

# Retirement Villages Bill 1999

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The objects of this Bill are:

- (a) to set out particular rights and obligations of residents and operators of retirement villages, and
- (b) to facilitate the disclosure of information to prospective residents of retirement villages, and
- (c) to require contracts between residents and operators of retirement villages to contain full details of the rights and obligations of the parties, and
- (d) to facilitate resident input, where desired by residents, into the management of retirement villages, and
- (e) to establish appropriate mechanisms for the resolution of certain disputes between residents and operators of retirement villages.

Failure to comply with the various requirements of the proposed Act, and the taking of action that is prohibited by the proposed Act, constitute offences attracting maximum penalties ranging from 5 penalty units to 200 penalty units. (A penalty unit is currently equivalent to \$110—see section 56 of the *Interpretation Act 1987*.)

### Outline of provisions

#### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** sets out the objects of the proposed Act.

**Clause 4** defines certain words and expressions used in the proposed Act. Important definitions include those of *residence contract*, *service contract* and *village contract*, *recurrent charge* and *departure fee*, *operator* and *resident* of a retirement village, *close associate* of an operator, *relative* of a person, *retired person* and *residence right*, *capital replacement* and *item of capital*.

**Clause 5** sets out the meaning of *retirement village* for the purposes of the proposed Act and makes it clear that certain premises that would otherwise fall within the definition of that term are excluded from it (for example, a building used or intended to be used predominantly for the provision of *residential care*, within the meaning of the *Aged Care Act 1997* of the Commonwealth, by an approved provider under that Act).

**Clause 6** sets out the meaning of *ingoing contribution*.

**Clause 7** specifies the persons who are *owners* of residential premises in a retirement village.

**Clause 8** specifies the circumstances in which a person is taken to have *permanently vacated* residential premises in a retirement village.

**Clause 9** deals with the granting of the residents' *consent* to a proposed measure or action. The procedure for obtaining that consent is set out in proposed Schedule 1. Briefly, the residents are taken to have consented to the measure or action if more than 50% of the residents who vote on the matter approve of it, unless the measure or action requires a special resolution (in which case 75% of the residents voting on the matter must approve of it).

**Clause 10** makes it clear that notes in the text of the proposed Act do not form part of the Act.

#### Part 2 Application of Act

**Clause 11** provides that the proposed Act applies to all retirement villages, whether they were established before or after the commencement of the proposed section. It also provides that the

proposed Act continues to apply in respect of persons who have rights in respect of former retirement villages.

**Clause 12** provides that the proposed Act binds the Crown.

**Clause 13** makes it clear that the proposed Act is to be read as being in addition to the other laws of the State. The proposed section also specifies that the *Landlord and Tenant Act 1899*, the *Landlord and Tenant (Amendment) Act 1948* and the *Landlord and Tenant (Rental Bonds) Act 1977* do not apply to or in respect of residential premises the subject of a residence contract under the proposed Act.

### **Part 3 Representations and information about retirement villages**

**Clause 14** prohibits the promotion of a proposed retirement village, and the sale of occupation rights in it, before any development consent required for the village has been obtained.

**Clause 15** prohibits any representation by the operator of a retirement village (or a person intending to carry out development for the purposes of a retirement village) that a **residential care facility** (such as a nursing home) will form part of, or be associated with, the village unless any necessary authorisation for the facility has been obtained.

**Clause 16** provides for exceptions to proposed sections 14 and 15. It provides that a person is not guilty of an offence under either of those sections merely because the person carries out market surveys in relation to the proposed development before the relevant consent or authorisation is obtained, or because he or she advertises the relevant development application in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*.

**Clause 17** prohibits any representation by the operator of a complex containing residential premises that the complex is a retirement village unless the complex falls within the definition of **retirement village** in the proposed Act.

The proposed section also prohibits an operator from representing that a service or facility is provided or available at or to a retirement village, or is associated with the village, if the service or facility is not so provided or available or associated.

The proposed section also allows a resident of a retirement village to apply to the Residential Tribunal (the **Tribunal**) for an order that the operator pay compensation if any service or facility that the operator represents is to be provided or made available in the future is not provided or made available within a reasonable time after the representation is made.

**Clause 18** requires the operator of a retirement village to provide a prospective resident of the village with a written statement (a **disclosure statement**) containing detailed information about the village. The statement must be in the form, and contain the information, prescribed by the regulations to be made under the proposed Act (**the regulations**) and must be provided to the person at least 14 days before he or she first enters into a village contract with the operator. A copy must be annexed to the contract.

**Clause 19** requires the operator of a retirement village to provide a person with general information about the retirement village industry no later than at the time that the disclosure statement is provided.

**Clause 20** requires the operator of a retirement village to have available for inspection at the village (or at a place of business in New South Wales) copies of various documents relating to the village. The documents include a site plan for the village, examples of the village contracts that an incoming resident may be required to enter into, audited accounts of the village for the previous 3 years, and the village rules. Copies are to be given to prospective residents on request.

### **Part 4 Entry into retirement villages**

**Clause 21** provides for the operator of a retirement village to charge a refundable fee for putting a person's name on a waiting list for the village.

**Clause 22** prohibits the operator of a retirement village from requiring or accepting holding deposits in relation to residential premises in the village that are occupied by a resident unless

the resident has given notice of intention to vacate.

**Clause 23** requires any holding deposit paid in relation to residential premises in a retirement village to be held in trust until the prospective resident concerned enters a residence contract with the operator of the village (or the operator is notified in writing that he or she does not intend to enter such a contract or has died).

A deposit paid under a residence contract is (unless the contract relates to the sale of premises and provides for the manner in which the deposit is to be held) to be held in trust until final payment is made under the contract.

## **Part 5 Village contracts**

**Clause 24** prohibits the operator of a retirement village from allowing a prospective resident of the village to occupy residential premises in the village before the person enters into a contract (being a residence contract or a service contract) with the operator. The prohibition does not apply in respect of a person who occupies the premises together with a person who has entered into such a contract, or who enters into a residential tenancy agreement with the operator.

If the operator contravenes the proposed section, any continuing liability of a former occupant of the premises to pay recurrent charges or departure fees in respect of the premises ceases on the date that a person enters into occupation of the premises, and the operator must make any required refund of the former occupant's ingoing contribution (and make any other payment that is required, under a village contract, to be made to the former occupant) no later than one month after that date.

**Clause 25** provides that, if any term of a village contract is inconsistent, to the detriment of the resident, with the information contained in the disclosure statement provided to the resident concerned, the contract is to be construed as if it contained the information in the statement, rather than the inconsistent term (unless the inconsistent term is a term of a standard contract prescribed by the regulations).

**Clause 26** provides that a village contract entered into after the commencement of the proposed section is unenforceable by the operator of a retirement village against a resident of the village unless it is in writing.

**Clause 27** prohibits the operator of a retirement village from entering into a village contract with a person earlier than 14 days after the person has been given a copy of the contract.

**Clause 28** prohibits any restriction by the operator of a retirement village of a person's right to seek independent advice before contracting with the operator. The provision also prohibits the operator's requiring a resident or a prospective resident to use a particular solicitor, barrister or licensed conveyancer nominated by the operator.

