

Queensland



RETIREMENT VILLAGES ACT 1999

**Reprinted as in force on 7 July 2000
(includes amendments up to Act No. 24 of 2000)**

Reprint No. 1

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

Information about this reprint

This Act is reprinted as at 7 July 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

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

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A).

Also see endnotes for information about when provisions commenced.

Queensland



RETIREMENT VILLAGES ACT 1999

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
<i>Division 1—Introduction</i>		
1	Short title	13
2	Commencement	13
<i>Division 2—Objects</i>		
3	Main objects	13
<i>Division 3—Interpretation and basic concepts</i>		
4	Definitions	14
5	What is a “retirement village”	14
6	What is “retirement village land”	14
7	What is a “retirement village scheme”	15
8	Who is a “retirement village scheme operator”	15
9	Who is a “resident”	15
10	What is a “residence contract”	15
11	What is an “existing residence contract”	16
12	What is a “service agreement”	16
13	What is a “public information document”	17
14	What is an “incoming contribution”	17
15	What is an “exit fee”	17
16	What is an “exit entitlement”	18
17	What is a “capital replacement fund”	18
18	What is a “capital replacement fund contribution”	18
19	What is a “maintenance reserve fund”	19
20	What is a “maintenance reserve fund contribution”	19

Retirement Villages Act 1999

21	What is a “retirement village dispute”	19
22	What is a “retirement village issue”	19

Division 4—Operation of Act

23	Application of Act	19
24	Application of Body Corporate and Community Management Act 1997 . .	20
25	Application of Fair Trading Act 1989	20
26	Certain age restrictions on residence not unlawful	20

PART 2—RETIREMENT VILLAGE SCHEMES***Division 1—Registration***

27	Application for registration of a retirement village scheme	21
28	Registration of retirement village scheme	22
29	Appeal to District Court	22
30	Time for making appeals	23
31	Starting appeals	23
32	Powers of court on appeal	23
33	Effect of court’s decision on appeal	23
34	Offence to operate etc. an unregistered retirement village scheme	24

Division 2—Retirement village scheme register

35	Retirement village scheme register	25
36	Scheme operator to give notice about inaccuracy in public information document	25
37	Public information document forms part of residence contract	26

Division 3—Chief executive may apply for court orders

38	Chief executive may apply for order appointing a manager of a retirement village	26
39	Additional power of chief executive to seek an order	27

Division 4—Cancelling registration of retirement village

40	Applying to cancel registration	27
41	Cancelling registration	28

PART 3—RESIDENCE CONTRACTS***Division 1—Purpose and intention of part***

42	Purpose and intention of part	29
----	---	----

Division 2—General

43	Scheme operator may enter into residence contract only if scheme is registered	29
44	Person signing residence contract to be given copy	29
45	Content of residence contract	30
46	Dealing with ingoing contribution	31
47	Dealing with instruments assigning property under a residence contract . .	32

Division 3—Rescinding residence contracts

48	Residence contract may be rescinded during cooling-off period	33
49	Reassignment of property acquired in cooling-off period	33
50	Scheme operator to compensate assignor if property assigned in cooling-off period is not reassigned	34

Division 4—Terminating right to reside

51	Definition for div 4	35
52	Termination by resident	35
53	Termination by scheme operator	35
54	Resident may ask for estimate statement of resident's exit entitlement . .	37
55	Right to reside in a retirement village terminates automatically on resident's death	37

Division 5—Reselling resident's right to reside

56	Definitions for div 5	37
57	Application of div 5	38
58	Scheme operator and resident to agree on work to reinstate unit to previous condition	38
59	Scheme operator to ensure reinstatement work to be completed	39
60	Scheme operator and former resident to agree on resale value of accommodation unit	39
61	Who pays for work in freehold interest scheme	40
62	Who pays for work in leasehold or licence scheme	40
63	When former resident's exit entitlement payable	40
64	Units not sold within 6 months	41
65	Operator to tell resident of all offers for accommodation unit	42
66	Accepting offers at less than agreed resale value	42
67	Updating agreed resale value	42

Retirement Villages Act 1999

68	Costs of selling	43
69	Limited ground for scheme operator to refuse to accept offer	43
70	Valuer	44
	<i>Division 6—Enforcing residence contracts</i>	
71	Enforcing residence contract	44
72	Restriction on enforcing residence contract	45
73	Limit on scheme operator’s liability for breach of residence contract	46
	PART 4—OTHER DOCUMENTS RELATING TO RETIREMENT VILLAGE SCHEMES	
74	Form and content of public information document	46
75	Accommodation information	47
76	Residents’ contributions information	47
77	Information about payments scheme operator must make to a resident	48
78	Funds information	48
79	Facilities information	48
80	Information about retirement village land	49
81	Residents’ rights information	49
82	Resale process information	49
83	Dispute resolution information	49
84	Public information document to be given to prospective resident	50
85	Residents’ access to certain documents	50
86	False or misleading documents	50
	PART 5—OPERATION OF SCHEMES FOR, AND MANAGEMENT OF, RETIREMENT VILLAGES	
	<i>Division 1—Operator and employees of village</i>	
87	Definitions for div 1	51
88	Persons prohibited from operating a retirement village scheme etc.	51
	<i>Division 2—Exercise of power of attorney by scheme operator</i>	
89	Power of attorney	52
	<i>Division 3—Capital improvement</i>	
90	Responsibility for capital improvement	53
	<i>Division 4—Capital replacement fund</i>	
91	Capital replacement fund	53

Retirement Villages Act 1999

92	Amount of capital replacement fund	55
93	Capital replacement fund budget	56
94	Payments into capital replacement fund	56
95	Restriction on investing capital replacement fund amounts	57
96	Resident liable for replacing certain capital items	57
	<i>Division 5—Maintenance reserve fund</i>	
97	Maintenance reserve fund	58
98	Amount of maintenance reserve fund	59
99	Maintenance reserve fund budget	60
100	Payments into maintenance reserve fund	60
101	Restriction on investing maintenance reserve fund amounts	61
	<i>Division 6—Charges for personal services</i>	
102	Charges for personal services for former residents	61
	<i>Division 7—Charges for general services</i>	
103	Working out and paying charges for general services for residents	61
104	Working out and paying general services charges for former residents	62
105	General services charges for unsold right to reside in accommodation units	63
106	Increasing general services charges	63
107	Resident’s responsibility for paying increased general services charge	64
108	New services to be approved by majority of residents	64
	<i>Division 8—Insurance</i>	
109	Definitions for div 8	65
110	Scheme operator must insure village	65
	<i>Division 9—Financial accounts and statements</i>	
111	Scheme operator must keep separate accounts for capital replacement fund and maintenance reserve fund	66
112	Quarterly financial statements	66
113	Annual financial statements	66
	PART 6—STATUTORY CHARGES OVER RETIREMENT VILLAGE LAND	
	<i>Division 1—Preliminary</i>	
114	Application of pt 6	67

<i>Division 2—Creating a statutory charge, its effect and priority</i>	
115	Definition for div 2 68
116	Creating a charge 68
117	Charge extends to new land 68
118	Effect of charge 69
119	Priority of charge 69
<i>Division 3—Enforcing a statutory charge</i>	
120	Enforcing a charge 70
121	Orders court may make 71
122	Effect of court order 71
<i>Division 4—Extinguishing and releasing a statutory charge</i>	
123	Extinguishing a charge 72
124	Scheme operator may ask for release of charge if land stops being retirement village land 72
125	Chief executive to release charge 73
<i>Division 5—Exemption from stamp duty and charges</i>	
126	Exemption from stamp duty and charges 74
PART 7—RESIDENTS PARTICIPATION	
<i>Division 1—Residents committee</i>	
127	Residents committee 74
128	Residents constitution 75
129	Committee’s function 75
<i>Division 2—By-laws</i>	
130	Residents may make, change or revoke by-laws 75
<i>Division 3—Residents meetings</i>	
131	Annual meeting 76
132	Other meetings 76
<i>Division 4—Proxy voting and postal voting</i>	
133	Voting 77
PART 8—ENFORCEMENT	
<i>Division 1—Inspectors</i>	
134	Appointment 78
135	Limitation of inspector’s powers 78

Retirement Villages Act 1999

136	Inspector's appointment conditions	78
137	Inspector's identity card	79
138	Production or display of inspector's identity card	79
	<i>Division 2—Powers of inspectors</i>	
	<i>Subdivision 1—Entry of places</i>	
139	Power to enter places	80
	<i>Subdivision 2—Procedure for entry</i>	
140	Entry with consent	80
141	Application for warrant	81
142	Issue of warrant	82
143	Warrants—procedure before entry	82
	<i>Subdivision 3—Powers after entry</i>	
144	General powers after entering places	83
145	Failure to help inspector or give inspector information	84
	<i>Subdivision 4—Power to seize evidence</i>	
146	Power to seize evidence from places	84
147	Receipts for seized things	85
148	Inspector to allow inspection etc.	85
149	Obligation to return seized things	85
	<i>Subdivision 5—Power to obtain information</i>	
150	Power to require production of documents	86
	<i>Subdivision 6—General enforcement matters</i>	
151	Obstructing etc. an inspector	86
152	Compensation	86
	PART 9—DISPUTE RESOLUTION	
	<i>Division 1—Preliminary</i>	
153	Parties' rights under this part preserved	87
154	Preliminary negotiation	87
	<i>Division 2—Mediators</i>	
155	Mediator's function	88
156	Matters that may be mediated	88

Division 3—Mediation of retirement village disputes

157 Notice of retirement village dispute 88

158 Chief executive to act on dispute notice 89

159 Right of representation 89

160 Conference to be held in private 89

161 Parties attendance at conference not compellable 89

162 Parties to mediation conference 89

163 Mediation agreements 90

164 No official record of mediation conference 90

165 Withdrawal of dispute 90

PART 10—APPLICATIONS TO TRIBUNAL

Division 1—Preliminary

166 Applications generally 91

Division 2—Applications about retirement village disputes

167 Application for reference of dispute 91

168 Chief executive to refer dispute to tribunal 91

Division 3—Applications about other retirement village issues

169 Resident’s right to apply for an order if threatened with removal,
deprivation or restriction 92

170 Resident may apply for order if given false or misleading documents 92

171 Former resident may apply for order for payment of exit entitlement 93

172 Chief executive to refer application to tribunal 93

Division 4—Requests to chief executive to make application

173 Resident may ask chief executive to make application for the resident . . 93

PART 11—TRIBUNAL HEARINGS OF RETIREMENT VILLAGE ISSUES

Division 1—Tribunal hearings

174 Chairperson may hold directions hearing 94

175 Presiding member 95

176 Venues 95

177 Hearing to be held in private 95

178 Appearances before tribunal 95

179 Right of representation 95

180	Procedure	96
181	Amendment of issue	96
182	Questions to be decided by majority of tribunal	96
183	Tribunals to keep records of proceedings	97
184	Powers of tribunal	97
185	Inspection of documents	97
186	Offences—hearings	97
187	Self incrimination	98
188	False or misleading information	98
189	False or misleading documents	98
190	Contempt of tribunal	99

Division 2—Tribunal orders

191	Tribunal orders generally	99
192	Tribunal orders under section 169	100
193	Tribunal orders under section 170	101
194	Tribunal orders under section 171	101
195	Enforcement of particular tribunal orders	101
196	Orders requiring payments	102
197	Orders of tribunal to be complied with	103
198	Tribunal’s order final and binding	103
199	Restricted right to question tribunal’s hearing and order	103

Division 3—Other provisions

200	Parties to pay own costs	103
201	Allowance to witness	104
202	Withdrawal of application	104

PART 12—COMPOSITION AND FUNCTIONS OF TRIBUNAL

Division 1—Tribunal panel

203	Appointment of members of tribunal panel	104
204	Duration of appointment	105
205	Conditions of appointment	105
206	Removal from office	105

Division 2—Composition of retirement village tribunals

207	Composition of retirement village tribunals	105
208	Chairperson	106
209	Tribunal’s function	106
210	Tribunal’s jurisdiction	106
211	Tribunal’s general powers	106
212	Transfer of hearings between tribunals and courts	107

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

213	Ordinary protection and immunity allowed	107
214	Admissions made during hearing of retirement village issue	108

Division 2—General

215	Exclusion of other jurisdictions	108
216	Register	109
217	Reports on discharge of tribunals’ function	109
218	Chief executive’s responsibility	110

PART 14—MISCELLANEOUS

219	Starting offence proceedings	110
220	Appointments and authority	110
221	Evidentiary provisions	111
222	Act’s remedies not exclusive	111
223	Protection from liability	111
224	Responsibility for acts or omissions of representatives	112
225	Executive officers must ensure corporation complies with Act	112
226	Annual report on operation of Act	113
227	Approval of forms	113
227A	Delegation of chief executive’s powers	113
228	Regulation-making power	114

