# Summary of proofs for possession applications

# by Caravan Park Owner or Caravan Owner

|  |
| --- |
| HEARING DETAILS |
| **VCAT number: R2021/**           **Date of hearing:**       /       /       **Caravan Park Owner / Caravan Owner (Owner):**                                                                                                                                                      **Agent (representing Owner at hearing):**                                             **Residents:**                                                                                                                                                            |
| DETAILS OF RESIDENCY AGREEMENT |
| **Address of site:**                                                                                                                                           **Date residency commenced:**       /       /        |
| SUMMARY OF APPLICATION |
| **When is the date of your VCAT application?**       /       /       **When did you send the application to the resident/s?**       /       /       **How did you send it?** [ ]  Electronically [ ]  Registered post [ ]  Ordinary post [ ]  By hand **Address/es sent to:**                                                                                                                                        **Evidence of sending the application to the resident is attached on pages**       **to**      . |
| DETAILS OF NOTICE TO VACATE |
| **Grounds for the NTV:** Section        Ground                        (eg Repairs)**What is the termination date in your NTV?**       /       /       **When did you send the NTV to the resident/s?**       /       /       **How did you send it?** [ ]  Electronically [ ]  Registered post [ ]  Personally (By Hand)**Address/es sent to:**                                                                                                                                                                                                                         **Evidence of sending the application to the resident is attached on pages**       **to**       . |

|  |
| --- |
| DETAILS OF APPLICATION |
| **What is the ground/s for seeking a possession order (briefly set out the facts which give rise to****the ground)?**                                                                                                                                                                                                                          **What date for possession are you requesting?**       /       /       **Is the date you are requesting reasonable and proportionate, and if so, why is it reasonable and proportionate?**                                                                                                                                                                                                                                        **Do you have all the documents relevant to the application (see following pages detailing evidence)?** [ ]  Yes, attach copy [ ]  No |
| DECLARATION |
| **This form is declared to be correct and submitted to VCAT on**       /       /       **By name of person appearing at hearing:**                                             [ ]  Owner [ ]  Agent**Signature of person appearing at hearing:**                                                |

|  |
| --- |
| EVIDENCE AND DOCUMENTS REQUIRED FOR HEARING |
| You must attach, at least, the following documents:* A copy of the Notice to Vacate and proof of service,
* A copy of any documents required under section 206AZI of the *Residential Tenancies Act 1997* to be attached and served with the Notice to Vacate,
* A copy of the Application and proof of service, and
* A copy of any document, photograph or video that you rely on to support the grounds for the giving of the Notice to Vacate.

All evidence must be labelled with sequential page numbers with a cover sheet identifying the documents that follow. For example, if you are submitting 30 pages of evidence, the documents must be numbered 1-30. Photographs should state the date they were taken and the location in the caravan park.This summary of proofs and attached evidence should be sent to VCAT and the resident/s at least three business days before the hearing and state the Tribunal reference number and date and time of the hearing in the subject line of the email (eg R2021/0001 15 February 2021 @ 2pm). Evidence can be submitted to the Tribunal at renting@vcat.vic.gov.au.For further information on [how documents should be submitted for the hearing](https://www.vcat.vic.gov.au/case-types/residential-tenancies/access-documents-residential-tenancy-case) and [how to prepare for your hearing,](https://www.vcat.vic.gov.au/the-vcat-process/prepare-to-come-to-vcat/prepare-for-the-hearing) refer to the [VCAT website](https://www.vcat.vic.gov.au/the-vcat-process/prepare-to-come-to-vcat/prepare-for-the-hearing). |
| REASONABLE AND PROPORTIONATE |
| For the purposes of determining whether it is reasonable and proportionate to make a possession order, the Tribunal must have regard to the following— (a) the nature, frequency and duration of the conduct of the resident which led to the notice to vacate being given, including whether the conduct is a recurring breach of obligations under a residency right; (b) whether the breach is trivial; (c) whether the breach was caused by the conduct of any person other than the resident; (d) whether the resident has made an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order and— (i) if an application has been made, whether a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order has been made and whether the notice or order is still in force; and (ii) if a notice or order was made, whether it included an exclusion condition; and (iii) any other matter in relation to family violence or personal violence the Tribunal considers relevant; (e) whether the breach has been remedied as far as is practicable; (f) whether the resident has, or will soon have, capacity to remedy the breach and comply with any obligations under the residency right; (g) the effect of the conduct of the resident on others; (h) whether any other order or course of action is reasonably available instead of making a possession order; (i) as the case requires, the behaviour of the owner, (j) any other matter the Tribunal considers relevant. |

