

Queensland



# RETIREMENT VILLAGES ACT 1988

**Reprinted as in force on 15 December 1997  
(includes amendments up to Act No. 82 of 1997)**

**Reprint No. 2C**

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# Information about this reprint

This Act is reprinted as at 15 December 1997. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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# RETIREMENT VILLAGES ACT 1988

[as amended by all amendments that commenced on or before 15 December 1997]

## **An Act to provide with respect to the establishment and conduct of retirement villages and for related purposes**

### **PART 1—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Retirement Villages Act 1988*.

#### **Intention concerning Act's application**

4. It is the intention of the Parliament that this Act should apply in relation to any scheme for a retirement village, the person or persons who operate any scheme for a retirement village and inducements and invitations to participate in any scheme for a retirement village where—

- (a) the retirement village is or is to be situated in Queensland irrespective of where the scheme for the retirement village is operated or the inducements or invitations to participate in the scheme are given, uttered or published; or
- (b) the scheme for the retirement village is operated in Queensland irrespective of where the retirement village is or is to be situated or the inducements or invitations to participate in the scheme are given, uttered or published;

except where a contrary intention appears or such an application of a provision of this Act would be in excess of the legislative power of the Parliament.

**Interpretation**

**6.(1)** In this Act—

**“advertisement”** includes an advertisement made—

- (a) by publishing a statement or claim in any newspaper, magazine, circular, pamphlet, handbill, notice or document; or
- (b) by communicating a statement or claim by means of a broadcast transmission, television transmission or cinematograph; or
- (c) in any other prescribed manner.

**“annual meeting”** means—

- (a) in respect of a retirement village to which section 47(2) does not apply—the annual meeting convened under section 47(1);
- (b) in respect of a retirement village to which section 47(2) applies—the annual general meeting of the body corporate conducting the retirement village held according to law.

**“approved form”** see section 61.<sup>1</sup>

**“by-laws”** means provisions relating to—

- (a) the control, management, administration or use and enjoyment of a retirement village; or
- (b) the provision of goods or services to residents in a retirement village;

other than provisions of that description that are conditions of a residence contract, or other contract made between a resident or prospective resident of the retirement village, and the person who operates the scheme for the village or the manager of the village, being provisions expressly set out in the contract.

**“existing retirement village”** means a retirement village that is being conducted at the commencement of this Act.

**“ingoing contribution”** means a payment that is made with a view to securing, by itself or with other acts, a right (whether enforceable or not) to reside in a retirement village but does not include a payment

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<sup>1</sup> Section 61 (Approval of forms)



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made recurrently by way of rent, fees or charges.

**“manager”** means, in relation to a retirement village, the person in charge of the day to day conduct of the village.

**“owner”** does not include the Crown and, in relation to land held on leasehold tenure from the Crown, means the lessee thereof.

**“prescribed period”** means—

- (a) in respect of a retirement village for which there is not a body corporate within the meaning of the *Building Units and Group Titles Act 1980* or the *Body Corporate and Community Management Act 1997*—the period of 12 months ending 3 months before the date on which the annual meeting is to be held; and
- (b) in respect of a retirement village for which there is a body corporate within the meaning of the *Building Units and Group Titles Act 1980*—the period to which the accounts presented to the annual meeting of that body is required by the provisions of that Act to relate; and
- (c) in respect of a retirement village for which there is a body corporate within the meaning of the *Body Corporate and Community Management Act 1997*—the period to which the accounts presented to the annual meeting of that body is required by the provisions of that Act to relate.

**“refundable ingoing contribution”** means so much of an ingoing contribution as is, under a residence contract or this Act refundable or payable to any person or to an estate upon the death of a resident or the occurrence of any other event.

**“registrar”** means the registrar of retirement villages.

**“residence contract”** means a contract made under a scheme for a retirement village with a person controlling the operation of the scheme or the person’s agent that purports to confer on a person or gives rise to a right to reside in a retirement village or that provides for or gives rise to obligations on the part of any person in connection with residence (whether by that person or another) in a retirement village.

**“resident”** means, in relation to a retirement village, a person who is entitled to reside in the village pursuant to a residence contract.

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**“residents’ committee”** means a committee formed under part 7 by residents in a retirement village.

**“retirement village”** means premises conducted or promoted as suitable for the use (exclusively or primarily) by elderly or retired persons in respect of which premises—

- (a) a person acquires, in consideration of the payment of an ingoing contribution—
  - (i) a right of residence, from whatever right, title or interest the right of residence may accrue; and
  - (ii) a right to receive a service;  
pursuant to 1 contract or more than 1 contract if, in the case of more than 1 contract, the making of each contract is dependent on the making of each other contract; and
- (b) the person who has the right of residence either—
  - (i) cannot validly dispose of that right to another; or
  - (ii) is subject to a restriction as to the manner in which or the person to whom the person may dispose of that right during the person’s lifetime to another;

but does not include a site within the meaning of the *Mobile Homes Act 1989*.

**“retirement village land”** means all the land used or to be used for a retirement village, and includes—

- (a) if the land is divided by a plan under the *Building Units and Group Titles Act 1980*—the lots and common property into which the land is divided; or
- (b) if the land is scheme land for a community titles scheme under the *Body Corporate and Community Management Act 1997*—the lots included in, and the common property for, the scheme.

**“service”** means any of the following—

- (a) management and administrative service;
- (b) gardening, repair or maintenance service;
- (c) hospital, nursing or medical services including accommodation;

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- (d) shop or other service for the provision of goods to residents;
- (e) hostel accommodation;
- (f) laundry service;
- (g) the provision of meals;
- (h) service or facility for the recreation or entertainment of residents;
- (i) any other service for the benefit, care or enjoyment of residents.

**“special resolution”** means a resolution which—

- (a) is passed at a meeting of residents of a retirement village of which meeting at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been given to all such residents; and
- (b) is passed at a meeting such as is referred to in paragraph (a) by a majority of not less than three-quarters of the persons entitled to vote and voting at that meeting.

**“utter”** means, in relation to a document or other writing, to use or deal with or to attempt to induce any person to use, deal with or act upon the document or other writing.

**(2)** For the purposes of this Act, a scheme for a retirement village includes—

- (a) particulars of all buildings and recreational facilities that are or will be available in connection with the scheme upon the completion of the final stage thereof; and
- (b) particulars of the land on which such buildings and facilities are or will be erected; and
- (c) particulars of the terms, conditions, entitlements and obligations by reference to which persons are or will be invited to participate in the scheme.

## **Registrar**

**7.(1)** There is to be a registrar of retirement villages.

**(2)** The registrar holds office under the *Public Service Management and Employment Act 1988*.

**Delegation by registrar**

8. The registrar may delegate the registrar's powers under this Act to an officer or employee of the department.

**Appointments and signatures need not be proved**

9. It shall not be necessary to prove the appointment or signature of the registrar in any court or to any person acting judicially or holding any position of a public nature and every such court or person shall presume that every document purporting to have been issued by the registrar has been duly made and issued unless the contrary is proved.

**Protection in administering Act**

10. No act or thing done or omitted by a person in the administration of this Act or done or omitted in good faith and without negligence by a person purporting to be acting in the administration of this Act shall render the Crown, the Minister, the registrar or that person liable in damages in respect thereof.

**Act not to apply in certain circumstances**

11.(1) This Act shall not apply to nursing homes conducted in accordance with a licence granted under the *Health Act 1937*, part 3, division 11A.

(2) Any religious or charitable organisation or any organisation that renders services for the benefit of the community may apply to the Minister to have the organisation declared an exempt organisation for the purposes of all or any of the provisions of this Act.

(3) Any person or persons who operate or propose to operate a scheme for a retirement village may apply to the Minister to have that retirement village declared to be an exempt retirement village for the purposes of all or any of the provisions of this Act.

(4) An application under subsection (2) or (3)—

- (a) shall state why the exemption is sought;
- (b) shall state whether the exemption sought is from the application

of all provisions or particular provisions only of this Act and, if the latter, shall specify which provisions.

(5) The Minister may require an applicant for exemption to give such further information in respect of the application as the Minister sees fit, and may, if the Minister thinks it appropriate, refer the application to the registrar for the registrar's comments.