**Clause 29** voids any purported variation of a village contract (and any termination of a village contract and entry into a new one) unless the resident who is the other party to the contract concerned has obtained a certificate from a legal practitioner (of the resident's choosing) stating that the practitioner has explained the effect of the proposed variation (or the new contract) to the resident and the resident appeared to understand the explanation and to consent to the variation or the new contract. The provision does not apply if the resident concerned requested the variation or the new contract.

**Clause 30** specifies that the reasonable costs of obtaining the certificate are payable by the operator of the retirement village.

**Clause 31** provides that the costs of the preparation of a village contract between the operator of a retirement village and a resident of the village (other than a residence contract relating to premises that are subject to a community land scheme, company title scheme or strata scheme) are to be borne equally by the operator and the resident. Any registration costs (under the *Real Property Act 1900*) associated with a lease, and any duty payable on the lease, is payable by the resident.

**Clause 32** allows a resident of a retirement village to rescind a village contract at any time

within the period of 7 business days after entering it (the *cooling-off period*) unless, in the case of a residence contract, the resident has commenced to live in the residential premises concerned.

**Clause 33** permits a resident of a retirement village to apply to the Tribunal for an order allowing the resident to rescind any village contract to which the operator of the village and the resident are parties on the grounds that the disclosure statement was false or misleading in a material particular or was not provided to the resident in accordance with the proposed Act. The application may be made at any time within the period of 3 months after the resident occupies residential premises in the village.

The Tribunal is precluded from making the order sought in certain circumstances (for example, if it is of the opinion that the resident is in substantially as good a position as he or she would have been had the operator complied with the proposed Act in respect of the disclosure statement).

**Clause 34** provides that a notice of rescission of a village contract takes effect on service of the notice, and that a rescinded village contract is taken to be void.

**Clause 35** sets out the consequences of rescission of a service contract. If the service contract only is rescinded (leaving the residence contract on foot), the parties are to try to renegotiate the service contract. If they cannot agree, the Tribunal may, on application of either party, make an order setting out the terms of the new contract.

**Clause 36** sets out the consequences of rescission of a residence contract. Generally, rescission of a residence contract operates to rescind the service contract and any associated village contract. The rescinding party is to be repaid all money paid by or on behalf of that party under the rescinded contract.

If the rescinded contract relates to premises that are subject to a community land scheme, company title scheme or strata scheme and was rescinded under proposed section 33, the rescinding party must execute any necessary instruments and deliver up any necessary documents to enable the re-registration of the shares or title in the name of the operator under the rescinded contract.

Any costs associated with the rescission are payable by the operator. However, claims for compensation or other adjustments may be made to the Tribunal (if, for example, the rescinding party had the benefit of possession of the residential premises concerned).

**Clause 37** sets out the consequences of a rescission of a village contract other than a service contract or a residence contract. The rescinding party is to be repaid all money paid by or on behalf of that party under the rescinded contract. Claims for compensation or other adjustments may be made to the Tribunal.

**Clause 38** prohibits the operator of a retirement village from allowing a prospective resident of the village to occupy residential premises in the village unless the operator prepares, and gives to the prospective resident, a report relating to the condition of the premises at the commencement of the prospective resident's occupation of the premises (a *condition report*). A copy of the report must be annexed to the first village contract that the prospective resident enters into with the operator. However, the requirement does not apply to all residence contracts. (For example, a residence contract under which the resident will own the premises concerned is excluded from its operation.)

**Clause 39** requires the operator of a retirement village to ensure that the other party to a village contract has a copy of the contract signed by the operator. A copy of a village contract signed by the resident or prospective resident of the village must be given to the resident or prospective resident if the contract is not entered into at the time the signed copy is given to the operator.

The proposed section also requires the operator to lodge for registration any lease that is to be registered under the *Real Property Act 1900* within one month after it is returned to the operator in registrable form. The resident is also to be provided with a copy of the fully-executed lease.

**Clause 40** provides that a contract between the operator of a retirement village and a resident of

the village is enforceable against any operator for the time being of the village, except an operator who is merely a landowner in the village.

**Clause 41** requires a person who is to become a new operator of a retirement village (if the person is to manage or control the village) to convene a meeting of the residents and to report at the meeting on the person's financial ability to operate the village and on his or her plans for its future management and operation.

**Clause 42** enables the regulations to make provision for or with respect to matter that must be included in, and matter that must be excluded from, contracts relating to retirement villages.

**Clause 43** provides for the regulations to prescribe a standard form of village contract.

**Clause 44** applies the rules of law relating to mitigation of loss or damage on breach of contract to a breach of a village contract.

## **Part 6 General management of retirement villages**

### **Division 1 Village rules**

**Clause 45** makes it clear that proposed Division 1 does not apply in relation to a retirement village that is subject to a community land scheme or strata scheme.

**Clause 46** provides for the making of written rules relating to the use, enjoyment, control and management of a retirement village.

**Clause 47** provides that a village rule is of no effect to the extent that it is inconsistent with any law.

**Clause 48** permits the regulations to prescribe model village rules that may be adopted in respect of a retirement village.

**Clause 49** allows an operator of a retirement village to make village rules for proposed villages and villages that do not have any residents.

**Clause 50** allows village rules to be made for existing retirement villages that do not have any rules in the same way that village rules may be amended.

**Clause 51** provides for the amendment of village rules (at the instigation of either the operator of the village or the residents) with the consent, by special resolution, of the residents.

**Clause 52** allows the operator of a retirement village who objects to an amendment to the rules proposed by the residents to apply to the Tribunal for an order prohibiting the proposed amendment.

**Clause 53** requires the operator of a retirement village to seek the residents' consent to an amendment to the statement of approved expenditure (as to which, see Division 5 of Part 7) if the operator considers that an amendment to the village rules to which the residents have consented under proposed section 51 will impose a cost on the operator additional to that allowed for in that statement.

**Clause 54** allows the operator or a resident of a retirement village to apply to the Tribunal for an order concerning a village rule whose validity is in dispute or that the operator or resident considers to be unjust, unconscionable, harsh or oppressive. The Tribunal is empowered to set aside the rule, to modify it or to uphold it.

**Clause 55** requires the operator and residents of a retirement village to comply with the village rules.

**Clause 56** requires the operator and residents to use their best endeavours to ensure compliance with the village rules by certain other persons (such as tenants of the operator or resident or other persons in the village at the invitation of the operator or resident).

### **Division 2 Certain obligations of operators**

**Clause 57** prohibits any involvement of certain persons (such as a person who is insolvent under administration within the meaning of the *Corporations Law*) in the promotion or sale of residence rights in a retirement village. It also prohibits their being an operator of a retirement village or being in any way concerned in the management or control of a retirement village.

**Clause 58** requires the operator of a retirement village to ensure that the village is reasonably

secure.

**Clause 59** requires the operator of a retirement village, on the request of the residents, to provide for or arrange a system that enables residents to summon assistance in an emergency.

**Clause 60** provides for variations (at the instigation of either the operator of a retirement village or its residents) in the services or facilities provided in the village by or on behalf of the operator. The variation may not be made unless the residents of the village, by special resolution, consent to it.

