

Passed by both Houses



New South Wales

Retirement Villages Bill 1999

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 1999*



New South Wales

Retirement Villages Bill 1999

Act No , 1999

An Act to set out particular rights and obligations of residents and operators of retirement villages; to establish mechanisms for the resolution of certain disputes between residents and operators of retirement villages; to repeal the *Retirement Villages Act 1989*; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

Clause 1 Retirement Villages Bill 1999

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Retirement Villages Act 1999*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Clause 14 of Schedule 4 commences on the date of assent to this Act.

3 Objects of Act

The objects of this Act 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.

4 Definitions

- (1) In this Act:

accounts of a retirement village means the accounts referred to in Division 6 of Part 7.

association and *association property* have the same meanings as they have in the *Community Land Management Act 1989*.

capital replacement means the replacement or improvement of items of capital, and includes the refurbishment of residential premises.

capital replacement fund means a fund established under section 95.

close associate of an operator of a retirement village means:

- (a) if the operator is a natural person:
 - (i) the spouse, parent, child or sibling of the operator, (or, if the operator is in a de facto relationship, the other party to that relationship), or
 - (ii) the parent, child or sibling by marriage of the operator, or
 - (iii) a body corporate of which the operator (or the operator's spouse, parent, child or sibling, or the operator's parent, child or sibling by marriage, or the other party to a de facto relationship with the operator) is a director or secretary, and
- (b) if the operator is a body corporate:
 - (i) a director or secretary of the body corporate or of a related body corporate (within the meaning of the *Corporations Law*), or
 - (ii) the spouse, parent, child or sibling (or the parent, child or sibling by marriage) of such a director or secretary (or, if the director or secretary is in a de facto relationship, the other party to that relationship), or
 - (iii) a related body corporate, and
- (c) in either case—an agent or employee of the operator.

community land scheme means a scheme (other than a strata scheme) within the meaning of the *Community Land Management Act 1989*.

company title scheme means a scheme under which a group of adjoining or adjacent premises (including residential premises) is owned or leased by a corporation each of whose shareholders has, by virtue of his or her shares, an exclusive right (under a lease or otherwise) to occupy one or more of the residential premises.

condition report means a report referred to in section 38.

de facto relationship has the same meaning as it has in the *Property (Relationships) Act 1984*.

departure fee—see section 156.

development and **development consent** have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

Director-General means the Director-General of the Department of Fair Trading.

disclosure statement means a statement referred to in section 18.

exercise a function includes perform a duty.

Fair Trading Tribunal means the Tribunal established under the *Fair Trading Tribunal Act 1998*.

financial year of a retirement village is the period determined under section 91.

former occupant of a retirement village means a resident, or a former resident, of the village:

- (a) who has permanently vacated any residential premises in the village, and
- (b) whose residence contract has been terminated (unless the resident owns the residential premises concerned), and
- (c) who continues to have rights or liabilities under a village contract relating to the village,

and includes the executor or administrator of the estate of such a person.

function includes a power, authority or duty.

general services means services provided, or made available, by or on behalf of the operator, to all residents of a retirement village, and includes such services as may be prescribed by the regulations for the purposes of this definition.

Note. Examples of general services are management and administration services and gardening and general maintenance.

holding deposit means money paid to the operator of a retirement village in consideration for not offering particular residential premises in the village to any other person pending a prospective resident's entering into a residence contract with the operator.

ingoing contribution—see section 6.

investigator means an investigator appointed under the *Fair Trading Act 1987*.

item of capital means:

- (a) any building or structure in a retirement village, and
- (b) any plant, machinery or equipment used in the operation of the village, and
- (c) any part of the infrastructure of the village, and

(d) any other item prescribed by the regulations,

but does not include any item excluded from this definition by the regulations.

legal practitioner means a barrister or solicitor (within the meaning of the *Legal Profession Act 1987*).

licensed conveyancer means the holder of a licence under the *Conveyancers Licensing Act 1995*.

maintenance fund means a fund established under section 100.

operator of a retirement village means the person who manages or controls the retirement village, and includes:

(a) a person (other than a resident or other person referred to in subsection (2)) who owns land in the village, and

(b) any other person or class of persons prescribed by the regulations for the purposes of this definition,

but does not include:

(c) the relevant association of a community land scheme or the owners corporation of a strata scheme, or

(d) the managing agent of such a scheme, or

(e) any person or class of persons excluded from this definition by the regulations.

personal services means optional services provided, or made available, by or on behalf of the operator, to individual residents of a retirement village, and includes such services as may be prescribed by the regulations for the purposes of this definition.

Note. Examples of personal services are the provision of meals, laundry services and the cleaning of the resident's residential premises.

prospective resident of a retirement village means a person who indicates (or on whose behalf it is indicated) to the operator of the village that he or she is (or might be) interested in becoming a resident of the village.

proxy of a resident of a retirement village means a person appointed by the resident for the purpose of voting on the resident's behalf at meetings of residents.

recurrent charge means any amount (including rent) payable under a village contract, on a recurrent basis, by a resident of a retirement village.

Note. Levies payable under a community land scheme or strata scheme are not **recurrent charges** (because they are not payable under a village contract).

relative of a person means:

- (a) the person's grandparent, parent, sibling or child, and
- (b) the person's grandparent, parent, sibling or child by marriage, and
- (c) the person's step-grandparent, step-parent, step-brother, step-sister or step-child, and
- (d) the person's aunts and uncles.

rescission notice means a notice under section 32 or 33.

residence contract means a contract that gives rise to a residence right.

residence right of a person means the person's right to occupy residential premises in a retirement village, being a right arising from a contract:

- (a) under which the person purchased the residential premises, or
- (b) under which the person purchased shares entitling the person to occupy the residential premises, or
- (c) in the form of a lease, licence, arrangement or agreement of any kind, other than a residential tenancy agreement in the form prescribed under the *Residential Tenancies Act 1987*:
 - (i) that is entered into under Division 5 of Part 10, or
 - (ii) that contains a term to the effect that this Act does not apply to the residential premises the subject of the agreement, or
- (d) in the form of any other contract of a kind prescribed by the regulations,

or any other right of a kind prescribed by the regulations.

Note. See also subsection (2).

resident of a retirement village means a retired person who has a residence right in respect of residential premises in the village and includes the following persons (each of whom is taken also to have a residence right in respect of the residential premises concerned):

-
- (a) the spouse of the retired person, if the spouse occupies the residential premises with the retired person,
 - (b) if the retired person is in a de facto relationship—the other party to that relationship, if the other party occupies the residential premises with the retired person,
 - (c) any person or class of persons prescribed by the regulations for the purpose of this definition,
 - (d) in Parts 6, 7 and 8 and Division 5 of Part 10—a former occupant of the retirement village.

residential care facility has the same meaning as in *State Environmental Planning Policy No 5—Housing for Older People or People with a Disability*.

Note. *State Environmental Planning Policy No 5—Housing for Older People or People with a Disability* defines a ***residential care facility*** as “accommodation for older people” (that is, people aged 55 years or over) “that includes:

- (a) meals and cleaning services, and
- (b) personal care or nursing care, or both, and
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,

not being a dwelling, hospital or psychiatric facility”.

residential premises means any premises or part of premises (including any land occupied with the premises) used or intended to be used as a place of residence.

residential tenancy agreement has the same meaning as it has in the *Residential Tenancies Act 1987*.

Note. The *Residential Tenancies Act 1987* defines ***residential tenancy agreement*** as “any agreement under which a person grants to another person for value a right of occupation of residential premises for the purpose of use as a residence:

- (a) whether or not the right is a right of exclusive occupation,
- (b) whether the agreement is express or implied, and
- (c) whether the agreement is oral or in writing, or partly oral and partly in writing,

and includes such an agreement granting the right to occupy residential premises together with the letting of goods”.

Residents Committee means a committee established under section 70.

retired person means a person who has reached the age of 55 years or has retired from full-time employment.

retirement village—see section 5.

Clause 4 Retirement Villages Bill 1999

Part 1 Preliminary

service contract means a contract under which a resident of a retirement village is provided with general services or personal services in the village.

special resolution means a resolution described in Part 3 of Schedule 1.

statement of approved expenditure means a statement referred to in section 116.

statement of proposed expenditure means a statement referred to in section 112.

strata scheme has the same meaning as it has in the *Strata Schemes Management Act 1996*.

tenant means a person who has the right to occupy residential premises under a residential tenancy agreement in the form prescribed under the *Residential Tenancies Act 1987*:

- (a) that is entered into under Division 5 of Part 10, or
- (b) that contains a term to the effect that this Act does not apply to the residential premises the subject of the agreement.

Note. A tenant is not a **resident**.

Tribunal means the Residential Tribunal established by the *Residential Tribunal Act 1998*.

village contract means:

- (a) a residence contract, or
- (b) a service contract, or
- (c) a contract under which a resident of a retirement village obtains the right to use a garage or parking space, or a storage room, in the village, or
- (d) any other contract of a kind prescribed by the regulations for the purpose of this definition.

Note. A residence contract, a service contract and any other village contract may be contained in a single document.

village rules means the rules made and in force from time to time under Division 1 of Part 6.

- (2) For the purposes of the definition of **residence right** in subsection (1), it does not matter that the person who obtains the right:
 - (a) is a corporation, if the premises concerned are intended for use as a residence by a natural person, or

-
- (b) obtains it for the purpose of allowing another person to live in the residential premises (instead of the person who obtained the right),

and in those cases, a retired person who lives in the premises with the consent of the corporation or of the person (as the case may be) is taken to have the residence right.

Note. Subsection (2) would apply in the case, for example, of a person who buys a strata-titled unit in a retirement village for the person's parent to live in.

- (3) In this Act, a reference to the sale, the sale price, or a contract for the sale, of residential premises in a retirement village that were or are to be occupied under a company title scheme is taken to be a reference to the sale, the sale price, or a contract for the sale, of the residence right in respect of the premises.
- (4) It is sufficient compliance with the requirements of this Act if:
- (a) an agent of the operator of a retirement village exercises the functions of the operator under this Act or the regulations, and
 - (b) any notice or other document required to be given to the operator under this Act or the regulations is given to an agent of the operator.
- (5) If there is more than one operator for a retirement village, it is sufficient compliance with the requirements of this Act if:
- (a) any of the operators exercises the functions of an operator under this Act or the regulations, and
 - (b) any notice or other document required to be given to the operator under this Act or the regulations is given to any of the operators.
- (6) A reference in this Act to an operator of a retirement village extends to the operator for the time being.

5 Meaning of “retirement village”

- (1) For the purposes of this Act, a *retirement village* is a complex containing residential premises that are:
- (a) predominantly or exclusively occupied, or intended to be predominantly or exclusively occupied, by retired persons who have entered into village contracts with an operator of the complex, or
 - (b) prescribed by the regulations for the purposes of this definition.

- (2) It does not matter that some residential premises in the complex may be occupied by employees of the operator or under residential tenancy agreements containing a term to the effect that this Act does not apply to the premises the subject of the agreement (instead of being occupied under residence contracts), or that those premises do not form part of the retirement village.
- (3) However, a *retirement village* does not include any of the following:
- (a) any building or any part of a building used or intended to be used 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,
Note. Paragraph (a) excludes from the definition of *retirement village* buildings that are commonly known as Commonwealth-subsidised hostels and nursing homes.
 - (b) any building the subject of a licence under the *Nursing Homes Act 1988*,
 - (c) any building or part of a building intended to be used for the provision of respite care (within the meaning of *Aged Care Act 1997* of the Commonwealth),
 - (d) a residential park (within the meaning of the *Residential Parks Act 1998*),
 - (e) a place at which accommodation is provided by the Aboriginal Housing Office or the New South Wales Land and Housing Corporation (unless it is provided pursuant to a joint venture, or otherwise in conjunction, with another person or body),
 - (f) a boarding-house or lodging house,
 - (g) any accommodation provided in a complex for employees of the complex who are not residents of the retirement village,
 - (h) any residential premises the subject of a residential tenancy agreement in the form prescribed under the *Residential Tenancies Act 1987* to which the operator of a retirement village is a party and that contains a term to the effect that this Act does not apply to the residential premises the subject of the agreement,
 - (i) any other place or part of a place excluded from this definition by the regulations.

6 Meaning of “ingoing contribution”

- (1) For the purposes of this Act, an *ingoing contribution* is:
- (a) any money payable to the operator under a residence contract, or
 - (b) any other money, regardless of how it is described, that is paid to the operator of a retirement village in consideration for, or in contemplation of, the person by whom (or on whose behalf) the payment was made becoming a resident of the village, regardless of whether the payment is made in a lump sum or by instalments.
- (2) Despite subsection (1), an ingoing contribution does not include any of the following:
- (a) a waiting list fee referred to in section 21,
 - (b) recurrent charges,
 - (c) if the resident owns his or her residential premises—the purchase price of the premises,
 - (d) any other payment of a kind prescribed by the regulations.

7 “Owner” of residential premises

For the purposes of this Act, a person *owns* residential premises in a retirement village if the person is:

- (a) the registered proprietor of the premises, or
- (b) the owner of shares that give rise to a residence right in respect of the premises.

8 “Permanent vacation” of residential premises

For the purposes of this Act, a person is taken to have *permanently vacated* residential premises in a retirement village when:

- (a) the person (or another person on behalf of the person) delivers up vacant possession of the person’s residential premises to the operator of the village following the person’s vacation of the premises, or
- (b) the executor or administrator of the person’s estate delivers up vacant possession of the person’s residential premises to the operator of the village following the person’s death, or

- (c) the Tribunal makes an order under section 143 declaring that the person's residential premises were abandoned by the person (and the person is taken to have permanently vacated the premises on the day specified in the order), or
- (d) if the person owns the premises or is taken to be a resident of the premises by the operation of section 4 (2)—the person dies or moves out of the premises.

9 "Consent" of residents

- (1) Schedule 1 provides for the way in which the residents of a retirement village give their consent to a proposed measure or action relating to the village for the purposes of this Act or the regulations.
- (2) If a resident or the operator of a retirement village considers that:
 - (a) the residents' consent to a particular measure or action has been obtained otherwise than as provided for by Schedule 1, or
 - (b) the votes of the residents were inaccurately counted,the resident or operator concerned may apply to the Tribunal for an order as to the validity of the consent.
- (3) On an application made to it under this section, the Tribunal may make an order:
 - (a) declaring the consent to have been validly obtained, or
 - (b) voiding the purported consent and directing that the residents vote again on the proposed measure or action.

10 Notes

Notes included in this Act are explanatory notes and do not form part of this Act.

Part 2 Application of Act

11 Application of Act

- (1) This Act applies to all retirement villages (whether established before or after the commencement of this section) and so applies despite the terms of any contract, agreement, scheme or arrangement (whether made or entered into before or after the commencement of this section).
- (2) This Act extends to apply to and in respect of:
 - (a) a retired person who continues to occupy residential premises in a former retirement village that was a retirement village when the retired person took up residence in the premises, and
 - (b) a retired person who has a right to occupy residential premises in a former retirement village that was a retirement village when the right was obtained, and
 - (c) a former resident of a former retirement village who continues to have rights or liabilities under the contract, agreement or arrangement under which he or she occupied (or had the right to occupy) the residential premises in the former retirement village when it was a retirement village, and
 - (d) the person who is the other party to the contract, agreement or arrangement under which the retired person occupies or occupied (or has or had the right to occupy) the residential premises in the former retirement village,
even though the former retirement village is no longer a retirement village.
- (3) However, this Act does not so apply in respect of any place or part of a place referred to in section 5 (3).
- (4) The regulations may prescribe other modifications to the application of this Act for the purposes of this section.
- (5) For the purposes of this Act:
 - (a) a reference in this Act to a resident of a retirement village includes a reference to a person described in subsection (2) (a), (b) or (c), and

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Part 2 Application of Act

- (b) a reference in this Act to the operator of a retirement village includes a reference to the person referred to in subsection (2) (d).
- (6) In this section, *former retirement village* means a complex that was previously, but is no longer, a retirement village within the meaning of this Act (even if it ceased to be such a retirement village before the commencement of this Act).

12 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

13 Effect of Act on other legislation

- (1) This Act is to be construed as being in addition to, and not in derogation of, any other law of the State, except as otherwise provided by this Act.
- (2) 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 this Act.

Part 3 Representations and information about retirement villages

14 Development consent

If development consent is required before development for the purposes of a retirement village can be carried out, a person must not:

- (a) advertise, or otherwise promote, the proposed village, or
- (b) advertise the sale of residential premises (or the right to occupy residential premises) in the proposed village,

before the consent has been obtained.

Maximum penalty: 100 penalty units.

15 Approvals for certain facilities

The operator of a retirement village (or a person intending to carry out development for the purposes of such a village) must not advertise or otherwise represent that a residential care facility is (or will be) associated with the village or the proposed village unless all authorisations required by law for the residential care facility concerned have been obtained.

Maximum penalty: 100 penalty units.

Note. An example of an authorisation that is required for a nursing home is a licence under the *Nursing Homes Act 1988*.

16 Exceptions to prohibitions on advertising

A person is not guilty of an offence under section 14 or 15 merely because the person:

- (a) carries out market surveys in relation to a proposed retirement village before the relevant development consent is obtained, or
- (b) carries out market surveys in relation to a proposed residential care facility in connection with a retirement village before obtaining the requisite authorisations, or
- (c) gives public notice of, or otherwise advertises, a development application relating to a proposed retirement village or a proposed residential care facility in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*.

17 Representations about retirement villages

- (1) A person who manages or controls a complex containing residential premises must not knowingly represent that the complex is a retirement village unless the complex is a retirement village within the meaning of this Act.

Maximum penalty: 50 penalty units.

- (2) The operator of a retirement village must not make a representation to a prospective resident knowing that it is inconsistent with the information contained in the disclosure statement provided to the prospective resident.

Maximum penalty: 50 penalty units.

- (3) The operator of a retirement village must not knowingly represent to a prospective resident that a particular service or facility is provided to or available at the village or to the residents, or is associated with the village, unless the service or facility is so provided or made available or associated.

Maximum penalty: 50 penalty units.

- (4) If the operator of a retirement village represents to a prospective resident of the village that a service or facility is to be provided to or made available by the operator at the village or to the residents in the future, the operator must ensure that a village contract entered into by that person and the operator specifies the service or facility concerned and the date by which it is to be provided or made available.

Maximum penalty: 50 penalty units.

- (5) The resident concerned may apply to the Tribunal for (and the Tribunal may make) an order that the operator pay compensation to the resident if the service or facility concerned is not provided or made available:

- (a) by the date specified in the village contract, or
- (b) if the village contract (in contravention of subclause (4)) does not specify the date—within a reasonable time.

- (6) For the purposes of this section, a representation made by an agent or employee of the operator of a retirement village is taken to be a representation of the operator unless the operator establishes, to the

satisfaction of the Tribunal or court, that, in making the representation, the agent or employee was acting otherwise than in his or her capacity as the operator's agent or employee.

Note. Any advertising, and promotional and sales material, relating to a retirement village must also comply with the *Fair Trading Act 1987* and the *Trade Practices Act 1974* of the Commonwealth.

18 Disclosure statement concerning village

- (1) The operator of a retirement village must provide a prospective resident (or a person acting on behalf of the prospective resident) with a disclosure statement in accordance with this section.
- (2) A disclosure statement is a written statement containing detailed information concerning the village.
- (3) The statement must:
 - (a) be in the form prescribed by the regulations, and
 - (b) contain the information required by that form, and
 - (c) be signed and dated by the operator.
- (4) The operator of the retirement village must annex a copy of the statement (or the statement as amended in writing and endorsed with the consent of the other party to the village contract) to the first village contract that the other party enters into with the operator.

Maximum penalty: 10 penalty units.

- (5) The operator of a retirement village must not enter into a village contract with a person earlier than 14 days after the person (or another person acting on behalf of that person) has been provided with a disclosure statement by the operator.

Maximum penalty: 100 penalty units.

- (6) If the operator of a retirement village fails to comply with a request to provide a prospective resident with a disclosure statement, the person who made the request may apply to the Tribunal for (and the Tribunal may make) an order requiring the operator to provide the disclosure statement.

19 General information about retirement villages

- (1) The operator of a retirement village must also provide general information about the retirement village industry, in a form approved by the Director-General, to any person to whom a disclosure statement is provided.
- (2) The general information must be provided no later than at the time the disclosure statement is provided.

Maximum penalty: 10 penalty units.

20 Copies of certain documents to be available

- (1) The operator of a retirement village must have available at the village or at a place of business in New South Wales, for inspection at all reasonable times by a prospective resident or a person acting on behalf of a prospective resident, copies of the following:
 - (a) a site plan for the village,
 - (b) plans showing the location, floor plan and significant dimensions of residential premises available in the village,
 - (c) the statements of proposed expenditure and the statements of approved expenditure for:
 - (i) each of the last 3 financial years of the village, and
 - (ii) the current financial year, and
 - (iii) the next financial year (if statements in respect of that year are available),
 - (d) the accounts for the village, audited as referred to in Division 6 of Part 7, for the last 3 financial years (excluding, during the first 3 months of a financial year, the immediately preceding financial year if the accounts for that year are not available),
 - (e) examples of all village contracts that an incoming resident may be required to enter into,
 - (f) the trust deed for any trust fund into which money paid by the residents is deposited,
 - (g) the village rules,
 - (h) the terms of the development consent, if any, for the village, but only if:
 - (i) construction of the village is not complete, or

- (ii) it is a condition of the development consent that a particular service or facility be provided for the life of the village,
- (i) if there is a capital replacement fund or a maintenance fund established for the village—statements of the balances in the fund as at the end of:
 - (i) each of the last 3 financial years of the village, and
 - (ii) the most recent quarter,
- (j) the most recent quarterly accounts of the income and expenditure of the village,
- (k) such other documents relating to the village, and to retirement villages generally, as the regulations may prescribe.

