

RETIREMENT VILLAGES BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

The retirement village industry in Queensland has been governed by the *Retirement Villages Act 1988* which has failed to address problems which have arisen due to changes and developments in the retirement village industry over the last decade. The 1988 Act has been the subject of criticism from both village residents and operators.

Three draft Bills and a consultation policy paper have been released since December 1996. In July 1998 a working group was formed comprising representatives from key operator and resident groups which met between August 1998 and January 1999. This working group was facilitated through mediation services provided by the Alternative Dispute Resolution Branch in the Department of Justice and Attorney-General.

This Bill is based on the amendments proposed in the *Retirement Villages Bill 1997* which formed the basis of the working party's deliberations.

The provisions contained in this Bill will:

- Replace the approval process with a more streamlined registration process, provide operators with a right to appeal the Chief Executive's decision, and provide for a means to cancel registration of a retirement village scheme;
- Establish minimum requirements for residence contracts, including content of contracts, holding deposits on trust, cooling-off period, termination rights and processes for reselling a resident's right to reside in a unit;

- Ensure prospective residents are provided with relevant information before they sign residence contracts in the form of a public information document;
- Clearly outline village operator's obligations, including the establishment of separate capital replacement and maintenance reserve funds, working out paying and increasing general service charges and the cessation of personal and general service charges for former residents;
- Limit the scope of general and enduring powers of attorney given by residents to village operators;
- Clearly outline village operators' obligations in relation to insurance for the village, the provision of financial statements to residents on a quarterly and annual basis;
- Include enhanced provisions for the creation and release of statutory charges over retirement village land;
- Provide residents with opportunities to participate in the affairs of the village through the establishment of residents' committees;
- Introduce a three-stage dispute resolution procedure, including the establishment of a new Retirement Village Dispute Tribunal.

Administrative Cost

The introduction of a Retirement Village Tribunal to deal with disputes will place additional functions on the Office of Fair Trading and this will require additional funding. The imposition of a nominal application fee on persons seeking an order from the Tribunal is not designed to cover costs but merely act as a deterrent to frivolous complaints.

Fundamental Legislative Principles

The majority of the provisions in the Bill are intended to apply to contracts entered into before its commencement. This has been examined with particular care by the Office of the Queensland Parliamentary Counsel in the drafting process.

Consultation

Consultation occurred with the following government agencies and non-government organisations:

Government agencies:

Department of Employment, Training and Industrial Relations

Department of Justice and Attorney-General

Department of Natural Resources

Department of the Premier and Cabinet

Department of State Development

Office of the Queensland Parliamentary Counsel

Queensland Treasury

Queensland Treasury National Competition Policy Unit

Non-government organisations:

Michael Isaac – Aged Care Queensland Incorporated

J. Hayhoe – C/- Argyle Garden Village

ARQRV

Assisted Living Association

Ronald Padison Association of Independent Retirees

Cliff Grimley and Greg Chapman—Association of Residents of Queensland Retirement Villages

Association of Residents of Queensland Retirement Villages

Heather Livesey – BallyCara Village

F.J. McCaul – C/- BallyCara Village

Maurice McNamara – BallyCara Village

Ada Morgan – BallyCara Village

Derek Sutherland – Barwicks Wisewoulds, Lawyers

Mrs C.R. Birkbeck

Liz Bullock – Buderim Gardens Village
Douglas Field- Buderim Gardens Village
Ms Jean Lehmann – Buderim Gardens Village
Betty Weller – C/- Buderim Gardens Village
Caxton Legal Centre
Kevin Hogan—Cleveland
Elizabeth Crow
Canon W.A. Doak
Ian Grevis-James – Drayton Villas
Mr Wood – Earle Haven Retirement Village
P.G. Phillips – Edenlea Village
Mr A. Viney – Edenlea Village
P.J. Van Epentwysen
Jean Mackay – C/- Equity Units
Residents – Everleigh Village
Mavis Jones – C/- Glenfield Grange Village
Mr Geoff Campbell – Green Group of Companies
Aileen Hawes
Charles Hawtrey – Hawtrey Holdings Pty Ltd
Jack Fraser – Heritage Gardens Village
William Grime – Immanual Gardens
Mark Dwyer – Institute of Chartered Accountants
Mr John Isele
Frank Lyndon – Jonoah Gardens
Ruth Kapernick
Diana Wilson – Laurel Springs
Leary & Partners, Quantity Surveyors
T.A. Morris – Lindsay Gardens

Paul Lucas – Representing Manly Retirement Village

Louise Lucas – Moreton Mews

Mrs Patricia Palmes

J. & J. Beck – Palm Springs Village

Malcolm Arnold Peninsula Palms Village

Dennis Tonikins – Peninsula Gardens Village

Joan Petherick

Beverley Potter

Heather Baldwin—Queensland Law Society

J.G. Orr – Queensland Villages Pty Ltd t/as Brookland Village

R.F. Robertson

Ross Williams – Runaway Bay Village

J.A. Carter – Southern Cross Village

Mr Rourke – Sovereign Gardens Retirement Village

Clare Spear

Josephine Stephens

M.R. Streeting – Streeting Lawyers

Mr D.R. Torrisi – Sugarland Gardens & Fraser Shores Village

P.R. Broome – Tranquility Gardens Residents' Committee

Torbay Hervey Bay Retirement Village

Peter O'Shea – TriCare Limited

Joy Waterhouse

Judith Wilson

NOTES ON PROVISIONS

PART 1 – PRELIMINARY

Division 1—Introduction

Short title

Clause 1 sets out the short title of the Act.

Commencement

Clause 2 provides for the commencement of the Act on a date to be fixed by proclamation.

Division 2—Objects

Main objects

Clause 3 sets out the main objects of the Act. The main object of the Act is to provide a regulatory framework for the operation of the retirement village industry that achieves an appropriate balance between the need to regulate for the protection of retirement village residents and the continued growth and viability of the retirement village industry in the State. The objects provide that fair trading and best practice standards should be promoted and encouraged.

Division 3—Interpretation and basic concepts

Definitions

Clause 4 indicates that definitions are set out in the dictionary in the schedule to the Act.

What is a “retirement village”

Clause 5(1) defines “retirement village” to mean premises where older community members or retired persons reside either in independent living units or serviced units under a retirement village scheme. This makes it clear that a retirement village for the purposes of the Act must be under a retirement village scheme.

Clause 5(2) excludes a site within the meaning of the *Mobile Homes Act 1989* from the meaning of “premises” in clause 5(1).

What is “retirement village land”

Clause 6 defines “retirement village land” to be land used or to be used for a retirement village and includes lots and common property within the meaning of the *Body Corporate and Community Management Act 1997*.

What is a “retirement village scheme”

Clause 7 sets out the essential elements for a retirement village scheme as being a scheme whereby a person enters into a residence contract, pays an ingoing contribution in exchange for a right to reside in a retirement village and, for the payment of a charge, that person receives one or more services in relation to the retirement village. If a scheme does not have one of these elements, it will not be considered to be a retirement village scheme.

Who is a “retirement village scheme operator”

Clause 8 provides that a person, either alone or with someone else, who controls or purports to control a retirement village scheme is a retirement village scheme operator.

Who is a “resident”

Clause 9 provides that a resident is a person who has a right to reside in a retirement village and a right to receive one or more services under a residence contract.

What is a “residence contract”

Clause 10(1) provides that a residence contract is a written contract, other than an excluded contract (which is defined in the Dictionary) between a resident and a scheme operator about residence in a retirement village.

Clause 10(2) extends the definition of residence contract to include other ancillary contracts provided the ancillary contract depends on or arises out of the residence contract or out of another ancillary contract. This ensures that all contracts in relation to services and other matters will be included in a residence contract.

Clause 10(3) sets out the mandatory elements of a residence contract. The provision allows a residence contract to either give a person an exclusive right to reside in a unit or to provide for obligations in relation to the person’s or someone else’s residence in the retirement village. A residence contract must also provide for rights in common with other residents in relation to the retirement village’s communal facilities and it must also contain a service agreement or provide for an agreement to enter into a service agreement. If a contract or if a group of contracts do not provide for all these matters, it will not be considered to be a residence contract under the terms of the Act. A residence contract must also restrict the right to disposal of the right to reside in the retirement village.

What is an “existing residence contract”

Clause 11 defines “existing residence contract” to be a residence contract existing prior to the commencement of the Act.

What is a “service agreement”

Clause 12(1) defines “service agreement” to include contracts between the scheme operator and a person whereby general services or personal services are supplied to a resident.

Clause 12(2) provides that a service agreement may be in a residence contract.

Clause 12(3) defines “general services” and “personal services”.

“General services” are those services that are supplied to all residents. Examples of general services are also given.

“Personal services” are those services that are optional and are supplied on the request of a resident. Examples of personal services are also given.

What is a “public information document”

Clause 13 provides that a public information document gives details about the retirement village scheme and must be in the form provided for in clause 74.

What is an “ingoing contribution”

Clause 14(1) defines “ingoing contribution” as being the amount that secures a resident’s right to reside in a retirement village, but does not include recurrent payments.

Clause 14(2) makes it clear that it does not matter whether the right to reside is enforceable or whether the payment secures the right or that something else is also needed to secure the right to reside.

What is an “exit fee”

Clause 15 provides that an exit fee is the amount that may be payable by a resident to a scheme operator when the resident leaves the retirement village or when the right to reside is sold. Other fees cannot be considered to be exit fees within the meaning of this term in the Act.

What is an “exit entitlement”

Clause 16 provides that an exit entitlement is the amount that may be payable by a scheme operator to a former resident under a residence contract when the resident leaves or when the right to reside is sold.

What is a “capital replacement fund”

Clause 17 provides that a capital replacement fund is the fund established under clause 91 to replace the retirement village’s capital items.

What is a “capital replacement fund contribution”

Clause 18 defines “capital replacement fund contribution” as the percentage of ingoing contribution that the scheme operator decides is payable to the fund. The contribution must be described in the public information document. This ensures that other fees cannot be included in the capital replacement fund contribution and that the amount payable must come from the scheme operator and not from a resident or former resident.

What is a “maintenance reserve fund”

Clause 19 provides that a maintenance reserve fund is the fund established under clause 97 for maintaining and repairing the retirement village’s capital items. This will cover repairs and maintenance of an infrequent or recurrent nature and will not be available for capital replacement purposes.