### **Exemptions**

**12.(1)** The Governor in Council may, whether or not an application has been made under section 11, declare, by regulation—

- (a) that an organisation of a kind mentioned in section 11(2) is an exempt organisation; or
- (b) that a retirement village is an exempt retirement village.

**(2)** An exemption under subsection (1)—

- (a) may be unconditional or subject to conditions; or
- (b) may be for a limited or unlimited time; or
- (c) may be an exemption from the application of all or specified provisions of this Act.

### **Withdrawal or variation of exemption**

**13.(1)** In this section—

**“exempt organisation”** means an organisation named in a declaration under section 12.

**“exempt retirement village”** means a retirement village named in a declaration under section 12.

**(2)** The Minister may, by written notice, call on—

- (a) an organisation that is an exempt organisation; or
- (b) a person who operates or proposes to operate an exempt retirement village;

on a specified day and at a specified time and place to show cause why the exemption should not be withdrawn or varied.

(3) If the person or body does not show cause to the satisfaction of the Minister, the Governor in Council may, by regulation, withdraw the exemption or vary the terms of the exemption.

### **Notification and consequence of exemption etc.**

**14.(1)** Notification in writing of an exemption declared under section 12 or of a withdrawal or variation of an exemption pursuant to section 13 shall be given, as soon as is practicable, to—

- (a) the organisation that the exemption concerns; or
- (b) the person who operates or proposes to operate the retirement village that the exemption concerns.

(2) For as long as an exemption continues and the conditions (if any) of the exemption are complied with, the organisation that the exemption concerns or, as the case may be, the person who for the time being operates or proposes to operate the retirement village that the exemption concerns shall not be subject to the application of the provisions of this Act to the extent specified by the exemption.

(3) Where the terms of an exemption have been varied the exemption referred to in subsection (2) is the exemption as last so varied.

## **PART 2—SCHEMES FOR RETIREMENT VILLAGES**

### **Promotion of retirement village requires approval**

**16.(1)** A person who operates a scheme for a retirement village shall not—

- (a) induce or attempt to induce, or invite any person to participate in a scheme for a retirement village, whether by way of the person's residence in the village or the person making of an ingoing contribution or the person doing any other act; or
- (b) utter any document or other writing or publish any advertisement calculated to induce or invite any person (whether a particular

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person or not) to participate in a scheme for a retirement village in any of the ways referred to in paragraph (a); or

- (c) extend any existing retirement village in Queensland;

unless—

- (d) the approval of the registrar has first been obtained in respect of the scheme for that retirement village; and
- (e) such of the conditions to which the approval is subject as are required to be complied with by the person who operates the scheme prior to the person taking any action of a kind referred to in paragraph (a), (b) or (c), are complied with; and
- (f) all other conditions to which the approval is subject are complied with by that person within the period or periods of time specified for that purpose in the instrument of approval.

Maximum penalty—

- (a) where the offender is an individual—100 penalty units or 2 years imprisonment;
- (b) where the offender is a corporate entity—400 penalty units.

**(2)** For the purposes of subsection (1), a scheme for a retirement village that has been approved by the registrar shall be deemed not to have been so approved if any particular of the scheme as furnished to the registrar has been altered materially without the approval of the registrar.

**(3)** Subsection (1)(a) and (b) apply in respect of existing retirement villages and retirement villages that come into existence after the commencement of this section.

### **Application for approval**

**17.(1)** Application for approval of the registrar to a scheme for a retirement village shall be lodged with the registrar.

**(2)** The registrar shall not approve of a scheme to which an application relates unless the registrar is satisfied—

- (a) that the registrar has knowledge of the name and place of residence of every person who is or will be in the foreseeable future controlling the operation or the promotion of the scheme

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- and the qualification (if any) of each such person;
- (b) that the registrar has been informed of the method of service of documents on the person or persons controlling the operation of the scheme and that the registrar approves of that method;
  - (c) in relation to—
    - (i) the financial ability of the person or persons controlling the operation of the scheme to establish the retirement village and to continue to operate the scheme;
    - (ii) all particulars of the scheme, including the provisions thereof to be utilised upon a failure of the scheme;
    - (iii) the contents of all documents relating to the scheme that are to be published for the information of the public;
    - (iv) all other matters that are prescribed or that the registrar considers relevant;
  - (d) that local government approval has been given to the establishment of the retirement village on the site indicated in the application where that approval is required by law.

**(3)** The registrar shall not be satisfied in relation to the matter referred to in subsection (2)(c)(iii) unless the document in question contains the following particulars—

- (a) the tenure on which or the authority under which residents of the retirement village occupy the premises occupied by them and the term for which they are entitled to occupy those premises;
- (b) the entitlement (if any) of residents of the retirement village to use parts of the village other than the premises occupied by them;
- (c) notification of all services to be provided to residents of the retirement village under the scheme for the village;
- (d) the form and contents (so far as they are established) of the contract to be made under the scheme for the retirement village with persons wishing to become residents of the village;
- (e) notification of the documents that will be given to residents of the retirement village as evidence of their entitlements therein;
- (f) notification of the control (if any) over the retirement village to be



exercised by the residents of the village.

(4) For the purposes of the law relating to defamation it shall be accepted that—

- (a) the registrar and officers acting in aid of the registrar in relation to approving of any person for the purposes of this Act have an interest in knowing the truth concerning the reputation and character of that person; and
- (b) there are reasonable grounds for belief by any person of whom inquiry is made for information that the registrar and such officers have the interest referred to in paragraph (a).

### **Registrar may impose conditions on approval**

**18.(1)** The registrar may—

- (a) subject the registrar's approval of a scheme for a retirement village to such conditions as the registrar thinks fit and specifies in the instrument of approval; and
- (b) by instrument in writing given to the person or persons controlling the operation of a scheme for a retirement village, impose conditions on the registrar's approval of the scheme previously given; and
- (c) by instrument in writing given to the person or persons controlling the operation of a scheme for a retirement village, vary or add other conditions for the conditions to which the registrar's approval of the scheme is for the time being subject.

(2) Without limiting the generality of subsection (1), the registrar may subject the registrar's approval of a scheme for a retirement village to a condition that every ingoing contribution and every other payment of money whether by way of deposit or otherwise in respect of a residence contract shall be paid directly into such trust account as is specified by the registrar and retained therein until all conditions in respect of the construction of the retirement village or, if the retirement village concerned is to be constructed in stages, of the relevant stage of the retirement village, are complied with.

(2A) If the provisions of subsection (2) are inconsistent with a provision

of the *Land Sales Act 1984*, the provision of that last mentioned Act to the extent of the inconsistency shall prevail.

(3) For the purposes of this Act, the registrar's approval of a scheme for a retirement village shall be taken to be subject to conditions to which it was subjected in the first instance, or which are imposed on it by the registrar at any time, or as varied or substituted for the time being by the registrar, as the case may be.

(4) A person controlling the operation of a scheme for a retirement village must comply with the conditions of the approval.

Maximum penalty—40 penalty units.

### **Revocation of approval**

19. If the registrar is satisfied that revocation of the registrar's approval of a scheme for a retirement village is necessary in order to protect the persons who may be invited or induced to participate in the scheme, whether by way of residing in the village or of making an ingoing contribution or doing any other act—

- (a) the registrar shall give to each person controlling the operation of the scheme 14 days notice in writing of the registrar's intention to revoke the registrar's approval of the scheme; and
- (b) the registrar may, upon the expiry of the period of such notice, by instrument in writing given to each such person revoke the registrar's approval of the scheme;

whereupon the scheme shall be taken to be one in respect of which the approval of the registrar has not been obtained.

### **Ministerial review of registrar's decisions**

20.(1) A person aggrieved by the registrar's—

- (a) refusal to approve a scheme for a retirement village; or
- (b) conditional approval of a scheme for a retirement village; or
- (c) revocation of the registrar's approval of a scheme for a retirement village;

may, within 14 days after the person's receipt of notification of the registrar's decision, apply to the Minister for a review by the Minister of the decision.

(2) The Minister's decision upon such a review shall be deemed to be that of the registrar and shall be given effect accordingly.

(3) Where the Minister's decision overturns a revocation of the registrar's approval it shall be deemed that the revocation has not taken effect.

## **PART 3—RESIDENCE CONTRACTS**

### **Residence contracts exempt from certain sections**

21. Section 22, 24, 27 or 28 does not apply in relation to a residence contract made before the commencement of that particular section.