Maximum penalty: 50 penalty units.

Note. Section 197 prohibits an operator of a retirement village from charging for the provision of these documents.

- (2) If the village has been in operation for 3 years or less, the documents referred to in subsection (1) (c), (d) and (i) must relate to each financial year that the village has been in operation.
- (3) The operator must give (or, if requested to do so, send by post) a copy of any document referred to in subsection (1) (a)–(j) to any prospective resident (or a person acting on behalf of a prospective resident) who requests it. The operator must give or send the document no later than 7 days after receiving the request.

Maximum penalty: 50 penalty units.

- (4) If the operator of a retirement village:
 - (a) fails to have the documents referred to in subsection (1) available for inspection as required by that subsection, or
 - (b) fails to comply with a request under subsection (3),

a prospective resident (or a person acting on behalf of a prospective resident) who wishes to inspect the documents, or who made the request under subsection (3) (as the case may be), may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to comply with the relevant requirement of this section.

Part 4 Entry into retirement villages

21 Waiting list fee

- (1) The operator of a retirement village must not require or accept any waiting list fee unless:
 - (a) the fee does not exceed \$200 (or such other amount as may be prescribed by the regulations), and
 - (b) the operator has a written policy setting out the way in which the waiting list operates, and
 - (c) the operator gives to the person who pays the fee, at the time payment is made, a copy of the policy and a receipt for the payment.

Maximum penalty: 100 penalty units.

- (2) If a waiting list fee is paid by or on behalf of any person, the operator must deduct the amount of the fee from any ingoing contribution payable by the person concerned (unless the fee is refunded in accordance with this section). If no ingoing contribution is payable, the waiting list fee must be refunded no later than at the time the person concerned first enters into a village contract with the operator.
- (3) A waiting list fee must be refunded in full no later than 14 days after the operator receives a written request for a refund from the person (or from the executor or administrator of the person's estate) by or on whose behalf the fee was paid.
- (4) If a waiting list fee is not refunded as required by this section, the person to whom the refund is payable may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to refund the fee.
- (5) In this section, *waiting list fee* means any payment made to the operator other than:
 - (a) an ingoing contribution, or
 - (b) a holding deposit, or
 - (c) a payment under a village contract.

22 Holding deposit

- (1) The operator of a retirement village must not require or accept a holding deposit in respect of any residential premises in the village that are occupied by a resident.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the resident has given the operator written notice of intention to vacate the premises.

23 Deposits to be kept in trust

- (1) This section does not apply to or in respect of an operator of a retirement village if the operator is:

- (a) a body constituted or established by an Act, or
- (b) a body constituted or established for any benevolent, philanthropic or patriotic purpose.

- (2) The operator of a retirement village must ensure that any money paid to the operator:

- (a) as a holding deposit, or
 - (b) as a deposit under a village contract,
- is held in trust in accordance with this section.

Maximum penalty: 50 penalty units.

- (3) The money may be held:

- (a) in a legal practitioner's trust account, or
- (b) in the trust account of a person licensed as a real estate agent under the *Property, Stock and Business Agents Act 1941*, or
- (c) in a licensed conveyancer's trust account, or
- (d) by a trustee company (within the meaning of the *Trustee Companies Act 1964*), or
- (e) in such other manner as the regulations may prescribe.

- (4) Money paid to the operator as a holding deposit is to be held in trust until:

- (a) the prospective resident enters into a residence contract with the operator (whether in relation to the premises concerned or to other premises in the same village or in another village), in

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Part 4 Entry into retirement villages

which case the money may, if both parties so agree, be taken to form part of the deposit under the contract, or

- (b) the operator is notified in writing that the prospective resident:
- (i) does not intend to enter into such a contract, or
 - (ii) has died,

in which case the money is to be refunded in full (to the prospective resident or to the executor or administrator of the prospective resident's estate, as the case may be) no later than 14 days after the operator receives the notification.

- (5) If the operator of a retirement village does not make any refund required by subsection (4), the prospective resident concerned (or the executor or administrator of his or her estate) may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to make the repayment.
- (6) Money paid to the operator as a deposit under a village contract is to be held in trust until final payment is made under the contract.
- (7) Subsections (2) (b) and (6) do not apply in respect of a contract for the sale of residential premises if the contract provides for the manner in which the deposit is to be held.

Part 5 Village contracts

24 Resident to enter village contract

- (1) The operator of a retirement village must not permit a prospective resident of the village to occupy residential premises in the village before the prospective resident enters into at least one of the following contracts with the operator:
 - (a) a residence contract,
 - (b) a service contract.

Maximum penalty: 50 penalty units.

Note. A residence contract, a service contract and any other village contract may be contained in a single document.

- (2) However, a prospective resident may occupy residential premises in the village without entering into a contract referred to in subsection (1) if:
 - (a) the prospective resident occupies the premises with a person who has entered into such a contract with the operator, or
 - (b) the prospective resident and the operator enter into a residential tenancy agreement to which this Act does not apply in relation to the premises.
- (3) If the operator contravenes subsection (1), then (despite the provisions of Part 10):
 - (a) the former occupant (if any) of the residential premises concerned has no liability to pay any recurrent charges or departure fees relating to the premises in respect of any period after the date on which the prospective resident occupies the premises, and
 - (b) the operator must, no later than one month after that date, make any 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.

25 Inconsistency between village contract and disclosure statement

- (1) To the extent that any term in 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 far as is practicable) as if it contained the information in the statement instead of the inconsistent term, unless the inconsistent term is a term of a standard contract prescribed under section 43.

- (2) If there is a dispute between a resident of a retirement village and the operator of the village as to whether there is an inconsistency referred to in subsection (1), the resident concerned may apply to the Tribunal for (and the Tribunal may make) an order determining the dispute.
- (3) Any such order is to specify the way in which the contract concerned is to be construed.

26 Village contracts to be in writing

Despite the provisions of any other Act or law, a village contract entered into after the commencement of this section is not enforceable by the operator of a retirement village against a resident of the village unless the contract is in writing.

27 Operator to allow time for examination of village contracts

The operator of a retirement village must not enter into a village contract with a person earlier than 14 days after the person (or another person acting on behalf of that person) has been provided with a copy of each village contract that the person is to enter into.

Maximum penalty: 100 penalty units.

28 No restriction on right to seek independent advice

- (1) An operator of a retirement village must not restrict any person's right to seek independent advice before entering into a village contract with the operator.

Maximum penalty: 10 penalty units.

- (2) An operator of a retirement village must not require a resident or a prospective resident to use the services of a legal practitioner, licensed conveyancer or other adviser nominated by the operator.

Maximum penalty: 10 penalty units.

- (3) If a resident or a prospective resident is required to use the services of a legal practitioner, licensed conveyancer or other adviser in contravention of this section, the operator of the village concerned is liable to pay to the resident or prospective resident the amount of any

fees paid by the resident or prospective resident to that legal practitioner, licensed conveyancer or other adviser for those services.

- (4) If the operator of a retirement village does not, on request, pay the amount due to a resident or prospective resident under subsection (3), the resident or prospective resident concerned (or the executor or administrator of his or her estate) may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to make the payment.

29 Variation or replacement of village contracts

- (1) A purported variation of a village contract, and a purported termination of a village contract and entry into a new village contract by the same parties in relation to the same residential premises, is of no effect (and the contract continues as in force before the purported variation or termination) unless the resident who is a party to the contract obtains a written certificate in accordance with this section.
- (2) The certificate:
- (a) must be signed by a legal practitioner of the resident's choosing, and
 - (b) must contain a statement to the effect that:
 - (i) the legal practitioner explained to the resident the effect of the proposed variation of the contract (or the proposed new contract, as the case may be), and
 - (ii) the resident appeared to understand the explanation and to consent to the variation (or to the new contract).
- (3) Sections 27 and 28 apply in respect of a variation of contract as if the variation were a new contract.
- (4) This section does not apply if the resident requested the variation or new contract.
- (5) A resident is not obliged to agree to a variation or replacement of his or her village contract because of the enactment of this Act (or for any other reason).

30 Costs of obtaining certificate

- (1) The reasonable costs of obtaining a certificate required by section 29 are payable by the operator of the retirement village as if the operator, and not the resident, were the client of the legal practitioner concerned.

- (2) The resident must provide the operator with a copy of any account presented to the resident in respect of those costs and the operator is not required to make any payment in respect of the costs until the resident has done so.
- (3) If the operator does not pay all the costs within 28 days after being provided with a copy of the relevant account, the resident (or the executor or administrator of his or her estate) may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to make the payment.
- (4) On application to it under this section, the Tribunal:
 - (a) may make the order sought, or
 - (b) may order the operator and the resident to pay the costs in such proportion as the Tribunal considers just in the circumstances.

31 Costs of preparation of village contracts

- (1) Legal and other expenses incurred by the operator of a retirement village in connection with the preparation of a village contract are payable by the operator and the resident concerned in equal shares (except as provided by section 30).
- (2) The operator must provide the resident with a copy of any account presented to the operator in respect of those expenses and the resident is not required to make any such payment until the operator has done so.
- (3) The regulations may prescribe a maximum amount payable by a resident for legal and other expenses incurred by the operator in connection with the preparation of a village contract.
- (4) If the regulations prescribe such a maximum amount, any difference between the resident's share of the amount incurred by the operator and the maximum amount prescribed is payable by the operator.
- (5) If a residence contract is in the form of a lease:
 - (a) duty (if any) payable on the lease, and
 - (b) the registration fee (if the lease is to be registered under the *Real Property Act 1900*),is payable by the resident.

Note. Section 179 of the *Duties Act 1997* provides (in part) that a lease instrument for a lease granted by or on behalf of a corporation, society or institution is not chargeable with duty if the purpose of the lease is to grant a retired person the right

to occupy residential accommodation and the lease has not been granted for the purpose of profit by the lessor. The section further provides that duty is not chargeable on a lease instrument on so much of the cost of a residential lease as relates to premises used, or intended to be used, exclusively as a residence.

- (6) This section does not apply in respect of a contract for the sale of residential premises that are subject to a community land scheme, company title scheme or strata scheme.

32 Cooling-off period

- (1) A resident or prospective resident may, within the period (the *cooling-off period*) of 7 business days after entering into a village contract, serve a written notice on:

- (a) the other party to the contract, and
- (b) the operator of the retirement village concerned (if the operator is not the other party),

to the effect that the resident or prospective resident rescinds the contract.

- (2) For this purpose, a contract is taken to have been entered into at midnight on the day on which a copy of the contract signed by the resident is given to the other party to the contract. The cooling-off period ends at midnight 7 business days after that day.
- (3) A contract must not be completed until after the cooling-off period has expired.
- (4) The cooling-off period under a residence contract is waived if the resident commences to live in the residential premises to which the contract relates.
- (5) This provision has effect despite the provisions of any other Act or law.

33 Rescission of village contract on grounds relating to disclosure statement

- (1) If a disclosure statement is not provided in accordance with this Act, or if the information in it is false or misleading in a material particular, the person to whom (or on whose behalf) it was provided may, within 3 months after occupying residential premises in the village, apply to the Tribunal for an order allowing the person to rescind any village contract to which the person and the operator of the village are parties.

- (2) The Tribunal is not to make an order referred to in subsection (1) if it is of the opinion that:
- (a) the disclosure statement was provided in accordance with this Act, or
 - (b) the information in the disclosure statement is not false or misleading in a material particular, or
 - (c) the operator acted reasonably and honestly and ought to be excused for the failure to provide accurate information, or to provide the disclosure statement in accordance with this Act, or
 - (d) the person to whom (or on whose behalf) the disclosure statement was provided is in substantially as good a position as he or she would have been had the failure not occurred.
- (3) If the Tribunal makes the order sought:
- (a) it may also make an order as to compensation payable to the person by the operator of the village, and
 - (b) the person may, by notice in writing to the operator, rescind the contract.

34 Effect of rescission notice

- (1) A rescission notice takes effect on service of the notice.
- (2) A village contract that is rescinded under this Part is taken to be void.
- (3) However, subsection (2) does not affect the rights and obligations set out in sections 35–37.

35 Consequences of resident's rescission of service contract

- (1) If a resident of a retirement village serves a rescission notice in relation to the resident's service contract but does not serve a rescission notice in relation to the residence contract, the resident and the operator of the village are to attempt to renegotiate the service contract.
- (2) If the operator of the village and the resident cannot agree on the terms of the new contract, the operator or the resident may apply to the Tribunal for an order setting out the terms of the new contract.
- (3) On application to it under this section, the Tribunal may:
 - (a) make the order sought, and

- (b) if the Tribunal considers it advisable, order the operator and the resident to enter into a new contract in the terms set out in the order.
- (4) Section 27 does not apply to a new service contract arising out of an order of the Tribunal under this section.

36 Consequences of resident's rescission of residence contract

- (1) A rescission notice in relation to a residence contract is taken also to apply to the service contract and any other village contract entered into by the resident concerned, and each of those contracts is taken to be void.
- (2) As soon as is reasonably practicable (and no later than one month) after a rescission notice that applies to a residence contract takes effect:
 - (a) the rescinding party is to be repaid all money paid by or on behalf of the party under the residence contract, and
 - (b) if the residence contract related to residential premises that are subject to a community land scheme, company title scheme or strata scheme and was rescinded under section 33, the rescinding party must:
 - (i) execute such instruments as may be necessary to enable re-registration of the shares (in the case of premises that are subject to a company title scheme) or title (in any other case) in the name of the operator under the rescinded contract, and
 - (ii) deliver up to the operator the relevant share documents or certificate of title.
- (3) The Tribunal may do either or both of the following:
 - (a) on the application of the rescinding party—order the other party to the contract to comply with subsection (2) (a),
 - (b) on the application of the operator—order the rescinding party to comply with subsection (2) (b).
- (4) Any fees or costs associated with a rescission during the cooling-off period are to be paid by the party incurring them.
- (5) Any fees or costs associated with a rescission at any other time (including registration fees) are payable by the operator, and the Tribunal may, on the application of the rescinding party, order the operator to make the relevant payment.

- (6) The rescinding party is not liable to make any payment to the operator in relation to the rescinded contract unless ordered to do so by the Tribunal.
- (7) Any order under subsection (5) is subject, in the case of a rescinding party to whom subsection (2) (b) applies, to his or her compliance with that paragraph.
- (8) Either party to a rescinded residence contract is entitled to make a claim to the Tribunal for:
 - (a) such compensation, adjustment or accounting as is just and equitable between the parties if the rescinding party has received the benefit of possession of the residential premises concerned, or
 - (b) the payment of damages, costs, or expenses arising out of a breach of any term, condition or warranty contained or implied in the contract (other than a term, condition or warranty referred to in section 52A of the *Conveyancing Act 1919*),

but not so as to affect rights and obligations under this section.

Note. Section 52A of the *Conveyancing Act 1919* provides (among other things) that a vendor under a contract for the sale of land is taken to have included in the contract such terms, conditions and warranties as may be prescribed. The remedies and relief available to a purchaser under such a contract (and the penalties that may be incurred by a vendor) for a breach of a prescribed term, condition or warranty are specified in the regulations made under that Act.

- (9) This section has effect despite the provisions of Division 8 of Part 4 of the *Conveyancing Act 1919*.

Note. Division 8 of Part 4 of the *Conveyancing Act 1919* provides (among other things) for a cooling off period in relation to a contract for the sale of residential property (within the meaning of that Division) and allows such a contract to be rescinded during that period. However, the rights and obligations of the parties under that Division differ from those under this section. Division 8 of Part 4 does not allow rescission after completion of the contract, and the purchaser under the rescinded contract forfeits 0.25% of the purchase price to the vendor.

See section 50 of the *Duties Act 1997* for refund of duty paid on a rescinded agreement for the sale or transfer of dutiable property.

37 Consequence of resident's rescission of other village contract

- (1) As soon as is reasonably practicable (and no later than one month) after a rescission notice that applies to a village contract other than a residence contract or a service contract takes effect, the rescinding party is to be repaid all money paid by or on behalf of the party under the rescinded contract.

- (2) The Tribunal may, on the application of the rescinding party, order the other party to the rescinded contract to comply with subsection (1).
- (3) Either party to a rescinded contract referred to in this section is entitled to make a claim to the Tribunal for such compensation, adjustment or accounting as is just and equitable between the parties having regard to any benefits that the rescinding party received under the contract before its rescission, but not so as to affect rights and obligations under this section.

38 Condition report

- (1) The operator of a retirement village must not permit 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*).
- (2) A condition report must take the form prescribed by, and must be completed in accordance with, the regulations.
- (3) The operator of the retirement village must annex a copy of the condition report to the first village contract that the prospective resident enters into with the operator.
- (4) If, after the commencement of this section, the operator permits a prospective resident to occupy residential premises in contravention of this section, the operator is prohibited from recovering any payment or other compensation for any alleged damage occurring to the premises during their occupancy by the prospective resident concerned.
- (5) This section does not apply if:
 - (a) the prospective resident is to occupy the residential premises together with a resident who is already in occupation of the premises, or
 - (b) the residential premises to which the contract relates are, or are to be, owned (within the meaning of Part 10) by the resident.

39 Operator to give residents and prospective residents copies of village contracts

- (1) As soon as is reasonably practicable (and no later than 14 days) after entering into a village contract, the operator of the retirement village concerned must ensure that the other party to the contract has a copy of the contract that is signed by the operator.

Maximum penalty: 50 penalty units.

- (2) If a resident or a prospective resident of a retirement village signs a village contract and gives it to the operator before the contract is entered into, the operator must give the resident or prospective resident a copy of the contract signed by the resident or prospective resident as soon as is reasonably practicable (and no later than 14 days) after receiving it.

Maximum penalty: 50 penalty units.

- (3) If a residence contract is in the form of a lease that is to be registered under the *Real Property Act 1900*, the operator must:
- (a) lodge the lease for registration within one month after the lease is given to the operator in registrable form, and
 - (b) provide the resident with a copy of the fully-executed lease within 14 days after the lease is returned to the operator following its registration.

Maximum penalty: 50 penalty units.

40 Contractual rights of residents against new operator

- (1) A village contract between a resident and a former operator of a retirement village may be enforced against any operator for the time being of the village.
- (2) However, proceedings do not lie against the owner of land in a retirement village (not being a person involved in the management or control of the village) for the enforcement of rights under subsection (1) unless:
- (a) the owner is a party to the contract, or
 - (b) the owner is a close associate of an operator involved in the management or control of the village, and

an operator other than the owner has failed to satisfy a judgment given for the enforcement of those rights.

41 New operator to convene meeting of residents

- (1) A person who proposes to become an operator of an existing retirement village (and who proposes to manage or control the village) must, at least 28 days before the person becomes the operator, report on:
 - (a) his or her financial ability to operate the village, and
 - (b) his or her plans for the future management and operation of the village (including any changes that he or she proposes to make),at a meeting of the residents and former occupants of the village convened for that purpose in accordance with this section.

Maximum penalty: 50 penalty units.
- (2) The person must convene the meeting by sending to each resident and former occupant, at least 7 days before the date of the meeting, a written notice setting out:
 - (a) the time and place of the meeting (which is to be held in the village if practicable, or at a venue near the village), and
 - (b) the reason for the meeting.

42 Regulations concerning village contracts

- (1) The regulations may make provision for or with respect to matter that is to be included in (and matter that is to be excluded from) village contracts or a class of village contracts.
- (2) If the regulations require a village contract to contain a clause in prescribed terms, a village contract of the kind to which the prescription relates is taken to include the clause in the terms prescribed.
- (3) If the regulations provide that any matter is to be excluded from village contracts or a class of village contracts, any village contract that contains that matter is void to the extent of that matter.

43 Standard form of village contract

- (1) The regulations may prescribe a standard form of village contract.
- (2) The regulations may provide for:
 - (a) more than one standard form of village contract, or
 - (b) the addition of clauses to, or the omission or variation of clauses contained in, the standard form or forms,

for use in relation to different classes of village contracts (including different classes of residence contracts) or different classes of residential premises.

- (3) A village contract for which a standard form is prescribed, and that is entered into after the day on which the form is prescribed, is void to the extent to which it is not in or to the effect of the standard form.
- (4) Any such contract that does not include a term of the form of contract that is the standard form at the time the contract is entered into is taken to include that term.
- (5) The terms contained in a prescribed standard form of village contract are not to be varied by the parties to a village contract for which the form is prescribed, and, to the extent that they are so varied, are taken not to have been varied.
- (6) However:
 - (a) nothing in subsection (3) or (5) voids any residence right conferred by the village contract concerned, and
 - (b) despite those subsections, the parties to a village contract for which a standard form is prescribed may insert additional terms in the contract, but only if the terms:
 - (i) do not contravene this or any other Act or law, and
 - (ii) are not inconsistent with a term of the prescribed village contract.
- (7) An additional term is void if the Tribunal so orders, on application by a resident, on being satisfied that the additional term does not comply with subsection (6) (b) (i) and (ii).

44 Parties to minimise loss from breach of village contract

The rules of law relating to mitigation of loss or damage on breach of a contract apply to a breach of a village contract.