PART 15—TRANSITIONAL AND SAVINGS PROVISIONS

229	Existing retirement village schemes	114
230	Existing exempt organisations and retirement villages	115
231	Releasing certain existing charges	115

Retirement Villages Act 1999

232	Apportionment of balance where separate funds maintained	116
233	Apportionment of balance where single fund maintained for maintenance and repairs	117
234	Apportionment of balance where single fund maintained for capital replacement and maintenance and repairs	117
235	Existing regulations	118
236	Existing by-laws	118
237	Retirement Villages Act 1988 references	118

PART 16—REPEAL AND AMENDMENT

238	Repeal	118
-----	------------------	-----

SCHEDULE 2	119
-----------------------------	-----

DICTIONARY

ENDNOTES

1	Index to endnotes	124
2	Date to which amendments incorporated	124
3	Key	124
4	List of legislation	125
5	List of annotations	125

RETIREMENT VILLAGES ACT 1999

[reprinted as in force on 7 July 2000]

An Act to provide for the establishment and operation of retirement villages, and for other purposes

PART 1—PRELIMINARY

Division 1—Introduction

Short title

1. This Act may be cited as the *Retirement Villages Act 1999*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Division 2—Objects

Main objects

3. The main objects of this Act are as follows—
 - (a) to declare particular rights and obligations of residents and scheme operators;
 - (b) to promote fair trading practices in operating retirement villages and in supplying services to residents;
 - (c) to facilitate the disclosure of information to prospective residents of a retirement village to ensure the rights and obligations of the

Retirement Villages Act 1999

- village residents and scheme operator may be easily understood;
- (d) to encourage the continued growth and viability of the retirement village industry in the State;
 - (e) to encourage the adoption of best practice standards by the retirement village industry;
 - (f) to provide a clear regulatory framework to ensure certainty for the retirement village industry in planning for future expansion;
 - (g) to facilitate participation by residents, who want to be involved, in the affairs of retirement villages;
 - (h) to provide for processes for resolving disputes between residents and scheme operators.

*Division 3—Interpretation and basic concepts***Definitions**

4. The dictionary in schedule 2 defines particular words used in this Act.

What is a “retirement village”

5.(1) A “**retirement village**” is premises where older members of the community or retired persons reside, or are to reside, in independent living units or serviced units, under a retirement village scheme.

- (2) In this section—

“**premises**” does not include a site within the meaning of the *Mobile Homes Act 1989*.

What is “retirement village land”

6. Land is “**retirement village land**” if the land is used, or to be used, for a retirement village and, for land included in a community titles scheme within the meaning of the *Body Corporate and Community Management Act 1997*, includes the lots and common property into which the land is subdivided.

What is a “retirement village scheme”

7. A “**retirement village scheme**” is a scheme under which a person—
- (a) enters into a residence contract; and
 - (b) in consideration for paying an ingoing contribution under the residence contract, acquires personally or for someone else, a right to reside in a retirement village, however the right accrues; and
 - (c) on payment of the relevant charge, acquires personally or for someone else, a right to receive 1 or more services in relation to the retirement village.

Who is a “retirement village scheme operator”

8. A person is a “**retirement village scheme operator**” if the person, alone or with someone else, controls the scheme’s operation or purports to control the scheme’s operation.

Who is a “resident”

9. A “**resident**” of a retirement village is a person who has a right to reside in the retirement village and a right to receive 1 or more services in relation to the retirement village under a residence contract.

What is a “residence contract”

10.(1) A “**residence contract**” is a written contract, other than an excluded contract, about residence in a retirement village entered into between a person and the scheme operator.

(2) A residence contract includes any other contract (an “**ancillary contract**”) between the person and the scheme operator if the ancillary contract is dependent on, or arises out of, the making of the residence contract or another ancillary contract.

- (3) To be a residence contract, a contract must—
- (a) either—
 - (i) purport to give a person, or give rise to a person having, an

Retirement Villages Act 1999

- exclusive right to reside in an accommodation unit in the retirement village; or
- (ii) provide for, or give rise to, obligations on a person in relation to the person's or someone else's residence in the retirement village; and
- (b) purport to give a person, or give rise to a person having a right, in common with other residents in the retirement village, to use and enjoy the retirement village's communal facilities; and
- (c) contain or incorporate—
- (i) a service agreement or an agreement to enter into a service agreement that includes a copy of the service agreement; and
 - (ii) if the contract includes an ancillary agreement that is not signed contemporaneously with the contract, an agreement to enter into the ancillary agreement that includes a copy of the ancillary agreement; and
- (d) restrict the way in which, or the persons to whom, the right to reside in the village may be disposed of during the resident's lifetime.

What is an “existing residence contract”

11. An “existing residence contract” is a residence contract existing immediately before the commencement of this Act.

What is a “service agreement”

12.(1) A “service agreement” is an agreement made between a person and a scheme operator under which general services or personal services are to be supplied for or to the person or someone else when the person or other person becomes a resident of a retirement village.

(2) A service agreement may be in a residence contract.

(3) In this section—

“general services” are the services supplied, or made available, to all residents of the retirement village.

Examples of general services—

- management and administration
- gardening and general maintenance
- shop or other facility for supplying goods to residents
- service or facility for the recreation or entertainment of residents.

“personal services” are optional services supplied or made available for the benefit, care or enjoyment of a resident of a retirement village.

Examples of personal services—

- laundry
- meals
- cleaning the resident’s accommodation unit.

What is a “public information document”

13. A **“public information document”** is a document, in the form provided for under section 74,¹ giving details about a retirement village scheme.

What is an “incoming contribution”

14.(1) An **“incoming contribution”** is the amount payable by a person under a residence contract to secure the person’s, or someone else’s, right to reside in a retirement village, but does not include a recurrent payment for rent, fees or charges.

(2) It is immaterial whether—

- (a) the right to reside in the village is enforceable or not; or
- (b) the payment alone secures the right, or something else is also required to secure it.

What is an “exit fee”

15.(1) An **“exit fee”** is the amount that a resident may be liable to pay to

¹ Section 74 (Form and content of public information document)

a scheme operator under a residence contract arising from—

- (a) the resident ceasing to reside in the accommodation unit to which the contract relates; or
- (b) the settlement of the sale of the right to reside in the accommodation unit.

(2) The exit fee for a residence contract, other than an existing residence contract, that a resident may be liable to pay to the scheme operator is to be calculated as at the day the resident ceases to reside in the accommodation unit to which the contract relates.

What is an “exit entitlement”

16. An “**exit entitlement**” is the amount that a scheme operator may be liable to pay to a former resident under a residence contract arising from—

- (a) the resident ceasing to reside in the accommodation unit to which the contract relates; or
- (b) the settlement of the sale of the right to reside in the accommodation unit.

What is a “capital replacement fund”

17. A “**capital replacement fund**” is a fund established under section 91² for replacing the retirement village’s capital items.

What is a “capital replacement fund contribution”

18. A “**capital replacement fund contribution**” is a percentage of the new resident’s ingoing contribution, decided by the scheme operator and described in the public information document as a contribution to the capital replacement fund.

² Section 91 (Capital replacement fund)

What is a “maintenance reserve fund”

19. A “**maintenance reserve fund**” is a fund established under section 97 for maintaining and repairing the retirement village’s capital items.

What is a “maintenance reserve fund contribution”

20. A “**maintenance reserve fund contribution**” is a proportion of the general services charges, decided by the scheme operator and described in the public information document as a contribution to the maintenance reserve fund.

What is a “retirement village dispute”

21. A “**retirement village dispute**” is a dispute between a scheme operator and a resident of a retirement village about the parties’ rights and obligations under the resident’s residence contract or this Act.

What is a “retirement village issue”

22. A “**retirement village issue**” is—

- (a) a retirement village dispute; or
- (b) an application for a tribunal order under sections 169 to 171 or 173.³

*Division 4—Operation of Act***Application of Act**

23. This Act applies to—

³ Sections 169 (Resident’s right to apply for an order if threatened with removal, deprivation or restriction), 170 (Resident may apply for order if given false or misleading documents), 171 (Former resident may apply for order for payment of exit entitlement) or 173 (Resident may ask chief executive to make application for the resident)

- (a) a retirement village scheme, including a scheme for a retirement village to which the *Body Corporate and Community Management Act 1997* applies, the scheme operator and inducements and invitations to enter into the scheme if—
 - (i) the retirement village is, or is to be, situated in the State, irrespective of where the scheme is operated or inducements or invitations to enter into the scheme are given or published; or
 - (ii) the scheme is operated in the State, irrespective of where the retirement village is, or is to be, situated or inducements or invitations to enter into the scheme are given or published; and
- (b) a residence contract entered into before or after the commencement of this section, unless this Act states otherwise.

Application of Body Corporate and Community Management Act 1997

24. If there is an inconsistency between this Act and the *Body Corporate and Community Management Act 1997* in relation to a person's rights and obligations under a retirement village scheme, this Act prevails to the extent of the inconsistency.

Application of Fair Trading Act 1989

25. This Act does not limit the application of the *Fair Trading Act 1989* to the acquisition, under a residence contract, of goods or services, within the meaning of that Act.

Certain age restrictions on residence not unlawful

26. Despite the *Anti-Discrimination Act 1991*, it is not unlawful for a scheme operator to discriminate on the basis of age if the discrimination merely limits residence in a retirement village to older members of the community and retired persons.

PART 2—RETIREMENT VILLAGE SCHEMES

Division 1—Registration

Application for registration of a retirement village scheme

27.(1) A person may apply to the chief executive to register a retirement village scheme.⁴

- (2)** The application must be in the approved form and accompanied by—
- (a) particulars of the following—
 - (i) the land on which the retirement village’s buildings and facilities are, or are to be, constructed;
 - (ii) the accommodation units and communal facilities the scheme operator undertakes are, or are to be, available for the village when the scheme is registered;
 - (iii) the accommodation units and communal facilities the scheme operator intends to make available for the village after the scheme is registered, depending on the sales activity, finance availability, or market conditions, for the village;
 - (iv) the terms under which persons are, or are to be, invited to enter into the scheme under the residence contracts for the retirement village;
 - (v) other particulars of the scheme prescribed under a regulation; and
 - (b) a copy of the public information document for the retirement village; and
 - (c) the fee prescribed under a regulation.

⁴ See part 15 for transitional and savings provisions about existing retirement village schemes.

Registration of retirement village scheme

28.(1) The chief executive may register, or refuse to register, a retirement village scheme for which an application for registration has been made.

(2) The chief executive's decision must be made within 60 days of the later of—

- (a) the day the application is received; or
- (b) if the particulars with the application do not conform with the requirements of section 27(2) and the chief executive asks for further particulars, the day the particulars are given.

(3) The chief executive may register the scheme only if satisfied—

- (a) the application complies with section 27; and
- (b) the applicant is not prohibited from operating a retirement village scheme under section 88.⁵

(4) If the chief executive registers the scheme, the chief executive must promptly give the applicant a registration certificate, in the approved form, stating the day the scheme was registered.

(5) If the chief executive refuses to register the scheme, the chief executive must promptly give the applicant a signed notice stating—

- (a) the reasons for the refusal; and
- (b) the applicant may appeal against the decision under section 29.

(6) If the chief executive fails to decide the application in the time required under subsection (2), the chief executive is taken to have refused the application and the applicant may appeal against the decision under section 29.

Appeal to District Court

29. A person whose application to register a retirement village scheme has been refused, or taken to be refused, may appeal against the decision to the District Court.

⁵ Section 88 (Persons prohibited from operating a retirement village scheme etc).

Time for making appeals

- 30.(1)** A person may appeal against the decision only within—
- (a) if a decision notice is given to the person—28 days after the notice was given to the person; or
 - (b) if the chief executive is taken to have refused the application under section 28—88 days after the application was made.
- (2)** The court may extend the period for appealing.

Starting appeals

- 31.** An appeal must be started by—
- (a) filing a written notice of appeal with the court; and
 - (b) serving a copy of the notice on the chief executive.

Powers of court on appeal

- 32.(1)** In deciding an appeal against a decision, the court—
- (a) has the same powers as the chief executive; and
 - (b) is not bound by the rules of evidence; and
 - (c) must comply with natural justice.
- (2)** An appeal is by way of rehearing.
- (3)** The court may—
- (a) confirm the decision; or
 - (b) set aside the decision and substitute another decision that it considers appropriate; or
 - (c) set aside the decision and return the issue to the chief executive with the directions it considers appropriate.