### **Residence contracts to be under approved scheme**

22.(1) A person controlling the operation of a scheme for a retirement village or the person's agent shall not make a residence contract in relation to the retirement village unless the registrar's approval of the scheme has first been obtained.

Maximum penalty—

- (a) where the offender is an individual—100 penalty units or 2 years imprisonment;
- (b) where the offender is a corporate entity—400 penalty units.

(2) Subsection (1) does not apply to a residence contract made to pass or surrender to a person controlling the operation of a scheme for a retirement village or the person's agent ownership of a part of the retirement village or a right of residence therein.

(3) For the purposes of subsection (1) a scheme for a retirement village that has been approved by the registrar shall be deemed not to have been so

approved if any particular of the scheme as furnished to the registrar has been altered materially without the approval of the registrar.

### **Public information documents incorporated in contracts**

**23.(1)** Where the registrar has approved a scheme for a retirement village the registrar shall enter in a register kept by the registrar a copy of each document relating to the scheme that is to be published for the information of the public and the contents of each such document so entered shall be deemed to be incorporated in and to form part of every residence contract made under the scheme by a person controlling the operation of the scheme or the person's agent.

**(2)** If, having regard to the circumstances material to a retirement village at a particular time, the registrar considers that a document entered in a register under subsection (1) should be altered, the registrar may, by instrument in writing, require the person or persons controlling the operation of the scheme to which the document relates to submit to the registrar a fresh document of a similar description but altered in the manner considered by the registrar to be required with a view to the fresh document being considered and accepted by the registrar.

**(2A)** A person must comply with a requirement of the registrar under subsection (2).

Maximum penalty—40 penalty units.

**(3)** When a fresh document referred to in subsection (2) has been accepted by the registrar it shall be entered as prescribed by subsection (1) and the contents of the fresh document shall be deemed to be incorporated in and to form part of every residence contract such as is referred to in subsection (1) in lieu of the contents of the document that it has replaced, being a contract made after the registration of the fresh document and before the fresh document is itself replaced by a further document entered as prescribed by subsection (1).

### **Certain provisions of residence contracts negated**

**24.** A provision of a residence contract made by a person controlling the operation of a scheme for a retirement village or the person's agent that—

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- (a) purports to exclude the operation of any provision of this Act or any of the contents of a document registered under section 23 (being contents that under that section are to be deemed to be incorporated in and to form part of the contract); or
- (b) purports to or operates so as to restrict the discretion of any person in the person's nomination of a holder of money or of documents in escrow under section 28; or
- (c) is inconsistent with any of the contents of a document referred to in paragraph (a);

is, in the case referred to in paragraph (a) or (b), null and void and, in the case referred to in paragraph (c), of no effect to the extent of the inconsistency.

**Enforcement of residence contracts**

**25.(1)** Subject to section 26 in relation to refundable ingoing contributions, a residence contract, whether made before or after the commencement of this section, is enforceable against—

- (a) a party to the contract;
- (b) a person who is not a party to the contract if at the time the contract is made that person is—
  - (i) a person controlling the operation of the scheme; or
  - (ii) an owner of the retirement village land;
- (c) a person who is not a party to the contract if at the time the contract is to be enforced that person is—
  - (i) a person controlling the operation of a scheme for that retirement village; or
  - (ii) an owner of the retirement village land.

**(2)** A person referred to in subsection (1)(c)(ii) who is not also a person referred to in subsection(1)(b)(ii) is liable to have a residence contract enforced against the person only if, at the time enforcement is sought, the land in question is being used for the purposes of a retirement village.

**(3)** A residence contract may be enforced, pursuant to this section, against a person who is not a party to the contract as if he or she were such

a party, and for this purpose he or she shall be deemed to be a party to the contract having the same obligation thereunder as the person who under the contract has the obligation that is sought to be enforced.

### **Exception to recovery of refundable ingoing contribution**

**26.** An obligation arising under a residence contract to honour an entitlement to recover a refundable ingoing contribution or part thereof is not enforceable against a person referred to in section 25(1)(c)(ii) who is not also a person referred to elsewhere in that subsection if the person became owner of the retirement village land by the person being a bona fide purchaser for value of that land from a mortgagee exercising power of sale under a mortgage created over that land before the commencement of section 33.

### **Avoidance of residence contracts**

**27.(1)** Withdrawal of an exemption granted pursuant to section 11 or revocation of an approval granted pursuant to section 19 shall not affect the validity of or entitlements or obligations under a residence contract made before the withdrawal or revocation takes effect, but the party to the contract who made it with a view to securing a right of residence in the retirement village concerned may—

- (a) in the case of the withdrawal of an exemption—within 7 days from and after he or she becomes aware of that withdrawal; or
- (b) in the case of the revocation of an approval—
  - (i) where no application for review is made under the provisions of this Act against that revocation—within 7 days from and after the last day for the making of such an application for review under this Act or within 7 days from and after the day he or she becomes aware of that revocation, whichever period is the later;
  - (ii) where an application for review has been duly made under this Act against that revocation—within 7 days after he or she becomes aware of a decision being made by the Minister not to overturn that revocation of approval;

rescind the contract as prescribed by subsection (4) on the ground of such withdrawal or revocation.

(2) A residence contract is not invalid or unenforceable by reason that it was made in contravention of section 22(1), but the party to the contract who made it with a view to securing a right of residence in the retirement village concerned may, within 7 days after he or she becomes aware of the contravention, rescind the contract as prescribed by subsection (4) on the ground of such contravention.

(3) A party to a residence contract who made it with a view to securing a right of residence in a retirement village may, at any time within 7 days after the day on which he or she entered into the contract, rescind the contract as prescribed by subsection (4).

(4) Rescission of a residence contract pursuant to this section may be effected by notice in writing given by or on behalf of the rescinding party to the other party or parties to the contract or to the solicitor for the other party or each of the other parties.

### **Property disposed of pending rescission under s 27(3)**

28.(1) If a party to a residence contract who is entitled under section 27(3) to rescind the contract pays money or assigns other property for the purposes of the contract before the time within which he or she may rescind has expired, this section shall be complied with.

(2) Money referred to in subsection (1) shall be paid directly to the public trustee constituted by the *Public Trustee Act 1978* or, if the parties to the residence contract agree, to—

- (a) a person whose name is on the roll of solicitors of the Supreme Court and who practises as a solicitor in Queensland; or
- (b) a real estate agent licensed under the *Auctioneers and Agents Act 1971*;

specified in the contract, to be held in trust in accordance with this section.

(3) An instrument of assignment of property referred to in subsection (1) together with the relevant instrument of title (if it is available) shall be deposited in escrow, in a place nominated by the assignor, conditioned as prescribed by this section.

(4) Upon rescission of a residence contract pursuant to section 27(3)—

- (a) money held in trust pursuant to subsection (2) shall be paid to the person by whom it was paid for the purposes of the contract; and
- (b) an instrument of assignment held in escrow pursuant to subsection (3) shall be released to the assignor; and
- (c) an instrument of title held in escrow pursuant to subsection (3) shall be released to the person from whom it was received into escrow.

(5) Upon expiry of the time within which a residence contract may be rescinded pursuant to subsection 27(3), if the contract has not then been rescinded—

- (a) money held in trust pursuant to subsection (2) shall be applied to the purposes of the contract; and
- (b) an instrument of assignment or of title held in escrow pursuant to subsection (3) shall be released so as to give effect to the contract.

(6) A person who contravenes this section commits an offence.

Maximum penalty—40 penalty units.

### **Procedure in face of breach of s 28**

**29.(1)** A person who, contrary to section 28, has acquired property by way of assignment made in performance of a residence contract by or on account of a party to the contract who has duly rescinded the contract pursuant to section 27(3) shall, forthwith upon such rescission, assign the property, free of all interests, mortgages and charges to which the property has become subject since the person acquired it, to the person from whom he or she acquired it or as that person directs in writing.

(2) A person who has in his or her control an instrument of title that relates to property referred to in subsection (1) shall, upon the request of or on behalf of the person to whom the property is to be assigned as required by that subsection, produce the instrument for registration of the assignment and issue of a fresh instrument of title and a release of all such interests, mortgages and charges as are referred to in that subsection.

(3) The costs, expenses, duties and charges associated with an



assignment required by subsection (1) to be made shall be the liability of the assignor and shall not be charged against the assignee.