Part 6 General management of retirement villages

Division 1 Village rules

45 Application of Division

This Division does not apply to or in respect of:

- (a) such part of a retirement village as is subject to a community land scheme or a strata scheme, or
- (b) the residents of that part of the village.

Note. The by-laws under the *Community Land Management Act 1989* or the *Strata Schemes Management Act 1996* (as the case may be) apply to the part of a retirement village that is subject to such a scheme.

46 Subject-matter of village rules

- (1) Written rules relating to the use, enjoyment, control and management of a retirement village may be made in accordance with this Division.
- (2) The rules made under this Division may relate to (but are not limited to) any or all of the following:
 - (a) persons other than residents or employees of the village living in the village,
 - (b) visitors, including overnight or short-stay guests,
 - (c) the making of noise,
 - (d) the parking of motor vehicles,
 - (e) the disposal of refuse,
 - (f) the keeping of pets,
 - (g) gardening and landscaping,
 - (h) the use and operation of services or facilities (including restrictions on their use),
 - (i) any other matter prescribed by the regulations.

47 Village rules to be consistent with other laws

A village rule is of no effect to the extent that it is inconsistent with this or any other Act or law.

48 Model village rules

The regulations may prescribe model village rules that may be adopted in respect of a retirement village.

49 Operator may make village rules for new villages

- (1) The operator (or proposed operator) of a proposed retirement village may make village rules in respect of the village.
- (2) The operator of a retirement village that is in existence on the commencement of this section may make village rules in respect of the village if, at the time the rules are made, the village has no residents.

50 Village rules for existing villages

If a retirement village that is in existence on the commencement of this section does not, on that commencement, have any village rules, rules may be made for the village in the same way as village rules may be amended under section 51.

51 Amendment of village rules

- (1) The operator of a retirement village must propose an amendment to the village rules if:
 - (a) a minimum of 5 residents, or 10% of the residents, (whichever is the greater) of the village (or, if the village has fewer than 10 occupied residential premises, residents from a majority of the occupied residential premises), or
 - (b) the Residents Committee of the village,
requests the operator in writing to do so.
- (2) The operator may propose an amendment to the village rules even if there has been no request under subsection (1).
- (3) A proposed amendment is not to be made unless the residents of the village, by a special resolution, consent to the amendment.
- (4) If consent is given, the amendment takes effect 7 days after the date on which the special resolution concerned is notified to the operator (or from such later date as the resolution may specify), unless the operator, within that period of 7 days:
 - (a) makes an application to the Tribunal under section 52, or
 - (b) seeks the residents' consent to an amendment to the statement of approved expenditure under section 53.

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- (5) An operator who receives a request under subsection (1) must call a meeting of the residents of the village, to be held no later than 28 days after the receipt of the request, for the purpose of considering a special resolution concerning the proposed amendment.
 - (6) Nothing in this section prevents the Tribunal from making an order under section 54 modifying or setting aside a village rule as amended.
 - (7) For the purposes of this section, an amendment to the village rules includes the following:
 - (a) a variation of a village rule,
 - (b) the addition of a new rule to the village rules,
 - (c) the omission of a village rule that is in force.

52 Operator's objection to proposed amendment of village rules

- (1) If the operator of a retirement village objects to a proposed amendment to the village rules requested by the residents and to which the residents have consented under section 51, the operator may apply to the Tribunal for an order prohibiting the proposed amendment.
- (2) On application under this section, the Tribunal may, after considering the circumstances of the case, make an order:
 - (a) prohibiting the proposed amendment, or
 - (b) directing that the proposed amendment (or the proposed amendment modified as specified in the order) is to take effect from the date specified in the order.

53 Operator's concern that amendment will impose additional cost

- (1) If the operator of a retirement village considers that an amendment to the village rules to which the residents have consented under section 51 will impose a cost on the operator additional to that allowed for in the statement of approved expenditure, the operator must seek the residents' consent to an amendment to the statement of approved expenditure.

Note. Division 5 of Part 7 provides for annual statements of proposed and approved expenditure. Section 117 allows an operator to seek the residents' consent to an amendment to the statement of approved expenditure if unforeseen requirements for expenditure arise.

- (2) Section 115 does not apply to or in respect of a consent sought under this section.

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Division 1 Village rules

- (3) If the residents refuse to consent to the amendment, the operator may apply to the Tribunal for an order in relation to the proposed amendment to the statement of approved expenditure.
- (4) On application to it under this section, the Tribunal may, after considering the circumstances of the case, either:
 - (a) order that the statement of approved expenditure be amended as specified in the order, or
 - (b) order that the statement of approved expenditure not be amended.
- (5) On making an order under subsection (4), the Tribunal may also:
 - (a) order that the proposed amendment to the village rules is not to take effect, or
 - (b) order that the proposed amendment to the village rules (or the proposed amendment modified as specified in the order) is to take effect from the date specified in the order.

54 Other applications to Tribunal concerning village rules

- (1) The operator of a retirement village or a resident of the village may, at any time, apply to the Tribunal for an order in relation to either or both of the following:
 - (a) a dispute concerning the legal validity of a village rule in force in the village,
 - (b) a village rule in force in the village that the operator or resident considers to be unjust, unconscionable, harsh or oppressive.
- (2) The Tribunal may determine an application made under subsection (1) by making an order:
 - (a) setting aside the village rule concerned, or
 - (b) modifying the operation of the rule in its application to a resident or to some or all of the residents of the village, or
 - (c) upholding the rule.

55 Compliance with village rules

- (1) The operator and residents of a retirement village must comply with the village rules as in force from time to time.

Note. The Tribunal can make various orders in relation to compliance with the village rules—see section 128. It can also terminate a resident's residence contract for serious or persistent breaches of the village rules—see section 134.

- (2) If a village rule is inconsistent with a term of a village contract, the village rule prevails to the extent of the inconsistency. However, if the inconsistent term of the contract is a prescribed term, that term prevails over the rule.

56 Compliance with village rules by persons other than operator and residents

- (1) It is a term of every village contract that the resident or former occupant who is a party to the contract will use his or her best endeavours to ensure compliance with the village rules by:
- (a) a tenant or subtenant, under Division 5 of Part 10, of the resident or former occupant, and
 - (b) any other person who is lawfully on the resident's or former occupant's residential premises (other than a person who has a right of entry to the premises without the resident's or former occupant's consent), and
 - (c) any other person who is in the retirement village at the resident's or former occupant's invitation.
- (2) It is also a term of every village contract that the operator will use his or her best endeavours to ensure compliance with the village rules by:
- (a) tenants of the operator, and
 - (b) employees of the operator, and
 - (c) any other persons who are in the retirement village at the operator's invitation.

Division 2 Certain obligations of operators**57 Certain persons not to be operators**

- (1) A person to whom this section applies must not:
- (a) be an operator of a retirement village, or

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Division 2 Certain obligations of operators

- (b) be involved in the promotion or sale of residence rights in a retirement village, or
- (c) be in any way (whether directly or indirectly) concerned, or take part, in the management or control of a retirement village.

Maximum penalty: 100 penalty units.

- (2) This section applies to the following persons:
 - (a) a person who is insolvent under administration,
 - (b) a person who is a director of an externally-administered body corporate,
 - (c) a person who was a director of a company that has been wound up (otherwise than voluntarily),
 - (d) a person who has been convicted (in New South Wales or elsewhere) of an offence involving:
 - (i) physical violence to another person, or
 - (ii) fraud or dishonesty, being an offence punishable on conviction by imprisonment for a period of not less than 3 months.
- (3) However, this section applies:
 - (a) to a person referred to in subsection (2) (c)—only for the period of 5 years immediately following the winding-up, and
 - (b) to a person referred to in subsection (2) (d)—only for the period of 5 years following the conviction (or, if the person was sentenced to imprisonment, within the period of 5 years following the person's release).
- (4) In this section, *externally-administered body corporate* and *insolvent under administration* have the same meanings as they have in the *Corporations Law*.

58 Operator to provide secure premises

- (1) The operator of a retirement village must ensure that the village generally is reasonably secure.
- (2) In particular, the operator must ensure that all residential premises in the village have such locks or other security devices, in good working order, as are necessary to make the premises reasonably secure.
- (3) Subsection (2) does not apply in respect of residential premises that are subject to a community land scheme, company title scheme or strata

scheme unless the operator, or a close associate of the operator, is the owner of the premises.

- (4) Any resident who believes in good faith that the retirement village is not reasonably secure may apply to the Tribunal for any of the following:
 - (a) an order directing the operator to comply with subsection (1) or (2),
 - (b) any other order referred to in section 128 (1).

59 Operator to provide village emergency system on request

- (1) The residents of a retirement village may, by a special resolution, request the operator of the village to provide or arrange for a village emergency system of a specified kind in the village.
- (2) If such a request is made, the residents are taken to have consented to the inclusion, in the statement of proposed expenditure relating to the financial year next following the date of the resolution, of the cost of providing or arranging for the village emergency system concerned.
- (3) If the operator fails to comply with a request referred to in this section, any resident of the village may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to provide or arrange for a village emergency system of the kind requested by the residents.
- (4) The operator must ensure that any village emergency system provided in the village (whether or not it was provided at the request of the residents) is regularly and adequately monitored and serviced.
- (5) Nothing in this section prevents a resident of a retirement village from arranging, at the resident's expense, for the provision of a system that will enable the resident to summon assistance in an emergency. However, any such system is not a village emergency system.
- (6) In this section, *village emergency system* means a system (such as buttons in residential premises and common areas, or bracelets that can be worn by residents) that enables residents to summon assistance in an emergency.

60 Variation in services or facilities provided at village

- (1) The operator of a retirement village must propose a variation in the services and facilities provided at the village if:
 - (a) a minimum of 5 residents, or 10% of the residents, (whichever is the greater) of the village (or, if the village has fewer than 10 occupied residential premises, residents from a majority of the occupied residential premises), or
 - (b) the Residents Committee of the village,
requests the operator in writing to do so.
- (2) The operator may propose a variation in the services and facilities provided at the village even if there has been no request under subsection (1).
- (3) The services and facilities provided at the village are not to be varied as proposed unless the residents of the village, by a special resolution, consent to the variation. If consent is given, the operator may vary the service or facility in accordance with the consent as soon as is practicable (unless the resolution provides that the variation is to take effect on a specified later date).
- (4) An operator who receives a request under subsection (1) must call a meeting of the residents of the village, to be held no later than 28 days after the receipt of the request, for the purpose of considering a special resolution concerning the proposed variation.
- (5) A resident is not entitled to vote on the special resolution unless the service or facility concerned is (or is proposed to be) available to the resident.
- (6) Regardless of the terms of any village contract, the operator does not breach the contract by varying services or facilities in accordance with this section.
- (7) If the operator considers that a proposed variation in services or facilities under this section will impose a cost on the operator additional to that allowed for in the statement of approved expenditure, the operator must seek the residents' consent to an amendment to the statement of approved expenditure.
- (8) Section 115 does not apply to or in respect of a consent sought under this section.

- (9) If the residents refuse to consent to the amendment, section 53 (3)–(5) applies to such a refusal in the same way that it applies to a refusal under that section.
- (10) In this section:
- services and facilities* means services and facilities provided by or on behalf of the operator.
- variation* in a service or facility includes the following:
- (a) a reduction in the service or facility,
 - (b) the withdrawal of a service or facility,
 - (c) an increase in a service or facility,
 - (d) any other change in a service or facility,
 - (e) the provision of a new service or facility.

61 Operator not to reduce or withdraw certain services and facilities

If a development consent for a retirement village requires that a particular service or facility be provided for the life of the village, the operator of the village must not reduce or withdraw that service or facility (despite any consent of the residents) unless the development consent is amended so as to omit or vary that requirement.

62 Consequence of unlawful variation in services or facilities

- (1) If an operator reduces or withdraws, or permits the reduction or withdrawal of, a service or facility otherwise than in accordance with section 60, a resident of the village concerned may apply to the Tribunal for an order for any one or more of the following:
- (a) the reinstatement of the service or facility concerned,
 - (b) the payment of compensation in relation to the reduced or withdrawn service or facility,
 - (c) a reduction in the recurrent charges payable by any one or more of the residents,
 - (d) the payment of the whole or part of those recurrent charges to the Tribunal until the service or facility concerned is reinstated.
- (2) In determining an application made under this section, the Tribunal may make the order sought or any other order of a kind set out in subsection (1).

63 Operator not to require residents to patronise particular businesses

- (1) The operator of a retirement village must not restrict the right of a resident of the village to purchase goods and services from a person of the resident's choice.

Maximum penalty: 10 penalty units.

Note. For example, the operator must not prevent a resident from obtaining meals-on-wheels services or any other service known as a Home and Community Care service (HACC).

- (2) However, the operator may prohibit particular tradespersons and service providers from entry (or further entry) into the village if they have:
- (a) unduly disturbed the peace and quiet of the village, or
 - (b) failed to observe reasonable rules of conduct established by the operator, or
 - (c) contravened any village rules concerning motor vehicle traffic that are displayed in, or near the boundary of, the village.

64 Operator not to demand power of attorney

- (1) The operator of a retirement village must not require a resident or prospective resident of the village to give the operator a power of attorney in favour of the operator, a close associate of the operator or a person nominated by the operator.

Maximum penalty: 100 penalty units.

- (2) Any power of attorney given in favour of an operator of a retirement village (or a close associate of the operator or a person nominated by the operator) by a resident or prospective resident of the village:
- (a) if given before the commencement of this section—terminates on that commencement, and
 - (b) if given on or after the commencement of this section—is void.
- (3) Subsection (2) does not apply if the resident or prospective resident who gave the power of attorney is a relative of the operator.
- (4) This section has effect despite Part 16 (Powers of attorney) of the *Conveyancing Act 1919* and despite the terms of any instrument creating a power of attorney.

Note. Section 160 of the *Conveyancing Act 1919* deals with irrevocable powers of attorney. Section 163F of that Act deals with powers of attorney that are given

with the intention that they will continue to be effective even if the person who gave the power loses capacity through unsoundness of mind.

65 Operator not to demand appointment as proxy

- (1) The operator of a retirement village must not require a resident or prospective resident of the village to appoint the operator (or a close associate of the operator or a person nominated by the operator) as the proxy of the resident.

Maximum penalty: 100 penalty units.

- (2) Any appointment of the operator of a retirement village (or a close associate of the operator or a person nominated by the operator) as the proxy of a resident or prospective resident of the village:
- (a) if made before the commencement of this section—terminates on that commencement, and
 - (b) if made on or after the commencement of this section—is void.
- (3) Subsection (2) does not apply if the resident or prospective resident who made the appointment is a relative of the operator.
- (4) This section has effect despite the terms of any instrument appointing an operator of a retirement village (or a close associate of the operator or a person nominated by the operator) as a resident's or prospective resident's proxy.

Note. Section 77 deals with the appointment of proxies.

Division 3 Certain rights of residents

66 Operator to respect rights of residents

- (1) The operator of a retirement village must respect the rights of residents of the village.
- (2) In particular, the operator:
- (a) must not interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of a resident, and
 - (b) must take all reasonable steps to ensure that all residents meet their obligations under their village contracts, the village rules and this Act, so that a resident does not unreasonably interfere with the peace, comfort and quiet enjoyment of his or her fellow residents, and

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Division 3 Certain rights of residents

- (c) must not interfere with the right of any resident to autonomy over his or her personal, financial and other matters and over his or her possessions, and
 - (d) must not inhibit any resident from exercising self-reliance in matters relating to his or her personal, domestic and financial affairs, and
 - (e) must use his or her best endeavours to ensure that each resident lives in an environment free from harassment and intimidation.
- (3) A resident of a retirement village who is of the opinion that the operator of the village has contravened any provision of this section in relation to the resident may apply to the Tribunal for an order for either or both of the following:
- (a) an order directing the operator to pay compensation to the resident,
 - (b) an order directing the operator to comply with this section.
- (4) On an application made under this section, the Tribunal may make the order sought or any other order of a kind set out in subsection (3).

67 Restriction of operator's access to residential premises

- (1) The operator of a retirement village and any person authorised by the operator must not, while a person has residence rights in relation to residential premises in the village, enter those residential premises except as permitted by this section.
- (2) The operator or other person may enter residential premises in the village only in the following circumstances:
- (a) if the resident consents to the entry,
 - (b) in an emergency, or if the operator has reasonable cause for concern about the health or safety of a person that the operator believes is on the premises,
 - (c) in order to carry out urgent repairs,
 - (d) in order to carry out general maintenance, but only if 7 days' notice has been given to the resident,
 - (e) in order to carry out a general inspection of the premises, but only if:
 - (i) the premises are not owned by the resident, and
 - (ii) 7 days' notice has been given to the resident, and

- (iii) a general inspection of the premises has not been carried out more than once in the immediately preceding 12 months,
 - (f) in accordance with an order of the Tribunal,
 - (g) in any other circumstances prescribed by the regulations.
- (3) The Tribunal may, on the application of the operator, make an order authorising the operator or any other person to enter residential premises in the village.
- (4) A resident of a retirement village who is of the opinion that the operator of the village has contravened any provision of this section in relation to the resident may apply to the Tribunal for an order for either or both of the following:
 - (a) an order directing the operator to pay compensation to the resident,
 - (b) an order directing the operator to comply with this section.
- (5) On an application made under subsection (4), the Tribunal may make the order sought or any other order of a kind set out in that subsection.

68 Right to appoint agent

- (1) A resident of a retirement village may appoint a person as the resident's agent for the purpose of receiving notices or other documents to be given to the resident under a village contract or under this Act.

Note. A resident may wish to appoint an agent if the resident (for example) cannot read or write English, is sick, or is going to be away from his or her residential premises for some time.

- (2) An appointment of the operator of the retirement village (or a close associate of the operator or a person nominated by the operator) as an agent under this section is of no effect.
- (3) An appointment under this section:
 - (a) may be made in a village contract or at any time after the contract commences, and
 - (b) may be revoked at any time by the resident,

but any such appointment or revocation has no effect until it is notified in writing to the operator of the village.

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Division 3 Certain rights of residents

- (4) The operator must give to the agent appointed by a resident, until such time as the appointment expires or is revoked, any notices or other documents that the operator is required to give to the resident under a village contract or this Act.
- (5) A notice or other document that is required by this section to be given to the agent appointed by the resident and that is not so given is taken not to have been given to the resident.

69 Residents to be given access to information about them

- (1) The operator of a retirement village:
 - (a) must, on request at any reasonable time, give a resident access to any information about the resident that is held by the operator, and
 - (b) must give the resident a copy of that information if the resident requests it, and
 - (c) if the resident satisfies the operator that any of the information is incorrect—must correct the information, on request, in accordance with the resident’s instructions.

Note. Section 197 prohibits an operator of a retirement village from charging the resident for giving access to the information or providing a copy of it.

- (2) If the operator fails to comply with a request made under this section, the resident concerned may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to comply.

70 Residents Committees and organisations

- (1) A Residents Committee may, with the consent of the residents of a retirement village, be established in the village for the purposes of this Act.
- (2) A Residents Committee is to be elected by the residents.
- (3) Only one Residents Committee may be established in a village, and only a resident of the village may be a member of the Committee.
- (4) If more than one body or committee (regardless of its name) purports to be the Residents Committee in a particular retirement village, the operator or a resident of the village may apply to the Tribunal for (and the Tribunal may make) an order determining which body or committee (if any) is the Residents Committee for the village.

- (5) A Residents Committee may, subject to the regulations:
- (a) determine its own procedure, and
 - (b) form any one or more sub-committees and determine their procedure, and
 - (c) call meetings of all the residents of the village for the purpose of considering and voting on matters referred to in section 74 (1).
- (6) The operator of a retirement village must not:
- (a) discourage or prevent the establishment of a Residents Committee, or
 - (b) obstruct a Residents Committee in the exercise of its functions, or
 - (c) attempt to prevent residents of the village from joining any organisation for residents of retirement villages.

Maximum penalty: 50 penalty units.

- (7) The operator must provide reasonable administrative assistance to the Residents Committee on request by the Committee, but only if an estimate of the cost of providing the assistance has been included in the statement of approved expenditure for the financial year in which the assistance is requested.

Note. Administrative assistance might involve such matters as photocopying or distributing notices.

- (8) Nothing in this section prevents the residents of a retirement village from establishing other committees of residents for other purposes.

71 Regulations concerning Residents Committees

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

72 Meetings between Residents Committee and operator

- (1) An operator of a retirement village must, on the reasonable request of a Residents Committee, meet the Committee (or a representative of the Committee).

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Division 3 Certain rights of residents

- (2) Subsection (1) does not apply to an operator who owns land in the village unless the operator is also involved in the management and control of the village.
- (3) A Residents Committee (or a representative of the Committee) must, on the reasonable request of the operator of the village concerned, meet the operator.
- (4) If a reasonable request under this section is not complied with, the operator or the Residents Committee that made the request may apply to the Tribunal for (and the Tribunal may make) an order directing compliance with the request.

73 Villages without Residents Committees

- (1) If there is no Residents Committee elected for a retirement village, the operator of the village must, at least once in every period of 12 months, call a meeting of the residents (to be held in or near the village) for the purpose of considering and voting on matters referred to in section 74 (1).
- (2) The operator must also call a meeting of the residents for that purpose if a minimum of 5 residents, or 10% of the residents, (whichever is the greater) of the village (or, if the village has fewer than 10 occupied residential premises, residents from a majority of the occupied residential premises) request the operator in writing to do so.