Effect of court's decision on appeal

- 33.** If the court substitutes another decision for the decision, the substituted decision is taken to be that of the chief executive.

Offence to operate etc. an unregistered retirement village scheme

34.(1) If a retirement village scheme is not registered, the scheme operator or proposed scheme operator must not—

- (a) operate the scheme; or
- (b) induce or invite a person to participate in the scheme by—
 - (i) residing in the retirement village to which the scheme relates; or
 - (ii) paying an ingoing contribution; or
 - (iii) doing another act in relation to the scheme; or
- (c) use a document, or publish an advertisement, to induce or invite a person to participate in the scheme by—
 - (i) residing in the retirement village to which the scheme relates; or
 - (ii) paying an ingoing contribution; or
 - (iii) doing another act in relation to the scheme; or
- (d) extend an existing retirement village.

Maximum penalty—540 penalty units.

(2) However, the scheme operator or proposed scheme operator does not contravene subsection (1)(c) if the document or advertisement merely invites expressions of interest in the scheme.

(3) In this section—

“advertisement” includes an advertisement made by publishing a statement or claim—

- (a) in a document, including a newspaper or magazine; or
- (b) by broadcast, electronic communication, telecommunication, video or film.

“induce” includes attempt to induce.

Division 2—Retirement village scheme register**Retirement village scheme register**

35.(1) The chief executive must keep a register for retirement village schemes.

(2) The register must include the following items (the “**records**”) for each registered scheme—

- (a) copies of the following documents—
 - (i) the registration certificate;
 - (ii) the public information documents and notices about inaccuracies in public information documents given under section 36;
- (b) the particulars of the scheme mentioned in section 27(2)(a);⁶
- (c) the annual financial statements given to the chief executive under section 113(3).⁷

(3) The records are to be kept on the register for at least 10 years.

(4) A person may, on payment of the fee prescribed under a regulation—

- (a) inspect the register at the department’s head office when it is open to the public; and
- (b) take extracts from, or obtain a copy of details in, the register.

(5) The register may be kept in any form that allows a person to have access to it under subsection (4).

Scheme operator to give notice about inaccuracy in public information document

36.(1) This section applies if the particulars in a public information document for a resident become inaccurate in a way that may materially affect the interests of a resident of the village.

⁶ Section 27 (Application for registration of retirement village scheme)

⁷ Section 113 (Annual financial statements)

(2) Within 28 days after the scheme operator becomes aware of the inaccuracy or the circumstances causing the inaccuracy, the scheme operator must make a full written disclosure of the inaccuracy to the chief executive and to each resident who is, or is likely to be, materially affected by the inaccuracy.

Maximum penalty for subsection (2)—540 penalty units.

Public information document forms part of residence contract

37.(1) A public information document for each resident is taken to form part of the resident's residence contract to which the public information document relates.

(2) A notice given to the chief executive and a resident under section 36 is taken to form part of the resident's residence contract.

(3) If a provision ("**PID provision**") of a public information document forming part of a resident's residence contract is inconsistent with another provision ("**contract provision**") of the contract not contained in the public information document, and the contract provision disadvantages the resident, the PID provision prevails to the extent of the inconsistency.

(4) If a PID provision is inconsistent with this Act, this Act prevails to the extent of the inconsistency.

Division 3—Chief executive may apply for court orders

Chief executive may apply for order appointing a manager of a retirement village

38.(1) If the chief executive reasonably believes it is necessary to protect the interests of residents of a particular retirement village, the chief executive may apply to the District Court for—

- (a) an order that a person be appointed as manager of the retirement village to control its operation; or
- (b) in urgent circumstances, an ex parte interim order appointing a stated person as manager of the retirement village.

(2) If the court makes an order under subsection (1), it may, at any time, make any ancillary order it considers necessary to support the order.

Additional power of chief executive to seek an order

39.(1) This section applies if the chief executive considers, on reasonable grounds, that a person is contravening section 34.⁸

(2) The chief executive may apply to the District Court for an order to stop the person from contravening the section.

(3) The court may make any order, including an interim order, it considers appropriate.

Division 4—Cancelling registration of retirement village**Applying to cancel registration**

40.(1) A scheme operator may ask the chief executive to cancel the registration of the retirement village scheme if the operator—

- (a) stops operating the scheme; or
- (b) proposes to stop operating the scheme.

(2) The request must be written.

(3) The scheme operator must also—

- (a) give each resident of the retirement village a written notice stating the following—
 - (i) the scheme operator has asked the chief executive to cancel the registration of the scheme;
 - (ii) if there is a statutory charge over the retirement village land, whether or not the operator has asked the chief executive to release the statutory charge over the retirement village land under section 124;⁹
 - (iii) how it will affect the person if the scheme is cancelled;
 - (iv) that, within 60 days after the person receives the notice, the person may, by written notice given to the chief executive,

⁸ Section 34 (Offence to operate etc. an unregistered retirement village scheme)

⁹ Section 124 (Scheme operator may ask for release of charge if land stops being retirement village land)

Retirement Villages Act 1999

object to the cancellation; and

- (b) give the chief executive—
 - (i) a statutory declaration made by the scheme operator stating the facts of the scheme operator's compliance with paragraph (a); and
 - (ii) a copy of the notice given to residents under paragraph (a).

(4) In this section—

“resident” includes a former resident who has not received an exit entitlement to which the former resident is entitled under the former resident's residence contract.

Cancelling registration

41.(1) Subsection (2) applies if—

- (a) a statutory charge existed over the retirement village land, the chief executive has released the charge; and
- (b) the chief executive is satisfied—
 - (i) the scheme operator has complied with section 40(3); and
 - (ii) cancelling the scheme is appropriate, having regard to the objections, if any, made under section 40(3).

(2) The chief executive may—

- (a) cancel the registration of the scheme; and
- (b) record the cancellation in the register.

PART 3—RESIDENCE CONTRACTS

Division 1—Purpose and intention of part

Purpose and intention of part

42.(1) The purpose of this part is to state minimum requirements for residence contracts.

(2) However, it is not the intention of this part to prevent a scheme operator agreeing in a residence contract or otherwise to conditions that are more beneficial to a resident or former resident than the provisions of this part.

Division 2—General

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

43.(1) A scheme operator may enter into a residence contract for the retirement village with someone else only if the scheme is registered under this Act.

Maximum penalty—540 penalty units.

(2) If a scheme operator enters into a residence contract in contravention of subsection (1), the contract is not invalid or unenforceable for that reason only, but may be terminated under section 52.¹⁰

Person signing residence contract to be given copy

44. When a person enters into a residence contract with a scheme operator, the operator must immediately give the person—

- (a) a signed copy of the contract; and
- (b) a public information document relating to the contract, unless the

¹⁰ Section 52 (Termination by resident)

document has already been given to the person under section 84.¹¹

Maximum penalty—100 penalty units.

Content of residence contract

45.(1) A scheme operator must ensure each residence contract for the retirement village includes details about the following—

- (a) the right to rescind the contract under section 48 before the cooling-off period ends;
- (b) the ingoing contribution payable under the contract;
- (c) the exit fee payable under the contract;
- (d) the resident's exit entitlement;
- (e) the services charges;
- (f) the amounts payable, and when the amounts are payable, by the resident for the maintenance reserve fund for the retirement village;
- (g) the insurance for the retirement village, and insurance for which the resident is responsible;
- (h) the resident's right to resell the right to reside in the accommodation unit;
- (i) the resident's entitlement to audited and unaudited financial statements for the village;
- (j) the dispute resolution process established under this Act;
- (k) the statutory charge, if relevant to the resident's title to, or interest in, the accommodation unit;
- (l) the resident's and scheme operator's rights to terminate the contract;
- (m) anything else prescribed under a regulation.

Maximum penalty—100 penalty units.

¹¹ Section 84 (Public information document to be given to prospective resident)

(2) A provision of a residence contract is of no effect to the extent that it is inconsistent with this Act or purports to restrict or exclude the operation of a provision of this Act.

(3) Also, a provision of a residence contract is of no effect to the extent that it purports to restrict or exclude the operation of a public information document, or a provision of a public information document, taken to form part of the contract under section 37.¹²

Dealing with ingoing contribution

46.(1) A person who receives an amount as an ingoing contribution under a residence contract must give it to one of the following persons (the “**trustee**”) to hold in trust—

- (a) the public trustee;
- (b) the scheme operator’s lawyer;
- (c) a real estate agent;
- (d) any authorised trustee corporation under the Corporations Law.¹³

Maximum penalty—100 penalty units.

(2) If the trustee receives an amount under subsection (1), the trustee’s receipt for the amount is a sufficient discharge for the person for the amount paid.

(3) The trustee must hold the amount in trust until the later of—

- (a) the day the conditions precedent, if any, to the creation of the right to reside to which the amount relates are fulfilled; or
- (b) the day the cooling-off period ends.

Maximum penalty—100 penalty units.

¹² Section 37 (Public information documents form part of scheme’s residence contracts)

¹³ Under the Corporations Law, section 9, an “**authorised trustee corporation**” is ‘a body corporate that is declared by the regulations to be an authorised trustee corporation for the purposes of the provision in which the expression appears’.

(4) At the end of the later day, the trustee must pay the amount to the person lawfully entitled to it.

Maximum penalty—100 penalty units.

(5) If there is a dispute between a resident and a scheme operator about who is lawfully entitled to the amount, the dispute is a retirement village dispute.

(6) If a retirement village dispute arises under subsection (5), the scheme operator must give the trustee written notice of the dispute immediately it arises.

Maximum penalty—100 penalty units.

(7) If the trustee is given a notice under subsection (6), the trustee must hold the amount in trust until the dispute is resolved—

- (a) as provided for under this Act; or
- (b) by agreement, by deed, between the parties.

Maximum penalty—100 penalty units.

(8) However, if the contract is rescinded in the cooling-off period, the trustee must immediately pay the amount to the person by whom it was paid under the contract.

Maximum penalty—100 penalty units.

(9) If a person (the “**payer**”) who is required to pay an amount to someone (the “**payee**”) under this section does not pay the amount, the payee may recover it, as a debt payable by the payer to the payee.

Dealing with instruments assigning property under a residence contract

47.(1) This section applies if the person (the “**assignor**”) who enters into a residence contract to secure the person’s, or someone else’s, right to reside in a retirement village assigns property under the residence contract before the cooling-off period ends.

(2) The scheme operator must ensure the assignment instrument is held

in escrow by the public trustee or the scheme operator’s lawyer (the “**authorised person**”).

Maximum penalty—100 penalty units.

(3) If the residence contract is rescinded in the cooling-off period, the authorised person must release the assignment instrument to the assignor.

Maximum penalty—100 penalty units.

(4) If the residence contract is not rescinded in the cooling-off period, the authorised person must, at the end of the cooling-off period, release the assignment instrument to the assignee, or someone else at the assignee’s written direction.

Maximum penalty—100 penalty units.

(5) In this section—

“**assignee**” means the person in whose favour property is assigned under an assignment instrument.

Division 3—Rescinding residence contracts

Residence contract may be rescinded during cooling-off period

48. A person who, personally or for someone else, enters into a residence contract to secure the person’s, or other person’s, right to reside in a retirement village may, by written notice given to the scheme operator, rescind the contract before the cooling-off period ends.

Reassignment of property acquired in cooling-off period

49.(1) This section applies if the assignee under an assignment instrument mentioned in section 47 acquires the property the subject of the assignment within the cooling-off period.

(2) As soon as possible after the assignee becomes aware the residence contract has been rescinded, the assignee must reassign the property to—

- (a) the person from whom the assignee acquired it (the “**assignor**”);
- or

- (b) someone else, at the assignor's written direction.

Maximum penalty—100 penalty units.

(3) The assignee must reassign the property free of all interests, mortgages and other charges to which it has become subject since the assignee acquired it.

Maximum penalty—100 penalty units.

(4) The assignee is responsible for the costs, expenses and duties relating to the reassignment under this section.

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

50.(1) This section applies if section 49 requires an assignee to reassign property on rescission of a residence contract but the assignee—

- (a) has disposed of the property; or
- (b) is unable, when the contract is rescinded, to discharge any interests, mortgages and other charges to which the property has become subject since the assignee acquired it.

(2) The scheme operator for the retirement village to which the contract relates must pay compensation to—

- (a) the assignor; or
- (b) someone else, at the assignor's written direction.

(3) The amount of compensation payable—

- (a) is, after discounting for any GST payable on any supply relating to the payment of the compensation, the amount equalling the value attributed to the assigned property under the residence contract; and
- (b) may be recovered as a debt payable by the scheme operator to the assignor, or other person mentioned in subsection (2)(b), in a court having jurisdiction for the recovery of the amount claimed.