|  |
| --- |
| GROUNDS FOR POSSESSION AND EVIDENCE FOR THE HEARING |
| **Tick the relevant ground in the Notice to Vacate that supports your Application and detail the evidence provided.** **Remove pages for any grounds that don’t apply.** |
| **[ ]  s.206AQ: Damage (Immediate NTV)**The resident or the resident’s visitor, whether by act or omission, has intentionally or recklessly caused serious damage to the caravan, the site, or the caravan park, including any common areas, or any facility in the caravan park, including any safety equipment.**Are before and after photos of the damage attached?**[ ]  Yes,attached on pages        to        [ ]  No **Is there video of the alleged event/s?**[ ]  Yes,attached on pages        to        [ ]  No **Witness 1 – Name:**                                                          **Witness 2 – Name:**                                                          **What other documentary evidence do you have?**                                                                                                                                                                        **This evidence is attached on pages**        to        **If the act was caused by a person other than the resident, should an order be made that the resident must not permit entry by that person to the site?** [ ]  Yes [ ]  No**Why/why not?**                                                                                                                            **Is it reasonable and proportionate to make a possession order?** [ ]  Yes [ ]  No**If ‘reasonable and proportionate’, why?**                                                                                                                                                                      **Can, and should, the Tribunal make a compliance order?** [ ]  Yes [ ]  No**If so, why?**                                                                                                                                                                                             **Are there any special requirements of the resident to access relevant social supports or alternative accommodation that the Tribunal needs to take into account when determining the termination date?** [ ]  Yes [ ]  No [ ]  Don’t know**If known, what are those special requirements?**                                                                                                                                    |

|  |
| --- |
| **[ ]  s.206AR: Danger: (Immediate NTV)** (**Note** the definition of “*endanger*” in the Director’s Guidelines)The resident, or the resident’s visitor, by act or omission, endangers the safety of[ ]  (a) any person or property in the caravan park; or[ ]  (b) the caravan park owner or the owner’s agent; or [ ]  (c) a contractor or employee of a person referred to in paragraph (b).**Are photos attached?** [ ]  Yes,attached on pages        to        [ ]  No **Is there video of the alleged event/s?** [ ]  Yes [ ]  No **Is there evidence from witnesses?** [ ]  Yes,attached on pages        to        [ ]  No **Witness 1 – Name:**                                                          **Witness 2 – Name:**                                                          **What other documentary evidence do you have?**                                                                                                                                                                        **This evidence is attached on pages**        to       **Is it reasonable and proportionate to make a possession order?** [ ]  Yes [ ]  No**If ‘reasonable and proportionate’ – why?**                                                                                                                                                                 **If the act was caused by a person other than the resident, should an order be made that the resident must not permit entry by that person to the site?** [ ]  Yes [ ]  No**Why or why not?**                                                                                                                 **If so, why?**                                                                                                                             **Are there any special requirements of the resident to access relevant social supports or alternative accommodation that the Tribunal needs to take into account when determining the termination date? (s 333(1B))** [ ]  Yes [ ]  No [ ]  Don’t know**If known, what are those special requirements?**                                                                                                                              |

|  |
| --- |
| [ ]  **s.206AS: Threats and intimidation: (14 day NTV)**The resident, or a person residing at the site, has seriously threatened or intimidated:[ ]  (a) the caravan park owner or the owner’s agent; or [ ]  (b) a contractor or employee of a person referred to in paragraph (a).**Are photos/ emails/ text messages attached?** [ ]  Yes,attached on pages        to        [ ]  No **Is there a video or a voice recording of the alleged event?** [ ]  Yes [ ]  No**Is there evidence from witnesses?** [ ]  Yes,attached on pages        to        [ ]  No**Witness 1 – Name:**                                                          **Witness 2 – Name:**                                                          **What other documentary evidence do you have?**                                                                                                                                              **This evidence is attached on pages**        to        **Is it reasonable and proportionate to make a possession order?** [ ]  Yes [ ]  No**If ‘reasonable and proportionate’, why?**                                                                                                                              **Can, and should, the Tribunal make a compliance order?** [ ]  Yes [ ]  No**If so, why?**                                                                                                                                                                                             **Are there any special requirements of the resident to access relevant social supports or alternative accommodation that the Tribunal needs to take into account when determining the termination date? (s 333(1B))** [ ]  Yes [ ]  No [ ]  Don’t know**If known, what are those special requirements?**                                                                                                                              |