74 Meetings of residents

- (1) The residents of a retirement village have the right to meet for the purpose of considering and voting on:
 - (a) any matter in respect of which the consent of the residents is required under this Act, and
 - (b) any other matter affecting the management and operation of the village, and
 - (c) any matter prescribed by the regulations.
- (2) A vote of the residents on a matter referred to in subsection (1) (b) does not bind the operator of the village.
- (3) If 2 or more residents occupy the same residential premises in the village, each of them may vote on a matter referred to in subsection (1).

- (4) The operator of the retirement village must not interfere with a resident's rights under this section.

Maximum penalty: 50 penalty units.

- (5) A meeting of residents must not be held simultaneously with a meeting that the residents, in another capacity, are required to hold or participate in under another Act.

Note. An example of such a meeting is a meeting required by the *Strata Schemes Management Act 1996* (if the retirement village is subject to a strata scheme).

75 Attendance at meetings of residents

- (1) A resident of a retirement village is not obliged to attend, or vote at, any meeting of the residents of the village.
- (2) A person who is not a resident of the village (including a person who occupies residential premises in the village otherwise than under a residence right) must not attend, or remain at, a meeting of the residents unless the residents at the meeting consent to the person's presence at the meeting.
- (3) Despite subsection (2), a person has a right to attend a meeting of the residents of a retirement village and to vote at the meeting on behalf of a resident of the village if the person:
- (a) is authorised to do so under a power of attorney given in favour of the person by the resident concerned, or
 - (b) is a person appointed, under the *Guardianship Act 1987* or the *Protected Estates Act 1983*, to manage the estate of the resident (or, if the management of the resident's estate is committed to the Protective Commissioner, the person is the Protective Commissioner or a person authorised by the Protective Commissioner for the purposes of this section).

- (4) The operator of the retirement village must not prevent or hinder the attendance of an investigator at a meeting of the residents if the residents at the meeting consent to the investigator's presence at the meeting.

Maximum penalty: 50 penalty units.

76 No restrictions on voting

- (1) A village contract may explain the system under which, at the time the contract is entered into, the residents of the retirement village meet and consider and vote on matters referred to in section 74 (1), but any term of the contract that purports to bind a resident to a particular system is void to the extent that it does so.
- (2) Any covenant, and any contract or other arrangement between the operator of a retirement village and a resident of the village, under which a particular vote of the resident (or the resident's failure to vote) on any matter relating to the village attracts a penalty, is void to the extent of that provision.

77 Proxies

- (1) A resident of a retirement village may, from time to time, appoint a person as the proxy of the resident.
- (2) Any such appointment is to be made in the form and manner prescribed by the regulations.
- (3) A person is not the proxy of a resident of a retirement village for the purposes of this Act unless the person is appointed under this section.

Note. Certain other laws (such as the *Strata Schemes Management Act 1996*) provide for the appointment of proxies for various purposes. However, an appointment under another law is not effective for the purposes of this Act, and an appointment under this Act is not effective for the purposes of another law (unless the other law provides that it is).

- (4) However, any appointment of a person (other than the operator, a close associate of the operator or a person nominated by the operator) as the proxy of a resident of a retirement village, being an appointment in force on the commencement of this section, is taken to have been made under this section.
- (5) A person appointed as the proxy of a resident of a retirement village cannot vote on the resident's behalf if the resident personally votes on the matter concerned.

78 Certain limitations on proxies

- (1) If a person holds appointments as the proxy of 5 residents in any one village at any one time, any appointment of the person as the proxy of another resident of the village, while the person continues to hold the 5 appointments, is void.

- (2) Any appointment of a person as the proxy of a resident of a retirement village after the commencement of this section:
- (a) may be revoked at any time by the appointor's giving notice in writing to the person, and
 - (b) if it is not revoked, terminates:
 - (i) after the first meeting at which it is exercised, or
 - (ii) if it is not exercised during the period of 6 months immediately following the date on which the appointment is made—on the expiry of that period.
- (3) Nothing in this section prevents a resident of a retirement village from reappointing a person as the resident's proxy after the revocation or termination of such an appointment.

79 Effect of certain votes

Any vote or resolution of the residents of a retirement village that purports to oblige the operator of the village concerned:

- (a) to abandon or amend plans for development in the village, or
- (b) to cease to act as the operator of the village,

is not binding on the operator.

Note. Submissions concerning proposed development in the village can be made under the *Environmental Planning and Assessment Act 1979* at the time that the operator seeks development consent under that Act.

Retirement villages may contain residential premises that are subject to a company title scheme, to a community scheme, precinct scheme or neighbourhood scheme under the *Community Land Management Act 1989*, or to a strata scheme under the *Strata Schemes Management Act 1996*. Resolutions of directors or members of the companies, and votes of relevant associations (under the *Community Land Management Act 1989*) and owners corporations (under the *Strata Schemes Management Act 1996*) have no relevance to decisions of residents under this Act (and vice versa).

80 Notice of intention to vacate

The maximum notice of an intention to vacate residential premises in a retirement village that may be required of a resident of the premises (whether under a contract or otherwise) is one month's notice in writing.

Clause 81	Retirement Villages Bill 1999
Part 6	General management of retirement villages
Division 4	Right of certain non-residents to become residents

Division 4 Right of certain non-residents to become residents

81 Right to become resident

- (1) A relative of a resident of residential premises in a retirement village:
- (a) who is a retired person, and
 - (b) who is occupying the residential premises concerned at the time that the resident dies or vacates the premises, and
 - (c) who had been occupying those premises for at least 6 months (whether before or after the commencement of this Act) immediately before that time,
- has the right to enter into a residence contract with the operator of the village in respect of the premises.
- (2) This section does not apply if:
- (a) the resident owns (or owned) the residential premises, or
 - (b) the resident is taken to be a resident by operation of section 4 (2).

82 Application to Tribunal concerning non-resident

- (1) If the operator of a retirement village refuses to enter into a residence contract referred to in section 81, the relative of the resident may apply to the Tribunal for an order directing the operator of the village to enter into the contract within the time specified in the order.
- (2) If the relative of the resident:
- (a) refuses to enter into a residence contract with the operator of the village in respect of the residential premises concerned, and
 - (b) refuses to deliver vacant possession of the residential premises to the operator,
- the operator may apply to the Tribunal for an order directing the relative of the resident to deliver vacant possession of the premises to the operator within the time specified in the order.
- (3) On an application made to it under this section, the Tribunal may make the order sought or any other order of a kind referred to in this section, as the Tribunal considers appropriate.

- (4) If the Tribunal is satisfied that the relative of the resident refused to enter into a residence contract only because the terms of the proposed contract were unreasonable, the Tribunal may set the terms of the contract (having regard to the terms of other residence contracts in force in the village) and direct the operator and the relative of the resident to enter into the contract within the time specified in the order.
- (5) The operator of the village must not enter into a residence contract in respect of the residential premises with any person other than the relative of the resident unless:
- (a) the relative delivers vacant possession of the premises to the operator, or
 - (b) the Tribunal orders the relative to do so.
- (6) A contract entered into in contravention of subsection (5) is void.
- (7) If:
- (a) a person who was occupying residential premises in the retirement village with a resident who has vacated the premises is not a person referred to in section 81 (1), and
 - (b) the person refuses to deliver vacant possession of the premises to the operator,
- the operator may apply to the Tribunal for (and the Tribunal may make) an order requiring the person to deliver vacant possession of the premises to the operator within the time specified in the order.

Division 5 Certain obligations of residents

83 Residents to respect rights of other persons

- (1) 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.
- (2) In particular, a resident:
- (a) must not interfere, or cause or permit any interference, with the reasonable peace, comfort or privacy of another resident, and
 - (b) must respect the rights of the operator of the village, and agents and employees of the operator, to work in an environment free from harassment or intimidation, and

Clause 83	Retirement Villages Bill 1999
Part 6	General management of retirement villages
Division 5	Certain obligations of residents

- (c) must not act in a manner that adversely affects the occupational health and safety of persons working in the village.
- (3) If the operator of the retirement village is of the opinion that a resident of the village has contravened any provision of this section, the operator may apply to the Tribunal for (and the Tribunal may make) an order directing the resident to comply with this section.

Division 6 Administrators, receivers and managers

84 Application for order appointing administrator

- (1) The Director-General may apply to the Supreme Court, in accordance with the rules of the Court, for an order appointing a specified person as an administrator of a retirement village:
 - (a) to exercise all the functions of the operator of the retirement village, or
 - (b) to exercise specified functions of the operator, or
 - (c) to exercise all the functions other than specified functions of the operator.
- (2) The Director-General may apply for an order under this section only if the Director-General is of the opinion that the well-being or financial security of the residents of the retirement village concerned is at risk.
- (3) For the purposes of determining whether an application for an order under this section should be made, the Director-General may appoint a person to inquire into, and report to the Director-General on, the well-being and financial security of the residents of a retirement village.

85 No application without consent

The Director-General is not to apply for an order appointing a person as an administrator under this Division unless the person has consented in writing to the appointment.

86 Terms and conditions of appointment

Without limiting the terms and conditions of the order of appointment of an administrator under this 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.

87 Effect of appointment

- (1) The operator of a retirement village must not, while an order under this Division is in force in respect of the village, exercise any of the functions of the operator that the administrator is authorised to exercise.
- (2) However, the appointment of an administrator does not relieve the operator of any of his or her liabilities under a village contract.
- (3) Subject to the terms of the appointment, a person appointed as an administrator of a retirement village must comply with all the obligations of the operator in relation to the functions that the person is authorised to exercise (including functions under a village contract) and is, in the exercise of those functions, taken to be the operator.

88 Revocation of appointment

- (1) An order made under this Division may be revoked or varied by the Supreme Court (whether or not on the application of the Director-General) and, unless sooner revoked, ceases to have effect at the expiration of such period after its making as may be specified in the order.
- (2) More than one order may be made under this Division in respect of the same retirement village.

89 Receivers and managers

- (1) If a receiver, or a receiver and manager, is appointed in respect of an operator of a retirement village, the person so appointed must (subject to the terms of the appointment) comply with the operator's obligations under this Act as if that person were the operator.
- (2) The terms and conditions of appointment of a receiver, or a receiver and manager, may exempt the appointee from the requirement to comply with such obligations of the operator as are specified or described in the order of appointment.

Clause 89 Retirement Villages Bill 1999

Part 6 General management of retirement villages

Division 6 Administrators, receivers and managers

- (3) This section does not apply to the extent that it is inconsistent with the *Corporations Law*.

90 No personal liability of administrator, receiver or receiver and manager

A matter or thing done or omitted to be done by an administrator, a receiver or a receiver and manager (or any person acting under the direction of the administrator, receiver or receiver and manager) does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the administrator, receiver, receiver and manager or person so acting personally to any action, liability, claim or demand.

Part 7 Financial management of retirement villages

Division 1 Preliminary

91 Financial year of retirement village

- (1) The operator of a retirement village is to determine a financial year for the village.
- (2) The financial year must be a period of 12 months commencing and ending on dates determined by the operator.

Division 2 Capital replacement

92 Responsibility for capital replacement

- (1) The operator of a retirement village must bear any costs of depreciation and capital replacement in the village, except as this Division otherwise provides.
- (2) The operator of a retirement village must not fund any costs of depreciation or capital replacement from the recurrent charges payable by a resident in the village except as provided by section 94.

93 Operator not liable for replacement of certain items of capital

- (1) The operator of a retirement village is not required to bear any costs of depreciation or capital replacement in respect of any item of capital:
 - (a) that is owned by a resident of the village, or
 - (b) that comprises residential premises the refurbishment of which:
 - (i) is the responsibility of a resident of the village under the resident's residence contract (as referred to in section 165), or
 - (ii) is necessary because of wilful damage or wear and tear in excess of fair wear and tear (as referred to in section 163).
- (2) Neither the operator nor the residents of a retirement village is required to bear any costs of capital replacement in respect of any item of capital:

Clause 93	Retirement Villages Bill 1999
Part 7	Financial management of retirement villages
Division 2	Capital replacement

- (a) that is association property under a community land scheme or common property under a strata scheme, or
- (b) that is subject to a company title scheme.

Note. The relevant association under the *Community Land Management Act 1989*, the owners corporation under the *Strata Schemes Management Act 1996* and the relevant company, respectively, are liable for the capital replacement of the items of capital referred to in subsection (2).

94 When residents may be charged for capital replacement

- (1) The operator of a retirement village may fund capital replacement and depreciation in the village from the recurrent charges payable by a resident of the village, but only if no ingoing contribution is payable by the resident.
- (2) However, even if an ingoing contribution is payable by any of the residents, the operator may fund from the recurrent charges the capital replacement and depreciation of (or the purchase of new) non-fixed items of capital in the village.

Note. A village bus is an example of a non-fixed item of capital in a retirement village.

- (3) Further, if the residents by special resolution request the operator to provide an item of capital that the village does not already possess, the operator may fund the provision of that item from the recurrent charges.

Note. A swimming pool might be an item of capital that a retirement village does not already possess.

- (4) Any amount that the operator proposes to expend, or set aside for the purposes of expending, under this section must be itemised in the statement of proposed expenditure.

95 Establishment of capital replacement fund

- (1) This section applies only if the operator of a retirement village represents in any promotional material, disclosure statement or village contract for the village that he or she allocates a specified proportion of ingoing contributions or departure fees (or both) for the purpose of financing depreciation and capital replacement in the village.
- (2) The operator of the retirement village must establish and maintain a capital replacement fund for the village.

Maximum penalty: 100 penalty units.

- (3) The operator is not to hold money in the fund otherwise than in an account with an authorised deposit-taking institution or by way of an investment as provided by this section.

Maximum penalty: 100 penalty units.

- (4) Money in the fund may be invested in any manner permitted by law for the investment of trust funds.
- (5) Any interest received on an investment under this section forms part of the fund.

96 Payment out of capital replacement fund

The operator must not pay any money from the capital replacement fund for the village for any purpose other than the purpose of capital replacement in the village.

Maximum penalty: 100 penalty units.

97 Operator to insure village

- (1) The operator of a retirement village must insure the village (and keep it insured) in accordance with this section.

Maximum penalty: 100 penalty units.

- (2) The village is to be insured to full replacement value.
- (3) Insurance required by this section:
- (a) must cover the following:
 - (i) damage,
 - (ii) costs incidental to the reinstatement or replacement of insured buildings,
 - (iii) public liability, and
 - (b) must provide for the reinstatement of property to its condition when new.
- (4) The regulations may specify the minimum amount of public liability insurance required under this section.
- (5) This section does not apply in respect of the part (if any) of a retirement village that is subject to a community land scheme, company title scheme or strata scheme.

Note. Insurance of property subject to company title is the responsibility of the relevant company. Insurance of a building or structure on association property in a community land scheme, and of common property in a strata scheme, is the responsibility of the relevant association and the owners corporation, respectively.

Clause 98	Retirement Villages Bill 1999
Part 7	Financial management of retirement villages
Division 2	Capital replacement

98 Operator not obliged to buy items of capital

Nothing in this Act prevents the operator from complying with any requirement to bear the costs of capital replacement under this Division by leasing the item of capital concerned or obtaining it under a hire-purchase arrangement.

Division 3 Capital maintenance

99 Operator to maintain items of capital

- (1) The operator of a retirement village must maintain items of capital in the village in a reasonable state of repair, having regard to the following:
 - (a) the age of the village,
 - (b) its prospective life,
 - (c) the amount of ingoing contributions, recurrent charges and departure fees payable by the residents,
 - (d) the amount of money available to be used for the purpose of maintenance in accordance with the statement of approved expenditure.
- (2) Subsection (1) does not apply in respect of any item of capital:
 - (a) that is owned by a resident of the village, or
 - (b) that is association property under community land scheme or common property under a strata scheme, or
 - (c) that is subject to a company title scheme, or
 - (d) to the extent that the item of capital requires repair because of damage (fair wear and tear excepted) caused by a resident of the village or a tenant or invitee of the resident.

Note. Maintenance of association property in a community land scheme and common property in a strata scheme is the responsibility of the relevant association and the owners corporation, respectively, for the scheme.

- (3) A resident of a retirement village who is of the opinion that the operator is not carrying out the works necessary for the maintenance of items of capital in the village in accordance with the statement of

approved expenditure may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to carry out (or cause to be carried out) specified works of maintenance within the time specified in the order.

100 Maintenance fund for long-term maintenance of items of capital

- (1) 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, the operator of the retirement village must establish and maintain a maintenance fund for the village.

Maximum penalty: 100 penalty units.

- (2) However, this section does not require a separate fund to be established in respect of each financial year.
- (3) The operator is not to hold money in the fund otherwise than:
- (a) in an account with an authorised deposit-taking institution, or
 - (b) by way of an investment as provided by this section, or
 - (c) as otherwise prescribed by the regulations.

Maximum penalty: 100 penalty units.

- (4) Money in the fund may be invested in any manner permitted by law for the investment of trust funds.
- (5) Any interest received on an investment under this section forms part of the fund.

101 Payment into maintenance fund

There is to be paid into the maintenance fund by the operator:

- (a) such proportion of recurrent charges as may be required by the statement of approved expenditure, and
- (b) all money received by way of settlement or other discharge of insurance claims made in respect of any matter referred to in section 97 (3) (a) (i) or (ii) that is not used for the purposes of repairing damage or meeting costs incidental to the reinstatement or replacement of insured buildings.

Clause 102 Retirement Villages Bill 1999

Part 7 Financial management of retirement villages

Division 3 Capital maintenance

102 Payment out of maintenance fund

An operator of a retirement village must not pay any money from the maintenance fund for the village for any purpose other than:

- (a) the purpose of repairs and maintenance of items of capital in the village, or
- (b) a purpose prescribed by the regulations.

Maximum penalty: 100 penalty units.

Division 4 Recurrent charges

103 Operator to pay certain recurrent charges

- (1) The operator of a retirement village must pay, in relation to any new residential premises in the village, an amount equivalent to the recurrent charges for general services payable under a village contract in respect of comparable (or the most nearly comparable) premises in the village.
- (2) In this section, *new residential premises* means residential premises that are not and have never been the subject of a village contract.

104 Variation of recurrent charges

- (1) A village contract may provide that any recurrent charges payable under it:
 - (a) are to be varied at specified intervals (or on specified dates) according to a fixed formula (for example, in proportion to variations in the Consumer Price Index), or
 - (b) may be varied at specified intervals (or on specified dates) otherwise than according to a fixed formula.
- (2) If a village contract provides that recurrent charges payable under it are to be varied (or may be varied) without specifying when they are to be varied (or may be varied), the second and any subsequent purported variation in any period of 12 consecutive months is of no effect.
- (3) A village contract must not provide for more than one method of variation of the recurrent charges payable under it.

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- (4) If a village contract provides for more than one method of variation of recurrent charges in contravention of subsection (3), the method that results in the lowest increase in recurrent charges is the applicable method.

105 Recurrent charges varied by fixed formula

- (1) If a village contract provides that recurrent charges are to be varied according to a fixed formula, the operator of the village must give at least 14 days' written notice of the variation to the resident concerned.
- (2) The notice must specify:
- the amount of the new recurrent charges, and
 - the date from which the new recurrent charges are payable, and
 - such other information as may be prescribed by the regulations.
- (3) A resident of the retirement village who is a party to a village contract referred to in subsection (1) is not required to pay any increase in his or her recurrent charges until notice of the increase is given as required by this section.
- (4) The operator of a retirement village must not increase (or attempt to increase) recurrent charges that are to be varied according to a fixed formula otherwise than in accordance with that formula and this section.

Maximum penalty: 50 penalty units.

106 Recurrent charges varied otherwise than by fixed formula

- (1) If a village contract provides that recurrent charges are to be varied otherwise than according to a fixed formula, the operator of the village must give at least 60 days' written notice of any proposed variation to the resident concerned.

Note. A provision to the effect that recurrent charges may be varied by "up to" a certain percentage is an example of such a provision.

- (2) The notice must:
- specify the amount of the proposed recurrent charges, and
 - specify the date from which it is intended that the proposed recurrent charges are to be payable, and
 - contain a brief explanation of the reasons for the variation, and

Clause 106 Retirement Villages Bill 1999

Part 7 Financial management of retirement villages

Division 4 Recurrent charges

- (d) state that the variation will not take effect unless the residents concerned consent to the variation or the Tribunal orders that it take effect, and
 - (e) contain such other information as may be prescribed by the regulations.
- (3) A notice given under this section may be cancelled by a later notice or a later notice may provide for a lesser increase than the increase (if any) specified in the earlier notice.
 - (4) For the purposes of the date from which the proposed variation is to take effect, a later notice is taken to have been given on the date on which the earlier notice was given.
 - (5) However, the period of 30 days specified in section 107 (2) commences, in relation to a later notice, on the date on which the later notice is actually given.
 - (6) An operator who is the operator of more than one retirement village must deal with each village separately under this section.
 - (7) The operator of a retirement village must not increase (or attempt to increase) recurrent charges that are to be varied otherwise than according to a fixed formula:
 - (a) beyond any upper limit specified in the relevant village contract, or
 - (b) otherwise than in accordance with this section.
- Maximum penalty: 50 penalty units.

107 Residents' consent to variation

- (1) A variation does not take effect under section 106 unless:
 - (a) the residents whose recurrent charges will be affected by the variation consent to the variation, or
 - (b) the Tribunal orders under section 108 that the variation take effect.
- (2) The residents concerned must, within 30 days after receiving a notice under section 106:
 - (a) meet, consider and vote on the proposed variation, and
 - (b) advise the operator that they consent, or do not consent (as the case may be) to the variation.