(4) If there are 2 or more scheme operators for the retirement village, the scheme operators are jointly and severally liable to pay the compensation.

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

51. In this division—

“resident” includes a person who, for someone else, enters into a residence contract to secure the other person’s right to reside in a retirement village.

Termination by resident

52.(1) A resident may terminate the resident’s right to reside in a retirement village by 1 month’s written notice given to the scheme operator.

(2) Also, a resident may terminate the resident’s right to reside in a retirement village by written notice given to the scheme operator if the retirement village scheme is not registered.

(3) A notice under subsection (2) must—

- (a)** be given within 14 days after the resident becomes aware the retirement village scheme is not registered; and
- (b)** state the day, no earlier than the day on which notice is given, on which the termination takes effect.

(4) If a resident terminates the resident’s right to reside in a retirement village under subsection (2), the scheme operator must refund the full amount of the resident’s ingoing contribution to the resident within 30 days of the termination.

Maximum penalty—540 penalty units.

(5) A resident may recover an amount owing under subsection (4) as a debt owed by the scheme operator.

Termination by scheme operator

53.(1) A scheme operator may terminate a resident’s right to reside in the retirement village by giving the written notice required by this section to the resident.

(2) If the resident’s right to reside in the retirement village is to be

Retirement Villages Act 1999

terminated on either of the following grounds, the scheme operator must give the resident 14 days notice—

- (a) the resident has intentionally or recklessly—
 - (i) injured a person while the person is in the retirement village; or
 - (ii) seriously damaged the resident's accommodation unit; or
 - (iii) seriously damaged property of another person in the retirement village;
- (b) the resident is likely, intentionally or recklessly, to do something mentioned in paragraph (a)(i) to (iii).

(3) The scheme operator must give the resident 2 months notice if the resident's right to reside in the retirement village is to be terminated on the on any of the following grounds—

- (a) the resident has committed a material breach of the contract;
- (b) the scheme operator reasonably believes the resident has abandoned the resident's right to reside in the retirement village;
- (c) the scheme operator and a person who has assessed the resident's care needs under the *Aged Care Act 1997*(Cwlth), section 22.4 reasonably believe the resident's type of accommodation is now unsuitable for the resident.¹⁴

Example of accommodation that is now unsuitable for the resident—

The resident resides in an independent living unit and now needs help with personal care not normally provided by the scheme operator.

(4) The notice must state—

- (a) the grounds on which the right to reside is being terminated; and
- (b) the day by which the resident must vacate the retirement village.

(5) If the scheme operator does not know the resident's current address, the scheme operator may give the notice by publishing it in—

- (a) a newspaper circulating throughout the State; and
- (b) a newspaper circulating throughout Australia.

¹⁴ *Aged Care Act 1997* (Cwlth), section 22.4 (Assessment of care needs)

(6) The scheme operator must not include the grounds for the termination in the newspaper notice.

Maximum penalty for subsection (6)—50 penalty units.

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

54.(1) This section applies if a resident gives a scheme operator a written notice—

- (a) stating the resident is considering terminating the resident's right to reside in the retirement village under section 52; and
- (b) asking the operator to give the resident a written estimate of the resident's exit entitlement as at the date of the notice.

(2) The scheme operator must comply with the request within 14 days after it is given, unless the scheme operator has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) However, the scheme operator does not contravene subsection (2) if the scheme operator has given the resident an estimate under that subsection within the 6 months immediately preceding the resident's request.

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

55. A right to reside in an accommodation unit in a retirement village held by a resident terminates on the death of the resident.

Division 5—Reselling resident's right to reside

Definitions for div 5

56. In this division—

“**termination date**” means—

- (a) the date a resident's right to reside under a residence contract or an existing residence contract in an accommodation unit in a retirement village is terminated under this Act; or

- (b) for a right to reside under a residence contract in an accommodation unit in a retirement village terminated before the commencement of this Act, the commencement of this section.

“**valuer**” see section 70.

Application of div 5

57. This division applies if—

- (a) a resident’s right to reside under a residence contract or an existing residence contract in an accommodation unit in a retirement village is terminated; and
- (b) under the contract, the scheme operator has the controlling right to sell the right to reside in the unit; and
- (c) the contract does not include provisions at least equivalent to the provisions of this division.

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

58.(1) Within 30 days after the termination date, the former resident and the scheme operator under a residence contract, other than an existing residence contract, are to negotiate in good faith and, if possible, agree in writing on any work (“**reinstatement work**”) that is necessary to be done to reinstate the accommodation unit as nearly as practicable to its condition at the start of the former resident’s occupation.

(2) For an existing residence contract, the former resident and the scheme operator are to negotiate in good faith and, if possible, agree in writing on any work (also “**reinstatement work**”) that is necessary to be done to reinstate the accommodation unit to a marketable condition having regard to—

- (a) the age of the accommodation unit and the retirement village; and
- (b) the general condition of accommodation units comparable with the unit in the village.

(3) If the former resident and the scheme operator can not agree on the reinstatement work, the scheme operator is to obtain a statement of the

work, and an itemised quote for doing the work, the operator considers to be reinstatement work from a qualified tradesperson appropriate for the work within a further 14 days.

Scheme operator to ensure reinstatement work to be completed

59.(1) This section applies if—

- (a) the former resident and the scheme operator agree on reinstatement work under section 58; or
- (b) a tribunal orders that work be done to reinstate the former resident's accommodation unit.

(2) The scheme operator must ensure the reinstatement work is completed within—

- (a) for reinstatement work agreed on under section 58—
 - (i) 90 days after the vacation date; or
 - (ii) if the former resident and the scheme operator agree on another time, the time agreed; or
- (b) for reinstatement work ordered to be done by a tribunal—the period fixed by the tribunal.

(3) In this section—

“vacation date”, of an accommodation unit in a retirement village, means—

- (a) the date a former resident vacates the unit; or
- (b) for a former resident who has vacated the unit before the commencement of this Act, the commencement of this section.

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

60.(1) Within 30 days after the termination date, the former resident and the scheme operator are to negotiate in good faith and, if possible, agree in writing on the resale value of the right to reside in the accommodation unit.

(2) If the former resident and the scheme operator can not agree on the

resale value of the accommodation unit, the scheme operator is to obtain a valuation of the right to reside in the unit from a valuer within a further 14 days.

(3) A valuation obtained under subsection (2) is taken to be the agreed resale value of the right to reside in the accommodation unit.

Who pays for work in freehold interest scheme

61. If the former resident's interest is a freehold interest, the former resident must pay the cost of reinstatement work.

Who pays for work in leasehold or licence scheme

62.(1) If the former resident's interest is a leasehold interest or licence, the cost of reinstatement work must be paid by—

- (a) to the extent the former resident caused accelerated wear to the accommodation unit's interior or deliberate damage to the unit—the former resident; or
- (b) if the residence contract states who is to make the payment—the person stated; or
- (c) otherwise—
 - (i) for a residence contract other than an existing resident contract—the scheme operator; or
 - (ii) for an existing residence contract—the former resident and the scheme operator in the same proportion as they are to share the sale proceeds of the right to reside in the unit on its sale.

(2) If the scheme operator must pay the cost of reinstatement work, it must be paid out of the operator's capital replacement fund.

When former resident's exit entitlement payable

63.(1) A scheme operator must pay the exit entitlement of a former resident to the person entitled to receive it on or before the sooner of—

- (a) the day when it must be paid under the former resident's

residence contract; or

- (b) 28 days after the right to reside is sold.

Maximum penalty—540 penalty units.

(2) However, this division does not prevent the operator paying the exit entitlement before the right to reside is sold if—

- (a) a scheme operator wants to pay an exit entitlement to a former resident after termination but before the right to reside is sold; and
- (b) the former resident and the operator agree on the value of the right to reside.

(3) At the same time as an exit entitlement is paid under this section, the scheme operator must give the former resident a written statement showing how the exit entitlement was worked out and the particulars of any of the following that are payable by the former resident—

- (a) any exit fee;
- (b) any accrued general services charges;
- (c) any outstanding services charges and fund contributions;
- (d) any expenses relating to the resale of the right to reside in the accommodation unit;
- (e) any other payments provided for in the contract.

Maximum penalty for subsection (3)—100 penalty units.

Units not sold within 6 months

64.(1) This section applies if—

- (a) a former resident's right to reside in a particular accommodation unit is not sold within 6 months after the termination date; and
- (b) the former resident has not been paid an exit entitlement under section 63.

(2) The former resident may engage a real estate agent to effect the sale of the right to reside in the accommodation unit.

Operator to tell resident of all offers for accommodation unit

65.(1) This section applies if a former resident has not been paid an exit entitlement under section 63.

(2) The scheme operator must promptly give to the former resident details of each offer to purchase the former resident's right to reside.

Maximum penalty—40 penalty units.

(3) Also, if the former resident asks, the scheme operator must give information about the following to the former resident as soon as practicable after the end of each month for which the right to reside remains unsold—

- (a) all sales inquiries relating to the right to reside;
- (b) what steps the operator is taking to promote the sale of the right to reside;
- (c) the following particulars of all other rights to reside in accommodation units for sale in the village—
 - (i) the number of rights for sale;
 - (ii) the size of the units;
 - (iii) the selling prices of the rights;
 - (iv) how long the rights have been for sale.

Maximum penalty for subsection (3)—40 penalty units.

Accepting offers at less than agreed resale value

66.(1) If a scheme operator accepts an offer for a right to reside less than the agreed value for the right, the former resident's exit entitlement is to be worked out as if the right to reside was sold at the agreed value.

(2) If a former resident accepts an offer for a right to reside less than the agreed value, the former resident's exit entitlement is to be worked out on the amount of the offer.

Updating agreed resale value

67.(1) This section applies if—

- (a) a former resident's right to reside in a particular accommodation

unit is not sold within 6 months after the termination date; and

- (b) the former resident has not been paid an exit entitlement under section 63.

(2) The former resident and the scheme operator are to reconsider the resale value of the right to reside at least every 3 months and, if possible, agree in writing on a new resale value, which may be the same value.

(3) If the former resident and the scheme operator can not agree on the resale value of the accommodation unit, the operator is to obtain a valuation of the right to reside in the unit from a valuer within a further 14 days.

(4) A valuation obtained under subsection (3) is taken to be the agreed resale value of the right to reside in the accommodation unit.

Costs of selling

68.(1) The costs of the sale of a right to reside in a particular accommodation unit, including the costs mentioned in sections 60(2) and 67(3), are to be shared by the former resident and the scheme operator in the same proportion as they are to share the sale proceeds of the right to reside in the unit on its sale.

(2) However, if the former resident engages a real estate agent to sell the right to reside, the former resident must pay the real estate agent's costs of the sale, if any, and commission.

(3) Except as provided by subsections (1) and (2), a scheme operator must not charge a former resident a fee, charge or commission, however described, for selling the resident's right to reside in the resident's accommodation unit.

Maximum penalty—40 penalty units.

(4) However, subsection (3) does not apply to an operator under an existing residence contract.

Limited ground for scheme operator to refuse to accept offer

69. A scheme operator may refuse to accept an offer to purchase a right to reside in an accommodation unit if the operator reasonably believes—

- (a) the prospective resident is not within the age limits for residents

Retirement Villages Act 1999

stated in the public information document; or

- (b) the type of unit to which the right to reside relates is unsuitable for the prospective resident.

Example for paragraph (b)—

The accommodation is an independent living unit and the prospective resident needs help with personal care not normally provided by the scheme operator.

Valuer

70.(1) For this division, the valuer of the resale value of the right to reside in the unit must be a person who—

- (a) is a registered valuer; and
(b) is agreed on by the scheme operator and the former resident.

(2) If the scheme operator and the former resident can not agree on the valuer—

- (a) the scheme operator or the former resident must immediately tell the chief executive by written notice; and
(b) the valuer is to be a registered valuer decided by the chief executive within 14 days after the chief executive receives the notice mentioned in paragraph (a).

(3) In this section—

“registered valuer” means a valuer registered under the *Valuers Registration Act 1992*.

Division 6—Enforcing residence contracts

Enforcing residence contract

71.(1) A residence contract is enforceable against the following persons for the recovery of all or part of the exit entitlement—

- (a) a person who is a party to the contract;
(b) a person who is not a party to the contract but who, when the contract was entered into—

Retirement Villages Act 1999

- (i) was the scheme operator for the retirement village to which the contract relates; or
- (ii) owned the retirement village land;
- (c) a person who is not a party to the contract but who, when the contract is to be enforced—
 - (i) is the scheme operator; or
 - (ii) owns the retirement village land.