What is a “maintenance reserve fund contribution”

Clause 20 defines “maintenance reserve fund contribution” as being the proportion of general service charges that the scheme operator decides will be a contribution to the maintenance reserve fund. The contribution must be described in the public information document.

What is a “retirement village dispute”

Clause 21 defines “retirement village dispute” as being a dispute between a scheme operator and a resident about the parties’ rights and obligations under a residence contract or under the Act. This makes it clear that other types of disputes such as disputes between residents, will not be retirement village disputes.

What is a “retirement village issue”

Clause 22 defines “retirement village issue” to be a retirement village dispute or an application for an order by the tribunal under clauses 168 (Resident’s right to apply for an order if threatened with removal, deprivation or restriction), 169 (Resident may apply for order if given false and misleading documents), 170 (Former resident may apply for order for payment of exit entitlement) and 172 (Resident may ask chief executive to

make application for the resident).

Division 4—Operation of the Act

Application of Act

Clause 23 provides that the Act applies to retirement village schemes including schemes that are subject to the *Body Corporate and Community Management Act 1997*. The Act also applies to the scheme operator and all inducements and invitations to enter into a scheme if the retirement village is situated in Queensland or if the scheme is operated in Queensland. The Act also applies to contracts entered into before or after the commencement of the clause unless the Act specifies otherwise. This makes it clear that the Act applies to all residence contracts, including existing contracts, unless a provision in the Act provides that the Act will not apply to it.

Application of Body Corporate and Community Management Act 1997

Clause 24 provides that the Act will prevail over any inconsistency with the *Body Corporate and Community Management Act 1997* in relation to a person's rights and obligations under a retirement village scheme. The Act will only prevail to the extent of the inconsistency.

Application of Fair Trading Act 1989

Clause 25 makes it clear that the Act will not affect the operation of the *Fair Trading Act 1989* in relation to the acquisition of goods or services under a residence contract.

Certain age restrictions on residence not unlawful

Clause 26 allows a scheme operator to discriminate on the basis of age in relation to residence in a retirement village. If a scheme operator does discriminate there will be no breach of the *Anti-Discrimination Act 1991*.

PART 2—RETIREMENT VILLAGE SCHEMES

Division 1—Registration

Application for registration of a retirement village scheme

Clause 27 provides that a person may apply to the chief executive of the Department to register a retirement village scheme. The application must be in the approved form and details of the land involved, the units and facilities that will be provided, the terms of residence contracts and other particulars that may be prescribed by regulation must be given. The public information document must also be lodged with the application. This provision will ensure that the chief executive is aware of any special conditions that a scheme operator may impose on residents and will ensure that retirement village schemes operate within the standards set by the Act.

Registration of retirement village scheme

Clause 28(1) provides the chief executive with a discretion to either register or refuse to register a retirement village scheme.

Clause 28(2) provides that the chief executive must make a decision to either register or refuse to register a retirement village scheme within 60 days of receiving the application, or further particulars about the application.

Clause 28(3) specifies that the chief executive may only register a retirement village scheme if the chief executive is satisfied that the application complies with the requirements of clause 27 and that the applicant is not prohibited from operating a retirement village scheme under clause 88 which deals with prohibitions on persons operating a retirement village scheme. This clause will ensure that all applications are accompanied by the prescribed information and that only persons who are not insolvent or guilty of offences such as fraud or physical violence can operate retirement village schemes.

Clause 28(4) provides that, once a scheme is registered, the chief executive must provide the applicant with a registration certificate which sets out the date of registration.

Clause 28(5) specifies that the chief executive must specify reasons for refusing to register a scheme and also provides that the applicant may appeal the decision under clause 29.

Clause 28(6) provides that if the chief executive does not decide an application within the time required in subclause (2), the chief executive is taken to have refused the application. In this case, the applicant can appeal the decision under clause 29.

Appeal to District Court

Clause 29 gives an applicant, whose application to register a retirement village scheme has been refused, the right to appeal against the decision to the District Court.

Time for making appeals

Clause 30(1) sets out the time limits for appealing a decision of the chief executive to refuse to register a retirement village scheme or the decision which is taken to have been made under clause 28.

Clause 30(2) gives the court power to extend the time for making an appeal.

Starting appeals

Clause 31 sets out the method of appealing. A notice of appeal must be filed with the court and a copy must be served on the chief executive.

Powers of court on appeal

Clause 32(1) sets out the powers of the court on an appeal. The court has the same powers as the chief executive, is not bound by the rules of evidence and must comply with natural justice.

Clause 32(2) provides that the appeal is by way of rehearing.

Clause 32(3) specifies the types of decisions that the court can make. The court may confirm the decision of the chief executive, set aside the decision of the chief executive and substitute its own decision or may set aside the decision of the chief executive and provide the chief executive with directions as to the making of a decision.

Effect of court's decision on appeal

Clause 33 provides that a decision of the court that is substituted for the decision of the chief executive is taken to be a decision of the chief executive.

Offence to operate etc. an unregistered retirement village scheme

Clause 34(1) prohibits a person from operating a retirement village scheme, from inducing or inviting people to participate in the scheme or from publishing documents or advertisements to induce people to participate in the scheme if the scheme has not been registered. The maximum penalty is 540 penalty units. This provision is to ensure that people do not attempt to operate unregistered retirement villages.

Clause 34(2) provides that an advertisement seeking expressions of interest in a scheme will not contravene the provision.

Clause 34(3) specifies that “advertisement” will include advertisements in newspapers or magazines, by broadcast, electronic communication, telecommunication, video or film, and specifies that “induce” will include attempt to induce.

Division 2—Retirement village scheme register

Retirement village scheme register

Clause 35 sets out the requirements for the retirement village scheme register which the chief executive must keep for at least 10 years and which must be open for public inspection. Copies of the particulars of the scheme must be recorded in the register including a copy of all public information documents and financial statements.

Scheme operator to give notice about inaccuracy in public information document

Clause 36 provides that scheme operators must give the chief executive and all affected residents advice of any inaccuracies in a public information document. This must be done if the change or inaccuracy materially affects the interests of a resident in a village. The operator must also make a full written disclosure to each resident who may be materially affected by the inaccuracy. The operator must give the notice within 28 days of becoming aware of the inaccuracy. The maximum penalty is 540 penalty units.

Public information document forms part of residence contract

Clause 37 provides that public information document and the notice under clause 36 form part of the scheme's residence contract. If there is any inconsistency between a residence contract and a public information document where the provision in the residence contract disadvantages a resident, the public information document will prevail. If there is any inconsistency between a public information document and the Act, the Act will prevail. This provision is to ensure that residents obtain the best advantages that are available.

Division 3—Chief executive may apply for court orders**Chief executive may apply for order appointing a manager of a retirement village**

Clause 38 allows the chief executive to apply to the District Court for the appointment of a manager of a retirement village if it is thought to be necessary to protect the interests of residents. The application can be made on an urgent basis as an ex parte matter and an interim order can be made. This provision is designed to protect the interests of residents and allows matters to be dealt with on an urgent basis.

Additional power of chief executive to seek an order

Clause 39 applies if the chief executive believes that a person is contravening clause 34 that prohibits a person from operating an unregistered retirement village scheme. The chief executive is permitted to

apply to the District Court to prevent the person from operating an unregistered scheme and the order may be made on an interim basis.

Division 4—Cancelling registration of retirement village

Applying to cancel registration

Clause 40 allows a retirement village scheme operator to request cancellation of registration of the scheme if the operator ceases or proposes to cease operating the village. The clause also requires the operator to give notice of the request to each resident giving details of any proposed release of any statutory charge and allowing the resident to object to the cancellation. The request must be accompanied by a statutory declaration setting out details of the notice given to each resident. This clause will apply to former residents who have not received all entitlements under a former residence contract.

Cancelling registration

Clause 41 permits the chief executive to cancel registration of a retirement village scheme provided the statutory charge has been released and the operator has given notice and sworn a statutory declaration as required by clause 40(3).

PART 3—RESIDENCE CONTRACTS

Division 1—Purpose and intention of part

Purpose and intention of part

Clause 42 provides that the purpose of the part is to specify minimum requirements for residence contracts and also provides that residence contracts can be on terms that are more beneficial to residents than the provisions of the part. This provision makes it clear that residence contracts are to be on terms that provide residents with the greatest degree of

protection and that degree is not to be less than the provisions of the Act specify.

Division 2—General

Scheme operator may enter into residence contract only if scheme is registered

Clause 43(1) prohibits a scheme operator from entering into a residence contract with another person unless the scheme is registered under the Act. The maximum penalty is 540 penalty units.

Clause 43(2) provides that a contract in relation to an unregistered scheme is not invalid or unenforceable but may be terminated under clause 52. This provision is designed to protect residents should a scheme be unregistered and allows a resident to terminate a contract under the terms of the Act.

Person signing residence contract to be given copy

Clause 44 obliges a scheme operator to give a person entering into a residence contract a signed copy of the contract and the public information document. The documents must be provided immediately the contract is entered into. The operator is not obliged to provide the person with a copy of the public information document if it has already been provided under clause 84. Maximum penalty is 100 penalty units.

Content of residence contract

Clause 45(1) sets out the matters that must be contained in a residence contract. The residence contract must contain details about the right to rescind the contract before the cooling-off period ends, details about the ingoing contribution, the exit fee, the exit entitlement, service charges, the maintenance reserve fund contributions, insurance requirements, rights of resale, rights relating to financial statements, dispute resolution under the Act, statutory charges, termination rights and other matters prescribed by regulation. The purpose of this provision is to ensure that prospective residents are aware of rights and obligations in relation to the retirement village before entering into a residence contract. The maximum penalty for

failure to set these matters out in the residence contract is 100 penalty units.

Clause 45(2) provides that provisions in a residence contract that are inconsistent with the Act or which attempt to exclude the provisions of the Act will be inoperative. This will prevent operators from attempting to contract out of the provisions of the Act.

Clause 45(3) provides that provisions in a residence contract that attempt to restrict or exclude the operation of a public information document will be inoperative.

Dealing with ingoing contribution

Clause 46(1) sets out the procedures for dealing with the ingoing contribution paid by a prospective resident. The ingoing contribution must be paid to a trustee specified in the clause. The penalty for failing to pay the ingoing contribution to a trustee is 100 penalty units.