- (3) If the operator is not advised as required by subsection (2) (b), the residents are taken to have refused consent to the variation.
- (4) The operator must provide such information in relation to the proposed variation as the Residents Committee (or, if there is no Residents Committee elected for the village, any resident) reasonably requests for the purpose of deciding whether consent should be given to the variation.

108 Determination by Tribunal

- (1) If the residents of a retirement village whose recurrent charges will be affected by a proposed variation of those charges do not consent to the proposed variation, the operator may apply to the Tribunal for an order in respect of the proposed variation.
- (2) The Tribunal may, on application by the operator:
 - (a) order that the proposed variation is to take effect, with or without modification, or
 - (b) order that the proposed variation is not to take effect.
- (3) An order under subsection (2) (a) may:
 - (a) specify the date from which the variation is to take effect (which may be a date other than the date specified by the operator in the notice given under section 106), and
 - (b) order that the recurrent charges are not to be further varied for a specified period, being a period that does not exceed 12 months.
- (4) In determining an application made under this section, the Tribunal may have regard to the following:
 - (a) the general market level of recurrent charges paid at similar retirement villages in the locality of the retirement village concerned or a similar locality,
 - (b) the level and cost of services and facilities provided for in the statement of proposed expenditure or approved expenditure (as the case may be),
 - (c) any proposed variations (including additions) to those services and facilities, being variations to which the residents have consented,
 - (d) the cost of general services required to be provided by the operator,

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Division 4 Recurrent charges

- (e) the frequency and amount of past variations of the recurrent charges,
- (f) if the retirement village is subject to a community land scheme or strata scheme—the amounts of levies and other contributions payable by the residents under the *Community Land Management Act 1989* or the *Strata Schemes Management Act 1996*,
- (g) any other relevant matter.

109 Tribunal may order refund of recurrent charges in certain circumstances

- (1) A resident of a retirement village may apply to the Tribunal for an order directing the refund of overpaid recurrent charges on any grounds, including the ground that an increase in the charges came into effect otherwise than in accordance with this Division.
- (2) The Tribunal may make an order directing a refund of all such overpaid recurrent charges.
- (3) An application under this section must be lodged no later than 12 months after the increase in the charges came into effect.

110 Receipts for recurrent charges

- (1) If payment of recurrent charges in a retirement village is made in person, any person who receives the payment must, without delay, give to the person making the payment a receipt for the payment.

Maximum penalty: 5 penalty units.

- (2) If the payment is not made in person, the operator of the village must, as soon as practicable after receipt of the payment, prepare or cause to be prepared a receipt for the payment and make the receipt available for collection by the resident concerned or give it to the resident.

Maximum penalty: 5 penalty units.

- (3) A receipt for payment of recurrent charges is not a receipt for the purposes of this section unless it includes the following particulars:
 - (a) the name of the operator,
 - (b) the name of the resident paying the recurrent charges (or on whose behalf they are paid),
 - (c) the address of the residential premises concerned,

- (d) the period for which the recurrent charge is paid,
 - (e) the date on which the payment is received,
 - (f) the amount of the payment.
- (4) This section does not apply to recurrent charges paid in accordance with an agreement between the resident and the operator into an account at an authorised deposit-taking institution nominated by the operator.

111 Abatement of recurrent charges

- (1) If residential premises in a retirement village are, otherwise than as a result of a breach of a village contract, destroyed or rendered wholly or partly uninhabitable or cease to be lawfully usable for the purpose of a residence or are appropriated or acquired by any authority by compulsory process, the recurrent charges payable by the resident of the premises abate accordingly.

Note. The operator or the resident may also seek to terminate the residence contract in these circumstances (unless the resident owns the residential premises concerned)—see section 132.

- (2) If the operator and the resident do not agree that the recurrent charges should abate under this section (or do not agree on the extent to which they should abate), either party may apply to the Tribunal for (and the Tribunal may make) an order declaring that the recurrent charges:
- (a) are not to abate, or
 - (b) are to abate to the extent specified in the order from the date so specified.

Division 5 Annual statements of proposed and approved expenditure

112 Statement of proposed expenditure

- (1) At least 60 days before the commencement of each financial year of a retirement village, the operator of the village must supply each resident of the village with a statement of proposed expenditure itemising the way in which the operator proposes to expend the money to be received by way of recurrent charges from the residents of the village during the financial year.

Maximum penalty: 100 penalty units.

Clause 112 Retirement Villages Bill 1999

Part 7 Financial management of retirement villages

Division 5 Annual statements of proposed and approved expenditure

- (2) A person who is the operator of more than one retirement village may provide a consolidated statement in relation to any 2 or more of the villages concerned, but, when providing the statement to the residents and former occupants of a particular village, must include a separate statement for that village.
- (3) The regulations may make provision for or with respect to:
 - (a) matters that must be dealt with in a statement of proposed expenditure, and
 - (b) matters that must not be financed by way of recurrent charges, and
 - (c) the form that the statement is to take.
- (4) The statement is to be accompanied by a notice:
 - (a) stating that the operator of the village is required to obtain the consent of the residents before expending the money as itemised in the statement, and
 - (b) stating further that, if the residents do not give their consent, the operator may expend the money in accordance with an order of the Tribunal, and
 - (c) briefly explaining the reasons for any changes in expenditure from the previous financial year, and
 - (d) stating that if any change in expenditure arises from a variation in the services or facilities provided at the village by the operator, consent to that variation must be by way of a special resolution of the residents, and
 - (e) containing such other information as may be prescribed.
- (5) The notice may (but need not) further state that the notice operates as the operator's formal request for the consent of the residents to the expenditure of the money as itemised in the statement.
- (6) Nothing in this section prevents an operator of a retirement village from cancelling a statement of proposed expenditure and replacing it with an amended statement at any time.

113 Order for statement of proposed expenditure

If the operator of a retirement village does not supply a statement of proposed expenditure as required by section 112, a resident of the village may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to supply the statement.

114 Residents' consent to expenditure

- (1) The operator of a retirement village must (whether by way of a notice referred to in section 112 or otherwise) seek the consent of the residents of the village to the expenditure itemised in the statement of proposed expenditure.

Maximum penalty: 100 penalty units.

- (2) The operator must provide such information in relation to the proposed expenditure as the Residents Committee (or, if there is no Residents Committee elected for the village, any resident) reasonably requests for the purpose of deciding whether consent should be given to the statement.
- (3) Without limiting subsection (2), it is reasonable for the Residents Committee or a resident to request to see quotations for any work proposed to be carried out or for any service or facility proposed to be provided.
- (4) The residents concerned must, within 30 days after receiving a request for consent to a statement of proposed expenditure (or an amended statement):
- (a) meet, consider and vote on the statement, and
 - (b) advise the operator that they consent, or do not consent (as the case may be) to the statement, and
 - (c) if they do not consent to the statement—specify the item or items in the statement to which they object.
- (5) If the operator is not advised as required by subsection (4) (b), the residents are taken to have refused consent to the statement.
- (6) If the operator fails to seek the consent of the residents, the residents are taken to have refused consent to the statement.
- (7) An operator who is the operator of more than one retirement village must deal with each village separately under this section.

115 Determination of expenditure by Tribunal

- (1) If the residents of a retirement village refuse consent to the expenditure itemised in the statement of proposed expenditure, the operator or a resident may apply to the Tribunal for an order in respect of the expenditure proposed for the financial year concerned.

- (2) If an application is made under this section, the Tribunal may do one or more of the following:
- (a) make interim orders allowing expenditure on all items in the statement of proposed expenditure other than those specified under section 114 (4) (c),
 - (b) give procedural directions to the parties to facilitate agreement between the parties concerning the proposed expenditure (including directions to prepare new costings for services and to meet and discuss disputed matters),
 - (c) make recommendations to the parties about the proposed expenditure (including recommendations about the cost and type of the services to be provided),
 - (d) order that the expenditure is to be as itemised in the statement of proposed expenditure,
 - (e) order that there is to be no expenditure, or reduced or increased expenditure, on any particular item in the statement of proposed expenditure,
 - (f) order that there is to be expenditure in a specified amount on an item that does not appear in the statement of proposed expenditure,
 - (g) order that the expenditure is to be as specified in the order,
 - (h) determine liability for expenses (if any) incurred from the commencement of the financial year to which the statement of proposed expenditure relates until the date on which an order under paragraph (d), (e), (f) or (g) is made,
 - (i) make any other order prescribed by the regulations for the purpose of this section.
- (3) If:
- (a) the operator makes an application under this section, and
 - (b) the Tribunal does not, before the commencement of the financial year to which the statement of proposed expenditure relates, make an order that gives rise to a statement of approved expenditure,

the operator may, until the Tribunal makes the relevant order, expend money received by way of recurrent charges to meet the reasonable and necessary costs of operating the village.

- (4) In determining an application made by the operator under this section, the Tribunal may review any expenditure made under subsection (3) and may order that the operator is liable for so much of that expenditure as it considers was not reasonable or necessary.
- (5) If the Tribunal gives directions or makes recommendations for further action under subsection (2), it may adjourn the proceedings for a report from the parties and, if necessary, take further action under subsection (2) when proceedings resume.
- (6) In determining an application made under this section, the Tribunal may have regard to the following:
 - (a) the reasonable cost of services provided (or proposed to be provided) in the village,
 - (b) the need for the services to be provided in the village,
 - (c) any other relevant matter.
- (7) If the Tribunal receives an application under this section at the same time as (or while there is before it) an application under section 108 in relation to recurrent charges payable at the same retirement village, it must make a determination under this section before making a determination under section 108.

116 Expenditure to be in accordance with statement of approved expenditure

- (1) 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.
- (2) 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.
- (3) The operator must not expend money received by way of recurrent charges otherwise than in accordance (apart from minor variations) with the statement of approved expenditure.
Maximum penalty: 100 penalty units.
- (4) If the operator:
 - (a) contravenes subsection (3), or

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Division 5	Annual statements of proposed and approved expenditure

- (b) did not (despite any order of the Tribunal under section 113) supply a statement of proposed expenditure in respect of a current financial year,

a resident may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to refund the recurrent charges paid by the resident during so much of the financial year as has passed at the time the order is made.

117 Amendment to statement of approved expenditure

- (1) The operator may seek the consent of the residents to an amendment to the statement of approved expenditure if unforeseen requirements for expenditure arise.
- (2) Sections 113 and 114 apply, with the necessary modifications, to and in respect of residents' consent to such an amendment in the same way as they apply to their consent to the statement of proposed expenditure.
- (3) If the residents consent to (or the Tribunal orders) an amendment (whether under this Division or under section 53), the operator does not contravene section 116 (3) by expending money in accordance with the statement of approved expenditure as amended.

Division 6 Annual accounts

118 Auditing of accounts

- (1) The operator of a retirement village must ensure that the accounts for the village are audited annually by a person qualified to audit accounts for the purposes of the *Corporations Law*.
Maximum penalty: 50 penalty units.
- (2) If the audit fees are to be paid by the residents of the village:
 - (a) the fees must be itemised in the statement of proposed expenditure, and
 - (b) the item must include the name of the auditor to be appointed, and
 - (c) the residents' consent to that appointment is required in the same way as it is required for the expenditure of the fees concerned.

- (3) The operator of the retirement village must also give the Residents Committee copies of quarterly accounts of the income and expenditure of the village.
- (4) If there is no Residents Committee established for the village, a copy of the quarterly accounts must be given to any resident who requests one.
- (5) The quarterly accounts are not required to be audited.

119 Copies of audited accounts to be provided to residents

- (1) Within 4 months after the end of a financial year of a retirement village, the operator of the village must provide the residents of the village with copies of the audited accounts for that financial year in accordance with this section.

Maximum penalty: 50 penalty units.

- (2) The audited accounts must include (but are not limited to):
 - (a) the following particulars:
 - (i) details of the income and expenditure of the village during the financial year, including income and expenditure of any capital replacement fund or maintenance fund,
 - (ii) details of the balances in any capital replacement fund or maintenance fund,
 - (iii) details of amounts received for insurance claims made in respect of any matter referred to in section 97 (3) (a) (i) or (ii) relating to the village during the financial year,
 - (iv) details of any interests, mortgages and other charges affecting the property of, or forming part of, the village (other than property or premises owned by residents of the village) as at the end of the financial year, and
 - (b) a statement that:
 - (i) specifies whether or not money payable by the village operator to former residents during the financial year concerned was paid in full and on time, and,
 - (ii) specifies, if any money so payable has not been paid, the amount concerned, details of the delay and the reasons for the delay, and
 - (iii) contains the matters required to be included by subsection (3), and

- (iv) gives details of any matters that may prevent the village operator from meeting those liabilities, and
 - (c) such other matters as may be prescribed by the regulations.
- (3) If the auditor is not satisfied that the operator has the capacity, during the financial year immediately following, to meet the liabilities relating to the village as and when they fall due, or if the auditor believes that there is considerable uncertainty regarding the ability of the operator to meet the liabilities of the village as and when they fall due during the financial year immediately following, a statement to that effect must appear in the audited accounts.
- (4) The format of the accounts must correspond as closely as possible with the layout of the statement of proposed expenditure.
- (5) A person who is the operator of more than one retirement village may provide audited consolidated accounts in relation to any 2 or more of the villages concerned, but, when providing the accounts to the residents of a particular village, must include a separate statement of income and expenditure for that village.
- (6) It is sufficient compliance with this section if the copies of the accounts are provided to the Residents Committee for the retirement village to which they relate and to any individual resident who asks the operator for one.
- (7) However, if there is no Residents Committee in the village concerned, the copies of the accounts are to be provided to each resident.

120 Any surplus or deficit to be carried over

Any surplus or deficit in the annual accounts of a retirement village is to be carried forward to the next financial year, unless the residents of the village consent, by means of a special resolution:

- (a) to the expenditure of the surplus, or
- (b) to the making good of the deficit by way of a special additional payment from the residents,

as the case may be.

Part 8 Disputes

Division 1 Preliminary

121 Application of Part

This Part has effect despite anything else in this or any other Act or law.

Division 2 Dispute resolution

Note. Although disputes between residents in a retirement village are not directly referable to the Residential Tribunal, there are circumstances in which the Tribunal may consider a dispute. For example, a party to the dispute may consider that the dispute arose because the operator of the village is not discharging his or her obligations under section 66 (2) (b). A dispute on that point is referable to the Tribunal. (Section 66 (2) (b) requires the operator to take all reasonable steps to ensure that all residents meet their obligations under their village contracts and the village rules so that a resident does not unreasonably interfere with the peace, comfort and quiet enjoyment of his or her fellow residents.)

122 Disputes between operator and resident

- (1) If a resident (or residents) or the operator of a retirement village claims that a dispute (including a dispute as to whether the operator is discharging his or her obligations under section 66 (2) (b)) has arisen between the resident and the operator or the operator and one or more residents, the resident (or residents) or operator may apply to the Tribunal for (and the Tribunal may make) an order in respect of the dispute.

Note. Section 128 specifies some of the kinds of orders that the Residential Tribunal can make.

- (2) Two or more residents who claim that a dispute, as referred to in subsection (1), has arisen may nominate, in accordance with the regulations, any resident as their representative in the dispute.
- (3) The nominated representative may apply to the Tribunal for an order in respect of the dispute, and the Tribunal may make an order that applies to the residents who are represented by the nominated representative.

123 Jurisdiction of Fair Trading Tribunal

- (1) A resident of a retirement village may apply directly to the Fair Trading Tribunal for an order in relation to any village contract (being a contract to which the resident is a party) that the resident considers to be harsh, oppressive, unconscionable or unjust.
- (2) The Fair Trading Tribunal has, and may exercise:
 - (a) jurisdiction to determine any application made to it under this section, and
 - (b) jurisdiction to determine any dispute referred to it under section 128 (1) (i) or (j), and,
 - (c) the same jurisdiction as the Supreme Court, and all the powers and authority of the Supreme Court, 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.

Note. Under the *Contracts Review Act 1980*, the Supreme Court may (among other things) refuse to enforce any or all of the provisions of the contract concerned or make an order declaring the contract void (in whole or in part) or varying (in whole or in part) any provision of the contract. It may also make orders with respect to any consequential or related matter, such as orders for the payment of money (whether or not by way of compensation) to a party to the contract and orders for the supply of services.

- (3) This section does not authorise the Fair Trading Tribunal to exercise the powers conferred by section 10 of the *Contracts Review Act 1980*.

Note. Section 10 of the *Contracts Review Act 1980* allows the Supreme Court, in certain circumstances, to prescribe or otherwise restrict the terms on which certain persons may enter into contracts of a specified class.

- (4) This section does not affect any jurisdiction of the Supreme Court under the *Contracts Review Act 1980* in relation to contracts between operators and residents of retirement villages.

124 Compliance with orders of Fair Trading Tribunal

A person must not wilfully contravene or fail to comply with an order of the Fair Trading Tribunal made on an application or referral to that Tribunal under this Act.

Maximum penalty: 50 penalty units.

125 Informal resolution of disputes

- (1) Nothing in this Division prevents the operator and residents of a retirement village from establishing mechanisms in the village for the purpose of attempting to resolve disputes in the village.
- (2) However, any term of any 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 this Act is void.

Note. Part 5 (Alternative dispute resolution) of the *Residential Tribunal Act 1998* provides for conciliation and mediation. Section 49 of that Act requires the Residential Tribunal, before making an order to determine a matter before it, to use its best endeavours to bring the parties to proceedings before it to a settlement acceptable to all of them.

Division 3 Residential Tribunal**126 Jurisdiction**

- (1) The Tribunal has, and may exercise, the jurisdiction conferred on it by or under this Act.

Note. Section 23 (2) of the *Residential Tribunal Act 1998* provides that, if proceedings for a matter for which the Tribunal has jurisdiction are instituted in or before a court, the proceedings must be transferred to the Tribunal if the parties to the proceedings agree or if the court concerned (of its own motion or on the application of a party to the proceedings) so directs.

- (2) The power to make orders conferred on the Tribunal by or under this Act includes the power to make orders ancillary to those orders.

127 No monetary limit on jurisdiction of Tribunal

The Tribunal is not, in exercising the jurisdiction conferred on it by this Act, limited in the amount of money that it may order to be paid.

128 Orders of Tribunal

- (1) The Tribunal may, on application by a resident (or residents) or an operator under this Act, make one or more of the following orders:
 - (a) an order directing the resident (or residents) or operator to comply with a requirement of this Act or the regulations,
 - (b) an order that varies or sets aside a provision of a village contract that conflicts with this Act or the regulations,
 - (c) an order that:

- (i) restrains any action in breach of any village contract or village rule, or
 - (ii) requires the performance of any village contract or village rule,
- (d) an order directing the resident (or residents) or operator to perform such work or take such other steps as the order specifies to remedy a breach of a village contract or village rule,
 - (e) an order for the payment of an amount of money,
 - (f) an order for compensation,
 - (g) an order that requires payment to the Tribunal of all or part of any recurrent charges payable by a resident (or residents) to the operator until the whole or part of any village contract has been performed or any application for compensation has been determined,
 - (h) an order that requires payment (out of recurrent charges paid to the Tribunal) towards the cost of remedying a breach of a contract or towards the cost of any compensation,
 - (i) an order that refers any dispute relating to a claim that a village contract is harsh, oppressive, unconscionable or unjust to the Fair Trading Tribunal for review under the *Contracts Review Act 1980*,
 - (j) an order that, with the concurrence of the parties to any other dispute, refers the dispute to the Fair Trading Tribunal for determination,
 - (k) an order that, with the concurrence of the parties to any other dispute, refers the dispute to the Community Schemes Board (if the retirement village concerned is subject to a community land scheme) or the Strata Schemes Board (if the retirement village concerned is subject to a strata scheme) for determination,
 - (l) any other order prescribed by the regulations for the purposes of this section.
- (2) Nothing in this section limits the orders that the Tribunal may make under this Act.

Part 9 Termination of residence contract

Division 1 General principles as to termination of residence contract

129 How and when residence right or contract is terminated

- (1) A residence right arising from a contract relating to residential premises that are owned by the resident terminates only on the completion of the sale of the premises.
- (2) A residence contract relating to premises other than premises owned by the resident (and the residence right under the contract) terminates:
 - (a) on the date on which the resident delivers up vacant possession of the residential premises to the operator, being a date that is (except as otherwise provided under this Part) at least one month after the date on which the resident gives the operator written notice of intention to vacate the premises (or such earlier date as the residence contract may allow), or
 - (b) on the date on which the resident delivers up vacant possession of the residential premises, with the prior consent of the operator, to the operator, or
 - (c) on the date on which the resident delivers up vacant possession of the residential premises to the operator after receiving notice of the operator's intention to apply to the Tribunal for an order terminating the resident's residence contract, or
 - (d) on disclaimer (for example, on renunciation by the resident accepted by the operator), or
 - (e) on the death of the last surviving resident under the contract, or
 - (f) on the date specified by the Tribunal in an order under section 143 declaring that the resident has abandoned the premises, or
 - (g) on the date on which the contract is terminated by the Tribunal, or

Clause 129 Retirement Villages Bill 1999

Part 9 Termination of residence contract

Division 1 General principles as to termination of residence contract

- (h) if the contract is frustrated:
 - (i) on eighth day after the date specified in the notice of termination given under section 132, unless application is made to the Tribunal within the time allowed by that section (or the notice of termination is withdrawn within that time), or
 - (ii) on the date specified by the Tribunal, if the Tribunal determines that the contract is frustrated.
- (3) Termination of a residence contract does not affect any other right or obligation of the parties under a village contract.