(4) This section shall be construed subject to section 27.

### **Case where s 29 cannot be complied with**

**30.** Where a person who has acquired property as referred to in section 29(1)—

- (a) has disposed of ownership thereof so that the person no longer has control of it when the person is required by that section to assign the property; or
- (b) is unable to discharge such interests, mortgages and charges as are referred to in that section when the person is required by that section to assign the property;

the person controlling the operation of the scheme for the retirement village concerned shall be liable (and if more than 1, jointly and severally so liable) to pay to the person from whom the property was acquired or as he or she directs in writing the full and true value of the property as at the time the residence contract in question was rescinded.

### **Recovery of money due and enforcement of ss 28–30**

**31.(1)** A person entitled pursuant to section 28(4) or 30 to payment of money may recover the amount thereof in any court of competent jurisdiction as a debt due and owing to the person by the person required by the relevant provision of this Act to make the payment.

(2) Without prejudice to the jurisdiction of any court in an action for a debt referred to in subsection (1), it is declared that the Supreme Court's jurisdiction includes jurisdiction to make all such orders as appear to it to be necessary or desirable to enforce the provisions of section 28, 29 or 30.

## **PART 4—CHARGES ON RETIREMENT VILLAGE LAND**

### **Application of part**

**32.(1)** This part applies only in relation to a retirement village or a part of a retirement village where entitlement to reside in the village or that part depends upon the holding of a tenure or a right other than an estate in fee simple in any part of the retirement village.

**(2)** Where this part applies in relation to a part only of a retirement village the expression “**the retirement village land**” when used in this part means the whole of the land used or to be used for the purposes of a retirement village in that part.

### **Creation of charge over retirement village land**

**33.(1)** As soon as practicable after the registrar has approved a scheme for a retirement village the registrar shall, by written notice lodged with the public officer charged with maintaining a register of title to the retirement village land, give notice that on and from the date of the registrar’s approval of the scheme (which date shall be specified in the notice) there exists a statutory charge over the whole of the retirement village land identified in the notification.

**(2)** Upon the giving of notice under subsection (1) the whole of the retirement village land to which the notice relates shall become and be subject to a statutory charge that secures for the benefit of each resident in the village the entitlements referred to in section 34.

**(3)** A statutory charge created under this section shall be deemed to have come into being and to encumber the subject land on the date of the registrar’s approval of the scheme for the retirement village whose land is subject to the charge.

**(4)** The public officer with whom a notice is lodged under subsection (1), upon request made by the registrar, shall cause to be made in the appropriate register maintained by the public officer all such entries as are necessary to record the existence of the statutory charge on the title to the land identified in the notice.

**(4A)** Subsection (4) shall be given effect notwithstanding—

- (a) that there exists a caveat affecting the retirement village land; or
- (b) that any copy of the relevant instrument of title is not produced for endorsement.

**(5)** A notice given under subsection (1) and a request to register the same are exempt from the payment of stamp duty under the *Stamp Act 1894* and no fees are payable in connection with giving effect to subsection (4) in respect thereof.

### **Nature of charge**

**34.** A statutory charge notified under section 33 secures in the manner prescribed—

- (a) due performance of every residence contract made under the scheme for the retirement village to whose land the notice given under section 33 relates; and
- (b) payment of all money payable to any person in connection with a residence contract made under the scheme for the retirement village to whose land the notice given under section 33 relates, whether payment of the money is provided for by the residence contract or by this Act.

### **Priority of charge**

**35.** A statutory charge notified under section 33 has priority over all interests, mortgages and other charges existing in or over the retirement village land to which the notice given under that section relates other than—

- (a) interests, mortgages and charges existing in or over the land at the time this section commences; and
- (b) a charge created by any Act or law of the Commonwealth, which pursuant to that Act or law has priority over other charges; and
- (c) a charge created by any Act or law of the State which pursuant to that Act or law has priority over other charges.

**Enforcement of charge**

**36.(1)** Where a court order—

- (a) for the payment of damages on account of non-performance of a residence contract; or
- (b) for the payment of other money for which this Act provides in connection with a residence contract;

to a resident, a former resident or a prospective resident of a retirement village or to any other person is not satisfied within a period of 6 months from the making of the order or from the expiry of a period within which it should have been satisfied according to the terms of the order (whichever period is later to expire) and the retirement village land to which the residence contract relates is subject to a statutory charge created under section 33, a person in whose favour the court order was made, upon serving notice on the registrar of his or her intention to make such an application may, subject to subsection (2), apply to the Supreme Court for an order that the retirement village land subject to the statutory charge be sold.

**(2)** Where the unsatisfied court order requires payment of a refund of an ingoing contribution it is not competent to a person to undertake recovery of the judgment by way of application under subsection (1) unless the amount of the refund involved exceeds \$10 000 or such other amount as is for the time being prescribed by the regulations for the purposes of this subsection.

**(3)** Unless the court orders to the contrary, where application for an order to sell is duly made the applicant shall cause the occupiers of the retirement village land subject to the statutory charge to be given notice of the application informing them of their right to be heard thereon.

**(3A)** Every occupier of retirement village land to which the application relates and every other person who appears to the court to have a sufficient interest in the matter of the application is entitled—

- (a) to be joined as a party to the proceedings;
- (b) to be heard on the matter of the application.

**(4)** If the court that hears the matter of the application is satisfied—

- (a) that the court order on which the application is founded remains unsatisfied and is not likely to be satisfied by any other recourse

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open to the applicant; and

- (b) that—
- (i) all the residents of retirement village land subject to the statutory charge have consented to the making of the application; or
  - (ii) it is in the best interests of all the residents of retirement village land subject to the statutory charge that the application be granted;

the court may order a sale of the retirement village land subject to the statutory charge (by auction, tender or private treaty as the court thinks fit to order) and may appoint a person to act as vendor's agent to arrange, negotiate and complete the sale in accordance with the court's order and jurisdiction is conferred on the Supreme Court accordingly.

(5) An order for the sale of retirement village land shall be sufficient authority for the sale of the estate, title and interest therein of the owner of the retirement village land free of all existing encumbrances liens and interests except such encumbrances liens and interests (other than the statutory charge created under section 33 to which the application related) as the court thinks should be preserved and specifies in its order, notwithstanding the existence of any caveat affecting the land or the exercise of any lien on the relevant instrument of title or the provisions of any other Act and the vendor's agent appointed by the court is empowered to pass and convey to the purchaser that estate, title and interest.

(6) The proceeds of sale of retirement village land pursuant to a court order made upon an application under subsection (1) shall be applied as follows—

- (a) firstly, in payment of the costs of the sale and the applicant's costs in seeking an order for sale of the land;
- (b) secondly, in payment of moneys duly payable under any mortgage or charge that ranks in priority ahead of the statutory charge created under section 33 and to which the application related, being a mortgage or charge to which the land sold is not to continue to be subject following the sale;
- (c) thirdly, in satisfaction of the court order on which the application was founded;

- (d) fourthly, in payment of refunds of ingoing contributions payable to persons, whose whereabouts are known, pursuant to residence contracts made under the scheme for the village or pursuant to the scheme itself, being residence contracts or a scheme that are or is not to continue in being in relation to the land sold following the sale;
- (e) fifthly, in payment of moneys payable under any mortgage or charge that ranks in priority after the statutory charge created under section 33 and to which the application related, being a mortgage or charge to which the land sold is not to continue to be subject following the sale;
- (f) sixthly, in payment to or at the direction of the person who was owner of the retirement village land immediately before the sale.

### **Extinguishment of charge**

**37.** A statutory charge created under section 33—

- (a) shall be extinguished in respect of the retirement village land subject to it upon its release by the registrar pursuant to this part; and
- (b) shall be extinguished in respect of retirement village land subject to it that is sold under a court order made under section 36 upon the sale of that land under the order, except where the land is to continue to be used for the purposes of a retirement village.

### **Where land ceases to be retirement village land**

**38.(1)** Where land has wholly ceased to be used for the purposes of a retirement village the person who controlled the operation of the scheme for the retirement village on the land may apply in or to the effect of the prescribed form to the registrar to release the statutory charge created under section 33 to which the land is subject.