Clause 46(2) provides that the trustee's receipt will be a sufficient discharge for the contribution.

Clause 46(3) provides that the trustee must hold the contribution until the later of either the creation of the right to reside is finalised or until the cooling-off period ends. The maximum penalty for failing to hold the amount is 100 penalty units.

Clause 46(4) provides that once the period for holding the contribution expires, the trustee must pay the contribution to the person who is entitled to it. Failure to comply with this has a maximum penalty of 100 penalty units.

Clause 46(5) deals with disputes about who is entitled to the contribution. The dispute is a retirement village dispute.

Clause 46(6) obliges the operator to give the trustee a notice of a dispute under subclause (5).

Clause 46(7) obliges the trustee to hold the amount until the dispute is resolved. The maximum penalty is 100 penalty units.

Clause 46(8) obliges the trustee to repay the contribution to the person who paid it if the contract is rescinded during the cooling-off period. The maximum penalty is 100 penalty units.

Clause 46(9) provides that amounts payable under the provision may be recovered as a debt in an appropriate court if the person obliged to pay the amount fails to pay it.

This clause will protect prospective residents and will ensure that ingoing contributions will not be dissipated until it is determined that the contract and the right to reside have been finalised.

Dealing with instruments assigning property under a residence contract

Clause 47(1) provides that the section will apply when a right to reside in a retirement village is assigned before the cooling-off period ends.

Clause 47(2) obliges the scheme operator to ensure that the instrument assigning the right is held in escrow by either the public trustee or by the scheme operator's lawyer. The maximum penalty for failing to do this is 100 penalty units. The public trustee or the scheme operator's lawyer is known as the "authorised person" for the purposes of the clause.

Clause 47(3) obliges the authorised person to release the instrument if the residence contract is rescinded during the cooling-off period. The maximum penalty for failure to release is 100 penalty units.

Clause 47(4) provides that the instrument must be released to the assignee if the residence contract is not rescinded during the cooling-off period. The maximum penalty is 100 penalty units.

Clause 47(5) defines "assignee".

The purpose of the clause is to protect assignees and their rights during the cooling-off period.

Division 3—Rescinding residence contracts

Residence contract may be rescinded during cooling-off period

Clause 48 allows a residence contract to be terminated without penalty during the cooling-off period.

Reassignment of property acquired in cooling-off period

Clause 49 applies when a person acquires property by assignment before the cooling-off period ends. If the residence contract is rescinded the assignee must reassign the property to the assignor or to a person nominated by the assignor. The assignment must be free of all other interests that it may have become subject to and the assignee must pay all the costs involved in the reassignment. The maximum penalty for a breach of subclauses (2) and (3) is 100 penalty units. The purpose of this clause is to protect persons who enter into residence contracts should they decide to rescind a residence contract. Any payment that has been made will be protected in this case.

Scheme operator to compensate assignor if property assigned in cooling-off period is not reassigned

Clause 50(1) provides that the clause applies if clause 49 has applied and the assignee has disposed of the property or the assignee cannot reassign the property free of other interests.

Clause 50(2) provides that the scheme operator must pay compensation to the assignor or to a person the assignor nominates. This clause will protect a person who may have signed a residence contract and paid money in the situation where the assignee cannot compensate the person.

Clause 50(3) sets out the amount of compensation that is payable as being the amount equal to the value of the assigned property which may be recovered in an appropriate court as a debt payable.

Clause 50(4) provides that, where there are two or more scheme operators, all operators are jointly and severally liable for the payment of compensation.

Division 4—Terminating right to reside**Definition for div 4**

Clause 51 defines “resident” for the purpose of the Division to include the situation where a person other than the prospective resident signs a residence contract. For example, a relative may sign a residence contract on behalf of another person who is to reside in the retirement village.

Termination by resident

Clause 52(1) allows a resident to terminate the right to reside by giving one month's written notice.

Clause 52(2) allows a resident to terminate a right to reside if the scheme is not registered.

Clause 52(3) sets out the requirements for termination under clause 52(2). The notice must be given within 14 days of the resident finding out that the scheme is not registered and must specify the day on which the termination takes effect. The termination cannot take effect any earlier than the day the notice is given.

Clause 52(4) provides that, where the scheme is not registered and the right to reside is terminated, the resident is entitled to a full refund of the ongoing contribution which must be paid to the resident within 30 days of the termination. The maximum penalty is 540 penalty units.

Clause 52(5) provides that the amount can be recovered as a debt.

Termination by scheme operator

Clause 53(1) provides that the scheme operator can terminate a resident's right to reside by giving written notice as required by the provision.

Clause 53(2) provides that the scheme operator must give 14 days notice in the following circumstances—because the resident has or is likely to intentionally or recklessly injure another person, damage their accommodation or another person's property. This provision will protect both the resident and the scheme operator.

Clause 53(3) provides that the scheme operator must give 2 months notice in the following circumstances—because the resident has committed a material breach of the contract, has abandoned the resident's right to reside in the village, or the scheme operator and a person who has assessed the resident's care needs under the *Aged Care Act 1997* (Cwlth) reasonably believe that the resident's type of accommodation is now unsuitable for the resident. The resident will be given sufficient time to vacate the premises and the scheme operator's property and interests will be protected.

Clause 53(4) sets out the requirements for the notice.

Clause 53(5) provides a mechanism for notice to be given where the scheme operator does not know the resident's current address.

Clause 53(6) provides that a notice in a newspaper must not include the grounds for termination. The maximum penalty is 50 penalty units.

Resident may ask for estimate statement of resident's exit entitlement

Clause 54 provides a mechanism for the resident to obtain an estimate of their exit entitlement should they decide to terminate the right to reside. If the scheme operator does not provide the resident with the estimate within 14 days of the request the maximum penalty is 40 penalty units.

Right to reside in a retirement village terminates automatically on resident's death

Clause 55 provides that a resident's right to reside terminates on the death of the resident.

Division 5—Reselling resident's right to reside

Definitions for div 5

Clause 56 provides a definition for "termination date". "Termination date" means the date that a right to reside is terminated under the Act or, if the right to reside is terminated before the commencement of the Act, the commencement of the clause will be the date of termination. The provision also provides that the definition of "valuer" is to be found in clause 70.

Application of div 5

Clause 57 sets out the requirements for the application of the Division. The Division will apply if the right to reside is terminated, the scheme operator has the controlling right to sell the right to reside and the contract does not contain provisions which are at least the equivalent of the provisions in the Division. This is to ensure that residents will not be disadvantaged by any contractual provisions that may be contrary or not as favourable to the resident as the provisions in the Division.

Scheme operator and resident to agree on work to reinstate unit to previous condition

Clause 58(1) sets out the procedure to be used to determine what reinstatement work is needed when the right to reside is terminated. The resident and the scheme operator are to negotiate in good faith and, if possible, agree in writing within 30 days of the termination of the work to be done to bring the unit as nearly as practicable to its condition at the start of the former resident's occupation.

Clause 58(2) provides that in the case of an existing residence contract, the parties are to negotiate in good faith and, if possible, agree in writing as to the work to be done to reinstate the unit to a marketable condition having regard to certain matters including the age of the unit and the village and the general condition of all accommodation units compared with the unit in question. This provision will ensure that residents are involved in deciding what reinstatement work should be done and any work that may be considered to be unnecessary should be excluded.

Clause 58(3) provides that if they cannot agree the scheme operator is obliged to obtain a statement from a qualified tradesperson within a further 14 days.

Scheme operator to ensure reinstatement work to be completed

Clause 59 sets out the time limits for reinstatement work to be completed.

Scheme operator and former resident to agree on resale value of accommodation unit

Clause 60 provides that the former resident and the scheme operator are to negotiate in good faith and, if possible, agree on the resale value of the unit in writing within 30 days of termination of the right to reside. If they cannot agree the operator must obtain a valuation from a valuer within a further 14 days. This provision will ensure that the resident is involved in the determination of the resale value and will ensure that, if the parties cannot agree, an independent third party will provide the valuation.

Who pays for work in freehold interest scheme

Clause 61 provides that, in freehold title schemes, the former resident must pay for the cost of reinstatement work that has been agreed upon.

Who pays for work in leasehold or licence scheme

Clause 62 sets out the procedure to be used to determine who pays for any reinstatement work when the right to reside is a leasehold or licence. If the former resident caused accelerated wear to the unit's interior or if there is deliberate damage, the former resident must pay the cost. If the contract provides for the situation the person stated to be responsible for payment must pay the cost. In other cases, the scheme operator must pay the cost or, in the case of existing contracts, the cost is to be shared in the same proportion as the parties are to share the sale proceeds of the right to reside. If the operator is obliged to pay, the cost must come from the capital replacement fund. This provision will ensure that residents are not obliged to pay for work if they are not responsible for damage or if they are not contractually obliged to pay for work.

When former resident's exit entitlement payable

Clauses 63(1) and (2) set out the requirements for when payment of the exit entitlement to the former resident is to be made. The provision allows the parties to agree on a time for payment to be made and if there is no contractual agreement or no agreement, the operator must pay the amount to the person who is entitled to it within 28 days of the right to reside being sold. The maximum penalty for failing to pay the entitlement within the time limit is 540 penalty units. The payment can be made earlier if the operator wants to pay it earlier.

Clause 63(3) provides that the operator must give a former resident a statement when paying the exit entitlement showing how the entitlement was worked out and must give particulars of exit fees, accrued general service charges, outstanding service charges and fund contributions, expenses relating to the resale of the right to reside, and any other payments provided for in the contract. The maximum penalty is 100 penalty units.

Units not sold within 6 months

Clause 64 allows the former resident to engage a real estate agent to sell a right to reside if it is not sold within six months of termination of the right to reside, and the former resident has not been paid an exit entitlement. This will allow residents some control over the sale procedure so that units are not vacant for a lengthy period of time.

Operator to tell resident of all offers for accommodation unit

Clause 65(1) provides that the provision applies if a former resident has not been paid an exit entitlement.

Clause 65(2) obliges the scheme operator to advise a former resident of all offers to purchase the right to reside. The maximum penalty is 40 penalty units.

Clause 65(3) provides that, if a resident requests, the operator must provide the resident with information about all sales inquiries, steps taken to promote the sale of the right to reside and certain specified details of all other units for sale in the village. The maximum penalty is 40 penalty units.