**Clause 61** prohibits the operator of a retirement village from reducing or withdrawing a service or facility (despite the consent of the residents) if the development approval for the village requires that it be provided for the life of the village.

**Clause 62** allows a resident of a retirement village to apply to the Tribunal for various orders if the operator of the village reduces or withdraws a service or facility from the village otherwise than as permitted under proposed section 60. The order sought may be, for example, for the reinstatement of the service or facility or for the payment of compensation.

**Clause 63** prohibits the operator of a retirement village from restricting the rights of a resident of the village to purchase goods and services from a person of the resident's own choosing.

**Clause 64** prohibits the operator of a retirement village from requiring a resident or prospective resident of the village to give the operator, a close associate of the operator or a person nominated by the operator a power of attorney in favour of the operator, a close associate or nominated person.

The proposed section also terminates, on the commencement of the proposed section, any such power given before the commencement of the proposed section and voids any such power given after the commencement of the proposed section. However, the proposed section does not apply if the person who gave the power is a relative of the operator.

**Clause 65** is a similar provision in relation to the appointment of an operator of a retirement village, a close associate of the operator or a person nominated by the operator as a proxy of a resident or prospective resident of the village.

### **Division 3      Certain rights of residents**

**Clause 66** requires the operator of a retirement village to respect the rights of residents of the village. In particular, the proposed section prohibits any interference by the operator with the residents' peace, comfort, autonomy and self-reliance. It also obliges the operator to take all reasonable steps to ensure that the residents meet their obligations under their village contracts, the village rules and the proposed Act so that they do not unreasonably interfere with the peace, comfort and privacy of the other residents.

**Clause 67** limits the access that the operator of a retirement village (and any person authorised by the operator) has to residential premises in the village.

**Clause 68** provides for the appointment of a person as the agent of a resident of a retirement village for the purpose of receiving notices or other documents to be given to the resident under a village contract or the proposed Act.

**Clause 69** requires the operator of a retirement village to give a resident (on request) access to any information about the resident that the operator holds, and to give the resident a copy of the information if the resident requests it.

**Clause 70** provides for the establishment of a Residents Committee in a retirement village for the purposes of the proposed Act. Other committees of residents may be established for other purposes.

**Clause 71** allows the regulations to make provision for or with respect to the election, functions and procedure of Residents Committees and sub-committees. The regulations may also prescribe model rules that may be adopted by a Residents Committee.

**Clause 72** requires the operator of a retirement village to meet the Residents Committee (or a representative of the Committee) of the village on the reasonable request of the Committee, and vice versa.

**Clause 73** requires the operator of a retirement village that does not have a Residents Committee to call a meeting of the residents at least once in every 12 months for the purpose of considering and voting on various matters affecting the village. The operator must also call such a meeting if a specified proportion of the residents request it.

**Clause 74** makes it clear that the residents of a retirement village have the right to meet for the purpose of considering and voting on various matters affecting the village.

**Clause 75** limits the attendance of persons other than residents at meetings of residents of a retirement village. The proposed section also makes it clear that a resident is not obliged to attend, or to vote at, any such meeting.

**Clause 76** voids any term of a village contract that purports to bind a resident to a particular system for the conduct of meetings and voting. It also voids any covenant (or contract or arrangement) under which a particular vote of a resident (or the resident's failure to vote) on any matter relating to the village attracts a penalty.

**Clause 77** enables a resident of a retirement village to appoint a person as the proxy of the resident for the purpose of voting on the resident's behalf at meetings of the residents.

**Clause 78** limits the number of proxies that a person may hold for the purposes of the proposed Act. It also specifies the way in which a person's appointment as another person's proxy may be revoked, and provides for its termination if it is not revoked.

**Clause 79** provides that any vote or resolution of the residents of a retirement village that purports to oblige the operator of the village to abandon or amend plans for further development of the village or to cease to act as the operator of the village is not binding on the operator.

**Clause 80** provides that a resident of a retirement village cannot be required to give more than one month's notice in writing of an intention to vacate his or her residential premises in the village.

#### **Division 4 Right of certain non-residents to become residents**

**Clause 81** provides that certain relatives of residents of residential premises in a retirement village who are living in the premises with the resident at the time that the resident vacates (but are not themselves *residents* of the village) have the right to enter into a residence contract with the operator of the retirement village in respect of the premises (unless the resident owns, or owned, the premises).

**Clause 82** provides for applications to the Tribunal in respect of the right of a relative referred to in proposed section 81 to become a resident of the retirement village if the operator of the village refuses to enter into a residence contract with the relative, if the relative refuses to enter such a contract and refuses to deliver vacant possession of the premises to the operator, or if the relative does not meet the necessary criteria (such as being a retired person).

#### **Division 5 Certain obligations of residents**

**Clause 83** provides that it is a term of every residence contract that the resident will respect the rights of other residents of, and other persons in, the village.

#### **Division 6 Administrators, receivers and managers**

**Clause 84** allows the Director-General of the Department of Fair Trading (the *Director-General*) to apply to the Supreme Court for an order appointing a specified person as an administrator of a retirement village. Such an application may be made only if the Director-General is of the opinion that the well-being or financial security of the residents of the village concerned is at risk.

**Clause 85** provides that an application is not to be made unless the person the subject of the application consents to the appointment.

**Clause 86** specifies that (without limiting the terms and conditions of the order of appointment of an administrator under the proposed Division) the terms and conditions may exempt the administrator from the requirement to comply with such obligations of the operator as are specified or described in the order of appointment.

**Clause 87** prohibits an operator of a retirement village from exercising any of the functions of the operator that the administrator is authorised to exercise while the order appointing the administrator is in force in respect of the village. The proposed section also requires a person appointed as the administrator to comply with all the obligations of an operator of the village in respect of the functions that the administrator is authorised to exercise (unless the terms of the administrator's appointment exempt the administrator from that requirement).

**Clause 88** allows for the revocation of the appointment of an administrator of a retirement village, and provides that the appointment terminates (if it is not sooner revoked) at the time (if any) specified in the order of appointment.

**Clause 89** requires any person appointed as a receiver, or a receiver and manager, in respect of an operator of a retirement village to comply with the operator's obligations under the proposed Act as if the person were the operator (unless the terms of the appointment exempt the person from that requirement).

**Clause 90** exonerates an administrator, a receiver and a receiver and manager (and any person acting under the direction of any of those persons) from personal liability in respect of any act done or omitted to be done in good faith for the purpose of the proposed Act or any other Act.

## **Part 7 Financial management of retirement villages**

### **Division 1 Preliminary**

**Clause 91** requires the operator of a retirement village to determine a financial year for the village.

### **Division 2 Capital replacement**

**Clause 92** provides that the operator of a retirement village is liable for depreciation and capital replacement in the village, except as the proposed Division otherwise provides.

**Clause 93** provides that the operator of a retirement village is not liable for depreciation or capital replacement in respect of certain items of capital (such as those owned by a resident of the village).