(2) For the purpose of enforcing a contract against a person mentioned in subsection (1)(b) or (c), the person is taken to be the scheme operator under the contract.

(3) A court may make an order under this section against a person mentioned in subsection (1)(b) only if the court is satisfied—

- (a) an order against a person mentioned in subsection (1)(a) or (c) would be ineffectual; and
- (b) in the particular circumstances, it is just to make the order.

(4) Subsection (1)(b)(ii) and (1)(c)(ii) are subject to section 72.

Restriction on enforcing residence contract

72.(1) This section applies to a person who is not a party to a residence contract that is sought to be enforced against the person, and who, when the enforcement is sought—

- (a) is not the scheme operator; but
- (b) owns the retirement village land.

(2) The contract can not be enforced against the person for the recovery of all or part of the exit entitlement if—

- (a) the person acquired the land as a genuine purchaser for value from a mortgagee exercising power of sale under a mortgage; and
- (b) the mortgage was created over the land before 1 November 1989.

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

73. A scheme operator is not liable for breach of a residence contract for the scheme operator's failure to supply a general service to a resident under the contract if—

- (a) the cost of supplying the service is more than the services charge for the service; and
- (b) the residents have not approved the payment of an increased services charge to cover the cost of supplying the service; and
- (c) in all the circumstances, the scheme operator acted reasonably.

**PART 4—OTHER DOCUMENTS RELATING TO
RETIREMENT VILLAGE SCHEMES****Form and content of public information document**

74.(1) A public information document must be in the approved form.

(2) A copy of the registration certificate for the retirement village scheme must be attached to the public information document.

(3) The public information document must state the day it was given to the chief executive under section 27 or 36.¹⁵

(4) The public information document must state any age limits for residents that apply to the retirement village scheme.

(5) The approved form must make provision for the following information—

- (a) accommodation information;
- (b) residents' contributions information;
- (c) information about payments the scheme operator must make to

¹⁵ Section 27 (Application for registration of a retirement village scheme) or 36 (Scheme operator to give notice about inaccuracy in public information document)

residents;

- (d) funds information;
- (e) facilities information;
- (f) information about the village land;
- (g) residents' rights and obligations information;
- (h) resale process information;
- (i) dispute resolution information.

(6) This section does not limit the information that may be included in a public information document.

Accommodation information

75. For this part, the accommodation information is as follows—

- (a) the type and number of accommodation units to which the document relates;
- (b) the number of accommodation units available for sale and the sale price of each of the units or, if only a right to reside in a unit is available, the ingoing contribution for the right to reside in the unit;
- (c) the type of tenure or interest a resident of the accommodation unit obtains in the retirement village;
- (d) the nature of insurance arrangements for the retirement village.

Residents' contributions information

76. For this part, the residents' contributions information is as follows—

- (a) the nature of the amounts a resident may be required to pay, for example, an ingoing contribution, an exit fee, services charges, and contributions to particular funds;
- (b) how the exit fee is to be worked out, including a table showing the minimum and maximum exit fee amounts payable under a residence contract over the term of the contract;

- (c) how the general services charge is worked out in relation to the retirement village's total operating costs.

Information about payments scheme operator must make to a resident

77. For this part, the information about payments the scheme operator must make to residents is how the exit entitlement, if any, is to be worked out if a resident's right to reside in an accommodation unit is terminated.

Funds information

78. For this part, the funds information is as follows—

- (a) the details of the funds the scheme operator is required to keep;
- (b) the balance in each fund at the end of the previous financial year;
- (c) the capital replacement fund contribution;
- (d) details of the quantity surveyor's report used to decide the percentage of the ingoing contribution to be applied toward the capital replacement fund;
- (e) for existing residence contracts that provide for an amount from a resident's services charge to be paid towards capital replacement, details of the amount as worked out by the scheme operator.

Facilities information

79. For this part, the facilities information is as follows—

- (a) facilities the scheme operator undertakes to offer a prospective resident under a residence contract for the retirement village;
- (b) the facilities the scheme operator proposes offering a prospective resident under a residence contract for the retirement village, depending on sales activity, finance availability or market conditions for the retirement village (each a "**contingency**") and when they are proposed to be offered;
- (c) the particular contingency for offering particular facilities mentioned in paragraph (b).

Information about retirement village land

80. For this part, the information about retirement village land is as follows—

- (a) whether or not there is a statutory charge created under this Act over the land;
- (b) whether or not there are any other encumbrances over the land.

Residents' rights information

81. For this part, the residents' rights information is as follows—

- (a) what a resident's rights are to rescind a residence contract in the cooling-off period;
- (b) what a resident's rights are, under a residence contract and this Act, to be given financial information about the retirement village scheme operation;
- (c) what a resident's rights are if the residence contract is terminated;
- (d) anything else prescribed under a regulation to be residents' rights information.

Resale process information

82. For this part, the resale process information is as follows—

- (a) how the resale value is to be decided;
- (b) when reinstatement work will be required and who pays for it;
- (c) the process for, and effect of, accepting offers, including, for example, when offers may be refused;
- (d) the provision of monthly sales information;
- (e) how the expenses of sale are to be shared.

Dispute resolution information

83. For this part, the dispute resolution information is as follows—

- (a) the types of disputes for which dispute resolution is available;

- (b) how a dispute may be submitted to a village-based dispute resolution panel, mediation or, in the last resort, the tribunal;
- (c) the fee for an application to the tribunal for resolution of a dispute.

Public information document to be given to prospective resident

84. A scheme operator must give a prospective resident of the retirement village a copy of the public information document before the prospective resident enters into a residence contract for the village.

Maximum penalty—540 penalty units.

Residents' access to certain documents

85.(1) A resident may ask the scheme operator to allow the resident to inspect, or take a copy of, a relevant document in the scheme operator's possession or control.

(2) A request under this section must be—

- (a) in writing and state a reasonable time, at least 7 days after it is given, for the resident's access to the document; and
- (b) accompanied by any fee that may be prescribed under a regulation.

(3) The scheme operator must comply with the request.

Maximum penalty—10 penalty units.

(4) In this section—

“relevant document” means the resident's residence contract or public information document.

False or misleading documents

86.(1) A scheme operator must not give the chief executive or a resident a document containing information the scheme operator knows is false or misleading.

Maximum penalty—200 penalty units.

(2) A complaint against a scheme operator for an offence against

subsection (1) is sufficient if it states the information was false or misleading to the scheme operator's knowledge.

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

Division 1—Operator and employees of village

Definitions for div 1

87. In this division—

“conviction” means a finding of guilt, or the acceptance of a plea of guilty, by a court.

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

“relevant conviction” means a conviction for—

- (a) an offence involving fraud or dishonesty punishable, at the time the conviction is recorded, by not less than 3 months imprisonment; or
- (b) an offence involving physical violence to someone else.

Persons prohibited from operating a retirement village scheme etc.

88.(1) A person who is an insolvent under administration must not—

- (a) be a scheme operator; or
- (b) promote a retirement village scheme; or
- (c) sell rights to reside in a retirement village; or
- (d) be concerned, directly or indirectly, in managing a retirement village.

Maximum penalty—100 penalty units.

- (2) A person who has a relevant conviction must not—
- (a) be a scheme operator; or
 - (b) promote a retirement village scheme; or
 - (c) sell rights to reside in a retirement village; or
 - (d) be concerned, directly or indirectly, in managing a retirement village.

Maximum penalty—100 penalty units.

(3) Subsections (1)(b) or (c) and (2)(b) or (c) do not apply to a person who is a resident or a former resident of a retirement village, or who acts for the resident or former resident, who does something mentioned in the subsections only to terminate the resident's or former resident's right to reside in an accommodation unit in the retirement village.

Division 2—Exercise of power of attorney by scheme operator

Power of attorney

89.(1) A scheme operator must not exercise or purport to exercise a power conferred on, or exercisable by, the scheme operator under a limited, general or enduring power of attorney given by a resident of the retirement village in favour of the scheme operator.

Maximum penalty—540 penalty units.

- (2) However, the scheme operator does not contravene subsection (1) if—
- (a) the resident is a relative of the scheme operator; or
 - (b) the scheme operator exercises, or purports to exercise, a power of attorney given to the operator by the resident to execute a surrender of a registered lease in favour of the resident over an accommodation unit after the resident's residence contract has been lawfully terminated under this Act; or
 - (c) the resident gives the power of attorney under the *Body Corporate and Community Management Act 1997*, section 168 or

176.¹⁶

Division 3—Capital improvement

Responsibility for capital improvement

90.(1) A scheme operator is solely responsible for the cost of the retirement village’s capital improvement, including the capital improvement of the village’s communal facilities owned by the operator.

(2) Subsection (3) applies only if a resident does not have a freehold interest in the resident’s accommodation unit.

(3) If a resident gives the scheme operator a written request for a particular capital improvement to the resident’s accommodation unit and the operator makes or agrees to make the improvement, the resident is solely responsible for the cost of the capital improvement.

(4) Also, if—

(a) retirement village residents, by special resolution at a residents meeting, vote to give the scheme operator a written request for another type of capital improvement to the village; and

(b) the operator makes or agrees to make the improvement,

all the village residents when the vote was taken are jointly and severally responsible for the cost of the capital improvement.

Division 4—Capital replacement fund

Capital replacement fund

91.(1) A scheme operator must—

(a) establish and keep a fund (the “**capital replacement fund**”) for replacing the retirement village’s capital items; and

¹⁶ *Body Corporate and Community Management Act 1997*, section 168 (Restriction on powers of attorney in favour of original owner), section 176 (Restriction on powers of attorney in favour of seller)

Retirement Villages Act 1999

- (b) hold amounts standing to the credit of the fund in a separate account—
 - (i) that is established and kept for the purpose; and
 - (ii) the name or style of which includes—
 - (A) the operator’s name; and
 - (B) the retirement village scheme the account is for followed by the words ‘secured capital replacement fund account’; and
 - (iii) that requires withdrawals from it, whether by cheque or otherwise, to be signed by the scheme operator.

Maximum penalty—540 penalty units.

(2) The scheme operator is solely responsible for contributing to the fund.

(3) No amount standing to the credit of the fund may be applied or used for a purpose other than—

- (a) replacing the village’s capital items; or
- (b) paying the quantity surveyor’s reasonable fees for giving a report for section 92; or
- (c) paying tax on amounts paid into the fund under section 94(1)(b).

(4) A person who applies or uses an amount in contravention of subsection (3) commits an offence.

Maximum penalty—540 penalty units.

(5) Without limiting subsection (3), the scheme operator must not use the amount standing to the credit of the fund for—

- (a) the village’s capital improvement, maintenance or repairs; or
- (b) capital replacement, maintenance or repairs of body corporate property to which the *Body Corporate and Community Management Act 1997* applies.

Maximum penalty—540 penalty units.

(6) Immediately the fund is established, a statutory charge is created over it for the benefit of the residents of the village to ensure the availability of the

balance of the fund for the purposes mentioned in subsection (3).

(7) The charge has priority over any other charge over the fund given by the scheme operator, including a charge given before the commencement of this section, other than a charge created and given priority over other charges under a Commonwealth law or another law of the State.

(8) Regardless of any change in who controls the scheme's operation, the charge is irrevocable and continues until—

- (a) the village ceases to operate as a retirement village scheme; and
- (b) all former residents have been paid their exit entitlement.

Amount of capital replacement fund

92.(1) Before a scheme operator decides a budget under section 93, the operator must obtain an independent quantity surveyor's written report about the expected capital replacement costs for the village for the next 10 years.

Maximum penalty—540 penalty units.

(2) The scheme operator must decide the amount to be held in the capital replacement fund for the village (the “**capital replacement reserve**”) having regard to the fund's purpose, the quantity surveyor's report and any amounts transferred to the fund under section 232 or 234.¹⁷

(3) If the amount held in an existing retirement village's capital replacement fund is less than the capital replacement reserve, the operator must decide the amount the operator must pay to the fund to reach the capital replacement reserve within the following period after the commencement of this division—

- (a) if the first resident in the village occupied an accommodation unit 5 or more years before the commencement—10 years;
- (b) if the first resident in the village occupied an accommodation unit less than 5 years before the commencement—5 years.

(4) If the amount a scheme operator must spend on capital replacement at

¹⁷ Section 232 (Apportionment of balance where separate funds maintained) or section 234 (Apportionment of balance where single fund maintained for capital replacement and maintenance and repairs)

any time is more than the amount held in the capital replacement fund, the operator must pay the difference between the actual amount to be spent and the amount held in the capital replacement fund.