Accepting offers at less than agreed resale value

Clause 66(1) provides that, if a scheme operator accepts an offer for a right to reside that is less than the value that has been agreed, the exit entitlement is to be worked out as if the right to reside was sold at the agreed value.

Clause 66(2) provides that, if a resident accepts an offer for a right to reside that is less than the value that has been agreed, the exit entitlement is to be worked out on the amount of the offer.

Updating agreed resale value

Clause 67 sets out a procedure for the agreed resale value to be reconsidered should the right to reside not be sold within six months of termination, and the former resident has not been paid an exit entitlement. The value is to be reconsidered at least every three months. If the parties cannot agree on a value, a valuation is to be obtained by the operator from a valuer within a further 14 days.

Costs of selling

Clause 68 provides that the costs of sale, including the costs of obtaining valuations, are to be shared by the resident and operator in the same proportion as the proceeds of sale are to be shared. But if a resident has engaged a real estate agent, the resident must pay the commission and other costs of sale to the real estate agent.

Limited ground for scheme operator to refuse to accept offer

Clause 69 allows a scheme operator to refuse to accept an offer to purchase a right to reside in circumstances where the prospective resident is not in the appropriate age group or is not retired or the unit is not suitable for the needs of the prospective resident.

Valuer

Clause 70 provides that any valuer engaged to value the right to reside must be a registered valuer and the parties must agree on the valuer chosen. If the parties cannot agree they must advise the chief executive in writing and the chief executive must decide on a valuer within 14 days of the notice. The valuer must be registered under the *Valuers Registration Act 1992*. This provision ensures that the appointed valuer is an independent party.

Division 6—Enforcing residence contracts**Enforcing residence contract**

Clause 71 sets out the persons against whom a residence contract is enforceable for the recovery of the exit entitlement. They include any party to the contract and persons who were scheme operators or who owned the village land at the time the contract was signed. Persons who were scheme operators or who owned the village land are taken to be the scheme operator under the contract. A court may make an order against a person who is not a party to the contract but who was an operator or owned the village land at the time the contract was entered only if it is satisfied that an order against the persons mentioned in subclause (1)(a) or (c) would be ineffective and it is just to make the order in the circumstances. This provision will ensure that residents are able to enforce contracts against prior scheme operators

who may attempt to avoid liability.

Restriction on enforcing residence contract

Clause 72 provides that the clause applies to a person who is not a party to a residence contract that is sought to be enforced against the person and who, at the time of enforcement, is not the operator but owns the retirement village land. The provision also provides that the contract cannot be enforced against the person to recover the exit entitlement if the person acquired the land as a genuine purchaser for value from a mortgagee exercising a power of sale when the mortgage was created over the land prior to 1 November 1989.

Limit on scheme operator's liability for breach of residence contract

Clause 73 relieves the scheme operator from liability for failing to supply a general service to a resident if the cost of supplying the service is more than the service charge, the residents have not approved an increase in the service charges and the scheme operator has acted reasonably in all the circumstances.

PART 4—OTHER DOCUMENTS RELATING TO RETIREMENT VILLAGE SCHEMES

Form and content of public information document

Clause 74 sets out the requirements for a public information document. The document must be in the approved form, must be accompanied by a copy of the registration certificate, must state the day it was given to the chief executive, must state the age limits for residents for the village and must contain the information specified in subclause (5). The information that a public information document must contain is defined in later clauses in Part 4. This provision will ensure that public information documents contain certain specified information that will assist residents and potential residents in assessing the rights and obligations relating to a residence contract and a retirement village.

Accommodation information

Clause 75 defines “accommodation information” that must be contained in the public information document. The information relates to the types of accommodation units available at the retirement village, the cost of accommodation units, the tenure or interest available and the nature of insurance arrangements.

Residents’ contributions information

Clause 76 defines “residents’ contributions information” that must be contained in a public information document. The information relates to the amounts payable as ingoing contributions, exit fees, service charges and contributions to funds. The information must also set out how the fees are calculated so that residents are fully aware of costs associated with residing in the village.

Information about payments scheme operator must make to a resident

Clause 77 provides that the information about payments that a scheme operator must make to a resident relates to how the exit entitlement is to be calculated if the right to reside is terminated. This provision will ensure that residents are aware of the method of calculating exit entitlements before entering into a residence contract.

Funds information

Clause 78 defines “funds information” that must be contained in a public information document. The information relates to the types of funds that the operator must keep, the amount held in each fund at the end of the last financial year, the capital replacement fund contribution and details of the quantity surveyor’s report that is used to calculate the contribution to the capital replacement fund. For existing contracts that provide for amounts of service charges to be paid towards capital replacement, the document must give details of the amount as worked out by the operator.

Facilities information

Clause 79 defines “facilities information” that must be contained in a public information document. The information relates to facilities to be offered and the facilities proposed to be offered in the future depending on certain market factors existing. This provision will ensure that prospective residents are aware of the facilities that will be available as well as facilities that may be available. Operators will also be protected should the situation arise where some facilities cannot be offered.

Information about retirement village land

Clause 80 defines “information about retirement village land” that must be in the public information document. This information relates to statutory charges and encumbrances over the land such as mortgages, company charges and other securities and interests.

Residents’ rights information

Clause 81 defines “residents’ rights information” that must be in the public information document. The information relates to rights to rescind a contract during the cooling off period, rights in relation to financial information, termination rights, and any other matters prescribed by regulation. This provision will ensure that residents are fully informed of the key rights and obligations prior to entering into a residence contract.

Resale process information

Clause 82 defines “resale process information” that must be in the public information document. The information relates to how the resale value is decided, details about reinstatement work and obligations to pay for reinstatement work, how offers are accepted and refused, details about the right to monthly sales information and how expenses are shared. This provision will ensure that residents are aware of the rights and obligations with respect to the resale process.

Dispute resolution information

Clause 83 defines “dispute resolution information” that must be in the public information document. The information relates to the types of disputes that the resolution process is available for, the method of submitting a dispute for resolution to one of the resolution forums, and the fees payable for resolution of a dispute by the tribunal. This provision will ensure that residents are aware of the dispute resolution procedure and how a dispute is resolved as well as the costs involved.

Public information document to be given to prospective resident

Clause 84 obliges a scheme operator to provide a resident with a copy of the public information document before a residence contract is signed. The maximum penalty is 540 penalty units.

Residents’ access to certain documents

Clause 85 allows a resident to inspect or copy documents in the control or possession of the scheme operator. The documents that can be inspected are the resident’s residence contract and the resident’s public information document. The request must be in writing and the fee that may be prescribed by regulation must be paid. The penalty for failing to allow an inspection is 10 penalty units.

False or misleading documents

Clause 86 prohibits a scheme operator from giving the chief executive or a resident a document containing information that the operator knows is false or misleading or a document that is incomplete in a material particular. The maximum penalty is 200 penalty units. A complaint made against an operator needs to state at least that the operator knew that the information was false or misleading.

PART 5—OPERATION OF SCHEMES FOR, AND MANAGEMENT OF, RETIREMENT VILLAGES

Division 1—Operator and employees of village

Definitions for div 1

Clause 87 sets out definitions to be used in Part 5 for “conviction”, “insolvent under administration” and “relevant conviction”.

Persons prohibited from operating a retirement village scheme etc.

Clause 88(1) prohibits a person who is an insolvent under administration from being a scheme operator, promoting or selling rights to reside in a retirement village scheme or from being concerned, directly or indirectly, in managing a retirement village. The maximum penalty is 100 penalty units. This provision will protect the financial interests of residents.

Clause 88(2) prohibits a person who has a relevant conviction from being a scheme operator, promoting or selling rights to reside in a retirement village scheme, from being concerned, directly or indirectly, in managing a retirement village or from being an employee in any capacity in a retirement village scheme. The maximum penalty is 100 penalty units. This clause will protect the financial interests of residents as well as protecting the personal safety of residents.

Clause 88(3) makes it clear that a resident or former resident who terminates his or her own right to reside in an accommodation unit in a retirement village is not caught by these provisions.

Division 2—Exercise of power of attorney by scheme operator

Powers of attorney

Clause 89 prohibits a scheme operator from exercising a limited, general or enduring power of attorney given by a resident to the scheme operator. The maximum penalty is 540 penalty units. This provision will not apply if the resident is a relative of the scheme operator, if the operator is exercising

the power of attorney to execute the surrender of a registered lease after having lawfully terminated a resident's contract or if the resident gives a power of attorney under the *Body Corporate and Community Management Act 1997*. The provision will safeguard the rights of residents and will protect them from divesting themselves of rights in favour of a scheme operator.

Division 3—Capital improvement

Responsibility for capital improvement

Clauses 90 (1) to (3) provide that the scheme operator is solely responsible for the retirement village's capital improvement including improvement to those community facilities owned by the operator. However, if a resident makes a written request for a particular improvement to their unit, and the resident does not have freehold title to the resident's unit and the improvement is made, the resident is responsible for payment of the cost.

Clause 90(4) provides that if the retirement village residents pass a special resolution at a residents' meeting, resolving to make a written request for a particular improvement and if the operator agrees to the improvement, those residents when the vote was taken are jointly and severally responsible for payment of the cost. This provision will ensure that operators are responsible for payment of capital improvement costs and that residents cannot be charged for capital improvements unless they are specifically requested and agreed to.

Division 4—Capital replacement fund

Capital replacement fund

Clause 91(1) obliges the scheme operator to establish a capital replacement fund and to hold the money in a trust account. The maximum penalty for failing to do this is 540 penalty units.

Clause 91(2) provides that the scheme operator is solely responsible for contributions to the fund.

Clause 91(3) provides that the scheme operator can use the money held in the fund only for replacing the village's capital items and paying the fees for the quantity surveyor's report under clause 92. The maximum penalty is 540 penalty units.

Clause 91(4) prohibits the scheme operator from using any of the fund for capital improvement, maintenance or repairs or capital replacement, maintenance or repairs of body corporate property under the *Body Corporate and Community Management Act 1997*. The maximum penalty is 540 penalty units.

Amount of capital replacement fund

Clause 92(1) provides that the scheme operator must obtain a quantity surveyor's report relating to expected capital replacement costs for the following ten years before determining the yearly budget under clause 93. The maximum penalty is 540 penalty units.