**(2)** Upon making such an application the applicant shall cause to be given to each person currently residing on the land who was a resident there when the land was being used for the purposes of a retirement village a notice in writing informing the person—

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- (a) that the application has been made for release of the statutory charge; and
- (b) what the consequences to the person will be if the statutory charge is released; and
- (c) that the person is entitled to lodge with the registrar an objection in writing to release of the statutory charge within 60 days of the receipt by the person of the notice.

(3) When the applicant has complied with the provisions of subsection (2) the applicant shall lodge with the registrar—

- (a) a statutory declaration made by the applicant as to—
  - (i) the facts of the applicant's compliance; and
  - (ii) whether the applicant has any knowledge or reason to suspect that any person has commenced or is likely to commence proceedings leading to enforcement of the charge under section 36; and
- (b) a copy of the notice (if any) given to residents in compliance with subsection (2).

(4) If the registrar is satisfied that—

- (a) an application for release of a statutory charge duly made to the registrar is one permitted by this section; and
- (b) the applicant has complied as necessary with subsections (2) and (3); and
- (c) having regard to any objections by residents lodged with the registrar within the period of 60 days referred to in subsection (2), it is appropriate to grant the application;

the registrar shall, by written notice lodged with the public officer to whom notice of the statutory charge was given under section 33, give notice that the statutory charge is no longer effective.

**Land to be excised from retirement village land**

**39.(1)** If the person who controls the operations of a scheme for a retirement village proposes that part of the land used for the purposes of the village should cease to be so used, the person may apply in or to the effect

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of the prescribed form to the registrar to release the statutory charge created under section 33 to which the land is subject, so far as it relates to that part.

(2) Upon making such an application the applicant shall cause to be given to each resident of the retirement village a notice in writing informing the resident—

- (a) that the application has been made for release of the statutory charge so far as it relates to the part in question; and
- (b) what the consequences to the resident will be if the statutory charge is released; and
- (c) that the resident is entitled to lodge with the registrar an objection in writing to release of the statutory charge within 60 days of the receipt by the resident of the notice;

and identifying for the resident the part in question.

(3) When the applicant has complied with the provisions of subsection (2) the applicant shall lodge with the registrar—

- (a) a statutory declaration made by the applicant as to—
  - (i) the facts of the applicant's compliance; and
  - (ii) whether the applicant has any knowledge or reason to suspect that any resident has commenced or is likely to commence proceedings leading to enforcement of the charge under section 36; and
- (b) a copy of the notice given to residents in compliance with subsection (2).

(4) If the registrar is satisfied that—

- (a) an application for release of a statutory charge duly made to the registrar is one permitted by this section; and
- (b) the applicant has complied with subsections (2) and (3); and
- (c) the part to which the application relates is identifiable by an existing plan of survey from the rest of the land used for the purposes of the retirement village; and
- (d) having regard to any objections by residents lodged with the registrar within the period of 60 days referred to in subsection (2)



it is appropriate to grant the application;

the registrar shall, by written notice lodged with the public officer to whom notice of the statutory charge was given under section 33, give notice that the statutory charge, so far as it relates to the part in question is no longer effective.

### **Public officer's duty concerning release of charge**

**40.(1)** The public officer to whom is given notice under section 38 or 39 that a statutory charge created under section 33 is no longer effective shall, upon the request of the registrar to release the charge, cause to be made in the appropriate register maintained by the public officer all such entries as are necessary to record the release of the charge in respect of the land specified in the notice.

**(1A)** Subsection (1) shall be given effect notwithstanding that there exists a caveat affecting the land in respect of which release of the charge is sought.

**(2)** A notice given under section 38 or 39 to a public officer and a request to release a statutory charge created under section 33 are exempt from the payment of stamp duty under the *Stamp Act 1894* and no fees are payable in connection with giving effect to subsection (1) in respect thereof.

## **PART 5—SECURITY OF TENURE OF RESIDENTS IN RETIREMENT VILLAGES**

### **Residents' deemed interest in land**

**41.(1)** A resident of a retirement village if the resident has not otherwise an estate or interest in the part of the retirement village land on which the resident is entitled to reside shall, for the purposes of this part, be deemed to be seised of an interest in the part of the retirement village land on which the resident is entitled to reside pursuant to a residence contract or which the resident is entitled to use pursuant to a residence contract in connection with the resident's occupancy of any part of the retirement village land.

(2) A person who is ordinarily a resident of a retirement village shall be taken to remain a resident of that part of the village ordinarily occupied by the resident notwithstanding the resident's temporary absence therefrom, unless it be shown that the resident has abandoned his or her entitlement to reside therein or that the residence contract pursuant to which the resident was a resident therein has been duly rescinded or discharged.

(3) An interest in land deemed pursuant to subsection (1) to be held by any person is not an interest sufficient to entitle that person to prohibit the sale, mortgage or other dealing with the retirement village land or any part thereof by means of a caveat under the *Land Title Act 1994*.

### **Right to apply for injunction**

**42.(1)** If a resident of a retirement village—

- (a) is threatened with removal or is removed from the retirement village; or
- (b) is threatened with deprivation or is deprived of the resident's entitlement to reside on that part of the retirement village land that the resident is entitled to occupy or use pursuant to a residence contract or the scheme for the village; or
- (c) is threatened with restriction of or is restricted in the resident's use of the retirement village land in accordance with a residence contract or the scheme for the village; or
- (d) is threatened with or suffers conduct that can be reasonably said to interfere with peaceful enjoyment of an entitlement referred to in paragraph (b);

the resident may make application to the Supreme Court for grant of an injunction under this part or may apply to the registrar to act in the resident's stead in making application to the Supreme Court for grant of an injunction under this part.

(2) An application to the registrar shall be in the approved form.

(2A) A person who, in an application made to the registrar under subsection (1), furnishes information that is false and which—

- (a) the person knows to be false; or

(b) the person furnishes without caring whether it is true or false; commits an offence against this Act.

(3) The registrar may, upon an application made to the registrar under subsection (1), having regard to the physical, mental and economic condition of the applicant and the alleged facts of the case, agree to act in the stead of the applicant in making application to the Supreme Court for an injunction under this part.

(4) If the registrar agrees to act in the stead of an applicant the costs of and associated with making application to the Supreme Court shall be costs of the registrar.

### **Jurisdiction to grant injunction**

**43.(1)** Where upon application made to it under section 42 the Supreme Court is satisfied—

- (a) that the applicant or the person in whose stead the registrar is acting in making the application is a resident of a retirement village; and
- (b) that the applicant or person referred to in paragraph (a) is seised of an interest in that part of retirement village land to which the application relates; and
- (c) that the removal, deprivation, restriction or conduct (suffered or threatened) to which the application relates—
  - (i) is or would be a breach of the relevant residence contract or the scheme for the retirement village in question and is not in the interests of the applicant or person referred to in paragraph (a); or
  - (ii) is not or would not be justified for any adequate reason;

the court may grant an injunction in such terms and for such period as the court determines to be appropriate to the circumstances, and jurisdiction is conferred on the Supreme Court accordingly.

(1A) Without limiting the generality of subsection (1), the court, in determining whether or not to grant an injunction, may have regard to the rights and interests of all persons who may be affected by the granting of an

injunction.

(2) Where application is made to the Supreme Court under section 42—

- (a) notice shall be given to the manager (if any) of the retirement village concerned; or
- (b) the court, if satisfied that the delay caused by giving notice would or might entail irreparable or serious mischief, may dispense with the giving of that notice and hear and determine the application *ex parte*.

(3) Application for consolidation of 2 or more applications made to the Supreme Court under section 42 may be made by any person who in the court's opinion has an interest in the matter of each of those applications.

## **PART 6—OPERATION OF SCHEMES FOR AND CONDUCT OF RETIREMENT VILLAGES**

### **Insolvent person debarred**

**44.(1)** A person who is an insolvent under administration—

- (a) shall not participate in promotion of a scheme for a retirement village; and
- (b) shall not participate in selling residence rights in a retirement village; and
- (c) shall not be concerned, directly or indirectly, in management of a retirement village.

Maximum penalty—40 penalty units.