130 Tribunal cannot terminate certain residence contracts

The Tribunal does not have jurisdiction under this Act:

- (a) to terminate a residence contract if the resident owns the premises concerned, or
- (b) to determine any question as to the title to any land.

131 Notice of intention to seek termination

- (1) If the operator or a resident of a retirement village intends to apply to the Tribunal for an order terminating a residence contract, the intending applicant must give the other party to the contract written notice of that intention, except as otherwise provided by this Act.
- (2) The notice is to be given in the form, and within the time, prescribed by the regulations.
- (3) The Tribunal is not to make an order terminating a residence contract unless it is satisfied that the notice (if required) has been duly given.

132 Termination if residence contract frustrated

- (1) If residential premises in a retirement village are, otherwise than as a result of a breach of a village contract, destroyed or rendered wholly or partly uninhabitable or cease to be lawfully usable for the purpose of a residence or are appropriated or acquired by any authority by compulsory process, the resident or the operator of the village may give immediate notice of termination to the other party to the residence contract relating to the premises concerned (unless the resident owns the premises).

Note. The operator and the resident may choose not to terminate the contract. However, recurrent charges payable in respect of the premises abate according to the degree to which the premises are uninhabitable—see section 111.

- (2) A notice of termination under this section may specify any date as the date on which the resident is to vacate the residential premises.
- (3) If the operator advises the resident (or the resident advises the operator) no later than 7 days after receiving a notice of termination under this section that he or she considers that the premises have not been rendered wholly or partly uninhabitable (as the case may be), either party may apply to the Tribunal for (and the Tribunal may make) an order determining the condition of the premises for the purposes of this section.
- (4) If an application is made to the Tribunal under this section, any notice of termination given under subsection (1) is suspended pending the determination of the Tribunal.
- (5) An application to the Tribunal under this section also operates as an application under section 111.
- (6) A notice of termination under this section may be withdrawn with the consent of both parties at any time before the termination of contract takes effect.

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

133 Termination on medical grounds

- (1) The operator of a retirement village or a resident of the village may apply to the Tribunal for an order terminating the residence contract of the resident if the operator or resident concerned is of the opinion that residential premises occupied by the resident are unsuitable for occupation by that resident because of his or her physical or mental incapacity.
- (2) The Tribunal may, on application under this section, make an order terminating the residence contract, but only if:
 - (a) it is of the opinion that the residential premises occupied by the resident are unsuitable for occupation by the resident because of the resident's physical or mental incapacity, and
 - (b) having considered the circumstances of the case, it is of the opinion that it is otherwise appropriate to make an order terminating the residence contract.

Clause 133 Retirement Villages Bill 1999

Part 9 Termination of residence contract

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

- (3) The Tribunal must not form an opinion under subsection (2) (a) unless it has considered a medical report with respect to the resident prepared by a medical practitioner nominated by the resident or, if such a report is not supplied or a nomination is not made, has given the resident a reasonable opportunity to supply such a report or make such a nomination.
- (4) The Tribunal is entitled to form an opinion under subsection (2) regardless of who made the application for the order to terminate the residence contract.
- (5) In determining whether to terminate a residence contract under this section, the Tribunal may:
 - (a) with the consent of the resident, request the Director-General of the Department of Health or any other person or any body to prepare a report with respect to the resident's physical or mental capacity, and
 - (b) have regard to any such report and any other report prepared on behalf of the resident or the operator, and
 - (c) have regard to any terms of the residence contract relating to the transfer of the resident to other residential premises.

Note. A report referred to in paragraph (a) might be requested, for example, from a body known as an Aged Care Assessment Team.
- (6) If the Tribunal makes an order terminating a residence contract under this section, the Tribunal must fix in the order a date by which the resident must vacate the residential premises concerned.

134 Termination on grounds of breach of village contract or rules

- (1) The operator of a retirement village may apply to the Tribunal for an order terminating the residence contract of a resident of the village who breaches any village contract between the resident and the operator or breaches a village rule.
- (2) A resident of a retirement village may apply to the Tribunal for an order terminating his or her residence contract if the operator breaches any village contract between the resident and the operator or breaches a village rule.
- (3) The Tribunal may, on application made under this section, make an order terminating the residence contract, but only if it is satisfied that:
 - (a) the breach, in the circumstances of the case, is such as to justify termination of the contract, or

- (b) persistent breaches by the resident or operator concerned are, in the circumstances of the case, such as to justify termination of the contract.
- (4) If the Tribunal makes an order terminating a residence contract under this section, the Tribunal must fix in the order a date by which the resident must vacate the residential premises concerned.
- (5) If the Tribunal forms the opinion, in the course of proceedings under this section, that a village rule is unjust, unconscionable, harsh or oppressive, it may make an order:
 - (a) setting aside the rule, or
 - (b) modifying the operation of the rule, either in its application to the operator or to a resident (or to some or all of the residents) of the retirement village concerned.

Division 3 Termination by Tribunal on application of operator

135 Termination on grounds of resident's causing serious damage or injury

- (1) The Tribunal may, on application by the operator of a retirement village, make an order terminating a residence contract if it is satisfied that the resident has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit:
 - (a) serious damage to any part of the village, or
 - (b) injury to the operator or an employee of the operator or any other resident.
- (2) If the Tribunal makes an order terminating a residence contract under this section, the Tribunal must fix in the order a date by which the resident must vacate the residential premises concerned.
- (3) An application under this section may be made whether or not the operator has given notice of his or her intention to apply to the Tribunal under this section for an order terminating the residence contract.

136 Termination on grounds of upgrade or change of use

- (1) The Tribunal may, on application by the operator of a retirement village, make an order terminating a residence contract if it is satisfied that:
 - (a) for the purpose of improving the village, the operator intends to carry out such substantial works in the village as require vacant possession of the residential premises concerned, or
 - (b) it is appropriate that the land on which the village is situated should be used for a purpose other than a retirement village.
- (2) However, the Tribunal is not to make an order terminating a residence contract under this section unless it is also satisfied that:
 - (a) the operator has given the resident at least 12 months' written notice of the operator's intention to make an application under this section, and
 - (b) development consent and any other necessary approvals to carry out the works or use the land for the other purpose have been obtained, and
 - (c) the operator has obtained (or made available) for the resident alternative accommodation:
 - (i) that is of approximately the same standard as, and requires no greater financial outlay on the part of the resident than, the residential premises the subject of the residence contract, and
 - (ii) that is acceptable to the resident or reasonably ought to be acceptable to the resident.
- (3) If the Tribunal makes an order terminating a residence contract under this section, the Tribunal:
 - (a) must fix in the order a date by which the resident must vacate the residential premises concerned, and
 - (b) must specify in the order the penalty that the operator will incur if the works are not substantially commenced, or action to facilitate the use of the land for the other purpose not taken, within 6 months after the date fixed under paragraph (a), and
 - (c) may order the operator to allow the resident to return to the residential premises, under a contract identical to the contract being terminated, on completion of the works, and

- (d) may make such other orders (including an order that the operator pay to the resident compensation for the resident's loss of rights under the residence contract) as it thinks fit.

Division 4 Suspension or refusal of orders for termination

137 Tribunal may suspend or refuse order for termination

- (1) The Tribunal may suspend the operation of an order fixing a date by which a resident of a retirement village must vacate residential premises if it is satisfied that it is desirable to do so, having regard to the relative hardship likely to be caused by the order to:
 - (a) the resident, or
 - (b) other residents or the operator of the retirement village.
- (2) The Tribunal may, as a condition of the suspension of the operation of an order for possession, require the resident to pay to the operator an occupation fee specified by the Tribunal for the period for which the order for possession is suspended.
- (3) The Tribunal may refuse to make an order terminating a residence contract if it is satisfied that:
 - (a) the operator was wholly or partly motivated to terminate the contract by the fact that:
 - (i) the resident had applied or proposed to apply to the Tribunal for an order, or
 - (ii) the resident had complained to a governmental authority or had taken some other action to secure or enforce his or her rights as a resident, or
 - (iii) an order of the Tribunal was in force in relation to the resident and the operator, or
 - (b) in the case of an application under section 134—the resident or operator who had breached the village contract or village rule remedied the breach concerned.

Clause 138	Retirement Villages Bill 1999
Part 9	Termination of residence contract
Division 5	Recovery of possession of premises

Division 5 Recovery of possession of premises

138 Prohibition on certain recovery proceedings in courts

An 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).

139 Operator not to recover possession of premises except by order

- (1) A person must not (whether acting on his or her own behalf or on behalf of another) enter residential premises in a retirement village for the purpose of recovering possession of the premises.

Maximum penalty: 200 penalty units.

- (2) Subsection (1) does not apply to:
 - (a) a person acting in accordance with a warrant of the Tribunal, or
 - (b) a mortgagee acting, pursuant to the mortgage, under a power to enter into possession of the premises or a power of sale.
- (3) A court before which proceedings for an offence under this section are brought may (in addition to any other penalty) order the person who committed the offence or any person on whose behalf that person acted to pay to the person entitled (or formerly entitled) to occupy the premises concerned such compensation as it thinks fit.

140 Enforcement of orders for possession

- (1) If the Tribunal makes an order fixing a date for vacation of residential premises in a retirement village and the order (or a condition of suspension of the order) is not complied with, the operator of the village may apply to the Tribunal for (and the Tribunal may issue) a warrant authorising a sheriff's officer to enter the residential premises and to give possession to the operator.
- (2) An order for possession of residential premises in a retirement village made by the Tribunal is not to be enforced otherwise than under the authority of a warrant issued under this section.

- (3) A sheriff's officer enforcing an order for possession of residential premises may enter the premises and take all such steps as are reasonably necessary to enforce the order and must produce to any person occupying the premises the warrant authorising the enforcement.
- (4) A police officer may, at the request of a sheriff's officer, assist the sheriff's officer to enforce the order for possession.
- (5) A sheriff's officer enforcing an order for possession of residential premises may use such force as is reasonably necessary for that purpose.
- (6) A person must not hinder or obstruct a sheriff's officer in the exercise of the functions conferred by this section.
Maximum penalty: 10 penalty units.
- (7) A matter or thing done by a sheriff's officer or police officer does not, if the matter or thing was done in good faith for the purpose of enforcing an order for possession, subject the sheriff's officer or police officer personally to any action, liability, claim or demand.

141 Liability of resident remaining in possession

- (1) If a resident of a retirement village fails to comply with an order made by the Tribunal fixing a date for vacation of residential premises, the resident is liable to pay compensation to the operator of the retirement village for any loss caused to the operator by that failure.
- (2) 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.
- (3) The Tribunal may, on application by the operator, order the resident to pay to the operator such compensation (including compensation for loss of recurrent charges) as it thinks fit.

Division 6 Abandonment of premises

142 Application of Division

- (1) This Division applies only in respect of residential premises in a retirement village that are the subject of a residence contract under

Clause 142 Retirement Villages Bill 1999

Part 9 Termination of residence contract

Division 6 Abandonment of premises

which the resident is not entitled to any repayment of his or her ingoing contribution, or other payment, on termination of the contract.

- (2) However, this Division does not apply in respect of residential premises that are owned by the resident.

143 Abandoned premises

- (1) The Tribunal may, on application by the operator of a retirement village, make an order that declares that residential premises occupied by a resident of the retirement village were abandoned by the resident on a day specified in the order.
- (2) However, the Tribunal is not entitled to make an order under this section merely because the resident has died.
- (3) The resident is taken to have abandoned the residential premises on the specified day.

144 Right of operator to compensation where resident abandons premises

- (1) If a resident of a retirement village abandons his or her residential premises, the resident is liable to pay compensation to the operator of the retirement village for any loss (including loss of recurrent charges) caused to the operator by the abandonment.
- (2) 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.
- (3) The Tribunal may, on application by the operator, order the resident to pay to the operator such compensation (including compensation for loss of recurrent charges) as it thinks fit.

Division 7 Uncollected goods

145 Application of Division

This Division does not apply to or in respect of residential premises that are owned by the resident.

146 Delivery of uncollected goods

- (1) If a residence contract is terminated and goods are left on the residential premises by a former resident of a retirement village:

- (a) the former resident, or
 - (b) any other person having an interest in the goods,
- may apply to the Tribunal for an order for the delivery of the goods into the former resident's or the other person's possession.
- (2) The Tribunal may, on application under subsection (1), make any one or more of the following orders:
- (a) an order for the delivery of the goods into the former resident's or the other person's possession,
 - (b) an order directing the former resident or the other person to pay any reasonable costs incurred by the operator of the retirement village in connection with the removal, storage or delivery of the goods.

147 Disposal of uncollected goods

- (1) If a residence contract is terminated and goods are left on the residential premises concerned by the former resident, the operator of the retirement village may:
- (a) apply to the Tribunal for an order under this section, or
 - (b) sell or dispose of the goods in accordance with the regulations.
- (2) Before making such an application, or selling or disposing of the goods, the operator must, if he or she has a forwarding address for the former resident of the premises, send notice of his or her intention to the former resident (or to the executor or administrator of the estate of the former resident).
- (3) The Tribunal may, on application by an operator under this section, make any one or more of the following orders (but only if it is satisfied that the operator has given, or was not able to give, the notice required by subsection (2)):
- (a) an order authorising the removal, destruction or disposal of the goods,
 - (b) an order authorising the sale of the goods,
 - (c) an order as to the manner of the sale of the goods,
 - (d) an order as to the proceeds of the sale of the goods.

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Part 9 Termination of residence contract

Division 7 Uncollected goods

- (4) A purchaser of goods sold by an operator in accordance with an order of the Tribunal or the regulations acquires a good title to the goods in defeasance of the interest of the former resident or any other person who has an interest in the goods.

148 Liability of operator

- (1) An operator does not incur any liability in respect of the delivery, removal, destruction, disposal or sale of goods in accordance with an order of the Tribunal under this Division or in accordance with the regulations.
- (2) However, if the operator deals with the goods otherwise than in accordance with such an order or the regulations, any person who has an interest in the goods may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to pay compensation to the applicant.

Part 10 Matters relating to vacation of premises

Division 1 Preliminary

149 Application of Part

- (1) This 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 this Part, except as otherwise provided by this Part.
- (2) For the purposes of this Part, a former occupant referred to in Division 4 of Part 6 is taken to have permanently vacated his or her residential premises in the retirement village on the date on which he or she died or moved out of the village, and nothing in that Division affects any rights or obligations of the resident under this Part.
- (3) This Part has effect despite the provisions of any village contract.

150 References to “owner” and sale of “residential premises”

- (1) In this Part, a reference to an *owner* of residential premises in a retirement village is taken to include a reference to a resident or former occupant of the premises:
 - (a) who is taken to have a residence right in respect of the premises in accordance with section 4 (2), or
 - (b) who does not own the premises but 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.
- (2) In this Part, a reference to the sale of *residential premises* occupied under a residence contract referred to in subsection (1) (b) is taken to include a reference to the sale of the residence right in respect of the premises.

Division 2 Recurrent charges

151 Recurrent charges in respect of personal services

- (1) A resident or former occupant of a retirement village who is absent from the village for a period of at least 28 consecutive days is not liable to pay, in respect of the remainder of that period of absence, recurrent charges for personal services.
- (2) If the operator and the resident or former occupant cannot agree on the proportion of recurrent charges that are payable for personal services, either of them may apply to the Tribunal for (and the Tribunal may make) an order apportioning the resident's or former occupant's recurrent charges between personal services and general services.
- (3) For the purposes of this section, a resident or former occupant is taken not to be absent from the village if the resident or former occupant lets or sublets the residential premises concerned.

152 Recurrent charges in respect of general services: owners

- (1) This section applies to a former occupant of residential premises in a retirement village who owns the premises.
- (2) The former occupant's liability to pay recurrent charges (being recurrent charges in respect of general services) that arise after the former occupant permanently vacated the residential premises ceases on:
 - (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 a person referred to in 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,

whichever date occurs first, unless the contract between the former occupant and the operator provides for an earlier cessation of that liability.

153 Recurrent charges in respect of general services: non-owners

- (1) This section applies to a former occupant of residential premises in a retirement village who is not the owner of the premises.
- (2) The former occupant’s liability to pay recurrent charges (being recurrent charges in respect of general services) that arise after the former occupant permanently vacated the residential premises ceases (unless the contract between the former occupant and the operator provides for an earlier cessation of that liability) on:
 - (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 Tribunal terminated the residence contract—the date on which the former occupant delivered up vacant possession of the premises to the operator, or
 - (d) 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, or

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Division 2 Recurrent charges

- (e) 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,

whichever date occurs first, or such earlier date as the operator and the former occupant may agree.

154 Time of payment of recurrent charges

- (1) A former occupant may, at his or her option, either:
 - (a) discharge (either wholly or in part) as the liability arises his or her liability for recurrent charges that arise after the former occupant permanently vacated the residential premises, or
 - (b) discharge that liability (either wholly or in part):
 - (i) in the case of a former occupant who owns the residential premises concerned—from the proceeds of the sale of the premises, or
 - (ii) in any other case—from the money payable to the former occupant by the operator of the retirement village under any village contract.
- (2) The former occupant must notify the operator of the retirement village in writing of the option chosen as soon as practicable after permanently vacating the premises.

155 Interest on recurrent charges

- (1) The operator of a retirement village may charge interest on so much of the recurrent charges as are not paid by a former occupant of the village as the liability to pay those charges arises.
- (2) Subsection (1) does not apply if a contract between the operator and the former occupant specifies that interest is not payable on the recurrent charges.
- (3) The regulations may prescribe a maximum rate of interest for the purposes of this section.
- (4) However, if the operator and the former occupant agree to a lower rate of interest, or if a contract between the operator and the former occupant specifies a lower rate of interest for the purposes of this section, the interest is payable by the former occupant at that lower rate.

Division 3 Departure fees**156 What is a “departure fee”?**

- (1) A *departure fee* is:
- (a) any amount of money payable under a village contract by a former occupant of a retirement village that is calculated in relation to:
 - (i) the period, or part of the period, during which the former occupant has or had a residence right in the village, and
 - (ii) such period after the termination of the former occupant’s residence right as is specified in section 160 (2), or
 - (b) any other money payable by a former occupant of a retirement village that is declared by the regulations to be a departure fee.

Note. Departure fees include the fees known as **deferred fees** under the 1995 *Retirement Village Industry Code of Practice* and **deferred management fees** under the 1989 *Retirement Village Industry Code of Practice*.

- (2) However, a departure fee does not include recurrent charges.
- (3) A departure fee must be calculated on a daily basis.
- (4) If a resident or former occupant of a retirement village moves to other residential premises in the village (or in another retirement village that is managed or controlled by the same operator or a close associate of that operator), the resident or former occupant is taken to have a continuous residence right for the purpose of the calculation of the departure fee.

157 Payment of departure fee

- (1) Any departure fee is payable to the operator of the retirement village.
- (2) A departure fee is payable out of the former occupant’s ingoing contribution.
- (3) However, if the former occupant owns (or owned) his or her residential premises in the retirement village, the departure fee is payable out of the proceeds of the sale of the residential premises concerned.
- (4) A departure fee is to be deducted from the amount of the refund of the ingoing contribution, or the proceeds of the sale, payable to the former occupant as specified in the relevant village contract.

158 Period for which departure fee may be charged after permanent vacation of premises: new contracts

- (1) This section applies only in the case of a former occupant whose village contract providing for payment of a departure fee was entered into on or after the commencement of this section.
- (2) A 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.

159 Period for which departure fee may be charged after permanent vacation of premises: old contracts—owners

- (1) This section applies only in the case of a former occupant:
 - (a) who owns his or her residential premises in the retirement village, and
 - (b) whose village contract providing for payment of a departure fee was in force before the commencement of this section.
- (2) A departure fee is not payable to the extent that it is calculated in respect of a period after:
 - (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 a person referred to in 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,

whichever date occurs first, or such earlier date as the operator and the former occupant may agree.

- (3) Despite the other provisions of this Act, subsection (2) does not affect any provision of a village contract that provides that the departure fee is not calculable in respect of a period before a date referred to in that subsection.

160 Period for which departure fee may be charged after permanent vacation of premises: old contracts—non-owners

- (1) This section applies only in the case of a former occupant:
 - (a) who does not own his or her residential premises in the retirement village, and
 - (b) whose village contract providing for payment of a departure fee was in force before the commencement of this section.
- (2) A departure fee may be calculated in respect of the period that ends on:
 - (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 Tribunal terminated the residence contract—the date on which the former occupant delivered up vacant possession of the premises to the operator, or
 - (d) 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, or

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Division 3 Departure fees

(e) 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,

whichever date occurs first, or such earlier date as the operator and the former occupant may agree.

(3) Despite the other provisions of this Act, subsection (2) does not affect any provision of a village contract that provides that the departure fee is not calculable in respect of a period before a date referred to in that subsection.

161 Reduction or waiver of departure fee

(1) The Tribunal may, on the application of a former occupant whose village contract providing for payment of a departure fee was in force before the commencement of this section, make an order reducing or waiving the former occupant's liability for such part of the departure fee as is calculated in respect of a period after the former occupant's permanent vacation of the residential premises concerned.

(2) However, the Tribunal may make such an order only if the Tribunal is of the opinion that any delay in the operator's entering into a village contract with another person in respect of the premises is attributable to any action (including a failure to market or promote the premises) of the operator.

Division 4 Repair and refurbishment of residential premises

162 Definition

In this Division, *refurbishment* of residential premises the subject of a residence contract means 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.