(5) The operator may adjust the capital replacement fund contribution annually to ensure the capital replacement reserve is reached within the relevant period mentioned in subsection (3).

Capital replacement fund budget

93.(1) The scheme operator must adopt a budget for each financial year for the capital replacement fund.

(2) The capital replacement fund budget must—

(a) allow for raising a reasonable capital amount to—

(i) provide for necessary and reasonable spending from the capital replacement fund for the financial year; and

(ii) 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; and

(b) fix the amount to be raised by way of capital replacement fund contribution to cover the capital amount mentioned in paragraph (a).

Example—

Replacing a village stand-by electricity generator is anticipated to be necessary in 3 years time at a cost currently estimated at \$60 000. The contribution amount for the capital replacement fund in the budget for the financial year must therefore include the annual proportional share for its replacement of \$20 000. Next year, the estimated cost has increased to \$68 000 and so the second year amount will be \$24 000. The estimated cost in the third year is \$70 000, so with the \$44 000 accumulated, a further \$26 000 is necessary to meet the cost.

Payments into capital replacement fund

94.(1) The following amounts must be paid into the capital replacement fund—

(a) amounts received under insurance policies for the destruction of

- items of a capital nature;
- (b) interest from investment of amounts held in the fund;
- (c) the capital replacement fund contribution;
- (d) if an existing residence contract requires an amount from a resident's services charge to be paid towards capital replacement—
 - (i) if the amount is stated in the contract—the amount; or
 - (ii) if the amount is not stated in the contract—the amount decided by the operator worked out in the way stated in the public information document;
- (e) any amounts transferred to the fund under section 232 or 234;
- (f) any amount paid by a resident under section 96(2).

Maximum penalty—540 penalty units.

(2) Subsection (1) does not limit the amounts a scheme operator may pay into the capital replacement fund.

(3) However, the scheme operator must not pay into the capital replacement fund amounts properly payable into another fund.

Maximum penalty for subsection (3)—540 penalty units.

Restriction on investing capital replacement fund amounts

95. A scheme operator must not invest an amount standing to the credit of the retirement village's capital replacement fund other than in an authorised investment under the *Trusts Act 1973*.

Maximum penalty—540 penalty units.

Resident liable for replacing certain capital items

96.(1) This section applies if a capital item of a retirement village is—

- (a) deliberately damaged by a resident; or
- (b) subjected to accelerated wear caused by a resident's actions.

(2) The resident is liable for the cost of replacing the item.

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

97.(1) A scheme operator must—

- (a) establish and keep a fund (the “**maintenance reserve fund**”) for maintaining and repairing the retirement village’s capital items; and
- (b) hold amounts standing to the credit of the fund on trust solely for the benefit of residents in a trust account that—
 - (i) is established and kept for the purpose; and
 - (ii) requires withdrawals from it, whether by cheque or otherwise, to be signed by the scheme operator.

Maximum penalty—540 penalty units.

(2) Residents are solely responsible for contributing to the fund.

(3) The scheme operator must not use an amount standing to the credit of the fund for a purpose other than—

- (a) maintaining and repairing the village’s capital items; or
- (b) paying the quantity surveyor’s reasonable fees for giving a report for section 98; or
- (c) paying tax on amounts paid into the fund under section 100(1)(b).

Maximum penalty—540 penalty units.

(4) Without limiting subsection (3), the scheme operator must not use the amount standing to the credit of the fund for—

- (a) the day to day maintenance of the village; or
- (b) the village’s capital improvement or replacement; or
- (c) capital replacement, maintenance or repairs of body corporate property to which the *Body Corporate and Community Management Act 1997* applies.

Maximum penalty—540 penalty units.

(5) Regardless of any change in who controls the scheme’s operation, the

trust is irrevocable and continues until—

- (a) the village ceases to operate as a retirement village scheme; and
- (b) all former residents have been paid their exit entitlement.

Amount of maintenance reserve fund

98.(1) Before the scheme operator decides a budget under section 99, the operator must obtain an independent quantity surveyor's written report about the expected maintenance and repair costs for the village for the next 10 years.

Maximum penalty—540 penalty units.

(2) The scheme operator must decide the amount to be held in the maintenance reserve fund for the village (the “**maintenance reserve**”) having regard to the fund's purpose, the quantity surveyor's report and any amounts transferred to the fund under sections 232 to 234.¹⁸

(3) If the amount held in an existing retirement village's maintenance reserve fund is less than the maintenance reserve, the operator must increase the maintenance reserve fund contribution to reach the maintenance reserve within the following period after the commencement of this division—

- (a) if the first resident in the village occupied an accommodation unit 5 or more years before the commencement—10 years;
- (b) if the first resident in the village occupied an accommodation unit less than 5 years before the commencement—5 years.

(4) If the amount a scheme operator must spend on maintenance or repairs at any time is more than the amount held in the maintenance reserve fund, the operator must pay the difference between the actual amount to be spent and the amount held in the maintenance reserve fund.

(5) An amount paid under subsection (4) is to be treated as an interest free loan from the scheme operator to the maintenance reserve fund.

(6) The scheme operator may adjust the maintenance reserve fund

¹⁸ Section 232 (Apportionment of balance where separate funds maintained), section 233 (Apportionment of balance where single fund maintained for maintenance and repairs) and section 234 (Apportionment of balance where single fund maintained for capital replacement and maintenance and repairs)

contribution annually to ensure the maintenance reserve is reached within the relevant period mentioned in subsection (3).

Maintenance reserve fund budget

99.(1) The scheme operator must adopt a budget for each financial year for the maintenance reserve fund budget.

(2) The maintenance reserve fund budget must—

- (a) allow for raising a reasonable amount for maintenance and repairs to—
 - (i) provide for necessary and reasonable spending from the maintenance reserve fund for the financial year; and
 - (ii) 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; and
- (b) fix the amount to be raised by way of contribution to cover the estimated recurrent expenditure mentioned in paragraph (a).

Example—

Painting of village property is anticipated to be necessary in 3 years time at a cost currently estimated at \$3 000. The contribution amount for the maintenance reserve fund in the budget for the financial year must therefore include the annual proportional share for painting of \$1 000. Next year, the estimated cost has increased to \$3 400 and so the second year levy will be \$1 200. The estimated cost in the third year is \$3 500, so with the \$2 200 accumulated, a levy of \$1 300 is necessary to meet the cost.

Payments into maintenance reserve fund

100.(1) The following amounts must be paid into the maintenance reserve fund—

- (a) the residents' maintenance reserve fund contributions;
- (b) interest received on investments belonging to the fund.

Maximum penalty—540 penalty units.

(2) Subsection (1) does not limit the amounts a scheme operator may pay

into the maintenance reserve fund.

(3) However, the scheme operator must not pay into the maintenance reserve fund amounts properly payable into another fund.

Maximum penalty for subsection (3)—540 penalty units.

Restriction on investing maintenance reserve fund amounts

101. A scheme operator must not invest an amount standing to the credit of the retirement village's maintenance reserve fund other than in an authorised investment under the *Trusts Act 1973*.

Maximum penalty—540 penalty units.

Division 6—Charges for personal services

Charges for personal services for former residents

102. If a resident of a retirement village who is liable to pay a charge for personal services vacates the village, the scheme operator must not levy the charge against the resident for more than 28 days after the resident vacates the village.

Maximum penalty—540 penalty units.

Division 7—Charges for general services

Working out and paying charges for general services for residents

103.(1) The amount a resident of a retirement village may be charged for general services under a residence contract must be worked out in the way stated in the public information document.

(2) A scheme operator must not charge a resident of a retirement village for general services an amount more than the amount worked out under subsection (1).

Maximum penalty—200 penalty units.

(3) The scheme operator must not include, or provide for, in a residence

contract in the charge for general services an amount or component, however described, that is payable for or towards replacing the retirement village's capital items.

Maximum penalty—200 penalty units.

(4) However, subsection (3) does not apply to an existing residence contract.

(5) Subject to section 104, a resident of a retirement village is responsible for only the resident's proportion of the general services charges for the period the resident resides in the resident's accommodation unit.

(6) Subsection (1) or (2) does not prevent the resident from being required to pay, as part of the charge for a general service under a residence contract, an amount directly or indirectly attributable to GST payable for the supply by, or to, the scheme operator for the service.

(7) In this section—

“**GST**” has the meaning given by *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

“**supply**” has the meaning given by *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

Working out and paying general services charges for former residents

104.(1) A former resident of a retirement village is responsible for the resident's proportion of the general services charges after the resident vacates the unit until the first of the following happens—

- (a) the right to reside in the unit is sold;
- (b) subject to subsection (2), a period of 90 days elapses (the “**90 day period**”);
- (c) a tribunal orders the scheme operator to pay the former resident's exit entitlement under section 171.

(2) If a former resident's right to reside in an accommodation unit has not been sold within the 90 day period, the resident and the scheme operator are each liable, after the period ends, to pay the general services charges in the same proportion as they are to share the sale proceeds of the right to reside in the unit on its sale.

(3) However, subsections (1)(a) and (b) and (2) do not apply to a former resident under an existing residence contract.

(4) If a former resident's right to reside in an accommodation unit has not been sold within the 90 day period, the scheme operator may—

- (a) accrue, as a book debt, the resident's proportion of the general services charges for the period starting after the end of the period and ending on the day the right to reside is sold; and
- (b) set off the accrued amount against the resident's exit entitlement.

(5) A scheme operator must not charge interest on the accrued amount.

Maximum penalty for subsection (5)—100 penalty units.

General services charges for unsold right to reside in accommodation units

105. A scheme operator must pay the proportion of the general services charges relating to the right to reside in an accommodation unit in the village—

- (a) that has not been occupied under a resident contract; or
- (b) for which there is no residence contract in force.

Maximum penalty—200 penalty units.

Increasing general services charges

106.(1) A scheme operator may increase charges for general services for a retirement village only under this section or as allowed under section 107.

(2) The scheme operator must not increase the general services charge above the percentage increase in the CPI for a particular year, unless the increase is approved by the retirement village residents by special resolution at a residents meeting.

Maximum penalty—200 penalty units.

(3) If the retirement village residents, by special resolution at a residents meeting, approve an increase in the general services charge for the retirement village above the percentage increase in the CPI for a particular year, the general services charge may be increased only by the amount of

the approved increase.

(4) For applying this section, the percentage increase in the CPI for a particular year is the percentage increase between the CPI last published before the start of the particular year and the CPI published for the quarter ending immediately before the residents meeting is held.

(5) In this section—

“CPI” means the all groups consumer price index for Brisbane published by the Australian statistician.

Resident’s responsibility for paying increased general services charge

107. A resident is not required to pay a charge for a general service under a residence contract to the extent that the charge is more than that payable under the contract and increased under section 106, unless the excess is attributable to an increase in—

- (a) rates, taxes or charges levied under an Act in relation to the retirement village land or its use; or
- (b) the salary or wages of a person engaged in the retirement village’s operation and payable under an award, certified agreement, enterprise flexibility agreement, industrial agreement, Queensland workplace agreement or other industrial agreement made, approved, certified, or continued in force under—
 - (i) the *Industrial Relations Act 1999*; or
 - (ii) a Commonwealth Act; or
- (c) insurance premiums in relation to the retirement village or its use; or
- (d) maintenance reserve fund contributions.

New services to be approved by majority of residents

108.(1) A scheme operator may offer residents a service not already supplied under the scheme, for which a services charge is to be, or may be, made, only if the residents agree to it being supplied by special resolution at a residents meeting.

(2) Subsection (1) does not apply to—

- (a) a personal service; or
- (b) a service a public information document states is proposed to be supplied.

Division 8—Insurance

Definitions for div 8

109. In this division—

“**building**” includes improvements and fixtures forming part of the building, but does not include fixtures installed by a resident removable by the resident at the termination of a residence contract.

“**damage**”, for coverage under insurance required to be effected under this division, means—

- (a) damage from earthquake, explosion, fire, lightning, storm, tempest or water; or
- (b) glass breakage; or
- (c) damage from impact, malicious act, or riot.

Scheme operator must insure village

110.(1) A scheme operator must insure and keep insured, to full replacement value, the retirement village, including the accommodation units, other than accommodation units owned by residents, and the communal facilities.

Maximum penalty—540 penalty units.

(2) An insurance policy taken out under this section—

- (a) must cover, to the greatest practicable extent—
 - (i) damage; and
 - (ii) costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and

- (iii) public liability; and
- (b) must provide for the reinstatement of property to its condition when new.

Maximum penalty for subsection (2)—540 penalty units.