|  |
| --- |
| [ ]  **s.206AT: Disruption: (Immediate NTV)**The resident, or the resident’s visitor has seriously interrupted the quiet and peaceful enjoyment of the caravan park by other occupiers.**Are photos/ emails/ text messages attached?** [ ]  Yes,attached on pages        to        [ ]  No **Is there a video or a voice recording of the alleged event?** [ ]  Yes [ ]  No**Is there evidence from witnesses?** [ ]  Yes,attached on pages        to        [ ]  No**Witness 1 – Name:**                                                          **Witness 2 – Name:**                                                          **What other documentary evidence do you have?**                                                                                                                                              **This evidence is attached on pages**        to        **Is it reasonable and proportionate to make a possession order?** [ ]  Yes [ ]  No**If ‘reasonable and proportionate’, why?**                                                                                                                              **If the act was caused by a person other than the resident, should an order be made under s 332A(3) that the resident must not permit entry by that person to the room?** [ ]  Yes [ ]  No**If so, why?**                                                                                                                                                                                              |

|  |
| --- |
| [ ]  **s.206AU: Non-payment of rent: (7 day NTV)**The resident owed the caravan park owner at least seven days rent when the NTV was given.**The rent is $**        per [ ]  calendar month [ ]  fortnight [ ]  week**As at the date the NTV was given, rent was paid up to and including**       /       /        **with $**        **on account. The effective paid to date was**       /       /       **.****As at today, the rent is now paid up to and including**       /       /        **with $**        **on account. The effective paid to date is**       /       /       **.****The rent owing to the date of hearing is $**       **.****A copy of the rental ledger dated**       /       /        **is attached on pages**       **.** **Is it reasonable and proportionate to make a possession order?** [ ]  Yes [ ]  No**If ‘reasonable and proportionate’, why?**                                                                                   **If the breach was caused by another person other than the resident, should an order be made under s 332A(3) that the resident must not permit entry by that person to the site?** [ ]  Yes [ ]  No**Provide reason why an order should or shouldn’t be made under s 332A(3)?**                                                            |
| [ ]  **s.206AV: Non-payment of hiring charges: (7 day NTV)**The resident owed the caravan owner at least seven days hiring charges when the NTV was given.**The hiring charges are $**        per [ ]  calendar month [ ]  fortnight [ ]  week**As at the date the NTV was given, the hiring charges were paid up to and including**      /       /        **with $**        **on account.** **The effective paid to date was**       /       /       **.****As at today, the hiring charges are now paid up to and including**       /       /        **with $**        **on account. The effective paid to date is**       /       /       **.****The hiring charges owing to the date of hearing is $**       **.****A copy of the ledger dated**       /       /        **is attached on pages**       **.** **Is it reasonable and proportionate to make a possession order?** [ ]  Yes [ ]  No**If ‘reasonable and proportionate’, why?**                                                                                   **If the breach was caused by another person other than the resident, should an order be made under s 332A(3) that the resident must not permit entry by that person to the site?** [ ]  Yes [ ]  No**Provide reason why an order should or shouldn’t be made under s 332A(3)?**                                                            |

|  |
| --- |
| [ ]  **s.206AW: Failure to comply with Tribunal order: (7 day NTV)**The resident has failed to comply with an order of the Tribunal made under section 212.**A copy of the VCAT order dated**       /       /        **is attached on pages**        of     **.****Are photos attached?** [ ]  Yes,attached on pages        to        [ ]  No**Is there video evidence?** [ ]  Yes [ ]  No **Is there evidence from witnesses?** [ ]  Yes,attached on pages        to        [ ]  No**Witness 1 – Name:**                                                          **Witness 2 – Name:**                                                          **What other documentary evidence do you have?**                                                                                                                                                       **This evidence is attached on pages**        to       .**Was the breach trivial?** [ ]  Yes [ ]  No **Why?**                                                                                                                       **Has the breach been remedied as far as possible?** [ ]  Yes [ ]  No**Why?**                                                                                                                       **Is it reasonable and proportionate to make a possession order?** [ ]  Yes [ ]  No**If ‘reasonable and proportionate’, why?**                                                                                                                                          |