163 Condition of premises on termination

(1) This section does not apply to or in respect of a former occupant who owns (or owned) his or her residential premises.

- (2) A former occupant of a retirement village must 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.
- (3) In particular, the premises must be left as nearly as possible in the same condition (fair wear and tear excepted) as set out in the condition report.
- (4) Subsection (3) does not apply in respect of premises the subject of a residence contract entered into before the commencement of section 38 unless a condition report relating to the premises was given to the resident in connection with the contract.
- (5) The operator of the village may require a former occupant to bear the cost of any repairs to the former occupant's residential premises that are necessary because the former occupant did not leave the premises in the condition required by this section.
- (6) However, a former occupant:
 - (a) who disagrees with a claim by the operator of the retirement village that such repairs are necessary because the premises were not left in the condition required by this section, or
 - (b) who is of the opinion that the cost of the repairs, as claimed by the operator, is excessive,may apply to the Tribunal for an order in relation to the claim.
- (7) In any proceedings before the Tribunal under this section:
 - (a) the operator bears the onus of substantiating his or her claim, and
 - (b) the Tribunal may:
 - (i) if it considers that the operator has not substantiated his or her claim—order the operator to withdraw the claim, or
 - (ii) if it considers that the operator has substantiated his or her claim, wholly or in part—order the former occupant to pay such amount to the operator as it considers necessary to defray the cost of the repairs.

164 No refurbishment required under contracts entered into after commencement of section

A former occupant of residential premises in a retirement village who entered into his or her residence contract in respect of those premises on or after the commencement of this section is not liable to refurbish (or pay for the cost of the refurbishment of) the premises.

165 Refurbishment under contract in force before commencement of section

- (1) If a former occupant whose contract was in force before the commencement of this section is required under the contract to pay for the cost of refurbishment of the residential premises concerned on permanently vacating those premises, the operator of the retirement village:
 - (a) must, before commencing the refurbishment, supply the former occupant with a work schedule for the refurbishment together with at least 3 quotations of costs for carrying out the refurbishment, and
 - (b) must negotiate with the former occupant and attempt to come to an agreement as to which quotation should be accepted, and
 - (c) if agreement cannot be reached, must allow the former occupant to obtain other quotations in an attempt to find a quotation that is acceptable to both the operator and the former occupant, and
 - (d) must ensure that the former occupant receives a fully-itemised account for the carrying out of the refurbishment, and
 - (e) must not accept or demand any payment for the carrying out of the refurbishment until the refurbishment is complete.

Maximum penalty: 50 penalty units.

- (2) If the operator and the former occupant cannot find a quotation that is acceptable to both of them (as referred to in subsection (1) (c)), either of them may apply to the Tribunal for (and the Tribunal may make) an order directing acceptance of one of the quotations.
- (3) Despite subsection (1), the operator is not obliged to obtain quotations of costs for carrying out the refurbishment if the former occupant agrees that the refurbishment is to be carried out by tradespersons who ordinarily carry out maintenance of the village.

- (4) If a former occupant whose contract was in force before the commencement of this section is required under the contract to pay a specified amount for the cost of refurbishment of the residential premises concerned on permanently vacating those premises, the former occupant:
- (a) is not required to pay an amount in excess of the specified amount (regardless of the actual cost of the refurbishment), and
 - (b) if the actual cost of the refurbishment is less than the specified amount—is required to pay only the lesser amount.

Division 5 Sale or letting of premises by certain residents

166 Application of Division

This Division applies only to a resident of a retirement village who owns his or her residential premises in the village.

167 Options

- (1) An operator of a retirement village who holds an option to purchase any residential premises from a resident of the village must decide whether or not to exercise the option, and must give the resident written notification of that decision, no later than 28 days after the resident permanently vacates the premises (or, if the resident has not lived in the premises, 28 days after the resident notifies the operator in writing that the premises are for sale).
- (2) If the operator does not give the notification required by subsection (1) within the time allowed by that subsection, the option lapses.
- (3) This section has effect despite any term of the option.

168 Sale of premises

- (1) A resident of a retirement village may:
 - (a) set the sale price of his or her residential premises in the village, and

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Division 5 Sale or letting of premises by certain residents

- (b) appoint a selling agent of the resident's choice (who may be the operator of the village if the operator is eligible to be appointed).

Note. In accordance with the *Property, Stock and Business Agents Act 1941*, the selling agent must be licensed as a real estate agent under that Act. Matters such as the form of the agency agreement (which must be in writing), the termination of the selling agent's appointment and the payment of commission are dealt with under that Act.

- (2) If the operator is appointed under subsection (1), the resident may also (but is not obliged to) allow the operator to set the sale price of the premises.
- (3) Any appointment of the operator of a retirement village, or a person chosen by the operator, as:
 - (a) a selling agent of residential premises in the village, or
 - (b) the person who sets the sale price of the premises,being an appointment made as part of the consideration for the resident's entering the village, or otherwise at the operator's request, terminates on the commencement of this section.
- (4) Any such appointment made on or after the commencement of this section is void.
- (5) An operator, or a person chosen by the operator, who is appointed as a selling agent under subsection (1):
 - (a) must notify the resident of all offers to purchase the premises, and
 - (b) must, if the resident so requests, provide the former occupant at the end of each named month with a report:
 - (i) detailing the marketing program (including details of all advertising of the premises or the village), and
 - (ii) listing all inquiries received about the sale, and
 - (iii) providing the names and telephone numbers (or other contact details) of the persons who made the inquiries (in so far as these are known to the operator), and
 - (iv) providing details (including the asking price) of all other residential premises for sale in the village,during that month.

- (6) If a person other than the operator is appointed as selling agent, the resident must notify the operator in writing of:
- (a) the name and contact details of the person appointed, and
 - (b) the asking price for the premises, and
 - (c) any changes to:
 - (i) the appointment or contact details of the agent, and
 - (ii) the asking price for the premises.

169 Operator not to interfere in sale

- (1) An operator of a retirement village who is not appointed a selling agent for residential premises in the village must not interfere with the sale of the premises.

Maximum penalty: 50 penalty units.

- (2) Without limiting subsection (1), an operator interferes with the sale of the premises if the operator interferes with any “For Sale” sign relating to the premises.
- (3) Subsection (2) does not apply if the sign has been erected contrary to the village rules (or the by-laws, if the village is subject to a community land scheme or strata scheme) or in such a way as to interfere with the peace, comfort and quiet enjoyment of another resident of the village.

170 Costs of sale

- (1) A resident of a retirement village who sells residential premises in the village and the operator of the village 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 in accordance with a village contract.
- (2) However, if the resident appointed a person other than the operator or a person chosen by the operator as a selling agent, the resident is liable to pay the selling agent’s commission.
- (3) The resident is not liable to pay commission to the operator or a person chosen by the operator if the premises are sold otherwise than as a result of the operator’s (or person’s) acting as the selling agent.

171 Purchaser and operator to enter contract

- (1) If a vendor for the sale of residential premises in a retirement village is not the operator of the village, the vendor must give the operator of the village sufficient notice of the proposed sale to enable the operator to provide the purchaser with a disclosure statement (and the information required under section 19) at least 14 days before the contract is entered into.
- (2) Such a contract is taken to include a provision to the effect that the contract is conditional on the purchaser's entering into a service contract with the operator of the village on or before completion of the purchase.
- (3) As soon as practicable after the contract for the sale of the premises is entered into, the vendor must notify the operator in writing of that fact.
- (4) If the operator decides not to enter into a service contract with the purchaser, the operator must, not later than 14 days after being notified under subsection (3):
 - (a) advise the vendor of that decision and of the reasons for it, and
 - (b) apply to the Tribunal for an order declaring that the operator is not obliged to enter into the service contract.

172 Vendor's application to Tribunal concerning proposed purchaser

- (1) If the operator of the retirement village does not, within 14 days after being given notification under section 171 (3), either:
 - (a) enter into a service contract with the purchaser, or
 - (b) apply to the Tribunal under section 171 (4),the vendor may apply to the Tribunal for an order directing the operator to enter into a service contract with the purchaser.
- (2) If the operator offers the purchaser a service contract containing terms and conditions substantially different, to the detriment of the purchaser, from the terms and conditions of the sample contracts available for inspection under section 20, the resident may apply to the Tribunal for an order directing the operator to enter into a service contract with the purchaser that is substantially in accordance with the sample contract.

173 Tribunal's determination in relation to proposed purchaser

- (1) On application under section 171 (4) or 172 (1), the Tribunal is to determine whether the operator's decision not to enter into a service contract concerned is reasonable in the circumstances, having regard to:
 - (a) whether the residential premises concerned are suitable for occupation by the purchaser (or another person the purchaser intends to allow to live in the premises), having regard to his or her physical and mental capacity, and
 - (b) any other factor that the Tribunal considers relevant.
- (2) For the purposes of subsection (1) (b), the age of the purchaser (or another person the purchaser intends to allow to live in the premises) is not relevant if the purchaser (or the other person) is a retired person.
- (3) On making its determination under subsection (1), the Tribunal may make an order of the kind referred to in section 171 (4) or 172 (1), as appropriate, regardless of whether that is the order sought.
- (4) An order referred to in section 172 (1) or (2) may also, if the Tribunal considers it appropriate, set the terms of the service contract to be entered into, having regard to the service contracts in force in the village and the sample contract available for inspection under section 20.
- (5) If the Tribunal makes the order referred to in section 172 (2), the Tribunal may also order the operator to pay such compensation to the vendor or the purchaser (or both) for delay and inconvenience as it considers just in the circumstances.

174 Letting or subletting of premises

- (1) A resident of residential premises in a retirement village may let (or, in the case of a resident referred to in section 150 (1) (b), sublet) the premises under a residential tenancy agreement in accordance with this Division.
- (2) Any residential tenancy agreement under this Division:
 - (a) must be in the form prescribed under the *Residential Tenancies Act 1987*, and

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- (b) must not be for a term that, together with any option to renew, exceeds 3 years.

Note. A residential tenancy agreement under this Division is subject to the *Residential Tenancies Act 1987*. The tenant is not a **resident** of the retirement village.

- (3) The tenant or subtenant under the residential tenancy agreement must be a retired person.
- (4) A resident of residential premises in a retirement village must not let or sublet the premises unless he or she has given the operator of the village written particulars of:
- (a) the name and age of the proposed tenant or subtenant, and
 - (b) the term of the proposed residential tenancy agreement, and
 - (c) such other matters in relation to the proposed agreement as the operator may reasonably require,
- and the operator has consented in writing to the agreement.
- (5) The operator may refuse to consent to a second or subsequent residential tenancy agreement if the proposed term of the agreement, when added to the term of any preceding agreement relating to the premises and to which the same resident was a party, would exceed 3 years.
- (6) If the operator decides not to consent to the residential tenancy agreement (otherwise than as allowed by subsection (5)), the operator must, no later than 7 days after receiving the written particulars required by subsection (4):
- (a) advise the resident of that decision (and of the reasons for it), and
 - (b) apply to the Tribunal for an order declaring that the operator is not obliged to consent to the agreement.
- (7) If the operator does not apply for such an order within the time allowed by this section, the operator is taken to have consented to the residential tenancy agreement.

175 Determination by Tribunal concerning proposed tenant or subtenant

- (1) On application under section 174, the Tribunal is to determine whether the operator's decision not to consent to the residential tenancy agreement concerned is reasonable in the circumstances, having regard to:

- (a) whether the residential premises concerned are suitable for occupation by the proposed tenant or subtenant, having regard to his or her physical and mental capacity, and
 - (b) any other factor that the Tribunal considers relevant.
- (2) For the purposes of subsection (1) (b), the age of the proposed tenant or subtenant is not relevant if the proposed tenant or subtenant is a retired person.
- (3) On making its determination under subsection (1), the Tribunal may make an order:
 - (a) directing the operator to consent to the residential tenancy agreement concerned, or
 - (b) declaring that the operator is not obliged to consent to the agreement.
- (4) The operator is taken to have consented to the residential tenancy agreement concerned on the making of an order under subsection (3) (b).

176 Effect of granting of residential tenancy agreement under this Division

- (1) Services under the service contract between the operator of a retirement village and the resident of residential premises in the village 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.
- (2) The letting or subletting of residential premises in accordance with this Division does not affect any right or obligation of the resident and the operator under a village contract.

177 Operator not to interfere in letting

- (1) The operator of a retirement village must not interfere with a resident's attempt to let his or her residential premises in the village (except as provided by section 174 (5)).
Maximum penalty: 50 penalty units.
- (2) Without limiting subsection (1), an operator interferes with the resident's attempt to let the premises if the operator interferes with any "For Lease" sign relating to the premises.

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- (3) Subsection (2) does not apply if the sign has been erected contrary to the village rules (or the by-laws, if the village is subject to a community land scheme or strata scheme) or in such a way as to interfere with the peace, comfort and quiet enjoyment of another resident of the village.

178 No assignment or subletting

- (1) A tenant or subtenant under a residential tenancy agreement under this Division must not:
- (a) assign his or her interest under the agreement, or
 - (b) sublet the premises the subject of the agreement.
- (2) This section has effect despite any term of the agreement concerned and despite the *Residential Tenancies Act 1987*.

179 Legal ability to sublet

- (1) For the purposes of this Division and despite the termination of the resident's residence contract, a resident referred to in section 150 (1) (b) is taken to possess a legal estate in his or her residential premises in the village such as to enable the resident to lease the premises to another person under a residential tenancy agreement.
- (2) The resident ceases to possess that estate on completion of the sale of the premises.

Division 6 Payments to former occupants

180 Payments to owners

- (1) This section applies to a former occupant of residential premises in a retirement village who owns the premises.
- (2) The operator of a retirement village must 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:
- (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,

unless the contract between the operator and the former occupant provides for earlier payment.

Maximum penalty: 50 penalty units.

- (3) At the same time as the payment is made, the operator must give the former occupant a statement setting out the following and showing how the amounts were calculated:
- (a) the departure fee, if any, payable by the former occupant,
 - (b) accrued or outstanding recurrent charges, if any, payable by the former occupant,
 - (c) any amount payable by the former occupant in relation to the sale of the residential premises concerned,
 - (d) any other amount payable by the former occupant under a village contract,
 - (e) in the case of a former occupant referred to in section 150 (1) (b)—the sale price of the premises,
 - (f) in the case of a former occupant who is required to pay for the cost of the refurbishment of his or her residential premises (as referred to in section 165)—the cost of that refurbishment,
 - (g) the amount of the payment to the former occupant.

Maximum penalty: 10 penalty units.

- (4) If:
- (a) payment is not made to the former occupant within the time required by this section, or
 - (b) if the amount of the payment is not calculated in accordance with this Act and any relevant village contract,

the former occupant may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to make the payment, or to

recalculate the amount and pay any additional amount due to the former occupant as a result of the recalculation, as the case may be.

- (5) An order under subsection (4) may, if the Tribunal considers it appropriate, also provide for the payment of interest at a rate determined by the Tribunal.

181 Payments to non-owners

- (1) This section applies to a former occupant of residential premises in a retirement village who does not own the residential premises concerned.
- (2) 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:
- (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, or
 - (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, or
 - (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, or
 - (d) if the Tribunal terminated the residence contract—the date that is one month after the date of the termination, or
 - (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, or
 - (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,

whichever date occurs first, or such earlier date as the operator and the former occupant may agree (unless the contract between the operator and the former occupant provides for earlier payment).

Maximum penalty: 50 penalty units.

(3) Any other payment that is required, under a village contract, to be made to the former occupant, being an amount that is dependent on the amount of the ingoing contribution of the incoming resident of the premises, 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.

Note. A contract may provide that the resident, when he or she permanently vacates his or her residential premises in the village, is to receive a refund of a fixed amount of the resident's ingoing contribution plus a share of any capital gains (that is, any greater amount of ingoing contribution payable by the incoming resident compared with the ingoing contribution paid by the former occupant). The refund of the ingoing contribution must be paid by the time specified in subsection (2), while the share of capital gains (if any) must be paid by the time specified in subsection (3).

(4) At the same time as a payment is made under this section, the operator must give the former occupant a statement setting out the following and showing how the amounts were calculated:

- (a) the departure fee (if any) payable by the former occupant,
- (b) accrued or outstanding recurrent charges, if any, payable by the former occupant,
- (c) any amount payable by the former occupant in respect of repairs required to the residential premises concerned (as referred to in section 163),
- (d) in the case of a former occupant who is required to pay for the cost of the refurbishment of his or her residential premises (as referred to in section 165)—the cost of that refurbishment,
- (e) any other amount payable by the former occupant under a village contract,
- (f) in relation to the part of a refund referred to in subsection (3)—the amount of the ingoing contribution of the incoming resident of the premises,
- (g) the amount of the payment to the former occupant.

Maximum penalty: 10 penalty units.

- (5) If the operator is of the opinion that he or she will not be able to enter into a residence contract with another person in respect of the premises within the time specified in subsection (2) (f), the operator may apply to the Tribunal for an order:
- (a) extending the time allowed for payment under this section, or
 - (b) allowing payment by instalments,
- on the grounds that compliance with the time-frame specified in subsection (2) (f) would cause undue hardship to the operator.
- (6) In determining an application made under subsection (5), the Tribunal:
- (a) may have regard to the hardship to be caused to the former occupant if an order of the kind set out in subsection (5) is made, and
 - (b) may make an order of that kind, and
 - (c) may, if it sees fit to do so, make a further order for the payment of interest at a rate determined by the Tribunal.
- (7) If:
- (a) payment is not made to the former occupant within the time required by this section, or
 - (b) the amount of the payment is not calculated in accordance with this Act and any relevant village contract,
- the former occupant may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to make the payment, or to recalculate the amount and pay any additional amount due to the former occupant as a result of the recalculation, as the case may be.
- (8) An order under subsection (7) may, if the Tribunal considers it appropriate, also provide for the payment of interest at a rate determined by the Tribunal.

182 Payments to executors and administrators

- (1) If:
- (a) a payment under this Division is required to be made to the executor or administrator of a former occupant's estate (because the former occupant has died), and
 - (b) the operator of the retirement village is unable to ascertain the identity of the executor or administrator,

the operator may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to deal with the money as specified in the order.

- (2) An operator does not incur any liability in respect of the operator's dealing with the money in accordance with the order.

Part 11 Enforcement

183 Proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations may be dealt with:
 - (a) summarily before a Local Court constituted by a Magistrate sitting alone, or
 - (b) with the consent of the Minister—summarily before the Supreme Court in its summary jurisdiction.
- (2) If proceedings are brought in a Local Court, the maximum monetary penalty that the Local Court may impose is 100 penalty units, despite any higher maximum monetary penalty provided in respect of the offence.
- (3) Proceedings for an offence under this Act or the regulations may be brought within the period of 3 years after the commission of the offence or, with the consent of the Attorney General, at any time.

184 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if:
 - (a) it appears to the authorised officer that the person has committed an offence against this Act or the regulations, and
 - (b) the regulations prescribe that offence as an offence for which a penalty notice may be issued.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for the alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

- (6) The regulations may:
- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
 - (b) prescribe the amount of penalty for the offence if dealt with under this section, and
 - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty that could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences or any other matter under this Act.
- (9) In this section, *authorised officer* means:
- (a) the Director-General, or
 - (b) a person appointed in writing by the Director-General as an authorised officer for the purposes of this section, or
 - (c) an investigator.

185 Monetary penalties imposed on operator

The operator of a retirement village must not in any way charge to the operating costs of the village or to the residents of the village the amount of any monetary penalty imposed (whether by way of a penalty notice or otherwise) on the operator for an offence against this Act or the regulations.

Maximum penalty: 200 penalty units.

186 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or has been convicted under the provision.

- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.
- (4) This section does not apply to or in respect of a person who is a director, or who is concerned in the management, of a statutory corporation.

187 Offences by persons other than principal offenders

A person who:

- (a) aids, abets, counsels or procures a person to contravene, or
- (b) induces, or attempts to induce, a person, whether by threats or promises or otherwise, to contravene, or
- (c) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of, or
- (d) conspires with others to contravene,

a provision of this Act or the regulations is guilty of an offence against this Act or the regulations and liable to the same penalty as a person who contravenes the provision.

Part 12 Administration

188 Definition

In this Part, *judicial body* means:

- (a) the Tribunal, or
- (b) the Fair Trading Tribunal, or
- (c) a court.

189 Functions of Director-General

- (1) The Director-General has, in addition to any other functions conferred or imposed on the Director-General, the following functions:
 - (a) the functions of investigating and carrying out research into matters relating to or affecting retirement villages,
 - (b) 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,
 - (c) the functions of distributing information about the services provided by the Director-General and the Tribunal in relation to residents of retirement villages and of promoting awareness of the rights and responsibilities of residents and persons involved in the retirement village industry,
 - (d) the functions of investigating and reporting on any matters, or making inquiries in relation to any matters, referred to the Director-General by the Minister or by the Tribunal in connection with this Act.
- (2) The Director-General may delegate to a person any of the Director-General's functions under this Act, other than this power of delegation.

190 Director-General may take or defend proceedings

- (1) The Director-General may take or defend proceedings before a judicial body on behalf of a resident of a retirement village if:
 - (a) the resident has made a complaint to the Director-General, and
 - (b) after investigating the complaint, the Director-General:
 - (i) is satisfied that the resident may have a right to take or defend the proceedings, and

- (ii) is of the opinion that it is in the public interest that the Director-General should take or defend those proceedings, and
 - (c) the resident consents to the Director-General's taking the proceedings.
- (2) The Director-General must take or defend proceedings before a judicial body on behalf of a resident of a retirement village if:
 - (a) the Minister directs the Director-General to do so, and
 - (b) the resident consents to the Director-General's taking the proceedings.