Division 9—Financial accounts and statements

Scheme operator must keep separate accounts for capital replacement fund and maintenance reserve fund

111. A scheme operator must ensure separate accounts are kept for the retirement village's capital replacement fund and maintenance reserve fund.

Maximum penalty—540 penalty units.

Quarterly financial statements

112.(1) A scheme operator must ensure a quarterly financial statement about the income and expenditure of the capital replacement fund and the maintenance reserve fund is given, on request, to a resident.

Maximum penalty—100 penalty units.

(2) The statement need not be audited, but must be in a form capable of being audited.

Maximum penalty—100 penalty units.

Annual financial statements

113.(1) A scheme operator must ensure a financial statement showing the following particulars about the retirement village's operation is given, on request, to a resident within 5 months after the end of each financial year—

- (a) income and expenditure during the financial year, including income and expenditure of the capital replacement fund and the maintenance reserve fund;
- (b) amounts received for insurance claims relating to the village during the financial year;

- (c) assets and liabilities relating to the village as at the end of the financial year;
- (d) interests, mortgages and other charges affecting the village's property as at the end of the financial year.

Maximum penalty—200 penalty units.

(2) The statement must be audited and an audit report issued under Australian Auditing Standards by either of the following—

- (a) a member, who holds a public practice certificate, of—
 - (i) the Australian Society of Certified Practising Accountants; or
 - (ii) the Institute of Chartered Accountants in Australia;
- (b) a registered company auditor.

Maximum penalty—200 penalty units.

(3) The scheme operator must give a copy of the statement to the chief executive within 5 months after the end of each financial year.

Maximum penalty—200 penalty units.

PART 6—STATUTORY CHARGES OVER RETIREMENT VILLAGE LAND

Division 1—Preliminary

Application of pt 6

114. This part does not apply if a resident holds a freehold interest or a leasehold interest in an accommodation unit in a retirement village.

Division 2—Creating a statutory charge, its effect and priority**Definition for div 2**

115. In this division—

“registered”, for a security, means registered under the *Land Title Act 1994*.

Creating a charge

116.(1) Immediately the chief executive registers a retirement village, a statutory charge is created over the retirement village land.

(2) As soon as practicable after the scheme is registered, the chief executive must give written notice of its registration to the registrar of titles.

(3) The notice must—

- (a) identify the retirement village land; and
- (b) state the day on which the scheme was registered.

(4) The registrar of titles must record the charge in the freehold land register under the *Land Title Act 1994*.

(5) However, subsection (1) does not apply if, before registering a retirement village scheme, the chief executive decides it should not apply—

- (a) because the scheme operator is—
 - (i) an organisation established for a religious, charitable or community purpose; and
 - (ii) of good standing in operating retirement village schemes; or
- (b) because of other exceptional circumstances and the chief executive is satisfied the proposed scheme operator provides another security to secure the rights under a residence contract of a resident in the retirement village.

Charge extends to new land

117.(1) This section applies if land (**“new land”**) becomes retirement village land of a retirement village after a charge (the **“original charge”**) on

the original retirement village land (the “**original land**”) for the retirement village is created under section 116.

(2) Immediately the new land becomes retirement village land, the charge over the original land is released and a charge is created over the original land and the new land.

(3) The scheme operator must give the chief executive written notice that new land has become retirement village land within 1 month of the new land becoming retirement village land.

Maximum penalty—540 penalty units.

(4) As soon as practicable after receiving the notice, the chief executive must give written notice of the change to the retirement village land to the registrar of titles.

(5) The notice must—

- (a) identify the retirement village land; and
- (b) state the day on which the new land became retirement village land.

(6) The registrar of titles must record the release of the original charge and the creation of the charge under subsection (2) in the freehold land register under the *Land Title Act 1994*.

Effect of charge

118. A statutory charge under this part secures the right of each resident of the retirement village to which it relates—

- (a) to occupy the resident’s accommodation unit; and
- (b) to use the village’s communal and recreational facilities; and
- (c) to be paid the exit entitlement the resident is entitled to under the resident’s residence contract on termination of the contract.

Priority of charge

119.(1) A statutory charge notified to the registrar of titles under this division has priority over all registered securities in or over the retirement village land to which the notice relates, whether or not the security was

registered before the statutory charge was notified to the registrar of titles.

(2) However, a statutory charge does not have priority over the following registered securities—

- (a) a charge created, and given priority over other charges, under a Commonwealth law or another law of the State;
- (b) securities registered in or over the retirement village land before 1 November 1989.

Division 3—Enforcing a statutory charge

Enforcing a charge

120.(1) This section applies if—

- (a) retirement village land is subject to a statutory charge under section 116 or 117; and
- (b) a court orders an amount be paid by a scheme operator to a retirement village resident in relation to a right of the resident mentioned in section 118(a) to (c) (the “**original order**”); and
- (c) the amount is not paid by 6 months after the end of the day by which it was required to be paid under the original order.

(2) The person in whose favour the original order was made may apply to the District Court for an order that the retirement village land be sold.

(3) However, a person may make an application under subsection (2) only if—

- (a) the person has given the chief executive written notice of the person’s intention to make the application; and
- (b) for an amount payable under the original order by way of an exit entitlement, the amount is at least \$10 000 or another higher amount prescribed under a regulation.

(4) Each resident of the retirement village, and anyone else who appears to the court to have a sufficient interest in the application, is entitled—

- (a) to be joined as a party to the proceeding; and

(b) to be heard on the application.

(5) Unless the court orders otherwise, the applicant must give the residents notice of their right to be heard on the application.

Orders court may make

121.(1) On hearing an application under section 120(2), the court may order that the retirement village land be sold only if the court is satisfied—

- (a) the original order is unsatisfied and is not likely to be satisfied in any other way open to the applicant; and
- (b) it is not contrary to the interests of any resident of the retirement village that the land be sold.

(2) Without limiting the orders it may make, the court may appoint a person to act as the vendor's agent for the sale.

Effect of court order

122.(1) An order for the sale of retirement village land under section 121—

- (a) authorises the sale of the land free of all existing securities, other than the securities the court preserves in its order; and
- (b) has effect despite—
 - (i) an existing caveat or lien affecting the land; or
 - (ii) any Act, other than this Act.

(2) A person appointed as the vendor's agent under section 121(2) has the power to convey the land to a purchaser and to do all things necessary to effect the conveyance.

(3) On settlement, the vendor is to apply the sale proceeds in the following order—

- (a) paying the sale costs and the applicant's costs in seeking the order for sale;
- (b) paying amounts payable under securities ranking in priority to the statutory charge;

- (c) satisfying the original order;
- (d) paying exit entitlements payable to residents if, because of the court order, the retirement village scheme stops operating or the residence contracts under the scheme terminate;
- (e) paying amounts payable under securities ranking in priority after the statutory charge;
- (f) paying the balance to the person who owned the retirement village land immediately before the sale, or to someone else at the person's direction.

(4) For ensuring compliance with subsection (3)(d), the vendor must take reasonable steps to locate any former resident to whom an exit entitlement is payable.

Division 4—Extinguishing and releasing a statutory charge

Extinguishing a charge

123.(1) A statutory charge created over retirement village land under this part is extinguished on—

- (a) its release by the chief executive under section 125; or
- (b) the sale of the land under a court order under section 121.

(2) However, subsection (1)(b) does not apply if—

- (a) the land continues, or is to continue, to be used under a registered retirement village scheme; and
- (b) under the scheme's residence contracts, a person does not obtain a freehold interest or a leasehold interest in the retirement village land.

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

124.(1) A scheme operator may ask the chief executive to release the statutory charge created over the retirement village land if—

- (a) the land stops being retirement village land; or

Retirement Villages Act 1999

(b) the scheme operator proposes to stop using the land for the retirement village.

(2) A request under subsection (1) must be in writing.

(3) The scheme operator must also—

(a) give each resident of the retirement village a notice in writing stating the following—

(i) the scheme operator has asked the chief executive to release the statutory charge over the retirement village land;

(ii) how it will affect the resident if it is released;

(iii) that, within 60 days after the resident receives the notice, the resident may, by written notice given to the chief executive, object to the release; and

(b) give the chief executive—

(i) a statutory declaration made by the scheme operator stating the following—

(A) the fact of the scheme operator's compliance with paragraph (a);

(B) whether the scheme operator knows or reasonably suspects a person has started, or is likely to start, proceedings to enforce the charge under section 120; and

(ii) a copy of the notice given to residents under paragraph (a).

(4) In this section—

“resident” includes a former resident who has not received an exit entitlement to which the former resident is entitled under the former resident's residence contract.

Chief executive to release charge

125.(1) The chief executive must release the statutory charge over a retirement village's land if the chief executive is satisfied—

(a) the scheme operator has complied with section 124; and

Retirement Villages Act 1999

(b) having regard to the objections made under the section, it is appropriate to release the charge over the land.

(2) If the chief executive releases a statutory charge under subsection (1), the chief executive must give the registrar of titles written notice of the release of the charge.

(3) On receipt of the notice, the registrar of titles must register the release of the charge over the land.

*Division 5—Exemption from stamp duty and charges***Exemption from stamp duty and charges**

126. A notice by the chief executive under section 116(2), 117(4) or 125(2) and any other instrument given to the registrar of titles to give effect to the recording of a charge or the release of a charge mentioned in those sections by the registrar, is exempt from the payment of—

- (a) stamp duty under the *Stamp Act 1894*; and
- (b) registration or other fees under the *Land Title Act 1994*.

PART 7—RESIDENTS PARTICIPATION*Division 1—Residents committee***Residents committee**

127.(1) The residents of a retirement village may establish, by election conducted among themselves, a residents committee.

- (2) A member of the residents committee—
 - (a) holds office for not more than 1 year, but may be re-elected; and
 - (b) may be removed, at any time, by special resolution at a meeting of the village residents.

(3) The residents committee may, subject to section 128—

- (a) decide its own procedures; and
- (b) form subcommittees and decide a subcommittee's procedures.

(4) The scheme operator for the retirement village may address the residents at a residents committee meeting.

Residents constitution

128.(1) The residents of a retirement village may, by a majority vote of the residents at a residents meeting, adopt a constitution.

(2) The constitution—

- (a) may not be inconsistent with this Act; and
- (b) must provide for a matter prescribed under a regulation.

(3) The committee must conform with the constitution.

Committee's function

129. The function of the residents committee is to deal with the scheme operator on behalf of residents about the day to day running of the village and any complaints or proposals raised by the residents.

Division 2—By-laws

Residents may make, change or revoke by-laws

130.(1) The residents of a retirement village may, by special resolution at a residents meeting and with the agreement of the scheme operator, make, change or revoke by-laws for the village.

(2) The scheme operator's agreement must not be unreasonably withheld.

(3) A by-law may be made about the non-exclusive use and enjoyment of the village.

(4) If there is an inconsistency between a by-law and a provision of a

residence contract for the village, the provision prevails to the extent of the inconsistency.

(5) The scheme operator may attend a residents meeting held to make, change or revoke a by-law.

(6) Subsection (3) does not limit the residents' power under another law to make, change or revoke by-laws.

Division 3—Residents meetings

Annual meeting

131.(1) In each year, a scheme operator must call an annual meeting of the residents of the retirement village as soon as reasonably practicable after the annual financial statements mentioned in section 113¹⁹ are available.

Maximum penalty—100 penalty units.

(2) However, the scheme operator must give each resident at least 21 days written notice of the meeting.

(3) The annual meeting may not be held simultaneously with a meeting that must be held under another Act.

Example—

The meeting may not be held simultaneously with a meeting that is required under the *Body Corporate and Community Management Act 1997*.

(4) The scheme operator must present the statements to the meeting.

Maximum penalty for subsection (4)—100 penalty units.

Other meetings

132.(1) A scheme operator or a residents committee or subcommittee of a retirement village may, by 14 days written notice given to each resident of the village, call a meeting of all the residents.

(2) However, in extraordinary or urgent circumstances, the scheme operator or the residents committee or subcommittee may call a meeting of

¹⁹ Section 113 (Annual financial statements)

the residents by giving each resident the written notice of the meeting that is reasonable in the circumstances but not less than 2 days.

Division 4—Proxy voting and postal voting

Voting

133.(1) A resident of a retirement village may by signed notice give a scheme operator or another resident of the village a power to vote for the resident by way of proxy vote at a specific residents meeting stated in the notice.

(2) A proxy vote given for more than 1 meeting is of no effect.

(3) A resident of a retirement village may cast a vote (“**postal vote**”) for a residents meeting by placing the resident’s written vote in a container provided by the scheme operator for the purpose in the common area of the village at least 24 hours before the time when the meeting is to be held.