(2) In subsection (1)—

**“insolvent under administration”** has the meaning given by the Corporations Law.

**Subsisting conviction acts as bar**

**45.** A person against whom there stands a conviction, wherever incurred, of—

- (a) an offence involving fraud or dishonesty punishable, at the time the conviction is or was recorded, by imprisonment for a period not less than 3 months; or
- (b) an offence involving physical violence to the person of another—
  - (i) shall not participate in promotion of a scheme for a retirement village; and
  - (ii) shall not participate in selling residence rights in a retirement village; and
  - (iii) shall not be concerned, directly or indirectly, in management of a retirement village.

Maximum penalty—40 penalty units.

**Records and accounts of retirement villages**

**46.(1)** A person controlling the operation of a scheme for a retirement village—

- (a) shall cause to be kept and retained for the retention period at a place in Queensland such records and books of financial and other records relating to the operation of the scheme as are prescribed by the regulations or, so far as the regulations do not so prescribe, as truly reflect the operation of the scheme; and
- (b) shall cause to be made such audits of the scheme as are prescribed by the regulations.

Maximum penalty—40 penalty units.

**(2)** A person who manages a retirement village—

- (a) shall cause to be kept and retained for the retention period at a place in Queensland such records and books of financial and other records relating to the affairs of the village as are prescribed by the regulations or, so far as the regulations do not so prescribe, as truly reflect the conduct of the village; and

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- (b) shall cause to be made such audits of the retirement village as are prescribed by the regulations.

Maximum penalty—40 penalty units.

(3) A person who falsifies, mutilates or destroys any record relating to the operation of a scheme for a retirement village or the conduct of a retirement village commits an offence against this Act.

Maximum penalty—40 penalty units.

- (4) For the purposes of this section—

**“retention period”** means—

- (a) in relation to a financial record—the period of 7 years after the year in which that record is made;
- (b) in relation to any other record—the period of 7 years after the year in which the record is made or came into possession by or on behalf of the person required by this section to retain the record.

(5) Where by this Act a person is required to produce or furnish any record, contract or other document it is to be construed that the person shall produce or furnish it in writing in documentary form.

## **PART 7—RESIDENTS’ PARTICIPATION**

### **Annual meetings**

**47.(1)** In each year the manager of a retirement village shall convene an annual meeting of all residents of the retirement village.

Maximum penalty—40 penalty units.

(2) Where the manager of a retirement village is a body corporate constituted by the residents of the retirement village and there is a requirement of law that the body corporate hold an annual general meeting the duty prescribed by subsection (1) shall be sufficiently discharged in a particular year if the body corporate holds in that year a general meeting in compliance with the requirement of law and at that meeting no vote was cast under the authority of a proxy given by a resident of the retirement

village, before or after becoming such a resident, at the behest of a person controlling the operation of the scheme for the retirement village or of the person's agent.

### **Proceedings at annual meetings**

**48.(1)** The person who operates a scheme for a retirement village shall present or cause to be presented to the annual meeting a statement in writing in the approved form signed by that person and setting out the following—

- (a) whether all refundable ingoing contributions that became payable during the prescribed period have been duly paid and, if any has not, the amount or amounts outstanding, details of the delay and the reasons for the delay;
- (b) whether the person who operates the scheme for the retirement village is aware of anything whereby the person may be prevented from meeting debts as and when they will fall due in the period of 12 months from the end of the prescribed period, and if the person is aware of any such matter, details of the matter.

Maximum penalty—40 penalty units.

**(2)** The manager of a retirement village shall present or cause to be presented to the annual meeting a financial statement signed by the manager showing in respect of the prescribed period—

- (a) the source of income received by way of charges for the provision of goods and services for the village by the manager; and
- (b) details of expenditure on the provision of goods and services for the village by the manager, including the amounts spent and the items to which the expenditure relates; and
- (c) details of the provision (if any) made for future extraordinary or major works in the village; and
- (d) details of anticipated expenditure on goods and services for the village; and
- (e) details of any proposed increases in services charges to be paid by residents; and

- (f) details of any special levies that it is proposed to ask residents to pay.

Maximum penalty—40 penalty units.

(3) A statement to be presented under subsection (2) shall be audited by a person registered as an auditor under the Corporations Law, part 9.2 unless, at the annual meeting held in the year immediately preceding the year in which the statement is to be presented, the residents present at that meeting decide by special resolution to dispense with the auditing requirements.

(4) The requirements of this section are in addition to those of any other Act that prescribes for the holding of a general meeting of the members of any body.

### **Residents' committee**

**49.(1)** This section and sections 50 and 51 do not apply in relation to a retirement village in respect of which there is a body corporate subject to the *Building Units and Group Titles Act 1980* or the *Body Corporate and Community Management Act 1997*.

(2) The residents of a retirement village may establish and maintain, by election conducted amongst themselves, a residents' committee.

(3) If a residents' committee is established, the following provisions of this subsection apply to it—

- (a) a member thereof shall hold office for 1 year from the date of the member's election but is eligible for reappointment;
- (b) a member thereof may be removed at any time by special resolution of a meeting open to all residents in the retirement village who are empowered by subsection (2) to maintain the committee;
- (c) it may conduct its meetings as it thinks proper;
- (d) it may form and determine the procedure of subcommittees;
- (e) it or any of its subcommittees may call a meeting of all residents in the retirement village.

(4) A residents' committee shall give notice in writing to both the person who operates the scheme for the retirement village and the manager, giving



particulars of all complaints or proposals raised at a meeting of the residents' committee in respect of which the committee decides that further action should be taken.

### **By-laws**

**50.(1)** Notwithstanding anything to the contrary contained in any residence contract or other contract made by a resident or prospective resident of a retirement village or contained in a by-law—

- (a) in the case of an existing retirement village—a meeting of residents of the village may, by special resolution—
  - (i) make by-laws that are not inconsistent with by-laws made prior to the commencement of this section;
  - (ii) alter or revoke by-laws made after the commencement of this section;
- (b) in the case of any other retirement village—a meeting of residents of the village may, by special resolution, make, alter or revoke by-laws.

**(2)** A person who operates the scheme for a retirement village and the manager of the retirement village are entitled to attend any meeting of the residents of the retirement village held for the purpose of making, altering or revoking a by-law pursuant to subsection (1).

**(2A)** Subsection (2) shall not be construed to entitle that person or manager to address a meeting referred to in that subsection.

**(3)** The powers conferred by subsection (1) are in addition to and not in substitution for any other powers that exist in respect of the making, alteration or revocation of by-laws.

### **Increases in services charges**

**51.(1)** In this section—

**“adjusted services charge”** means a services charge as varied in accordance with this section.

**“consumer price index”** means the table described as ‘Consumer Price Index Numbers—All Groups, Brisbane’ published by the Australian

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Statistician under the *Census and Statistics Act 1905* (Cwlth).

“**quarter**” means each period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

“**services charge**” means a recurring charge made by the manager of a retirement village and payable by a resident of the retirement village in consideration of the provision of goods or services or both by the manager to the resident.

“**special levy**” means a payment which is made by a resident of a retirement village to the person who operates the scheme for the village or to the manager of the village and which is not—

- (a) a services charge; or
- (b) a payment made in consideration of residence in the village.

(2) Notwithstanding anything to the contrary in a residence contract, any other contract made by or on behalf of a resident or prospective resident of a retirement village or the by-laws a resident of a retirement village is not required to pay a services charge to the extent to which it is greater than the adjusted services charge.

(3) An adjusted services charge shall be determined in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

- (a) for a retirement village that has levied a services charge on or before the date of assent of this Act—

“**A**” means the services charge payable for the quarter immediately preceding the date on which this Act is assented to by or on behalf of Her Majesty.

“**B**” means the consumer price index last published at the time the adjusted services charge is to be determined.

“**C**” means the consumer price index published in respect of the quarter immediately preceding the date on which this Act is assented to by or on behalf of Her Majesty; and

- (b) for any other retirement village—

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“**A**” means the services charge payable for the first completed quarter of the second year of the operation of the retirement village.

“**B**” means the consumer price index last published at the time the adjusted services charge is to be determined.

“**C**” means the consumer price index published in respect of the first completed quarter of the second year of the operation of the retirement village.

(3A) The amount of an adjusted services charge determined in accordance with the appropriate formula prescribed by subsection (3) shall not be calculated beyond 1 decimal point.

(4) A manager of a retirement village is not liable in any civil action for breach of contract in respect of the manager’s failure to provide goods and services to residents of the village if—

- (a) to cover the cost of the provision of the goods and services it would be necessary to levy a services charge greater than the adjusted services charge; and
- (b) the residents have not approved the payment of a services charge greater than the adjusted services charge; and
- (c) in all the circumstances the manager acted reasonably.