191 Conduct of proceedings by Director-General

- (1) If the Director-General takes or defends proceedings before a judicial body on behalf of a resident of a retirement village, the Director-General:
 - (a) is to have the conduct of those proceedings on behalf of the resident, and
 - (b) may appear personally or by a legal practitioner or an agent, and
 - (c) may do all such things as are necessary or expedient to give effect to an order or a decision of the judicial body, and
 - (d) is liable to pay the costs (if any) of the resident.
- (2) The resident is liable to pay any other amount that the judicial body orders the resident to pay.

192 Intervention by Director-General

- (1) Without limiting section 191, the Director-General may, if he or she is of the opinion that it would be in the public interest to do so, intervene in any proceedings arising under this Act.
- (2) The Director-General must intervene in such proceedings if directed to do so by the Minister.
- (3) On intervening in any proceedings, the Director-General:
 - (a) becomes a party to the proceedings and has all the rights of such a party, and
 - (b) has a right to be heard personally or by a legal practitioner or agent.

193 Power of investigator to obtain information, documents and evidence

- (1) If an investigator believes on reasonable grounds that a person is capable of giving information, producing documents or giving evidence in relation to a matter that constitutes, or may constitute, an offence against this Act or the regulations, the investigator may, by notice in writing given to the person, require the person:
- (a) to provide an investigator, by writing signed by the person (or, in the case of a body corporate, by a competent officer of the body corporate) and given to the investigator within the time and in the manner specified in the notice, with any such information, or
 - (b) to produce to an investigator, in accordance with the notice, any such documents, or
 - (c) to appear before an investigator at a time and place specified in the notice and give any such evidence, either orally or in writing, and produce any such documents.
- (2) If an investigator believes on reasonable grounds that a person has engaged, or is engaging, in conduct that constitutes, or may constitute, an offence against this Act or the regulations, the investigator may, for the purpose of ascertaining by the examination of documents in the possession or under the control of the person whether the person has engaged, or is engaging, in that conduct:
- (a) enter any retirement village, residential premises or other premises, and
 - (b) inspect any documents in the possession or under the control of the person, and
 - (c) make copies of, or take extracts from, those documents.
- (3) A person must not:
- (a) without reasonable excuse, refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it, or
 - (b) in purported compliance with such a notice, provide information, or give evidence, that the person knows is false or misleading, or
 - (c) hinder or obstruct an investigator exercising his or her functions under subsection (2).

Maximum penalty: 50 penalty units.

194 Limitation on power of investigator

- (1) Section 193 does not authorise any person 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.
- (2) An investigator may not exercise in any premises a function conferred by section 193 unless the investigator produces his or her certificate of identification if requested to do so by a person apparently in charge of those premises or apparently in charge of any work being performed on those premises.
- (3) A person is not required to give to an investigator information or evidence, or to produce a document, in compliance with a notice under section 193 unless the investigator produces, if requested to do so, his or her certificate of identification.
- (4) A natural person is excused from providing information, giving evidence or producing or permitting the inspection of a document in accordance with section 193 on the ground that the information, evidence or document may tend to incriminate the person.
- (5) In this section, *certificate of identification* of an investigator means the certificate referred to in section 18 (1) of the *Fair Trading Act 1987*.

195 Inspection of documents by Director-General and others

- (1) The Director-General, a person authorised by the Director-General or an investigator may inspect a document produced in accordance with a notice under section 193 and may make copies of, or take extracts from, the document.
- (2) For the purposes of this Act or the regulations, the Director-General or an investigator may:
 - (a) take possession, and
 - (b) retain possession for as long as is necessary for those purposes, of a document produced in accordance with a notice under section 193.
- (3) A person who is otherwise entitled to possession of a document retained under this section is entitled to be supplied, as soon as practicable, with a copy certified (by a person authorised in writing by the Director-General for the purposes of this section) to be a true copy, and the certified copy is admissible as evidence in all courts as if it were the original document.

196 Exclusion of personal liability

A matter or thing done or omitted to be done by the Director-General, an investigator, other authorised officer or any person acting under the direction of the Director-General does not, if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act, subject the Director-General, investigator, other authorised officer or person so acting personally to any action, liability, claim or demand.

Part 13 Miscellaneous

197 No charge for information

The operator of a retirement village must not charge a person for giving the person access to, or for providing, or for making available, to the person any information or document that the operator is required by or under this Act to give the person access to, or to provide or have available.

Maximum penalty: 50 penalty units.

198 Costs of operator's legal advice or proceedings

- (1) The residents of a retirement village are not liable to pay any costs incurred by the operator (or that the operator expects to incur) in obtaining legal advice, or undertaking legal proceedings, in relation to the village unless:
 - (a) the costs appear in the statement of approved expenditure, or
 - (b) in the case of legal advice obtained—section 31 applies.
- (2) If the residents refuse to consent to the inclusion of such costs as an item in a statement of proposed expenditure, the Tribunal, on an application by the operator under section 115, may order expenditure on those costs only if the Tribunal determines that:
 - (a) the legal advice was (or is to be) obtained, or the proceedings undertaken, wholly in the interest of the residents, and
 - (b) the costs are reasonable in the circumstances.
- (3) This section has effect despite the provisions of any village contract.
- (4) However, this section does not apply in respect of any costs awarded in favour of the operator and against a resident (or the residents) of a retirement village in legal proceedings.

199 Contracting out prohibited

- (1) The provisions of this Act and the regulations have effect despite any stipulation to the contrary in any agreement, contract or arrangement, and no agreement, contract or arrangement, whether oral or wholly or partly in writing, and whether made or entered into before or after the commencement of this section, operates to annul, vary or exclude any of the provisions of this Act or the regulations.

- (2) Subsection (1) applies in relation to the constitution of a corporation in the same way as it applies in relation to an agreement, contract or arrangement.
- (3) A person must not enter into any agreement, contract or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act.
Maximum penalty: 100 penalty units.
- (4) However, the operator of a retirement village may enter into a residential tenancy agreement, in the form prescribed under the *Residential Tenancies Act 1987*, that contains a term to the effect that this Act does not apply to the residential premises the subject of the agreement, and, in entering into the agreement, the operator and the tenant under the agreement are taken not to contravene this section.

200 Disclosure of information

A person must not disclose any information obtained in connection with the administration or execution of this Act unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act, or
- (c) for the purposes of any legal proceedings arising out of this Act (or any other Act) or of any report of any such proceedings, or
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, the *Freedom of Information Act 1989* or the *Independent Commission Against Corruption Act 1988*, or
- (e) as permitted by the regulations, or
- (f) with other lawful excuse.

Maximum penalty: 5 penalty units.

201 Service of documents

- (1) A notice or other document required to be given under this Act or the regulations to a resident of a retirement village may be given:
- (a) by delivering it personally to the resident, or

- (b) by sending it by post to the residential premises occupied by the resident and addressed to the resident, or
 - (c) in such other manner as may be prescribed for the purposes of this section or approved by the Tribunal.
- (2) A notice or other document required to be given to the operator of a retirement village under this Act or the regulations may be given:
- (a) by delivering it personally to the operator, or
 - (b) by sending it by post to the operator's usual place of business, or
 - (c) in such other manner as may be prescribed for the purposes of this section or approved by the Tribunal.
- (3) If a notice or other document referred to in this section is sent by post, it is taken to have been received (unless evidence sufficient to raise doubt is adduced to the contrary) on the second working day after it was posted.

202 Costs of administration

Contributions are to be made to meet the costs of the administration of this Act from:

- (a) the Rental Bond Interest Account established under the *Landlord and Tenant (Rental Bonds) Act 1977*, in accordance with section 20 of that Act, and
- (b) the Property Services Council Statutory Interest Account established under the *Property, Stock and Business Agents Act 1941*, in accordance with section 63E of that Act.

203 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to:
 - (a) the manner in which, and the time within which, an application may be made to the Tribunal, and

- (b) applications to the Tribunal by the Residents Committee of a retirement village on behalf of one or more residents of the village, and
 - (c) the other party or parties to applications to the Tribunal made by the operator of a retirement village.
- (3) The regulations may create an offence punishable by a penalty not exceeding 50 penalty units.

204 Amendment of Fair Trading Act 1987 No 68

The *Fair Trading Act 1987* is amended as set out in Schedule 2.

205 Consequential amendment of other Acts

The Acts set out in Schedule 3 are amended as set out in that Schedule.

206 Repeals

The following Act and regulations are repealed:

- (a) *Retirement Villages Act 1989*
- (b) *Retirement Villages Regulation 1995*
- (c) *Retirement Village Industry Code of Practice Regulation 1995*

207 Savings, transitional and other provisions

Schedule 4 has effect.

208 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Consent of residents

(Section 9)

Part 1 Preliminary

1 Entitlement to vote

A former occupant of a retirement village may vote on a measure or action relating to the village if the former occupant is, or would have been, entitled to vote on the measure or action as a resident.

Part 2 Consent generally

2 Vote to be taken

- (1) If this Act provides that a particular measure or action is of no effect unless it is consented to by the residents of a retirement village, or otherwise requires the consent of the residents, the residents of the village concerned are taken to have given their consent if more than 50% of the residents who vote (whether personally or by proxy) on the measure or action (being residents who are entitled to vote) consent to it.
- (2) Subclause (1) does not apply to a measure or action that requires a special resolution.

3 Method of voting

- (1) A vote in relation to a measure or action (including a measure or action that requires a special resolution) may be taken by means of:
 - (a) a show of hands, or
 - (b) a written ballot conducted in accordance with the regulations.
- (2) The regulations may require a vote in relation to a measure or action of a particular class or kind to be taken by means of a written ballot.

4 Result of vote

- (1) The operator of a retirement village must accept as the residents' decision in relation to a measure or action that requires their consent the decision that is reported to the operator by:
 - (a) an officer of the Residents Committee, or
 - (b) if there is no Residents Committee established for the village, a resident elected by the means referred to in clause 3 (1) of this Schedule as the representative of the residents of the village in relation to the measure or action concerned.
- (2) Regulations may be made for or with respect to the election of a representative of residents for the purposes of subclause (1).

Part 3 Consent requiring special resolution

5 Notice of special resolution

If a measure or action requires a special resolution:

- (a) a resolution concerning the action or measure must be put to a meeting of residents of the retirement village, and
- (b) at least 21 days' written notice of the meeting must be given to all residents of the village, and
- (c) the notice must:
 - (i) set out the resolution, and
 - (ii) specify that the resolution is to be put as a special resolution.

6 Quorum required for special resolution

- (1) A special resolution submitted at a meeting of the residents of a retirement village must not be considered unless there is a quorum present to consider and vote on the resolution.
- (2) There is a quorum for considering and voting on such a resolution only if:
 - (a) a minimum of 5 persons entitled to vote on the resolution, or 25% of the number of persons entitled to vote on the resolution (whichever is the greater), or

- (b) if the village has fewer than 10 occupied residential premises, persons entitled to vote on the resolution from a majority of the occupied residential premises,
is present, either personally or by proxy.
- (3) If a quorum, as provided by subclause (2), is not present within the next half-hour after the relevant resolution arises for consideration at the meeting, the meeting stands adjourned for at least 7 days.
- (4) If a quorum, as provided by subclause (2), is not present within the next half-hour after the time fixed for the adjourned meeting, the persons present personally or by proxy and entitled to vote constitute a quorum for considering that resolution.

7 How special resolution is carried

A special resolution is carried only if it is passed by at least 75% of the number of residents who are present (whether in person or by proxy), and entitled to vote, at the meeting concerned.

Schedule 2 Amendment of Fair Trading Act 1987

(Section 204)

[1] Section 4 Definitions

Omit “or” where secondly occurring in paragraph (d) of the definition of *services* in section 4 (1).

[2] Section 4 (1), definition of “services”

Insert after paragraph (e) of the definition:

or

- (f) a service contract (within the meaning of the *Retirement Villages Act 1999*),

[3] Section 25B Membership

Omit “6 members” from section 25B (1). Insert instead “7 members”.

[4] Section 25B (2) (b)

Omit “5 persons”. Insert instead “6 persons”.

[5] Part 2, Division 9 (sections 25M–25O)

Insert after section 25L:

Division 9 Retirement Villages Advisory Council

25M Establishment

There is established by this Act a council called the Retirement Villages Advisory Council.

25N Membership

- (1) The Retirement Villages Advisory Council is to consist of 14 members.
- (2) The members of the Retirement Villages Advisory Council are:
 - (a) the Director-General or a nominee of the Director-General, and
 - (b) 13 persons appointed by the Minister and having, in the opinion of the Minister, expertise appropriate to its functions (as consumer or industry representatives or otherwise).
- (3) Schedule 4A has effect with respect to the members and procedure of the Retirement Villages Advisory Council.

25O Functions

- (1) The functions of the Retirement Villages Advisory Council are to advise the Minister:
 - (a) as to such issues relating to retirement villages as it thinks fit or as are referred to it by the Minister, and
 - (b) in particular:
 - (i) as to the development of policy relating to retirement villages and the retirement village industry, and
 - (ii) as to any issues relevant to any legislation administered by the Minister for Fair Trading and relating to retirement villages or the retirement village industry.
- (2) In this section:

retirement village has the same meaning as it has in the *Retirement Villages Act 1999*.

retirement village industry includes:

 - (a) the businesses of designing, developing, managing, operating and providing services to retirement villages, and

(b) any other business prescribed by the regulations for the purposes of this definition,

but does not include any business declared by the regulations to be excluded from this definition.

[6] Section 44 False representations

Omit “or” where fourthly occurring in section 44 (k).

[7] Section 44 (m)

Insert after section 44 (l):

, or

(m) make a false or misleading representation concerning a person’s rights or obligations under a village contract (within the meaning of the *Retirement Villages Act 1999*).

[8] Schedule 4A Provisions relating to advisory councils

Insert “, 25N” after “25K”.

Schedule 3 Consequential amendment of other Acts

(Section 205)

3.1 Contracts Review Act 1980 No 16

Section 4 Definitions

Insert at the end of paragraph (d) of the definition of *Court* in section 4 (1):

, or

- (e) in accordance with section 123 of the *Retirement Villages Act 1999*, and without affecting the jurisdictional limitations referred to in that section, the Fair Trading Tribunal.

3.2 Fines Act 1996 No 99

Schedule 1 Statutory provisions under which penalty notices issued

Insert in alphabetical order:

Retirement Villages Act 1999, section 184

3.3 Landlord and Tenant (Rental Bonds) Act 1977 No 44

Section 20 Rental Bond Interest Account

Insert after section 20 (2B):

- (2BA) There is payable from the Rental Bond Interest Account any amount authorised by the Director-General of the Department of Fair Trading, with the consent of the Minister, to be paid out of the account in payment of any costs and expenses incurred in the administration of the *Retirement Villages Act 1999*.

3.4 Property, Stock and Business Agents Act 1941 No 28

Section 63E Application of money for purposes of certain Acts

Insert after 63E (2):

- (2A) There is also payable from the Statutory Interest Account any amount authorised by the Director-General, with the consent of the Minister, to be paid out of the account in payment of any costs and expenses incurred in the administration of the *Retirement Villages Act 1999*.

3.5 Residential Tenancies Act 1987 No 26

Section 6 Agreements and premises to which Act does not apply

Insert after section 6 (1) (c):

- (c1) if the agreement is a residence contract within the meaning of the *Retirement Villages Act 1999*,

3.6 Residential Tribunal Act 1998 No 168

[1] Section 6 Residential Tribunal

Omit "*Retirement Villages Act 1989*" from the Note.

Insert instead "*Retirement Villages Act 1999*".

[2] Section 25A

Insert after section 25:

25A Notice of hearing to be served in certain cases

- (1) If a person who is a party to proceedings before the Tribunal:
- (a) is a protected person within the meaning of the *Protected Estates Act 1983*, or
 - (b) has a guardian, or

(c) is both a protected person and a person who has a guardian,

the Registrar must cause notice of the proceedings to be given to the Protective Commissioner, any guardian of the person, any other person the Registrar considers appropriate and any other person prescribed for the purposes of this section.

- (2) However, if the application giving rise to the proceedings was lodged by the Protective Commissioner or the party's guardian, notice is not required to be given to that person.
- (3) The Tribunal may cause notice of proceedings to be given to such persons as it thinks fit.

[3] Section 27A

Insert after section 27:

27A Assistance to Tribunal

The Tribunal or the Registrar may, in respect of any proceedings or proposed proceedings before the Tribunal, request a report or other assistance from the Director-General of the Department of Fair Trading or any other person or body.

[4] Section 47A

Insert after section 47:

47A Compliance with order of Tribunal

A person must not wilfully contravene or fail to comply with an order of the Tribunal made under any Act (not being an order for the payment of an amount of money or an order under section 52 of the *Residential Tenancies Act 1987*).

Maximum penalty: 50 penalty units or 12 months' imprisonment or both.

3.7 Strata Schemes Management Act 1996 No 138

Dictionary

Omit “*Retirement Villages Act 1989*” from the definition of *retirement village* in Part 1 of the Dictionary.

Insert instead “*Retirement Villages Act 1999*”.

Schedule 4 Savings, transitional and other provisions

(Section 207)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Definitions

In this Part:

Code of Practice means the *Retirement Village Industry Code of Practice* prescribed by the *Retirement Village Industry Code of Practice Regulation 1995*, as in force immediately before the repeal of that regulation.

existing contract means:

- (a) a residence contract under the former Act, or
- (b) any other contract, agreement, scheme or arrangement by which a person obtained, before the commencement of the former Act, the right to occupy residential premises in a complex that was, at the time the right was obtained, a retirement village within the meaning of this Act (even if it ceased to be such a retirement village before the commencement of this Act or the former Act).

former Act means the *Retirement Villages Act 1989*.

3 Continuation of contracts

- (1) An existing contract in respect of a retirement village within the meaning of this Act that is in force on the commencement of this clause is taken to be a residence contract.
- (2) Any other contract, agreement, scheme or arrangement in force on the commencement of this clause under which, under the former Act, the administering authority of a retirement village provides services to a resident of the village is taken to be a service contract.
- (3) A contract that, by operation of this clause, is taken to be a village contract continues in force until it is terminated in accordance with this Act.

4 Continuation of village rules

A village rule that was in force in a retirement village under the Code of Practice immediately before the repeal of the *Retirement Village Industry Code of Practice Regulation 1995* is taken to be a village rule made under this Act.

5 Budgets and audited accounts given under Code of Practice

- (1) For the purposes of section 20 of this Act:
 - (a) audited accounts provided in accordance with clause 40 of the Code of Practice are taken to be accounts audited as referred to in Division 6 of Part 7 of this Act, and

- (b) draft budgets provided, and the final budgets developed, under clause 41 of the Code of Practice are taken to be statements of proposed expenditure and statements of approved expenditure, respectively.
- (2) The draft budget provided, and final budget developed, under clause 41 of the Code of Practice for the financial year that is current on the commencement of Part 7 of this Act are also taken to be statements of proposed expenditure and statements of approved expenditure, respectively, for the purposes of that Part.

6 Disclosure statements

For the purposes of sections 25 and 33 of this Act, the document required to be provided under clause 20 of the Code of Practice is taken to be a disclosure statement.

7 Informal resolution of disputes

A disputes committee convened under clause 44 of the Code of Practice that is in existence on the commencement of section 125 of this Act is taken to be a mechanism established for the purpose of attempting to resolve disputes as referred to in that section.

8 Termination of right of occupation

Any proceedings to terminate the right of occupation of a resident of a retirement village that were instituted under the former Act and not determined before the repeal of that Act are to be determined as if this Act had not been enacted.

9 Vacation of residential premises

A resident of a retirement village under the former Act who permanently left his or her residential premises before the commencement of this Act is taken to have permanently vacated the premises for the purposes of this Act.

10 Goods left before commencement of clause

Division 7 of Part 9 applies to goods left in a retirement village by a resident under a residence contract terminated before the commencement of this clause, and not finally dealt with before that commencement, in the same way as it applies to goods left in a retirement village by a resident under a residence contract terminated after that commencement.

11 Departure fees

A reference in an existing contract to the payment of:

- (a) a deferred management fee, or
- (b) a deferred fee,

is taken to be a reference to the payment of a departure fee.

12 Delegation

A delegation in force under section 11 of the former Act immediately before the commencement of section 189 continues in force on and after that commencement and is taken to be a delegation of the Director-General under that section.

13 Date of permanent vacation of residential premises in retirement village

For the purposes of Part 10, a former occupant who permanently vacated his or her residential premises in a retirement village before the commencement of this clause is taken to have permanently vacated the premises on that commencement.

14 Operator's legal costs

- (1) Section 198 (3) extends to a village contract entered into before the commencement of that subsection.
- (2) If, before the commencement of this clause, any legal proceedings in relation to a retirement village had been commenced but were not finally determined (being proceedings to which the operator and a resident or residents of the village are parties), the resident or residents concerned are not liable to pay such part of the operator's costs in relation to the proceedings as are incurred, or may reasonably be apportioned to such of the proceedings as take place, after that commencement.

Retirement Villages Bill 1999

Schedule 4 Savings, transitional and other provisions

- (3) Subclause (2) has effect despite the provisions of any village contract, whether entered into before or after the commencement of this clause.
- (4) However, subclause (2) does not apply in respect of any costs awarded in favour of the operator and against a resident or residents of the retirement village in legal proceedings.