**Clause 94** provides that the operator of a retirement village may fund capital replacement in the village from the recurrent charges paid by residents of the village in certain circumstances. Any amount that the operator proposes to expend (or set aside for the purposes of expending) under the proposed section must be specified in the statement of proposed expenditure.

**Clause 95** requires the operator of a retirement village to establish and maintain a *capital replacement fund* to finance capital replacement and depreciation in the village if the operator represents in any promotional material for the village that he or she allocates a specified proportion of ingoing contributions or departure fees (or both) for that purpose. Money in the fund must be held in an account with an authorised deposit-taking institution or invested in any manner permitted by law for the investment of trust funds.

**Clause 96** prohibits the use of money in the capital replacement fund for any purpose other than the purpose of capital replacement.

**Clause 97** requires the operator of a retirement village to insure the village (except for any part of the village that is subject to a community land scheme, company title scheme or strata scheme).

**Clause 98** permits the operator of a retirement village to discharge his or her liability for capital replacement by leasing the item of capital concerned or obtaining it under a hire-purchase arrangement.

### **Division 3 Capital maintenance**

**Clause 99** requires the operator of a retirement village to maintain items of capital in the village in a reasonable state of repair, having regard to matters such as the age of the village and the amount of ingoing contributions, recurrent charges and departure fees payable by the residents.

**Clause 100** requires the operator of a retirement village to establish and maintain a *maintenance fund* if a statement of approved expenditure provides for the setting aside of a



proportion of recurrent charges for the purpose of financing repairs and maintenance of items of capital in a period that extends beyond the financial year to which the statement of approved expenditure relates. Money in the fund must be held in an account with an authorised deposit-taking institution or invested in any manner permitted by law for the investment of trust funds.

**Clause 101** specifies the money that is to be paid into the maintenance fund (which includes such proportion of recurrent charges as may be required by the statement of approved expenditure).

**Clause 102** prohibits the use of money in the maintenance fund for any purpose other than the purpose of repairs and maintenance or a purpose prescribed by the regulations.

#### **Division 4 Recurrent charges**

**Clause 103** requires the operator of a retirement village to pay the recurrent charges for general services (that is, services provided to the village as a whole, such as gardening) in respect of any residential premises in the village that are not the subject of a village contract (unless a former occupant of the premises has a continuing liability under proposed Part 10 to pay those charges).

**Clause 104** allows a service contract to provide for the variation of recurrent charges payable under it. The variation may be according to a fixed formula (such as in proportion to variations in the Consumer Price Index) or otherwise. If the contract does not specify the intervals at which the charges are to be varied, they must not be varied more frequently than once a year.

**Clause 105** requires the operator of a retirement village to give at least 14 days' written notice of a variation in recurrent charges when the variation is made according to a fixed formula.

**Clause 106** requires the operator of a retirement village to give at least 60 days' written notice of a variation in recurrent charges when the variation is made otherwise than according to a fixed formula. It also allows the operator to give a subsequent notice providing for a lesser increase (if any) in the recurrent charges.

**Clause 107** makes it clear that a variation notified under proposed section 106 does not take effect unless the residents consent to it or the Tribunal so orders.

**Clause 108** allows the operator of a retirement village to apply to the Tribunal for an order in respect of a proposed variation in recurrent charges if the variation is made otherwise than according to a fixed formula and the residents do not consent to the variation.

The proposed section specifies the matters to which the Tribunal may have regard when determining such an application (for example, the general market level of recurrent charges paid at similar retirement villages in the locality of the retirement village concerned or a similar locality). The Tribunal may order that the variation is to take effect, with or without modification, or that it is not to take effect.

**Clause 109** allows the Tribunal, on the application of a resident of a retirement village, to order the refund of overpaid recurrent charges if increases in those charges came into effect otherwise than in accordance with the proposed Division.

**Clause 110** requires receipts to be given for payment of recurrent charges.

**Clause 111** provides for the abatement of recurrent charges in certain circumstances (for example, if the residential premises to which they relate become wholly or partly uninhabitable).

#### **Division 5 Annual statements of proposed and approved expenditure**

**Clause 112** requires the operator of a retirement village to supply the residents of the village with a statement itemising the way in which the operator proposes to expend the money to be received by way of recurrent charges during a particular financial year (a *statement of proposed expenditure*). The statement is to be supplied at least 60 days before the commencement of the financial year concerned.

**Clause 113** allows a resident of a retirement village to apply to the Tribunal for an order directing the operator of the village to supply the residents with a statement of proposed

expenditure if the operator fails to do so in accordance with proposed section 112.

**Clause 114** requires the operator of a retirement village to seek the consent of the residents of the village to the statement of proposed expenditure. The operator must provide such information as the residents may reasonably require for the purpose of deciding whether consent should be given. If the operator fails to seek the residents' consent, the residents are taken to have refused consent.

**Clause 115** allows the operator or a resident of a retirement village to apply to the Tribunal for an order in respect of the statement of proposed expenditure if the residents of the village do not consent to it. On receiving such an application, the Tribunal may make recommendations about the proposed expenditure, may direct the preparation of new costings for services, and may make various orders concerning the proposed expenditure (for example, that there is to be no expenditure, or there is to be reduced or increased expenditure, in relation to a particular item in the statement).

**Clause 116** provides that, if the residents of the village consent to the expenditure itemised in the statement of proposed expenditure, or the Tribunal orders that the expenditure is to be as itemised in that statement, the statement of proposed expenditure is taken to be a *statement of approved expenditure*. However, if the Tribunal makes any other order in relation to the statement of proposed expenditure, the statement of approved expenditure is taken to be that statement, modified to accord with the order.

The operator of the village must not expend money received by way of recurrent charges otherwise than in accordance (apart from minor variations) with the statement of approved expenditure.

**Clause 117** allows the operator or a resident of a retirement village to seek the consent of the residents to an amendment to the statement of approved expenditure if unforeseen requirements for expenditure arise. The provisions that apply to the obtaining of the residents' consent to the statement of proposed expenditure also apply (with any necessary modifications) to the obtaining of their consent to an amendment to the statement of approved expenditure.

## **Division 6 Annual accounts**

**Clause 118** requires the operator of a retirement village to ensure that the accounts for the village are audited annually by a person qualified to audit accounts for the purposes of the *Corporations Law*. If the audit fees are to be paid by the residents of the village, the fees must be itemised in the statement of proposed expenditure, the name of the auditor to be appointed must also be itemised, and the residents' consent to that appointment must be obtained.

**Clause 119** requires the operator of a retirement village to provide residents of the village with copies of the audited accounts for the village within 3 months after the end of the village's financial year.

**Clause 120** requires any surplus or deficit in the annual accounts to be carried forward to the next financial year unless the residents of the village consent (by special resolution) to the expenditure of the surplus or the making good of the deficit.

## **Part 8 Disputes**

### **Division 1 Preliminary**

**Clause 121** provides that the proposed Part has effect despite anything in the proposed Act or in any other law.

### **Division 2 Dispute resolution**

**Clause 122** allows the operator of a retirement village or a resident of the village to apply to the Tribunal for an order in respect of any dispute between the operator and the resident.