Clause 92(2) obliges the scheme operator to determine the amount to be held in the capital replacement fund having regard to the quantity surveyor's report, to the purpose of the fund and to any amounts transferred to the fund from any existing funds. This amount is known as the "capital replacement reserve".

Clause 92(3) provides that the scheme operator must pay any additional amount into the fund to make the amount up to the capital replacement reserve if the amount held in an existing fund is less than the capital replacement reserve. The amount must be paid within ten years if the first resident in the village occupied a unit five years or more before commencement of the division, or within five years if the first resident in the village occupied a unit less than 5 years before the commencement of the division. This provision will allow operators to reinstate a capital replacement fund so that it complies with the provisions of the Act within a reasonable time.

Clause 92(4) provides that the operator must pay any difference between any amount spent and the amount held in the fund if there are insufficient funds to pay for capital replacement.

Clause 92(5) allows the operator to adjust the contribution to the fund on an annual basis to ensure the reserve amount is reached within the time specified in subclause (3).

Capital replacement fund budget

Clause 93 obliges the scheme operator to adopt a budget for each financial year for the capital replacement fund. The budget must cater for the raising of capital to provide for necessary and reasonable spending and to also retain an appropriate proportional share that must be accumulated to meet major expenditure over at least the next nine years. The budget must also fix the amount for the capital replacement fund contribution.

Payments into capital replacement fund

Clause 94 sets out the amounts that must be paid into the capital replacement fund but does not limit the amounts to those that are specified. Amounts that should be paid into another fund must not be paid into the capital replacement fund. The maximum penalty is 540 penalty units.

Restriction on investing capital replacement fund amounts

Clause 95 prohibits investment of amounts in the capital replacement fund in any investment other than one authorised by the *Trusts Act 1973*. The maximum penalty is 540 penalty units.

Resident liable for replacing certain capital items

Clause 96 provides that a resident is liable to pay for the cost of replacing capital items that the resident has either deliberately damaged or that the resident has subjected to accelerated wear.

Division 5—Maintenance reserve fund**Maintenance reserve fund**

Clause 97(1) obliges the scheme operator to establish a maintenance reserve fund that is to be used for maintaining and repairing the village's capital items. The amounts held in the fund must be held in a trust account. The maximum penalty is 540 penalty units.

Clause 97(2) provides that residents are solely responsible for contributions to the fund.

Clause 97(3) allows a scheme operator to use amounts in the fund for an existing village only for maintaining and repairing the village's capital items and paying the quantity surveyor's reasonable fees for providing a report for the purpose of clause 98. The maximum penalty is 540 penalty units.

Clause 97(4) prohibits an operator from using amounts in the fund for day to day maintenance of the village, capital improvement or replacement or capital replacement, maintenance or repairs of body corporate property that the *Body Corporate and Community Management Act 1997* applies to. The maximum penalty is 540 penalty units.

Amount of maintenance reserve fund

Clause 98(1) provides that the scheme operator must obtain a quantity surveyor's report relating to expected maintenance costs for the following ten years before determining the yearly budget under clause 99. The maximum penalty is 540 penalty units.

Clause 98(2) obliges the scheme operator to determine the amount to be held in the maintenance reserve fund having regard to the quantity surveyor's report, to the purpose of the fund and to any amounts transferred to the fund from any existing funds. This amount is known as the "maintenance reserve".

Clause 98(3) provides that the scheme operator must pay any additional amount into the fund to make the amount up to the maintenance reserve if the amount held in an existing fund is less than the maintenance reserve. The amount must be paid within ten years if the first resident in the village occupied a unit five years or more before commencement of the division, or within five years if the first resident in the village occupied a unit less than five years before the commencement of the division. This provision will allow operators to reinstate a maintenance reserve fund so that it complies with the provisions of the Act within a reasonable time.

Clause 98(4) provides that the operator must pay any difference between any amount spent and the amount held in the fund if there are insufficient funds to pay for maintenance or repairs.

Clause 98(5) provides that an amount paid by the operator under subclause (4) is to be treated as an interest free loan to the fund.

Clause 98(6) allows the operator to adjust the contribution to the fund on an annual basis to ensure the reserve amount is reached within the time specified in subclause (3).

Maintenance reserve fund budget

Clause 99 obliges the operator to adopt a budget for the fund for each financial year that allows for necessary and reasonable spending from the fund and to reserve an appropriate proportional share of amounts necessary to be accumulated to meet anticipated major expenditure over at least the next 9 years after the financial year. The amount of contributions must be fixed in the budget.

Payments into maintenance reserve fund

Clause 100 specifies that the amounts to be paid into the fund are the residents' contributions and interest received on investments of the fund, but does not limit the amounts to those that are specified. Amounts that should be paid into another fund must not be paid into the maintenance reserve fund. The maximum penalty is 540 penalty units.

Restriction on investing maintenance reserve fund amounts

Clause 101 prohibits investment of amounts in the maintenance reserve fund in any investment other than one authorised by the *Trusts Act 1973*. The maximum penalty is 540 penalty units.

*Division 6—Charges for personal services***Charges for personal services for former residents**

Clause 102 prohibits an operator from levying charges for personal services against a resident who has left the village for longer than a period of 28 days after the resident has left. The maximum penalty is 540 penalty units. This provision will ensure that residents are not charged for personal services for any lengthy period of time after leaving a village.

Division 7—Charges for general services**Working out and paying charges for general services for residents**

Clauses 103(1) and (2) require the amount payable for general services to be specified in the public information document and prohibits an operator from charging a greater amount than the amount set out in the public information document. The penalty is 200 penalty units.

Clauses 103(3) and (4) prohibit an operator from charging an amount for general services in a new residence contract when the amount is, in reality, for replacing capital items of the retirement village. The maximum penalty is 200 penalty units. However, this does not apply to existing residence contracts.

Clause 103(5) provides that a resident will only be responsible for their proportion of general services charges whilst they reside in the unit. This provision is subject to clause 104.

Working out and paying general services charges for former residents

Clause 104(1) limits a former resident's responsibility for payment of general services charges for the shorter of the following periods—until the right to reside in the unit is sold, for a period of ninety days, or until a tribunal orders the payment of the former resident's exit entitlement.

Clause 104(2) allows general services charges to be apportioned in the proportions that the parties are to share in sale proceeds on the sale of a right to reside in the situation where the right to reside is not resold within 90 days of a resident leaving the unit.

Clause 104(3) provides that subclauses (1)(a) and (b) and (2) do not apply to existing residence contracts. In effect, this means that residents under existing residence contracts will continue to be liable to pay general services charges until the right to reside in the unit is sold.

Clauses 104(4) and (5) allow an operator to accrue a resident's proportion of general services charges as a book debt after 90 days if the right to reside is not sold within 90 days. The amount can be set off against a resident's exit entitlement. However, interest cannot be charged on the amount owing. The maximum penalty is 100 penalty units.

General services charges for unsold right to reside in accommodation units

Clause 105 obliges an operator to pay the proportion of general services charges that relate to the unsold right to reside in new units in the village, that is those which have not been previously occupied, as well as those for which the operator has resumed responsibility and there is no residence contract in force. The maximum penalty is 200 penalty units. This provision will ensure that residents entering new villages will not pay a disproportionate amount for charges prior to the village units being occupied.

Increasing general services charges

Clause 106 prescribes the only method for a scheme operator to increase general service charges and provides for a penalty of 200 penalty units. If the increase is above the percentage increase in the CPI for a particular year, the village residents must approve the increase by special resolution at a residents' meeting. The section also defines "CPI" for the purpose of the section.

Resident's responsibility for paying increased general services charge

Clause 107 provides that a resident is not required to pay for a general service when the charge is more than the amount set out in the residence contract or as approved as an increase under clause 106 unless the increase is due to certain specified matters, such as rates or taxes, salaries, insurance premiums or maintenance reserve fund contributions.

New services to be approved by majority of residents

Clause 108 provides that a scheme operator can offer a new service that is not a personal service and that is not proposed in the public information document only if the residents agree to it being supplied by special resolution at a residents meeting.

Division 8—Insurance**Definitions for div 8**

Clause 109 sets out definitions of the terms “building” and “damage” to be used in the division.

Scheme operator must insure village

Clause 110 obliges the scheme operator to insure the retirement village, including accommodation units and communal facilities owned by the operator, to full replacement value. The maximum penalty is 540 units. The policy must cover damage, costs incidental to reinstatement or replacement and public liability and must provide for reinstatement of the property to its condition when it was new. The maximum penalty is 540 units.

Division 9—Financial accounts and statements**Scheme operator must keep separate accounts for capital replacement fund and maintenance reserve fund**

Clause 111 obliges the operator to keep separate accounts for the capital replacement fund and the maintenance reserve fund. The maximum penalty is 540 penalty units.

Quarterly financial statements

Clause 112 obliges the operator to provide a resident with the quarterly financial statement about income and expenditure of the capital replacement fund and the maintenance reserve fund if the resident requests a copy. The maximum penalty is 100 penalty units.

Annual financial statements

Clause 113(1) provides that the scheme operator must give a resident, if the resident requests it, a financial statement within five months after the end of the financial year setting out details of income and expenditure of the

capital replacement fund and the maintenance reserve fund, details of amounts received for insurance claims, assets and liabilities, interests and mortgages and other charges affecting village property. The maximum penalty is 200 penalty units. This provision will ensure that residents are fully aware of the financial position of the village.

Clause 113(2) provides that the statement must be audited by a member of the Australian Society of Certified Practising Accountants or the Institute of Chartered Accountants in Australia, or by a registered company auditor. The maximum penalty is 200 penalty units.

Clause 113(3) provides that the operator must give the chief executive a copy of the statement within five months of the end of the financial year. The maximum penalty is 200 penalty units.

PART 6—STATUTORY CHARGES OVER RETIREMENT VILLAGE LAND

Division 1—Preliminary

Application of pt 6

Clause 114 provides that the Part does not apply to secure the rights of a resident who holds freehold title or a registered lease in an accommodation unit in the retirement village.

Division 2—Creating a statutory charge, its effect and priority

Definition for div 2

Clause 115 defines the word “registered” for the purpose of the Division.

