to, an agent of the operator; or
- (b) if the resident has no notice of a new operator – gives notice or the document to, or pays the money to, the last-known operator.

**Division 2      Regulations**

**184      Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may:
- (a) prescribe provisions of this Act that do not apply to a specified class of caravan park agreements; and

- (b) modify specified provisions of this Act in their application to a specified class of caravan park agreements; and
  - (c) prescribe terms that are to be implied, or expressly included, in caravan park agreements or a class of caravan park agreements; and
  - (d) provide for how Parts 10, 14 and 15 and this Part apply to a long term occupant.
- (3) Also, the Regulations may provide for the way in which an operator may dispose of a caravan that is abandoned in the caravan park, whether under a caravan park agreement.

## **Part 18 Transitional and other provisions**

### **Division 1 Transitional provisions for Caravan Parks Act 2012**

#### **185 Application to certain agreements at commencement**

- (1) This section applies to an immovable dwelling located in a caravan park that is subject to an agreement for its lease at the commencement of this section.
- (2) This Act does not apply to the immovable dwelling until the agreement ends after the commencement.

#### **186 Transitional regulations**

- (1) A regulation may provide for a matter of a transitional nature:
  - (a) because of the enactment of this Act; or
  - (b) to otherwise allow or facilitate the transition to the operation of this Act.
- (2) The regulation may have retrospective operation to a day not earlier than the commencement of this section.
- (3) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person (other than the Territory or a Territory authority) by:
  - (a) decreasing the person's rights; or
  - (b) imposing liabilities on the person.
- (4) The regulation must declare it is made under this section.



- (5) This section, and each regulation made under it, expires 1 year after the commencement.

## **Division 2 Residential Tenancies Amendment Act 2010 amended**

### **187 Act amended**

This Division amends the *Residential Tenancies Amendment Act 2010*.

### **188 Part 2 repealed**

Part 2  
*repeal*

### **189 Part 5 inserted**

After section 34  
*insert*

## **Part 5 Expiry of Act**

### **35 Expiry**

This Act expires immediately after the commencement of section 189 of the *Caravan Parks Act 2012*.

## **Division 3 Residential Tenancies Act amended**

### **190 Act amended**

This Division amends the *Residential Tenancies Act*.

### **191 Section 6 amended**

#### **(1) Section 6**

*omit*

This

*insert*

#### **(1) This**

(2) Section 6(1)(h)

*omit*

or a mobile home

*insert*

immovable dwelling or mobile home

(3) After section 6(1)

*insert*

(2) In this section:

*caravan*, see section 4 of the *Caravan Parks Act*.

*caravan park*, see section 4 of the *Caravan Parks Act*.

*mobile home*, see section 4 of the *Caravan Parks Act*.

**192 Part 21 inserted**

After section 165

*insert*

**Part 21 Transitional provision for Caravan Parks Act  
2012**

**166 Application to certain agreements at commencement**

- (1) This section applies to an immovable dwelling located in a caravan park that is subject to an agreement for its lease at the commencement of this section.
- (2) This Act continues to apply to the immovable dwelling until the agreement ends after the commencement.

**Division 4 Misuse of Drugs Act amended**

**193 Act amended**

This Division amends the *Misuse of Drugs Act*.

**194 Section 11A amended**

Section 11A definition *tenant*, after paragraph (a)

*insert*

- (ab) in relation to an occupancy under a caravan park agreement as defined in the *Caravan Parks Act 2012* – means a resident as defined in that Act; and

## ENDNOTES

### 1 KEY

Key to abbreviations

amd = amended  
app = appendix  
bl = by-law  
ch = Chapter  
cl = clause  
div = Division  
exp = expires/expired  
f = forms  
*Gaz* = *Gazette*  
hdg = heading  
ins = inserted  
lt = long title  
nc = not commenced

od = order  
om = omitted  
pt = Part  
r = regulation/rule  
rem = remainder  
renum = renumbered  
rep = repealed  
s = section  
sch = Schedule  
sdiv = Subdivision  
SL = Subordinate Legislation  
sub = substituted

### 2 LIST OF LEGISLATION

***Caravan Parks Act 2012* (Act No. 1, 2012)**

Assent date 21 March 2012

Commenced ss 21 and 22: 21 March 2012; rem: 1 May 2012 (s 2)