**Clause 123** allows a resident of a retirement village to apply to the Fair Trading Tribunal for an order in relation to any village contract to which the resident is a party if the resident considers the contract to be harsh, oppressive, unconscionable or unjust. The proposed section confers jurisdiction on the Fair Trading Tribunal to determine any such application and any dispute

referred to it under proposed section 128 (1) (i) or (j).

The proposed section also confers on that Tribunal the same jurisdiction as the Supreme Court has (together with all the powers and authority of the Supreme Court, other than the power conferred by section 10 of the *Contracts Review Act 1980*) in proceedings in which relief under the *Contracts Review Act 1980* is sought in relation to a contract between an operator of a retirement village and a resident of the village.

**Clause 124** provides a maximum penalty of 50 penalty units for failure to comply with an order of the Fair Trading Tribunal made on application or referral to that Tribunal under the proposed Act.

**Clause 125** makes it clear that the operator and residents of a retirement village may establish other mechanisms for the purpose of attempting, informally, to resolve disputes in the village. However, the proposed section voids any term of a village contract that provides that the parties to the contract must attempt to resolve disputes between them by any process other than the process provided for under the proposed Act.

### **Division 3 Residential Tribunal**

**Clause 126** empowers the Tribunal to exercise the jurisdiction conferred on it by the proposed Act.

**Clause 127** makes it clear that the Tribunal is not limited in the amount of money it may order to be paid under the proposed Act.

**Clause 128** empowers the Tribunal to make various orders on application by the operator of a retirement village or a resident of the village (for example, an order that requires the operator or resident to comply with a requirement of the proposed Act or the regulations, an order for compensation, an order that restrains any action in breach of a contract or the village rules or an order referring the dispute to the Fair Trading Tribunal for determination).

## **Part 9 Termination of residence contract**

### **Division 1 General principles as to termination of residence contract**

**Clause 129** sets out the circumstances in which, and the time at which, a residence right or a residence contract in a retirement village terminates.

The residence right of a resident who owns his or her residential premises terminates only on the completion of the sale of the premises.

A residence contract relating to any other residential premises in the village (and the residence right under that contract) is terminated on disclaimer, on the death of the resident, on frustration of the contract, if the resident abandons the premises or delivers up vacant possession to the operator in various circumstances or if the Tribunal terminates the contract.

**Clause 130** makes it clear that the Tribunal does not have jurisdiction under the proposed Act to terminate a residence contract relating to residential premises that are owned by the resident or to determine any question as to the title to land.

**Clause 131** requires an operator or a resident of a retirement village who intends to apply to the Tribunal for an order terminating a residence contract to give the other party to the contract written notice of that intention.

**Clause 132** provides for the termination of a residence contract on frustration of the contract (for example, if the residential premises the subject of the contract are rendered wholly or partly uninhabitable otherwise than as a result of a breach of a village contract).

### **Division 2 Termination by Tribunal on application of either operator or resident**

The proposed Division empowers the Tribunal to make orders, on the application of either the operator or a resident of a retirement village, and on various grounds, terminating residence contracts relating to the village. In making such an order, the Tribunal must fix a date by which the resident concerned must vacate the residential premises.

**Clause 133** provides for termination of a residence contract on the grounds that the residential

premises occupied by the resident are unsuitable for occupation by the resident because of the resident's physical or mental incapacity.

**Clause 134** provides for termination of a residence contract on the grounds that the operator or the resident breached his or her village contract or a village rule in such a way (for example, so seriously or so persistently) as to justify the termination.

### **Division 3 Termination by Tribunal on application of operator**

The proposed Division deals with termination of residence contracts by the Tribunal on the application of the operator of a retirement village. In making such an order, the Tribunal must fix a date by which the resident concerned must vacate the residential premises.

**Clause 135** provides for termination of a residence contract on the grounds that the resident intentionally or recklessly caused or permitted (or is likely intentionally or recklessly to cause or permit) serious damage to any part of the village or injury to the operator or an employee of the operator or any other resident.

**Clause 136** provides for termination of a residence contract on the grounds that the operator requires vacant possession of the residential premises concerned for the purpose of carrying out substantial works to improve the village, or because the land on which the village is situated is to be used for another purpose.

### **Division 4 Suspension or refusal of orders for termination**

**Clause 137** enables the Tribunal to suspend the operation of an order fixing a date by which a resident whose residence contract is terminated must vacate the residential premises if it is satisfied that it is desirable to do so, after considering the relative hardship likely to be caused to the resident and other residents of the village. The proposed section also sets out the circumstances in which the Tribunal may refuse to make an order terminating a residence contract.

### **Division 5 Recovery of possession of premises**

**Clause 138** provides that the operator of a retirement village does not have standing to commence proceedings in the Supreme Court, the District Court or a Local Court to obtain recovery of possession of residential premises in the village (except as mortgagee of the premises).

**Clause 139** prohibits entry to residential premises in a retirement village for the purpose of recovery of possession of the premises by a person other than a mortgagee under a power to enter into possession or a power of sale or a person acting in accordance with a warrant of the Tribunal. In proceedings for an offence against the proposed section, a court may order compensation to be paid to the person against whom the offence was committed.

**Clause 140** provides for a sheriff's officer to enforce an order for possession of residential premises in a retirement village after the Tribunal has issued a warrant authorising the sheriff's officer to do so.

A sheriff's officer enforcing an order for possession is empowered to seek the assistance of a police officer and to take all reasonably necessary steps to enforce the order. The proposed section makes it an offence to hinder or obstruct a sheriff's officer in the exercise of functions conferred by the proposed section.

**Clause 141** makes a resident who fails to comply with an order of the Tribunal fixing a date by which the resident must vacate residential premises in a retirement village after termination of his or her residence contract liable to pay compensation to the operator for loss caused by failure to comply with the order. However, the operator must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by the taking of those steps.

### **Division 6 Abandonment of premises**

**Clause 142** provides that the proposed Division applies only in respect of residential premises the subject of a residence contract under which the resident is not entitled to any repayment of

ngoing contribution, or any other payment, on termination of the contract.

**Clause 143** enables the Tribunal to make an order, on application by the operator of a retirement village, declaring that residential premises occupied by a resident of the village were abandoned by the resident on a specified day.

**Clause 144** entitles the operator of a retirement village to apply to the Tribunal for compensation from the resident concerned for any loss caused to the operator by the resident's abandonment of the residential premises. However, the operator must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by the taking of those steps.

#### **Division 7      Uncollected goods**

**Clause 145** provides that the proposed Division does not apply to or in respect of residential premises that are owned by the resident.

**Clause 146** enables a former resident of a retirement village (or any other person having an interest in the goods concerned) to apply to the Tribunal for orders for the delivery of goods left behind by the resident after the termination of his or her residence contract.

**Clause 147** enables the operator of a retirement village to apply to the Tribunal for orders relating to goods left behind by a former resident of the village whose residence contract has been terminated. Before doing so, however, the operator must send notice of his or her intention to the former resident if the operator has a forwarding address for the former resident.

A purchaser of the goods acquires a good title to the goods.

**Clause 148** provides that the operator of a retirement village does not incur any liability in respect of the operator's dealing with the goods in accordance with an order of the Tribunal or in accordance with the regulations.