Creating a charge

Clauses 116(1) to (4) provide that, when a retirement village scheme is registered, a statutory charge is immediately created over the village land and the chief executive must give notice of the charge to the registrar of titles identifying the land and stating the day it was registered. The charge must then be registered over the title under the provisions of the *Land Title Act 1994*.

Clause 116(5) provides that, before registering a retirement village scheme, the chief executive may consider other options in deciding whether to create a statutory charge, including the operator's standing as a religious, charitable or community purpose run retirement village, or other exceptional circumstances providing the chief executive is satisfied that the operator provides another security to protect the rights of residents.

Charge extends to new land

Clause 117 allows a statutory charge to be released and reimposed where new land becomes retirement village land after the charge is created on the original retirement village land. The scheme operator is obliged to give notice to the chief executive that new land has been acquired within one month of the land becoming retirement village land. The maximum penalty for failing to give the notice is 540 penalty units. The chief executive is then obliged to give the registrar of titles notice that the charge must be released and reimposed in order to extend it over the new land, identifying the land and stating the day on which it became retirement village land.

Effect of charge

Clause 118 provides that the effect of the charge is to secure the residents' right to occupy the unit, to use the communal and recreational facilities and to be paid the exit entitlement on termination of the residence contract.

Priority of charge

Clause 119 gives priority over all other registered securities to the statutory charge regardless of when the other securities were registered. However, it does not have priority over charges created and given priority under a Commonwealth law or another State law or over securities registered before 1 November 1989.

Division 3—Enforcing a statutory charge**Enforcing a charge**

Clause 120 applies if retirement village land is subject to a statutory charge under clauses 116 or 117 and a court makes an order for an amount to be paid by an operator to a resident in relation to a right to occupy the unit, use the communal and recreational facilities or to be paid an exit entitlement and the amount remains unpaid 6 months after the order to pay. The clause allows a person to apply to the District Court for the village land to be sold if the person has given notice to the chief executive and the amount to be paid is at least \$10,000 or a higher amount prescribed by regulation. Each resident can be joined as a party and can be heard on the application and notice must be given to the residents of this right.

Orders court may make

Clause 121 provides that the court may order that the land be sold if it is satisfied that the original order cannot be fulfilled and there is no other way for it to be fulfilled and it is not contrary to the interests of any resident in the village. The court is also permitted to appoint a person to be the agent of the vendor for the sale.

Effect of court order

Clause 122 provides that an order for the sale of the land under clause 121 allows the land to be sold free of other securities unless any have been preserved by the court and the order will allow the land to be sold regardless of any existing caveat or lien or any other Act. Subclause (3) specifies the method to be used for the apportionment of the sale proceeds.

Division 4—Extinguishing and releasing a statutory charge**Extinguishing a charge**

Clause 123 provides that the charge can be extinguished if the chief executive releases the charge under clause 125 or if the land is sold under an order under clause 121. However, if the land remains as retirement village land and if a person does not obtain a freehold or leasehold interest under a residence contract, an order to sell the land made under clause 121 will not extinguish the charge.

Scheme operator may ask for release of charge if land stops being retirement village land

Clause 124 allows a scheme operator to apply to the chief executive to have a statutory charge released if the land ceases to be retirement village land. The operator must give notice to the residents and former residents giving them the opportunity to object to the chief executive within 60 days of receipt of the notice. The operator must give the chief executive a statutory declaration stating that notice has been given to the residents and stating whether it is likely that proceedings to enforce a charge will be or has been made under clause 120.

Chief executive to release charge

Clause 125 allows the chief executive to give the registrar of titles notice to release a statutory charge if the chief executive is satisfied that clause 124 has been complied with and that it is appropriate to release the charge considering any objections to its release. The registrar of titles is then obliged to release the charge.

PART 7—RESIDENTS PARTICIPATION

Division 1—Residents committee

Residents committee

Clause 126 permits the residents of a retirement village to establish a residents committee. Members hold office for not more than one year but can be re-elected and they may be removed at any time by special resolution. The clause specifies certain matters for the conduct of committees and provides that operators may address the residents at a residents' committee meeting.

Residents constitution

Clause 127 allows the residents to adopt a constitution that is consistent with the Act and that provides for matters prescribed under a regulation by majority vote.

Committee's function

Clause 128 provides that the committee is to deal with the scheme operator on behalf of residents in relation to the day to day operation of the village and in relation to any complaints and proposals by residents.

Division 2—By-laws

Residents may make, change or revoke by-laws

Clause 129 allows the residents to make, change or revoke by-laws for the village with the consent of the operator. By-laws can be about the non-exclusive use and enjoyment of the village as well as being about other matters. Any inconsistency with a residence contract will not operate over the contract.

Division 3—Residents meetings**Annual meeting**

Clause 130(1) obliges the operator to call an annual meeting of residents as soon as it is practicable after the annual financial statements are available. The maximum penalty is 100 penalty units.

Clause 130(2) provides that the residents must be given 21 days' notice of the meeting.

Clause 130(3) provides that the meeting cannot be held with any other meeting held under another Act such as meetings under the *Body Corporate and Community Management Act 1997*.

Clause 130(4) obliges the operator to present the statements to the meeting. The maximum penalty is 100 penalty units.

Other meetings

Clause 131 specifies the time limit for notice of other meetings to be 14 days. However, in extraordinary or urgent situations a meeting may be called with no less than 2 days' notice.

Division 4—Proxy voting and postal voting**Voting**

Clauses 132(1) and *(2)* allow a resident to appoint a proxy to vote at the meeting stated in the appointment. The proxy can be the scheme operator or another resident. The proxy vote is only valid for one meeting.

Clauses 132(3) and *(4)* allow a resident to cast a postal vote 24 hours before the meeting is to be held and obliges the operator to provide a secure and locked container for the votes in the common area at least 24 hours before the meeting. The maximum penalty for failing to provide the container is 10 penalty units.

Clause 132(5) prohibits an operator from opening the container before it is given to the chairperson of the meeting. The operator cannot allow the container to be opened before this time. The maximum penalty is 10

penalty units.

Clause 132(6) obliges the operator to deliver the container to the chairperson immediately before the meeting is opened. The maximum penalty is 10 penalty units.

PART 8—ENFORCEMENT

Division 1—Inspectors

Appointment

Clause 133 allows the chief executive to appoint public service officers with the appropriate expertise and experience to be inspectors under the Act.

Limitation of inspector's powers

Clause 134 sets out the limitations on inspector's powers.

Inspector's appointment conditions

Clause 135 provides that the conditions of appointment are set out in the instrument of appointment and sets out the circumstances where an inspector will cease to hold office. The clause also sets out the requirements for resignation from office.

Inspector's identity card

Clause 136 provides that inspectors will be given an identity card by the chief executive and sets out the requirements for the identity card. Subclause (3) obliges the person to return the card within 21 days after ceasing to be an inspector. The maximum penalty for failing to return the card is 10 penalty units. Identity cards can be given to a person for other purposes also.

Production or display of inspector's identity card

Clause 137 provides that an inspector may only exercise a power under the Act after first producing the identity card or after having the identity card visibly displayed. In certain cases, the inspector may produce the card for inspection at the first reasonable opportunity.

Division 2—Powers of inspectors***Subdivision 1—Entry of places*****Power to enter places**

Clause 138 allows an inspector to enter a place if the occupier consents to the entry, if it is a public place and entry is when it is open to the public, the entry is authorised by a warrant, or it is an administration or management office for a retirement village and the entry is made during business hours, or it is otherwise open for entry. The inspector may enter the place to contact the occupier. The provision does not permit entry to a person's place of residence.

Subdivision 2—Procedure for entry**Entry with consent**

Clause 139 applies when an inspector is going to ask an occupier for consent to enter premises and prescribes the conditions for obtaining consent to enter the premises. If consent is given, the inspector is permitted to ask the occupier to sign an acknowledgment and the requirements for the acknowledgment are set out. Subclause (6) sets out the circumstances when a court must find that an occupier did not consent to the entry.

Application for warrant

Clause 140 allows an inspector to apply to a magistrate for a warrant for a place. The application must be sworn and state the grounds for seeking the warrant. The magistrate can refuse to consider the application until the magistrate has all the details needed.

Issue of warrant

Clause 141(1) sets out the requirements for the issue of a warrant. The magistrate must be satisfied that there are reasonable grounds for suspecting there is evidence of an offence against the Act and the evidence is at the place or may be at the place within the next 72 hours.

Clause 141(2) provides that the warrant must state that the inspector may enter the place and exercise the powers under the Act. It must also state that the inspector may use necessary and reasonable help and force. It must set out the offence, the evidence that may be seized, the hours when the place may be entered and the date the warrant ends. The date the warrant ends must be within 7 days of its issue.

Warrants—procedure before entry

Clause 142 sets out the procedures the inspector must follow before entering a place under a warrant.

Subdivision 3—Powers of entry**General powers after entering places**

Clause 143 sets out the powers of an inspector after the inspector enters a place. However, if the inspector enters a place to obtain consent of the occupier or under a warrant, the provision only applies if consent is given or subject to the warrant. The powers are set out for the purpose of monitoring or enforcing compliance with the Act. The powers include the power to search, inspect a document, take extracts or copies of documents, to take persons, equipment and materials into or onto a place, to require the occupier or a person at the place to assist the inspector or to give information.

Failure to help inspector or give inspector information

Clause 144 obliges persons who are required to give assistance or information under clause 143(3)(e) to comply with the requirements of the inspector, unless the person has a reasonable excuse not to. The maximum penalty is 100 penalty units. The provision also provides that if the requirement is to be complied with by the person giving information or

producing a document, other than a document required to be kept by the person under the Act, it is a reasonable excuse to fail to give information or produce a document on the ground of self-incrimination.

Subdivision 4—Power to seize evidence

Power to seize evidence from places

Clause 145(1) allows an inspector who has entered a place that the inspector believes is the administration or management office to seize evidence from a place that the inspector reasonably believes is evidence of an offence under the Act.

Clause 145(2) allows an inspector who has entered a place under a warrant to seize evidence that the warrant was issued for.

Clause 145(3) allows an inspector who has entered a place under a warrant or with the occupier's consent to seize a thing that is believed to be evidence of the commission of an offence, if it is believed that the seizure is to prevent concealment, loss or destruction or the use of the thing in a continuing or repeated offence.