|  |
| --- |
| [ ]  **s.206AX: Successive breaches by resident:** (7 day NTV)The resident has breached a duty provision; and on 2 previous occasions the resident has been in breach of the same provision; and the resident has been given a breach of duty notice on each of the two prior occasions.**First breach** A copy of the first breach notice dated       /       /        and proof of service is attached on pages        of       .**Are photos attached?** [ ]  Yes,attached on pages        to        [ ]  No **Is there video evidence?** [ ]  Yes [ ]  No **Is there evidence from witnesses?** [ ]  Yes,attached on pages        to        [ ]  No **Witness/es Name:**                                                          **Did the resident remedy the breach within the time given in the notice?** [ ]  Yes [ ]  No **Second breach**A copy of the second breach notice dated       /       /        and proof of service is attached on pages        of       .**Are photos attached?** [ ]  Yes,attached on pages        to        [ ]  No**Is there video evidence?** [ ]  Yes [ ]  No **Is there evidence from witnesses?** [ ]  Yes,attached on pages        to        [ ]  No **Witness/es Name**                                                          **Did the resident remedy the breach within the time given in the notice?** [ ]  Yes [ ]  No **Third breach****Are photos attached?** [ ]  Yes,attached on pages        to        [ ]  No **Is there video evidence?** [ ]  Yes [ ]  No **Is there evidence from witnesses?** [ ]  Yes,attached on pages        to        [ ]  No **Witness/es Name:**                                                          **What other documentary evidence do you have?**                                                                                  **This evidence is attached on pages**        to       .**Is it reasonable and proportionate to make a possession order?** [ ]  Yes [ ]  No**If ‘reasonable and proportionate’, why?**                                                                                   **If the breach was caused by another person other than the resident, should an order be made under s 332A(3) that the resident must not permit entry by that person to the site?** [ ]  Yes [ ]  No**Why or why not?**                                                                                            |

|  |
| --- |
| [ ]  **s.206AY: Use of site or caravan for illegal purpose: (7 day NTV)**The resident has used the site or caravan or permitted its use for a purpose that is illegal at common law or under an Act.**Are photos attached?** [ ]  Yes,attached on pages        to        [ ]  No**Is there video evidence?** [ ]  Yes [ ]  No **Is there evidence from witnesses?** [ ]  Yes,attached on pages        to        [ ]  No**Witness 1 – Name:**                                                          **Witness 2 – Name:**                                                          **What other documentary evidence do you have?**                                                                                                                                                       **This evidence is attached on pages**        to       .**Is there police evidence or police charges?**[ ]  Yes,attached on pages        to        [ ]  No**What common or statutory law has the resident not complied with?**                                                                            **Is it reasonable and proportionate to make a possession order?** [ ]  Yes [ ]  No**If ‘reasonable and proportionate’, why?**                                                                                                                                          |

|  |
| --- |
| [ ]  **s.206AZ: Sale of caravan: (60 day NTV)**[ ]  (1) A caravan owned by the caravan park owner and occupied by the resident is to be sold immediately after the termination date, or[ ]  (2) The caravan park owner has entered into a contract of sale of a caravan owned by the caravan park owner, and the contract of sale is subject to one or more conditions which have now been satisfied, and the NTV was given within 14 days after the last condition was satisfied, or [ ]  (3) The caravan park owner has entered into a non-conditional contract of sale and the NTV was given within 14 days after the contract of sale was entered into.[ ]  (4) A caravan owned by the caravan owner and occupied by the resident is to be sold immediately after the termination date, or[ ]  (5) The caravan owner has entered into a contract of sale of a caravan and the contract of sale is subject to one or more conditions which have now been satisfied, and the NTV was given within 14 days after the last condition was satisfied, or [ ]  (6) The caravan owner has entered into a non-conditional contract of sale and the NTV was given within 14 days after the contract of sale was entered into.**A copy of the Director of CAV approved documentary evidence required to accompany the****Notice to Vacate is attached on pages**        to       **.****Is there an authority to sell attached**? [ ]  Yes,attached on pages        to       [ ]  No **Is there a contract of sale attached**? [ ]  Yes,attached on pages        to       [ ]  No **Has a contract of sale been prepared by a conveyancer or an Australian legal practitioner**?  [ ]  Yes,attached on pages        to       [ ]  No  **Has the caravan been sold?**[ ]  Yes – the date the contract was entered into was        /        /       and the settlement date is        /        /       [ ]  No **Was the contract of sale subject to any conditions that entitled a party to terminate the contract, if not satisfied?**[ ]  Yes – the date the contract was entered into was        /        /       [ ]  No **Is it reasonable and proportionate to make a possession order?** [ ]  Yes [ ]  No**If ‘reasonable and proportionate’, why?**                                                                                                                                          |