### **Part 10   Matters relating to vacation of premises**

#### **Division 1      Preliminary**

**Clause 149** provides that the proposed Part extends to apply in respect of a former occupant of a retirement village whose residence contract was in force immediately before the commencement of the proposed Part (except as otherwise provided by the proposed Part).

It also provides that a former occupant whose relative is occupying the former occupant's premises (as referred to in Division 4 of Part 6) is taken to have permanently vacated the premises on the date on which the former resident moved out of the village. (This is in spite of the fact that the former occupant has not delivered vacant possession of the premises to the operator of the village.)

**Clause 150** provides that a reference in the Part to an *owner* of residential premises in a retirement village is taken to include certain other persons, notably a person whose residence contract includes a provision to the effect that the amount of any payment required to be made by the operator to the resident after the resident permanently vacates the premises is wholly dependent on the amount paid by the next incoming resident for the residence right in respect of the premises.

The proposed section also provides that a reference to the sale of the *residential premises* of such an owner is taken to be a reference to the sale of the residence right in respect of the premises.

#### **Division 2      Recurrent charges**

**Clause 151** provides that a resident or former occupant of a retirement village who is absent from the village for a period of 28 consecutive days is not liable to pay recurrent charges in respect of personal services in respect of the remainder of that period of absence. If the operator of the village and the resident or former occupant cannot agree on the apportionment of recurrent charges between personal services and general services, either of them may apply to the Tribunal for an order making that apportionment.

**Clause 152** provides that an owner's liability to pay recurrent charges in respect of general

services arising after the owner permanently vacates the premises ceases on the earliest of the following dates (unless the contract between the operator and the resident or former occupant provides for an earlier cessation of the liability):

- (a) the date on which the operator of the retirement village enters into:
  - (i) a village contract with an incoming resident, or
  - (ii) a residential tenancy agreement with an incoming tenant, in relation to the premises, or
- (b) the date on which a person takes up residence in the premises with the consent of the operator, or
- (c) if the operator buys the premises from the former occupant—the date on which contracts for the purchase are exchanged, or
- (d) if the former occupant is taken to be an “owner” by virtue of proposed section 150 (1) (b):
  - (i) if the Tribunal terminated the residence contract—the date on which the former occupant delivered up vacant possession of the premises to the operator, or
  - (ii) if the former occupant delivered up vacant possession of the premises to the operator after receiving notice of the operator’s intention to apply to the Tribunal for an order terminating the residence contract—the date on which vacant possession was delivered.

**Clause 153** is a similar provision relating to non-owners. The dates for cessation of liability are the same as in proposed section 152, except that the paragraph referring to exchange of contracts for the sale of the premises is omitted and a paragraph referring to the delivery of vacant possession (otherwise than after termination of the residence contract by the Tribunal or after receiving notice of the operator’s intention to apply to the Tribunal for an order terminating the contract) is added. The maximum period of time for which a non-owner can be liable for recurrent charges for general services is 6 months after delivering vacant possession to the operator.

**Clause 154** provides for the former occupant to elect to pay recurrent charges either when the liability for them arises or at a later date (or partly as the liability arises and partly at a later date).

**Clause 155** provides for interest on recurrent charges arising after the former occupant vacated the residential premises if payment is not made when the liability arises.

### **Division 3 Departure fees**

**Clause 156** explains that a *departure fee* is any fee calculated in relation to the period (or part of a period) during which a person has or had a residence right in a retirement village (and, in certain limited cases, in respect of a period after the termination of the person’s residence contract), or a fee declared by the regulations to be a departure fee.

**Clause 157** provides that any departure fee is payable to the operator of the retirement village. It is payable out of the former occupant’s ingoing contribution unless the former occupant owns or owned his or her premises (in which case, it is payable out of the proceeds of the sale of the premises).

**Clause 158** provides that, in the case of a former occupant whose village contract was entered into on or after the commencement of the proposed section, any departure fee is not payable to the extent that it is calculated in respect of a period after the former occupant permanently vacated the residential premises concerned.

**Clause 159** deals with owners whose village contracts were in force on the commencement of the proposed section. Its effect is to provide that a departure fee is not payable to the extent that it is calculated in respect of a period for which the former occupant is not liable to pay recurrent fees for general services (although the provision sets out the alternative dates again).

**Clause 160** is a provision to the same effect in relation to non-owners.

**Clause 161** allows the Tribunal to make an order waiving or reducing the former occupant’s liability for payment of so much of a departure fee as is calculated in respect of a period after

the former occupant permanently vacated the residential premises concerned if it is of the opinion that any delay in the operator's entering into a village contract with another person in relation to the premises is attributable to the operator.

#### **Division 4 Repair and refurbishment of residential premises**

**Clause 162** defines *refurbishment* of residential premises the subject of a residence contract as meaning (for the purposes of the Division) any improvement of the premises in excess of that required to reinstate the premises to the condition they were in (fair wear and tear excepted) at the commencement of their occupation by the resident under the contract.

**Clause 163** requires a former occupant (other than an owner) to leave his or her residential premises as nearly as possible in the same condition (fair wear and tear excepted) as the premises were in at the beginning of the residence contract and, in particular, as nearly as possible in the same condition as set out in the condition report required by proposed section 38.

Provision is made for an application to the Tribunal for an order in relation to a dispute between the operator and the former occupant as to whether the premises have been left in such a condition as to require repairs, or a dispute about the cost of the repairs, or a dispute about both.

**Clause 164** makes it clear that a former occupant who entered into his or her residence contract on or after the commencement of the proposed section is not liable to refurbish (or pay for the cost of the refurbishment of) the premises.

**Clause 165** deals with contracts that were in force before the commencement of the proposed section and that contain a provision requiring the former occupant to refurbish. The proposed section makes provision for the obtaining of quotations for the carrying out of the work and for negotiations between the operator of the retirement village and the former occupant as to which quotation should be accepted (with the matter to be determined by the Tribunal, if necessary).

#### **Division 5 Sale or letting of premises by certain residents**

**Clause 166** makes it clear that the proposed Division applies only to residents of retirement villages who own their residential premises in the village.

**Clause 167** requires an operator of a retirement village who holds an option to purchase any residential premises in the village from a resident to decide whether or not to exercise the option (and to give the resident notice of that decision) no later than 28 days after the resident permanently vacates the premises concerned. If notice is not given, the option lapses. The provision overrides any term of the option.

**Clause 168** allows a resident of a retirement village to set the sale price for his or her residential premises, and to appoint a selling agent of the resident's choice (who may be the operator of the retirement village). Any appointment of the operator (or a person of the operator's choice) as the selling agent, if made as part of the consideration for entry into the village or otherwise at the operator's request, is voided.

The proposed section sets out certain obligations of the selling agent (if the agent is the operator or a person chosen by the operator), and requires the resident to give the operator details of the selling agent if the resident appoints a person other than the operator or a person chosen by the operator.