(5) Subsection (2) does not apply if the payment of a services charge that is greater than the adjusted services charge has been approved by resolution of a majority of the residents of a retirement village at a meeting of the residents or is approved by resolution of the residents’ committee.

(6) Subsection (2) does not apply to the payment of a services charge that is greater than the adjusted services charge to the extent to which the greater amount is attributable to—

- (a) rates, taxes or charges in respect of retirement village land or the use of retirement village land levied by or under an Act; or
- (b) salaries or wages payable to the manager or other person engaged in the conduct of the retirement village in accordance with an industrial award or industrial agreement made or registered under—
  - (i) the *Industrial Relations Act 1990*; or

(ii) a Commonwealth Act.

(7) Notwithstanding anything to the contrary in a residence contract, any other contract made by or on behalf of a resident or prospective resident of a retirement village or the by-laws, a resident of a retirement village is not required to pay a special levy unless—

- (a) the residents have not been required to pay a special levy within the period of 12 months preceding; and
- (b) the special levy has become payable in 1 of the following ways—
  - (i) the expenditure that the levy is intended to meet must be incurred by reason of requirements of or under an Act or of an order of a court;
  - (ii) the residents of the retirement village have authorised the making of the special levy by special resolution passed at a residents' meeting;
  - (iii) the residence contract, such other contract or a by-law provides that the residents of the retirement village are responsible for the expenditure or the class of expenditure that the special levy is intended to meet.

## **PART 8—MISCELLANEOUS PROVISIONS**

### **Powers of registrar etc.**

**52.(1)** The registrar and any officer authorised in writing by the registrar to assist the registrar for the purposes of this Act—

- (a) may, subject to subsection (2), enter any retirement village and any premises therein and make inquiry into the affairs of the village and the operation of the scheme for the village and into matters connected therewith; and
- (b) may, subject to subsection (2), enter any premises or place where he or she suspects on reasonable grounds any financial or other record, contract or other document relating to the affairs of a retirement village or the operation of the scheme for a village are

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to be found; and

- (c) may require any person who has under his or her control any such financial or other record, contract or other document to produce it to him or her or as he or she directs; and
- (d) may inspect and make copies of and extracts from any such financial or other record, contract or other document; and
- (e) may seize and retain any financial or other record, contract or other document where he or she considers it necessary to do so for the purpose of possible proceedings against any person in respect of an offence, whether against this Act or any other Act; and
- (f) may require any person whom he or she believes to possess appropriate knowledge to furnish to him or her or as he or she directs information concerning any financial or other record, contract or other document relating to the affairs of a retirement village or the operation of the scheme for a retirement village or any item therein or concerning any transaction in connection with a retirement village or the scheme for a retirement village.

**(2)** The power of entry conferred by subsection (1) shall not be exercised without the consent of the occupier concerned or a search warrant that authorises such entry except where the registrar has reasonable cause to suspect that entry forthwith is necessary to prevent the destruction of evidence that an offence has been committed against this Act.

**(2A)** A justice who is satisfied upon the complaint of the registrar or any officer authorised by the registrar to assist the registrar for the purposes of this Act that there is reasonable cause to suspect that in any place there is to be found evidence that an offence against this Act has been committed may issue his or her warrant directed to the complainant to enter that place with such assistance as he or she considers necessary for the purpose of exercising therein the powers conferred on him or her by this Act.

**(2B)** The warrant shall be, for a period of 1 month from the date of its issue, lawful authority for the person to whom it is directed and all persons acting in aid of him or her—

- (a) to enter the place to which the warrant relates; and
- (b) to exercise therein the powers conferred on him or her by this

Act.

(3) Where any financial or other record, contract or other document has been seized and retained pursuant to subsection (1) the person from whose possession it was seized shall be entitled to obtain, free of any charge and within a reasonable time, a copy certified by the registrar as correct and in all proceedings before courts such certified copy shall be received in evidence as if it were the original thereof.

(4) Where in the exercise of the registrar's powers under subsection (1) the registrar or any officer authorised to assist the registrar requires a solicitor or barrister-at-law to disclose a privileged communication made by or on behalf of or to that solicitor or barrister-at-law in his or her capacity as a solicitor or barrister-at-law, the solicitor or barrister-at-law is entitled to refuse to comply with the requirement unless the person to whom or by or on behalf of whom the communication was made agrees to the solicitor or barrister-at-law complying with the requirement.

(5) Where the solicitor or barrister-at-law so refuses to comply with a requirement, the solicitor or barrister-at-law shall, if the solicitor or barrister-at-law knows the name and address of the person to whom or by whom the representation was made, forthwith furnish that name and address in writing to the registrar or the officer authorised to assist the registrar.

### **Duties of persons under Act**

**53.(1)** A person shall—

- (a) provide to the registrar or any officer authorised by the registrar to assist the registrar for the purposes of this Act full and free access to all financial or other records, contracts and other documents relating to the affairs of a retirement village or to the scheme for a retirement village; and
- (b) comply with a requisition directed to the person pursuant to section 52;

unless the person has a lawful excuse for the person's failure to do so.

Maximum penalty—40 penalty units.

**(1A)** Except as is provided by section 52(4) and (5), protection of the

confidentiality of any financial or other record, contract or other document or of the identity or affairs of any person does not constitute such lawful excuse.

**(1B)** A failure by the registrar or officer seeking such access or making such requisition to produce evidence of his or her identity and, in the case of an officer, the officer's authority upon demand therefor constitutes such lawful excuse.

**(2)** Where a person who produces any financial or other record, contract or document to comply with subsections (1) to (1B) has objected to doing so on the ground that to do so might incriminate the person in the commission of an offence against this Act the record, contract or document shall not be admissible in evidence upon a charge against that person of an offence against this Act other than an offence defined in subsection (3)(b).

**(3)** A person shall not—

- (a) obstruct, hinder, threaten or intimidate the registrar or any officer authorised by the registrar to assist him or her for the purposes of this Act in the exercise of his or her powers or the discharge of his or her functions under this Act or any person acting in aid of the registrar or any such officer; or
- (b) in response to a requisition directed to the person pursuant to this Act for information, furnish information that is, to the person's knowledge, false or misleading; or
- (c) retake or attempt to retake any financial or other record, contract or other document seized pursuant to this Act.

Maximum penalty—40 penalty units.

**(4)** Where under any provision of this Act 2 or more persons are subject to the same obligation it shall be sufficient compliance with that provision if 1 of those persons discharges the obligation, whereupon the other person or persons shall be free of the obligation to the extent that it has been so discharged.

### **Offence to advertise unlawful retirement village**

**54.** If an advertisement published in respect of any premises—

- (a) describes those premises as a retirement village; or

- (b) can be reasonably construed as stating or implying that those premises are or are to be conducted as a retirement village;

a person who instructed the publication of the advertisement commits an offence against this Act unless—

- (c) there exists in relation to those premises a scheme for a retirement village approved by the registrar; or
- (d) the consent in writing of the registrar has first been obtained.

Maximum penalty—40 penalty units.

### **General offence provision**

**55.** Proceedings in respect of an offence against this Act shall be taken in a summary way under the *Justices Act 1886*, within 1 year after the commission of the offence or within 6 months after the offence comes to the knowledge of the complainant, whichever period is the later to expire, upon the complaint of the registrar or a person authorised by the registrar in writing in that behalf.

### **Evidentiary provisions**

**56.(1)** Judicial notice shall be taken of a signature purporting to be that of the registrar.

**(2)** A certificate purporting to be that of the registrar as to any of the following matters shall, upon its production in any proceedings, be accepted as evidence of the matters contained in the certificate—

- (a) that a particular scheme for a retirement village has or has not been approved by the registrar as at a time specified in the certificate;
- (b) the conditions to which an approval by the registrar of a particular scheme for a retirement village is or was subject at a time specified in the certificate;
- (c) the documents that are or were, at a time specified in the certificate, registered under section 23 in respect of a particular scheme for a retirement village;
- (d) that a requisition made under this Act was directed to a person



specified in the certificate and, where the requisition was oral, the substance of the requisition;

- (e) that a response was or was not made by a person to whom a requisition made under this Act was directed and, if a response was made, the nature and extent of that response;
- (f) any matter within the control or knowledge of the registrar and relevant to the proceedings.