Receipts for seized things

Clause 146 provides that an inspector must give a receipt for a seized thing to the person from whom it was seized. The receipt may be left in a conspicuous position in a secure way at the place of seizure if it is not practicable to give it to the person.

Inspector to allow inspection etc.

Clause 147 provides that an inspector must allow a person to inspect seized evidence or to obtain a copy of a document after the inspector has seized the evidence and before it is returned or dealt with.

Obligation to return seized things

Clause 148 sets out the obligation of the chief executive to return seized things and sets out the time limit for their return.

Subdivision 5—Power to obtain information**Power to require production of documents**

Clause 149 allows an inspector to require the production of a document or financial record. Unless the person has a reasonable excuse, the person must comply. The maximum penalty is 100 penalty units. The excuse of self-incrimination is a reasonable excuse for failure to produce a document.

Subdivision 6—General enforcement matters**Obstructing etc. an inspector**

Clause 150 prohibits a person from obstructing an inspector without reasonable excuse. The maximum penalty is 40 penalty units. The word “obstruct” is defined.

Compensation

Clause 151 allows a person to claim compensation from the State if the person has incurred loss or expense because of the exercise of a power under the Part. A court may only order compensation if it is just to make the order in the circumstances of the case.

PART 9—DISPUTE RESOLUTION***Division 1—Preliminary*****Parties’ rights under this part preserved**

Clause 152 provides that any provision in a contract about arbitration, court or tribunal proceedings will not limit a party’s rights under the Part in relation to dispute resolution.

Preliminary negotiation

Clause 153 provides that retirement village disputes can only be referred to mediation if the parties have first attempted to resolve the dispute by meeting with a view to resolving the dispute. The provision sets out the requirements with respect to notice for the meeting. This provision is a mandatory dispute resolution procedure and will assist parties to try and resolve retirement village disputes before taking a matter to mediation or a tribunal hearing.

Division 2—Mediators**Mediator's functions**

Clause 154 provides that a mediator's function is to seek to resolve retirement village disputes by mediation.

Matters that may be mediated

Clause 155 sets out the jurisdiction of mediators in retirement village disputes. Mediators can mediate disputes other than disputes about an issue that is the subject of arbitration, that has been the subject of an arbitration award, or that is before or has been decided by a court. This provision will ensure that parties will not seek to resolve a dispute by using multiple avenues of dispute resolution.

Division 3—Mediation of retirement village disputes**Notice of retirement village dispute**

Clause 156 allows a party to a retirement village dispute to apply to the chief executive to have the dispute referred to mediation. The clause sets out the requirements for the application. If the residence contract has been terminated the notice must be lodged within four months of the termination.

Chief executive to act on dispute notice

Clause 157 sets out the obligations of the chief executive once a dispute notice is lodged. Within 14 days, the chief executive must appoint a mediator and give notice of the mediator and the time, date and place for the mediation to the parties. The parties must receive the notice at least 7 days before the mediation conference.

Right of representation

Clause 158 provides that parties may be represented by a lawyer or an agent unless the mediator considers that the party should not be so represented. For instance, the mediator may consider representation by one party inappropriate if the other party is not represented and this creates an imbalance in bargaining power between the parties.

Conference to be held in private

Clause 159 provides that the mediation conference is not open to the public.

Parties attendance at conference not compellable

Clause 160 provides that parties cannot be compelled to attend a mediation conference.

Parties to mediation conference

Clause 161 allows a mediator to permit persons to participate in a mediation conference if the mediator thinks the person has a sufficient interest in having the dispute resolved. However, the person does not become a party to the dispute.

Mediation agreements

Clause 162 provides that, if an agreement is reached at a mediation conference, the agreement must be recorded in writing and a copy of the signed agreement must be given to the chief executive.

No official record of mediation conference

Clause 163 prohibits a person making an official record of matters said at a mediation conference. The maximum penalty is 40 penalty units. The mediator is permitted to take notes that must be destroyed at the end of the conference and the mediator is permitted to record an agreement under clause 162(2).

Withdrawal of dispute

Clause 164 allows a person who has filed a dispute notice with the chief executive to withdraw the notice by giving the chief executive a written notice of withdrawal. The notice may be given before or after a mediation has started and the chief executive must advise the mediator if one has been appointed.

PART 10—APPLICATIONS TO TRIBUNAL*Division 1—Preliminary***Applications generally**

Clause 165 sets out the requirements for the making of an application under the Part.

*Division 2—Applications about retirement village disputes***Application for reference of dispute**

Clause 166 allows a party to a dispute to give a notice to the chief executive to refer the dispute to the chief executive if the parties cannot reach a mediated agreement, a party does not attend a mediation conference, the dispute is not settled within four months of a lodgement of a dispute notice or if the party claims that another party to a mediation agreement has not complied with the agreement either within the time specified or if there was no time specified within two months after signing the agreement.

Chief executive to refer dispute to tribunal

Clause 167 obliges the chief executive to appoint a tribunal to hear the dispute and to give notice to the panel members as well giving notice to the parties of the panel appointed. This must be done within 14 days of receipt of the notice.

Division 3—Applications about other retirement village issues**Resident's right to apply for an order if threatened with removal, deprivation or restriction**

Clause 168(1) allows a resident to give the chief executive a notice for an order by the tribunal if the resident is threatened with removal or is removed from the village, is threatened with deprivation or is deprived of a right to reside in the village, or is threatened with restriction or is restricted in the use of the village land. This allows the resident to make an urgent application to the tribunal without the need to follow the usual three-step dispute resolution procedure.

Clause 168(2) provides that the resident may apply to the chief executive for an order by the tribunal that the operator do nor not do a stated thing.

Resident may apply for order if given false or misleading documents

Clause 169 allows a resident to make an application to the chief executive for an order by the tribunal to have the residence contract set aside if the resident is given false or misleading documents and the resident is materially prejudiced by the false or misleading documents.

Former resident may apply for order for payment of exit entitlement

Clause 170 allows a resident to apply to the chief executive for an order by the tribunal that the operator pay the exit entitlement if the operator breaches certain provisions relating to resale of the unit and if the resident is materially prejudiced by the contravention.

Chief executive to refer application to tribunal

Clause 171 obliges the chief executive to appoint a tribunal panel, to give notice to the panel members and to give notice to the resident and operator of the panel within 7 days of an application being made under clauses 168, 169 or 170. The notice to the scheme operator must state grounds on which the order is sought.

Division 4—Requests to chief executive to make application**Resident may ask chief executive to make application for the resident**

Clause 172 allows a resident to ask the chief executive to make the application and the chief executive may make the application if the chief executive believes it is appropriate considering the resident's physical, mental or financial state and the facts involved in the case. The resident must not knowingly or recklessly give false information in any request to the chief executive. The maximum penalty is 100 penalty units.

PART 11—TRIBUNAL HEARINGS OF RETIREMENT VILLAGE ISSUES***Division 1—Tribunal hearings*****Chairperson may hold directions hearing**

Clause 173 allows the chairperson of the tribunal to hold a directions hearing and sets out the procedure to be followed for a directions hearing as well as the decisions and directions that can be made at the hearing.

Presiding member

Clause 174 provides that the chairperson must preside at the hearing of a retirement village issue.

Venues

Clause 175 allows the tribunal to sit at times and places decided by the chairperson.

Hearing to be held in private

Clause 176 provides that tribunal hearings are held in private but the tribunal and the parties may agree to let a person attend.

Appearances before tribunal

Clause 177 provides that the parties to the issue may appear as well as others that the tribunal gives leave to appear.

Right of representation

Clause 178 provides that a party may be represented by a lawyer or another person approved by the tribunal.

Procedure

Clause 179 obliges the tribunal to observe the rules of natural justice and to act as quickly and as informally as possible to be consistent with a fair consideration of the matter. The tribunal is not bound by the rules of evidence and may inform itself in the manner it considers appropriate. The tribunal may decide its own procedures but must comply with any procedure set out in a regulation.

Amendment of issue

Clause 180 allows the tribunal to amend the particulars of an issue if a party requests it or if the parties agree to an amendment.

Questions to be decided by majority of tribunal

Clause 181 provides that issues must be decided by a majority of members but the chairperson must decide a question of law.

Tribunals to keep record of proceedings

Clause 182 obliges the tribunal to keep a record of its proceedings in the manner it considers appropriate.

Powers of tribunal

Clause 183 sets out the powers of the tribunal at a hearing of a retirement village issue.

Inspection of documents

Clause 184 allows the tribunal to inspect a document or thing, make copies, photographs or take extracts of a document or thing, or take possession of a document or thing. The tribunal must allow persons entitled to possession of the document or thing to have access to it.

Offences—hearings

Clause 185(1) provides that persons served with an attendance notice must not fail to attend without reasonable excuse. The maximum penalty is 40 penalty units.

Clause 185(2) sets out the obligations of witnesses. The maximum penalty is 40 penalty units.

Self incrimination

Clause 186 provides that a reasonable excuse for failing to answer a question or to produce a document will be the ground of self-incrimination. However, the provision will not apply to a document a person is required to keep under the Act.

False or misleading information

Clause 187 prohibits a person from making false or misleading statements to the tribunal that is false or misleading in a material particular. The maximum penalty is 100 penalty units.

False or misleading documents

Clause 188 prohibits a person from giving the tribunal a document that the person knows is false or misleading unless the person advises the tribunal of this or gives the correct information to the tribunal. The maximum penalty is 100 penalty units.

Contempt of tribunal

Clause 189 sets out the matters that a person must not do in relation to the tribunal. The maximum penalty for doing any of the matters stated is 100 penalty units.

Division 2—Tribunal orders**Tribunal orders generally**

Clause 190 allows the tribunal to make the orders it considers just to resolve a retirement village issue and sets out some of the orders the tribunal may make. If a person is not present when an order is made the chief executive is obliged to serve a copy on the person as soon as practicable after it is made.

Tribunal orders under section 168

Clause 191 applies to applications for an order if a resident is threatened with removal, deprivation or restriction and provides that the tribunal must be satisfied that the actual or threatened removal, deprivation or restriction is or would be a breach of a residence contract or is not or would not be reasonably justified.

Tribunal orders under section 169

Clause 192 applies to applications where the resident has been given false or misleading documents and allows the tribunal to set aside a contract and to make orders it considers appropriate. Examples of the types of orders that can be made are given.