**Clause 169** prohibits the operator of the retirement village from interfering in the sale.

**Clause 170** provides that the operator and the resident are to share the costs of the sale in the same proportion (if any) as they are to share any capital gains on the sale. However, if the resident appointed a person other than the operator or a person of the operator's choice as the selling agent, the resident is liable to pay the selling agent's commission.

**Clause 171** requires a vendor of residential premises in a retirement village who is not the operator of the village to give the operator sufficient notice of the sale to enable the operator to provide the purchaser with the disclosure statement and other information that the operator is obliged to provide to a prospective resident.

The proposed section also makes a contract for the sale of residential premises in a retirement

village conditional on the purchaser's entering into a service contract with the operator of the village. If the operator decides not to enter such a contract, the operator must advise the vendor of that decision and of the reasons for it, and must apply to the Tribunal for an order declaring that the operator is not obliged to enter into the service contract.

**Clause 172** provides that, if the operator does not either enter into the service contract or apply to the Tribunal within 14 days after being notified of exchange of contracts for the sale, the vendor may apply to the Tribunal for an order directing the operator to enter the contract concerned.

**Clause 173** provides that the Tribunal, on application by the operator or the vendor in regard to the service contract, must determine whether the operator's decision not to enter into such a contract is unreasonable in the circumstances, having regard to the physical and mental capacity of the purchaser and any other factor that the Tribunal considers relevant. On making that determination, the Tribunal may make an order of the kind referred to in proposed section 171 or 172, as appropriate, regardless of whether that was the order sought.

**Clause 174** allows a resident to let (or, in the case of a resident who is taken to be an owner by virtue of clause 150, sublet) his or her residential premises in the retirement village under a residential tenancy agreement to which the *Residential Tenancies Act 1987* applies. Any such agreement must not be for a term of more than 3 years and the tenant or subtenant must be a retired person.

The resident must provide the operator with written details of the proposed agreement (and the proposed tenant or subtenant) and must not enter into the agreement unless the operator has consented in writing to it. The operator may refuse consent to a second or subsequent agreement if the proposed term, when added to the term of any preceding such agreement relating to the premises entered into by the same resident, would exceed 3 years.

If the operator refuses consent in any other case, the operator must advise the resident of that decision and of the reasons for it, and must apply to the Tribunal for an order declaring that the operator is not obliged to consent to the agreement. If the operator does not apply for the order within the time allowed by the proposed section (7 days after receiving the written details the resident is required to provide), the operator is taken to have consented to the agreement.

**Clause 175** provides for the Tribunal to determine, on application by the operator in regard to the proposed residential tenancy agreement, whether the operator's decision not to consent to the agreement is unreasonable in the circumstances, having regard to the physical and mental capacity of the proposed tenant and any other factor that the Tribunal considers relevant.

The Tribunal may order the operator to consent to the agreement, or may declare that the operator is not obliged to consent to it. If the Tribunal orders the operator to consent, the operator is taken to have consented to the agreement on the making of the order.

**Clause 176** provides that services under the service contract between the operator of a retirement village and the resident are to be provided to a tenant or subtenant of the resident as if the tenant or subtenant were the resident, and the contract may be enforced accordingly. It also provides that the letting or subletting of residential premises in accordance with the proposed Division does not affect any right or obligation of the resident and the operator under a village contract.

**Clause 177** prohibits the operator of the retirement village from interfering in the letting of the premises (except as provided by proposed section 174).

**Clause 178** prohibits a tenant or subtenant under the residential tenancy agreement from assigning his or her interest under the agreement or subletting the premises the subject of the agreement.

**Clause 179** provides that, for the purposes of the proposed Division (and despite the termination of the resident's residence contract), a resident who is taken to be an owner by virtue of proposed section 150 is also taken to possess a legal estate in his or her residential premises such as to enable the resident to lease the premises under a residential tenancy



agreement.

### **Division 6      Payments to former occupants**

**Clause 180** is concerned with final payments to former occupants who owned their residential premises in a retirement village.

It requires the operator of the village to make any payment required to be made to the former occupant following the sale of the premises within 14 days after the earliest of the following (unless the contract between the operator and the former occupant provides for earlier payment):

- (a) the date on which the operator receives full payment under a residence contract with an incoming resident of the premises,
- (b) the date on which the operator enters into a village contract with an incoming resident of the premises,
- (c) the date on which the operator enters into a residential tenancy agreement with an incoming tenant of the premises,
- (d) the date on which a person takes up residence in the premises with the consent of the operator,
- (e) if the operator buys the premises from the former occupant—the date on which the operator completes the purchase.

At the same time as the payment is made, the operator is required to give the former occupant a statement setting out various fees and charges (such as any departure fee payable, any accrued or outstanding recurrent charges) and the amount of the payment due to the former occupant. The statement must also show how the various amounts were calculated.

Provision is made for the former occupant to apply to the Tribunal for the appropriate order if the payment is not made within the time allowed by the proposed section or if the amount of the payment is not calculated in accordance with the proposed Act and any relevant village contract.

**Clause 181** is concerned with final payments to former occupants who were not owners.

It provides that the date on which the operator of a retirement village must make any refund of the former occupant's ingoing contribution that is required, under a village contract, to be made is the earliest of the following (unless the operator and the former occupant agree on an earlier date or the contract provides for earlier payment):

- (a) the date that is 14 days after the date on which the operator receives full payment under the residence contract of an incoming resident of the premises,
- (b) the date that is 14 days after the date on which the operator enters into a residential tenancy agreement with an incoming tenant of the premises,
- (c) the date that is 14 days after the date on which a person takes up residence in the premises with the consent of the operator,
- (d) if the Tribunal terminated the residence contract—the date that is one month after the date of the termination,
- (e) if the former occupant delivered up vacant possession of the premises to the operator after receiving notice of the operator's intention to apply to the Tribunal for an order terminating the residence contract—the date that is one month after the date on which vacant possession was delivered,
- (f) the date that is 6 months after the date on which the former occupant otherwise delivered up vacant possession of the premises to the operator.

Any other payment that is required, under a village contract, to be made to the former occupant and that is dependent on the amount of the ingoing contribution of the incoming resident is to be paid to the former occupant within 14 days after the earlier of:

- (a) the payment, under a village contract, of any money to the operator, by that incoming resident, or
- (b) the incoming resident's taking up residence in the premises.

At the same time as the payment is made, the operator is required to give the former occupant a statement setting out various fees and charges (such as any departure fee payable, any accrued or outstanding recurrent charges) and the amount of the payment due to the former occupant. The statement must also show how the various amounts were calculated.

Provision is made for the former occupant to apply to the Tribunal for the appropriate order if the payment is not made within the time allowed by the proposed section or if the amount of the payment is not calculated in accordance with the proposed Act and any relevant village contract.

**Clause 182** provides that if a payment under the proposed Division is required to be made to the executor or administrator of a former occupant's estate and the operator of the retirement village concerned is unable to ascertain the identity of the executor or administrator, the operator may apply to the Tribunal for an order directing the operator to deal with the money as specified in the order.

## **Part 11 Enforcement**

**Clause 183** provides that proceedings for an offence against the proposed Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone or (with the consent of the Minister) by the Supreme Court. The consent of the Attorney General is required if proceedings are to be brought later than 3 years after the commission of the offence.