(3) A writing certified by the registrar to be a true and correct copy of any financial or other record, contract or document shall, upon its production in any proceedings, be accepted as evidence as if it were the original thereof.

(4) In proceedings in respect of an offence against this Act—

- (a) it shall not be necessary to prove the authority of the complainant to take the proceedings unless the absence of such authority is alleged; and
- (b) it shall not be necessary to prove the authority of any officer authorised by the registrar to assist the registrar for the purposes of this Act.

### **Address for service**

**57.(1)** An applicant to the registrar for the purposes of this Act shall, in the applicant's application, specify an address for service of documents on the applicant.

(2) Any document to be given for the purposes of this Act to a person who makes or has made an application to the registrar shall be taken to have been duly given to the person if—

- (a) it is served personally on the person; or
- (b) it is left at or sent by prepaid post addressed to the person at the address for service specified in the person's application.

### **Act's remedies not exclusive**

**58.** The provision by this Act of a remedy to a party to a contract is without prejudice to any other remedy had by that party under the law apart from this Act.

**Report on operation of Act**

**59.** The department's annual report for a financial year must include a report about the operation of this Act during the year.

**Regulations**

**60.(1)** The Governor in Council may make regulations under this Act.

**(2)** A regulation may be made with respect to any of the following matters—

- (a) the form and content of applications under this Act for the registrar's approval;
- (b) the form and content of advertisements and documents to be published for the information of the public about a scheme for a retirement village;
- (c) the form of register to be kept by the registrar under this Act and the way of keeping it;
- (d) the accounts and records to be kept about the operation of a scheme for a retirement village and the way of keeping the accounts and records;
- (e) the matters for which fees are payable under this Act, the amount of the fees, the persons who are liable to pay fees, when the fees are payable, and the recovery of unpaid amounts of fees;
- (f) how the registrar and officers authorised by the registrar to help the registrar are to perform functions or exercise powers under this Act;
- (g) prescribing offences for contraventions of a regulation and fixing a maximum penalty of not more than 10 penalty units for a contravention.

**Approval of forms**

**61.** The chief executive may approve forms for use under this Act.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 15 December 1997. Future amendments of the Retirement Villages Act 1988 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

## 4 Table of earlier reprints

### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 69 of 1994	12 January 1995
2	to Act No. 58 of 1995	7 June 1996
2A	to Act No. 79 of 1996	3 March 1997
2B	to Act No. 28 of 1997	8 August 1997

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Changed citations and remade laws	1
Changed names and titles	1
Corrected minor errors	1
Obsolete and redundant provisions	1, 2
Renumbered provisions	1

## 6 List of legislation

### **Retirement Villages Act 1988 No. 79**

date of assent 11 November 1988

ss 1–2 commenced on date of assent

remaining provisions commenced 1 November 1989 (proc pubd gaz 28 October 1989 p 1593)

as amended by—

### **Statute Law (Miscellaneous Provisions) Act 1991 No. 97 ss 1–3 sch 2**

date of assent 17 December 1991

commenced on date of assent

### **Justice Legislation (Miscellaneous Provisions) Act 1992 No. 40 ss 1–2, 163 sch 1**

date of assent 14 August 1992

commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–3 sch 1**

date of assent 7 December 1992

commenced on date of assent

**Consumer Law (Miscellaneous Provisions) Act 1993 No. 82 pts 1, 9, s 3 sch 1**

date of assent 17 December 1993

s 3 sch 1 (amendments 2, 3, 5 and 6) commenced 7 March 1994 (1994 SL No. 68)

remaining provisions commenced on date of assent

**Building Units and Group Titles Act 1994 No. 69 ss 1–2, 229 sch 2**

date of assent 1 December 1994

ss 1–2 commenced on date of assent

remaining provisions never proclaimed into force and rep 1995 No. 58 s 5(1) sch 7

**Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2**

date of assent 28 November 1995

commenced on date of assent

**Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1**

date of assent 28 November 1995

commenced on date of assent

**Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 29**

date of assent 12 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 28 February 1997 (1997 SL No. 35)

**Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3**

date of assent 22 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 13 July 1997 (1997 SL No. 210)

**Justice and Other Legislation (Miscellaneous Provisions) Act (No. 2) 1997 No. 82 ss 1–3 sch**

date of assent 5 December 1997

commenced on date of assent

**7 List of annotations****Commencement**

s 2 om R2 (see RA s 37)

**Arrangement**

s 3 om 1991 No. 97 s 3 sch 2

**Limited preservation of authority of Commissioner for Corporate Affairs**

s 5 om 1993 No. 82 s 3 sch 1

**Interpretation**s 6 def “**approved form**” ins 1995 No. 58 s 4 sch 1def “**existing retirement village**” amd 1995 No. 57 s 4 sch 2def “**Minister**” om 1991 No. 97 s 3 sch 2

def “**prescribed period**” sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)  
amd 1997 No. 28 s 295 sch 3

def “**registrar**” sub 1995 No. 58 s 4 sch 1

def “**retirement village**” amd 1993 No. 82 s 46

def “**retirement village land**” sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7); 1997 No. 28 s 295 sch 3

### **Registrar**

s 7 amd 1993 No. 82 s 3 sch 1  
sub 1995 No. 58 s 4 sch 1

### **Delegation by registrar**

s 8 sub 1993 No. 82 s 3 sch 1

### **Appointments and signatures need not be proved**

s 9 amd 1993 No. 82 s 3 sch 1

### **Exemptions**

s 12 sub 1992 No. 68 s 3 sch 1

### **Withdrawal or variation of exemption**

s 13 sub 1992 No. 68 s 3 sch 1

### **Notification of retirement villages**

s 15 om 1993 No. 82 s 3 sch 1

### **Promotion of retirement village requires approval**

s 16 amd R1 (see RA s 39)

### **Registrar may impose conditions on approval**

s 18 amd 1993 No. 82 s 3 sch 1

### **Residence contracts to be under approved scheme**

s 22 amd R1 (see RA s 39)

### **Public information documents incorporated in contracts**

s 23 amd 1993 No. 82 s 3 sch 1

### **Property disposed of pending rescission under s 27(3)**

s 28 amd 1993 No. 82 s 3 sch 1

### **Creation of charge over retirement village land**

s 33 amd 1995 No. 58 s 4 sch 1

### **Where land ceases to be retirement village land**

s 38 amd 1995 No. 58 s 4 sch 1

### **Land to be excised from retirement village land**

s 39 amd 1995 No. 58 s 4 sch 1

### **Right to apply for injunction**

s 42 amd 1995 No. 58 s 4 sch 1

### **Insolvent person debarred**

s 44 amd 1993 No. 82 s 3 sch 1

**Subsisting conviction acts as bar**

s 45            amd 1993 No. 82 s 3 sch 1

**Records and accounts of retirement villages**

s 46            amd 1993 No. 82 s 3 sch 1

**Annual meetings**

s 47            amd 1993 No. 82 s 3 sch 1

**Proceedings at annual meetings**

s 48            amd 1993 No. 82 s 3 sch 1; 1995 No. 58 s 4 sch 1

**Residents' committee**

s 49            amd 1991 No. 97 s 3 sch 2; 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7); 1997 No. 28 s 295 sch 3

**Increases in services charges**

s 51            amd 1992 No. 40 s 163 sch 1; 1993 No. 82 s 3 sch 1

**Powers of registrar etc.**

s 52            amd 1997 No. 82 s 3 sch

**Duties of persons under Act**

s 53            amd 1993 No. 82 s 3 sch 1

**Offence to advertise unlawful retirement village**

s 54            amd 1993 No. 82 s 3 sch 1; 1997 No. 82 s 3 sch

**General offence provision**

s 55            amd 1993 No. 82 s 3 sch 1

**Evidentiary provisions**

s 56            amd 1993 No. 82 s 3 sch 1

**Report on operation of Act**

s 59            sub 1996 No. 79 s 105

**Regulations**

s 60            sub 1993 No. 82 s 3 sch 1

**Approval of forms**

s 61            prev s 61 ins 1992 No. 68 s 3 sch 1  
om 1995 No. 57 s 4 sch 2  
pres s 61 ins 1995 No. 58 s 4 sch 1