Tribunal orders under section 170

Clause 193 applies to applications in relation to the payment of an exit entitlement and sets out the method to be used by the tribunal in calculating the exit entitlement to be paid. The tribunal must obtain an independent valuation if the resale value of the right to reside has not been agreed.

Enforcement of particular tribunal orders

Clause 194 applies to enforcement orders made by the tribunal and sets out the procedure for a party to enforce the order. The order can be filed in the District Court registry and the registrar of the District Court must endorse a certificate of non-compliance if satisfied that there has been a failure to comply with the order. The endorsed order is then taken to be an order of the District Court and may be enforced as an order of the District Court.

Orders requiring payments

Clause 195 sets out the procedure for enforcing orders for the payment of money. The order may be filed in the appropriate court's registry and endorsed by the registrar if there has been a failure to comply. The order is then taken to be a properly entered judgment of that court and can be enforced as such.

Orders of tribunal to be complied with

Clause 196 obliges a person to comply with a tribunal order unless the person has a reasonable excuse. The maximum penalty is 100 penalty units.

Tribunal's order final and binding

Clause 197 provides that the tribunal's order is final and binding on the parties to the issue whether they have appeared or have been represented before the tribunal or not.

Restricted right to question tribunal's hearing and order

Clause 198 permits the tribunal's right to hear a retirement village issue and to make an order only based on an error of law.

Division 3—Other provisions**Parties to pay own costs**

Clause 199 obliges each party to bear their own costs of tribunal hearings.

Allowance to witness

Clause 200 provides that witnesses before the tribunal are entitled to an allowance for attendance at the hearing. The allowance is either prescribed by regulation or, if no allowance is prescribed, as decided by the chairperson.

Withdrawal of application

Clause 201 allows a person to give notice to the chief executive to withdraw a retirement village issue. The notice may be given before or after mediation or a tribunal hearing has started.

**PART 12—COMPOSITION AND FUNCTIONS OF
TRIBUNAL*****Division 1—Tribunal panel*****Appointment of members of tribunal panel**

Clause 202 provides that the Governor in Council may appoint members of a panel of retirement tribunal members known as the tribunal panel. The panel will consist of one or more persons who have been a Supreme or

District Court judge or who are lawyers of at least five years standing as well as a number of representatives of scheme operators and residents.

Duration of appointment

Clause 203 allows a panel member to be appointed for a term no longer than three years and allows a panel member to resign by written notice to the Minister.

Conditions of appointment

Clause 204 provides that the Governor in Council will decide the remuneration and allowances to be paid to panel members and provides that panel members hold office on the conditions stated in the Act and on other conditions decided by the Governor in Council.

Removal from office

Clause 205 allows the Governor in Council to remove a panel member if the member is incapable of properly discharging the functions of a panel member or if the member is unfit to hold office.

Division 2—Composition of retirement village tribunals**Composition of retirement village tribunals**

Clause 206 sets out the requirements for the composition of a retirement village tribunal from members of the tribunal panel.

Chairperson

Clause 207 provides that either a person who has been a Supreme Court or District Court judge or a lawyer of at least five years standing is the chairperson.

Tribunal's function

Clause 208 provides that the tribunal's function is to hear retirement village issues that are within its jurisdiction and that it is appointed to hear.

Tribunal's jurisdiction

Clause 209 sets out the jurisdiction of a retirement village tribunal.

Tribunal's general powers

Clause 210 allows a tribunal to do all things necessary or convenient to perform its function and has the powers conferred by the Act.

Transfer of hearings between tribunals and courts

Clause 211 allows a court to transfer a matter to a tribunal if the matter is within the tribunal's jurisdiction and allows a tribunal to transfer a matter to a court if it believes a court should deal with it.

**PART 13—OTHER PROVISIONS FOR MEDIATION
CONFERENCES AND TRIBUNAL HEARINGS*****Division 1—Privilege and immunity*****Ordinary protection and immunity allowed**

Clause 212 provides mediators, tribunal members, parties, lawyers, witnesses and documents to have the same protection and immunity as they would have had before the Supreme Court.

Admissions made during hearing of retirement village issue

Clause 213 provides that evidence of things said at a mediation conference is not admissible in any court or tribunal proceeding and evidence of things said at a tribunal hearing is not admissible in any court

proceeding. The provision does not apply to proceedings about an offence or other misconduct that happens during a mediation conference or hearing, or in which the falsity or misleading nature of the thing said is relevant.

Division 2—General

Exclusion of other jurisdictions

Clause 214 prevents a matter from being referred to arbitration or court after a dispute notice is filed under Part 9 or 10. The provision also sets out the circumstances when this will not apply.

Register

Clause 215 obliges the chief executive to keep a register of mediators, tribunal panel members and retirement village issues. The register must be open for public inspection and people must be permitted to take extracts or to be given a copy of matters in the register. The provision sets out the matters that must be contained in the register and the conditions for setting a fee for the cost of copying material.

Reports on discharge of tribunal's function

Clause 216 obliges a nominated tribunal member to give the chief executive a report within two months of the end of each financial year about the discharge of its function throughout the year. The provision sets out the matters that must be contained in the report.

Chief executive's responsibility

Clause 217 provides that the chief executive is responsible for ensuring operators and residents are advised of the practices and procedures of the department, mediators and tribunals and may advise scheme operators and residents about retirement village issues.

PART 14—MISCELLANEOUS

Starting offence proceedings

Clause 218 sets out the time limits for the commencement of proceedings for offences against the Act.

Appointments and authority

Clause 219 provides that it is not necessary to prove the appointment of the chief executive, an inspector's appointment or the authority of the chief executive or inspector to do anything under the Act. The provision will not apply if reasonable notice is given to a party relying on the appointment or authority that the appointment or authority is to be challenged.

Evidentiary provisions

Clause 220 sets out evidentiary matters under the Act relating to the appointment or power of inspectors, the signature of the chief executive, and certificates signed by the chief executive.

Act's remedies not exclusive

Clause 221 provides that nothing in the Act will prevent a party to a residence contract seeking or enforcing another remedy under another law.

Protection from liability

Clause 222 provides that an official will not incur civil liability for an act done or omission made honestly and without negligence under the Act. Liability will attach to the State. "Official" is defined as the chief executive or an employee of the department.

Responsibility for acts or omissions of representatives

Clause 223 provides that, when proving a person's state of mind about an act or omission, it is sufficient to show that the act was done or omitted to be done by a representative of the person within that representative's

actual or apparent authority and the representative had the state of mind. “Representative” and “state of mind” are defined. The act or omission is taken to be that of the person unless the person can prove that the person could not by the exercise of reasonable diligence, have prevented the act or omission.

Executive officers must ensure corporation complies with Act

Clause 224 obliges the executives of a corporation to ensure the corporation complies with the Act and provides that if a corporation commits an offence, each executive officer also commits an offence of failing to ensure the corporation complies with the Act. The maximum penalty is the penalty for the contravention of the provision by the individual. It will be a defence to an executive officer to prove the officer exercised reasonable diligence to ensure the corporation complied with the provision or that the officer was not in a position to influence the conduct of the corporation.

Annual report on operation of Act

Clause 225 provides that the department’s annual report must include a report on the operation of the Act.

Approval of forms

Clause 226 allows the chief executive to approve forms under the Act.

Regulation-making power

Clause 227 allows the Governor in Council to make regulations under the Act and sets out some of the matters a regulation may provide for.

PART 15—TRANSITIONAL AND SAVINGS PROVISIONS

Existing retirement village schemes

Clause 228 provides that existing retirement village schemes are taken to be registered under the Act and within six months of commencement of the Act the operator must give the chief executive certain information. The maximum penalty is 540 penalty units.

Existing exempt organisations and retirement villages

Clause 229 allows an existing exemption under the repealed Act to be an exemption under this Act read with the necessary changes to be consistent with the Act. The exemption expires two years after the commencement. Regulations may set out provisions of the Act to which the exemption does not apply. The provision does not prevent an operator from applying for an exemption under the Act.

Releasing certain existing charges

Clause 230 applies to the situation where an existing retirement village is no longer a retirement village on the commencement of the Act, or where a resident's right to reside is based on a registered lease over part of the village land and allows a charge under the repealed Act to be released to the extent that it relates to the leased land. The provision sets out the procedure to be followed in applying for the charge to be released.

Apportionment of balance where separate funds maintained

Clause 231 obliges an operator to transfer the balance that may be in separate capital replacement and maintenance and repairs funds to the funds specified under the provisions of the Act. The operator must do this within 90 days of the section commencing. The maximum penalty is 200 penalty units.

Apportionment of balance where single fund maintained for maintenance and repairs

Clause 232 obliges an operator to transfer the balance in a fund for maintenance and repairs to the maintenance reserve fund within 90 days of the section commencing. The maximum penalty is 200 penalty units.

Apportionment of balance where single fund maintained for capital replacement and maintenance and repairs

Clause 233 obliges an operator to transfer the balance that may be in a single fund for capital replacement and maintenance and repairs to the capital replacement and maintenance reserve fund in the appropriate proportions determined by the quantity surveyor's reports under clauses 92 and 98. This must be done within 90 days of the section commencing. The maximum penalty is 200 penalty units.

Existing regulations

Clause 234 allows regulations in force under the repealed Act immediately before this clause commencing remain in force subject to amendment or repeal by a regulation under this Act and are to be read with the necessary changes to be consistent with this Act. The regulations will expire one year after the commencement.

Existing by-laws

Clause 235 allows existing by-laws to continue under the Act subject to amendment or repeal by a by-law under this Act. Any inconsistency between a by-law made under clause 129(1) and a by-law made before 1 November 1989 and in force immediately before the commencement of this provision, the existing by-law prevails to the extent of the inconsistency.

Retirement Villages Act 1988 references

Clause 236 provides that references in an Act or document to the *Retirement Villages Act 1988* is to be taken as a reference to this Act.

PART 16—REPEAL AND AMENDMENT**Repeal**

Clause 237 repeals the *Retirement Villages Act 1988*.

Amendment—sch 1

Clause 238 Schedule 1 amends the Act mentioned in it.

SCHEDULE 1**ACT AMENDED**

Schedule 1 amends section 5 of the *Fair Trading Act 1989*.

SCHEDULE 2**DICTIONARY**

Schedule 2 sets out the dictionary of definitions to be used in the Act as referred to in clause 4.