**Clause 184** provides for the issue of penalty notices in relation to offences under the proposed Act or the regulations.

**Clause 185** prohibits the operator of a retirement village charging to the operating costs of the village (or to the residents of the village) the amount of any monetary penalty imposed on the operator for an offence against the proposed Act or the regulations.

**Clause 186** makes directors and managers of corporations liable for contraventions of the proposed Act by those corporations if they knowingly authorised or permitted the contravention. The proposed section does not apply to directors and managers of statutory corporations.

**Clause 187** makes it an offence to aid, abet, counsel or procure, induce or attempt to induce a person to contravene a provision of the proposed Act or to be in any way a party to such a contravention by a person or to conspire with others to contravene a provision of the proposed Act.

## **Part 12 Administration**

**Clause 188** defines *judicial body* for the purposes of the proposed Part. The term is defined to mean the Tribunal, the Fair Trading Tribunal or a court.

**Clause 189** sets out the functions of the Director-General. The functions include the functions of investigating and carrying out research into matters relating to or affecting retirement villages and the functions of investigating and attempting to resolve complaints by residents and operators of retirement villages (and of taking such action, including prosecution for any offence, as the Director-General thinks appropriate).

The provision also allows the Director-General to delegate his or her functions under the proposed Act.

**Clause 190** specifies the circumstance in which the Director-General may, or must, take or defend proceedings before a judicial body on behalf of a resident of a retirement village.

**Clause 191** provides for the conduct of proceedings taken or defended before a judicial body by the Director-General on behalf of a resident of a retirement village.

**Clause 192** allows the Director-General to intervene in proceedings arising under the proposed Act, and requires the Director-General to do so if so directed by the Minister.

**Clause 193** sets out the powers of investigators under the proposed Act. The powers include powers to obtain information and require the production of documents or other evidence.

**Clause 194** imposes certain limitations on the powers of investigators. For example, an

investigator is not empowered to enter a part of any premises that is being used for residential purposes without the consent of the occupier of that part of the premises.

**Clause 195** enables the Director-General, investigators and persons authorised by the Director-General to inspect, copy and take extracts from documents produced under proposed section 193.

**Clause 196** exonerates the Director-General, investigators and certain other officers from personal liability incurred in respect of any act done or omitted in good faith for the purposes of the proposed Act.

### **Part 13 Miscellaneous**

**Clause 197** specifies that all the information and documents that the operator is required to provide to a person, or to have available, under the proposed Act are to be provided to the person, or made available, free of charge.

**Clause 198** provides that residents of a retirement village are not liable to pay any legal costs incurred by the operator in obtaining advice, or undertaking proceedings, in relation to the village unless the costs appear in the statement of approved expenditure (or unless the costs are awarded against a resident or the residents by a court or the Tribunal).

However, the Tribunal may, on an application by the operator following any refusal of the residents to consent to expenditure on those costs, order that expenditure, but only if the Tribunal determines that the advice was obtained, or the proceedings undertaken, wholly in the interest of the residents, and the costs are reasonable in the circumstances.

**Clause 199** provides that no contract or other agreement or arrangement, whether oral or wholly or partly in writing, and whether made or entered into before or after the commencement of the proposed section, operates to annul, vary or exclude any of the provisions of the proposed Act. It makes it an offence to enter into a contract or other agreement or arrangement with the intention of defeating, evading or preventing the operation of the proposed Act.

An exception is made in the case of certain residential tenancy agreements that are permitted to contain a term to the effect that the proposed Act does not apply to the residential premises the subject of the agreement.

**Clause 200** makes it an offence, except in certain circumstances, to disclose any information obtained in connection with the administration or execution of the proposed Act.

**Clause 201** sets out the manner of service of documents on residents and operators of retirement villages under the proposed Act.

**Clause 202** provides for contributions to be made to meet the costs of the administration of the proposed Act from the Rental Bond Interest Account established under the *Landlord and Tenant (Rental Bonds) Act 1977* and the Property Services Council Statutory Interest Account established under the *Property, Stock and Business Agents Act 1941*.

**Clause 203** sets out the general regulation-making power under the proposed Act. The regulations may create an offence and may impose a penalty not exceeding 50 penalty units. The proposed section makes particular reference to the power to make regulations prescribing the manner in which, and the time within which, applications may be made to the Tribunal, the making of applications by the Residents Committee of a retirement village on behalf of one or more residents of the village, and the other parties to applications made by the operator of a village.

Other regulation-making powers are set out in the proposed sections relating to their subject matter (for example, the power to prescribe standard contracts for the purposes of the proposed Act is set out in proposed section 43).

**Clause 204** gives effect to the Schedule of consequential amendments to the *Fair Trading Act 1987*.

**Clause 205** gives effect to the Schedule of consequential amendments to other Acts.

**Clause 206** provides for the repeal of the Act and regulations that the proposed Act is to replace.

**Clause 207** gives effect to the Schedule of savings, transitional and other provisions.

**Clause 208** provides for Ministerial review of the proposed Act.

## **Schedules**

**Schedule 1** sets out the way in which the residents of a retirement village signify their consent to a particular action or measure.

**Schedule 2** amends the *Fair Trading Act 1987* so as:

- (a) to establish a Retirement Villages Advisory Council along the lines of other advisory councils under that Act (such as the Home Building Advisory Council and the Property Services Advisory Council), and
- (b) to make it explicit that the *Fair Trading Act 1987* applies to service contracts under the proposed Act.

**Schedule 3** amends the following Acts:

The *Contracts Review Act 1980* is amended in consequence of the jurisdiction that the proposed Act confers on the Fair Trading Tribunal in relation to that Act.

The *Fines Act 1996* is amended so as to apply the scheme relating to penalty notices, set out in that Act, to penalty notices issued under the proposed Act.

The *Landlord and Tenant (Rental Bonds) Act 1977* is amended to provide for contributions to be paid from the Rental Bond Interest Account established under that Act for the costs of the administration of the proposed Act.

The *Property, Stock and Business Agents Act 1941* is similarly amended in relation to the Statutory Interest Account established under that Act.

The *Residential Tenancies Act 1987* is amended so as to make it clear that that Act does not apply to a residential tenancy agreement that is a residence contract within the meaning of the proposed Act.

The *Residential Tribunal Act 1998* is amended so as:

- (a) to require notice of proceedings before the Tribunal to be given to the Protective Commissioner if a party to the proceedings is a protected person, and notice to be given to the guardian of any party who has a guardian, and
- (b) to allow the Tribunal to request a report or other assistance from any person or body in relation to any proceedings (or proposed proceedings) before it, and
- (c) to create the offence of wilfully contravening or failing to comply with an order of the Tribunal made under any Act (other than an order for the payment of an amount of money or a rent order under section 52 of the *Residential Tenancies Act 1987*). The offence attracts a maximum penalty of 50 penalty units, or 12 months' imprisonment, or both.

The *Strata Schemes Management Act 1996* is amended so as to update the definition of **retirement village** in the Dictionary to that Act.

**Schedule 4** contains savings and transitional provisions consequent on the enactment of the proposed Act.