|  |
| --- |
| [ ]  **s.206AZ: Closure of caravan park: (6 month NTV)**The caravan park owner has given written notification to the municipal council of the proposed closure of the caravan park, ahead of giving the resident a notice to vacate the site.**A copy of the written notification to the municipal council is attached on pages**        to       **.****What is the reason for the closure of the caravan park?**                                                                                                                      **Has the caravan park owner applied to the Tribunal for an order determining the compensation to be paid to eligible residents for the closure of the caravan park (s.215A)?** [ ]  Yes [ ]  No**If Yes, has an order been made?** [ ]  Yes,attached on pages        to       [ ]  No **Is it reasonable and proportionate to make a possession order?** [ ]  Yes [ ]  No**If ‘reasonable and proportionate’, why?**                                                                                                                                           |
| [ ]  **s.206AZB: Occupation by caravan owner: (14 day NTV)**The resident has hired a caravan for a fixed term and:1. The caravan owner intends to personally occupy the caravan, or
2. The caravan owner intends to make it available for occupation by-
3. the owner’s partner, child, parent or partner’s parent; or
4. another person who normally loves with the caravan owner and is wholly or substantially dependent on the caravan owner.

**A copy of the fixed term hire agreement is attached on pages**        to       **.****A copy of the Director of CAV approved documentary evidence required to accompany the****Notice to Vacate is attached on pages**        to       **.****Is it reasonable and proportionate to make a possession order?** [ ]  Yes [ ]  No**If ‘reasonable and proportionate’, why?**                                                                                                                                           |

|  |
| --- |
| [ ]  **s.206AZD: Notice under agreement with specified period of occupancy: (60 day NTV)**[ ]  (1) A caravan park owner has given a resident a notice to vacate a site at the end of the specified period of occupancy under a section 144 agreement, or[ ]  (2) A caravan owner has given a resident a notice to vacate a caravan at the end of the specified period of occupancy under a section 144 agreement.**A copy of the s.144 agreement is attached on pages**        to       **.****The specified period of occupancy ends on**       /       /       , **and the termination date in the notice to vacate is**       /       /       , **being a date that is on or after the end of the specified period of occupancy.****Is it reasonable and proportionate to make a possession order?** [ ]  Yes [ ]  No**If ‘reasonable and proportionate’, why?**                                                                                                                                           |
| **[ ]  s.206AZF: Notice by caravan park mortgagee: (90 day or 6 month NTV)**The caravan park mortgagee is entitled to possession of, or to exercise a power of sale in respect of, the caravan park.**A copy of a Court order entitling the mortgagee to possession or to exercise a power of sale is attached on pages**        to       **.****Is the mortgage agreement attached?** [ ]  Yes,attached on pages        to        [ ]  No**The entitlement to possession or sale is at clause**        of the agreement on page       .**Is it reasonable and proportionate to make a possession order?** [ ]  Yes [ ]  No**If ‘reasonable and proportionate’, why?**                                                                                                                                           |
| **[ ]  s.206AZG: Notice by caravan mortgagee: (30 day or 6 month NTV)**The caravan mortgagee is entitled to possession of the caravan under a security.**A copy of the security document entitling the mortgagee to possession is attached on pages**        to       **.****Is the mortgage agreement attached?** [ ]  Yes,attached on pages        to        [ ]  No**The entitlement to possession is at page**        **of the agreement**.**Is it reasonable and proportionate to make a possession order?** [ ]  Yes [ ]  No**If ‘reasonable and proportionate’, why?**                                                                               |