(4) The scheme operator must provide a secure locked container for postal votes in the common area at least 24 hours before the time the meeting is to be held.

Maximum penalty—10 penalty units.

(5) The scheme operator must not open, or allow to be opened, the container before it is delivered to the chairperson of the meeting.

Maximum penalty—10 penalty units.

(6) The scheme operator must deliver the container to the chairperson of the meeting immediately before the chairperson opens the meeting.

Maximum penalty for subsection (6)—10 penalty units.

PART 8—ENFORCEMENT

Division 1—Inspectors

Appointment

134.(1) The chief executive may appoint a public service officer as an inspector.

(2) The chief executive may appoint an officer as an inspector only if, in the chief executive's opinion, the officer has the necessary expertise or experience to be an inspector.

Limitation of inspector's powers

135. The powers of an inspector may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice of the chief executive given to the inspector.

Inspector's appointment conditions

136.(1) An inspector holds office on the conditions stated in the instrument of appointment.

(2) An inspector ceases holding office—

- (a) if the appointment provides for a term of appointment—at the end of the term; and
- (b) if the appointment conditions provide—on ceasing to hold another office stated in the appointment conditions (the “**main office**”).

(3) An inspector may resign by signed notice of resignation given to the chief executive.

(4) However, an inspector may not resign from the office under this Act (the “**secondary office**”) if a condition of appointment to the main office requires the inspector to hold the secondary office.

Inspector's identity card

137.(1) The chief executive must give each inspector an identity card.

(2) The identity card must—

- (a) contain a recent photograph of the inspector; and
- (b) be in a form approved by the chief executive; and
- (c) be signed by the inspector; and
- (d) identify the person as an inspector under this Act.

(3) A person who ceases to be an inspector must return the person's identity card to the chief executive within 21 days after the person ceases to be an inspector, unless the person has a reasonable excuse for not returning it.

Maximum penalty—10 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for this and other Acts or for other purposes.

Production or display of inspector's identity card

138.(1) An inspector may exercise a power under this Act in relation to a person only if the inspector—

- (a) first produces the inspector's identity card for inspection by the person; or
- (b) has the inspector's identity card displayed so that it is clearly visible to the person.

(2) However, if, for any reason, it is not practicable to comply with subsection (1), the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

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

139.(1) An inspector may enter a place if—

- (a) its occupier consents to the entry; or
- (b) it is a public place and the entry is made when it is open to the public; or
- (c) the entry is authorised by a warrant; or
- (d) it is an office for administering or managing a retirement village and is—
 - (i) open for carrying on the business of the retirement village; or
 - (ii) otherwise open for entry.

(2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

(3) For subsection (1)(d), an office for administering or managing a retirement village does not include a part of the place where a person resides.

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

140.(1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 139(1)(a).

- (2) Before asking for the consent, the inspector must tell the occupier—
- (a) the purpose of the entry; and
 - (b) that the occupier is not required to consent.
- (3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state—
- (a) the occupier has been told—
 - (i) the purpose of the entry; and
 - (ii) that the occupier is not required to consent; and
 - (b) the purpose of the entry; and
 - (c) the occupier gives the inspector consent to enter the place and exercise powers under this part; and
 - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgment, the inspector must immediately give a copy to the occupier.
- (6) A court must find the occupier of a place did not consent to an inspector entering the place under this part if—
- (a) an issue arises in a proceeding before the court whether the occupier of the place consented to the entry under section 139(1)(a); and
 - (b) an acknowledgment mentioned in subsection (4) is not produced in evidence for the entry; and
 - (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

Application for warrant

- 141.(1)** An inspector may apply to a magistrate for a warrant for a place.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the

inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

Issue of warrant

142.(1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is at the place or, within the next 72 hours, may be at the place.

(2) The warrant must state—

- (a) that a stated inspector may, with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry; and
 - (ii) exercise the inspector’s powers under this part; and
- (b) the offence for which the warrant is sought; and
- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 7 days after the warrant’s issue, the warrant ends.

Warrants—procedure before entry

143.(1) This section applies if an inspector named in a warrant issued under this part for a place is intending to enter the place under the warrant.

(2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—

- (a) give the person a copy of the warrant;
- (b) tell the person the inspector is permitted by the warrant to enter the place;

- (c) give the person an opportunity to allow the inspector immediate entry to the place without using force.

(3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

Subdivision 3—Powers after entry

General powers after entering places

144.(1) This section applies to an inspector who enters a place.

(2) However, if an inspector—

- (a) enters a place to get the occupier's consent to enter premises, this section applies to the inspector only if the consent is given; or
- (b) enters a place under a warrant, this section applies subject to the warrant.

(3) For monitoring or enforcing compliance with this Act, the inspector may—

- (a) search any part of the place; or
- (b) inspect a document in or on the place; or
- (c) take extracts from, or make copies of, a document in or on the place; or
- (d) take into or onto the place any persons, equipment and materials the inspector reasonably requires for exercising a power under this Act; or
- (e) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (d); or
- (f) require the occupier of the place, or a person at the place, to give the inspector information to help the inspector ascertain whether this Act is being complied with.

(4) When making a requirement mentioned in subsection (3)(e) or (f), the inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

Failure to help inspector or give inspector information

145.(1) A person required to give reasonable help under section 144(3)(e) or information under section 144(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) 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 this Act, it is a reasonable excuse for the person to fail to give the information or produce the document on the ground that giving the information or producing the document might tend to incriminate the person.

Subdivision 4—Power to seize evidence

Power to seize evidence from places

146.(1) An inspector who enters a place under section 139(1)(d) may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.

(2) An inspector who enters a place under this division under a warrant may seize the evidence for which the warrant was issued.

(3) An inspector who enters a place under this division under a warrant, or enters a place with the occupier's consent, may seize a thing if the inspector suspects, on reasonable grounds—

- (a) the thing is evidence of the commission of an offence against this Act; and
- (b) the seizure is necessary to prevent—
 - (i) the thing's concealment, loss or destruction; or
 - (ii) the thing's use in committing, continuing or repeating the offence.

Receipts for seized things

147.(1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.

(3) The receipt must describe generally each thing seized and its condition.

Inspector to allow inspection etc.

148. Until a seized thing is returned or otherwise finally dealt with under this Act, an inspector must allow a person who would be entitled to possession of it, if it had not been seized—

- (a) to inspect it free of charge; or
- (b) if it is a document, to obtain a copy of it free of charge.

Obligation to return seized things

149.(1) This section applies if a thing is seized under this Act.

(2) The chief executive must return the seized thing to its owner at the end of—

- (a) 6 months; or
- (b) if a prosecution for an offence involving the thing is started within the 6 months—the prosecution for the offence and any appeal from the prosecution.

(3) Despite subsection (2), the chief executive must return the seized thing to the owner immediately if the chief executive stops being satisfied its retention as evidence is necessary.

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

150.(1) An inspector may require a person to make available for inspection by an inspector, or produce to an inspector for inspection, at a reasonable time and place nominated by the inspector—

- (a) a document issued to the person under this act; or
- (b) a document required to be kept by the person under this Act.

(2) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(3) It is a reasonable excuse for the person not to comply with the requirement if complying with it might tend to incriminate the person.

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

151.(1) A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse for the obstruction.

Maximum penalty—40 penalty units.

(2) In this section—

“**obstruct**” includes hinder and resist, and attempt to obstruct.

Compensation

152.(1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this part.

(2) Payment of compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or

(b) an offence against this Act brought against the person making the claim for compensation.

(3) A court may order the payment of compensation for the loss or expense only if it is satisfied that it is just to make the order in the circumstances of the particular case.

PART 9—DISPUTE RESOLUTION

Division 1—Preliminary

Parties' rights under this part preserved

153. To remove any doubt, it is declared that if a provision of a residence contract requires or permits a dispute under or about the contract to be referred to arbitration or be heard by any court or tribunal, the provision does not limit a party's rights under this part.

Preliminary negotiation

154.(1) The parties to a retirement village dispute may refer the dispute to a mediation process under this part only if the parties have attempted to resolve the dispute under this section.

(2) A party to the dispute (the "**first party**") must give the other party to the dispute (the "**second party**") written notice—

- (a) stating the matters in dispute; and
- (b) nominating a day, no earlier than 14 days after the notice is given, (the "**nominated day**") for the parties to meet within the village to attempt to resolve the dispute.

(3) The second party must give the first party a written response to the notice within 7 days after receiving the notice.

(4) On the nominated day, or another day within 7 days after the nominated day and agreed by the parties, the parties must meet in the retirement village and attempt to resolve the dispute.

Division 2—Mediators**Mediator’s function**

155. A mediator’s function under this Act is to seek to resolve, by mediation, retirement village disputes within a mediator’s jurisdiction.

Matters that may be mediated

156.(1) A mediator may mediate retirement village disputes, other than a retirement village dispute about an issue between the parties that—

- (a) is the subject of arbitration; or
- (b) has been the subject of an award (interim or final) in an arbitration proceeding; or
- (c) is before, or has been decided by, a court.

(2) For subsection (1)(a), a retirement village dispute is only the subject of arbitration if the arbitration proceeding has started.

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

157.(1) A party to a retirement village dispute that a mediator may mediate may apply to the chief executive to have the dispute referred to mediation.

(2) The application (the “**dispute notice**”) must be—

- (a) in the approved form; and
- (b) accompanied by the fee prescribed under a regulation; and
- (c) given to the chief executive.

(3) However, if the resident’s residence contract has been terminated, the dispute notice must be given within 4 months after the payment of the former resident’s exit entitlement.

Chief executive to act on dispute notice

158.(1) Within 14 days after receiving the dispute notice, the chief executive must—

- (a) appoint a mediator to mediate the retirement village dispute; and
- (b) give written notice to the parties to the dispute of—
 - (i) the mediator who is to mediate the dispute; and
 - (ii) the time, date and place of the mediation conference to be conducted by the mediator.

(2) The notice under subsection (1)(b) must be given at least 7 days before the mediation conference.

Right of representation

159. At a mediation conference, a party to the retirement village dispute may be represented by a lawyer or an agent unless the mediator is satisfied the party should not be represented.

Conference to be held in private

160. A mediation conference is not open to the public.

Parties attendance at conference not compellable

161. A party to a retirement village dispute can not be compelled to attend a mediation conference.

Parties to mediation conference

162.(1) A mediator may allow a person to take part in a mediation conference if the mediator is satisfied the person has a sufficient interest in the resolution of the dispute.

(2) However, the person does not become a party to the dispute.

Mediation agreements

163.(1) This section applies if the parties to a retirement village dispute reach a mediated agreement on the dispute.

(2) The mediator must record the agreement (the “**mediation agreement**”) in writing and have it signed by or for the parties.

(3) The mediator must give a copy of the signed agreement to the chief executive as soon as practicable after it is signed.

No official record of mediation conference

164.(1) A person must not make a record of anything said at a mediation conference.

Maximum penalty—40 penalty units.

(2) However, the mediator does not contravene subsection (1) if—

- (a) the mediator makes notes during the mediation conference the mediator considers appropriate and destroys them at the end of the mediation; or
- (b) records an agreement under section 163(2).

Withdrawal of dispute

165.(1) A person who has given a dispute notice to the chief executive may, by written notice (the “**withdrawal notice**”) given to the chief executive, withdraw the dispute notice.

(2) The withdrawal notice may be given before or after a mediator has started mediating the dispute.

(3) The chief executive must advise the mediator, if appointed, and the other parties to the dispute of the withdrawal as soon as practicable after receipt of the withdrawal notice.

PART 10—APPLICATIONS TO TRIBUNAL

Division 1—Preliminary

Applications generally

166. An application under this part must be—

- (a) in the approved form; and
- (b) accompanied by the fee prescribed under a regulation; and
- (c) given to the chief executive.

Division 2—Applications about retirement village disputes

Application for reference of dispute

167. A party to a retirement village dispute may apply to the chief executive to refer the dispute to a tribunal if—

- (a) the parties to the dispute can not reach a mediated agreement to the dispute; or
- (b) a party to the dispute does not attend the mediation conference for the dispute; or
- (c) the dispute is not settled within 4 months after the dispute notice is given to the chief executive; or
- (d) the party claims that another party to a mediation agreement has not complied with the agreement within the time specified in it or, if no time is specified, within 2 months after the agreement is signed.

Chief executive to refer dispute to tribunal

168. Within 14 days after the application is made, the chief executive must—

- (a) appoint a tribunal from the tribunal panel to hear the dispute; and

- (b) give written notice to the tribunal panel members of their appointment to hear the dispute; and
- (c) give written notice to the parties to the dispute of the appointment and composition of the tribunal to hear the dispute.

Division 3—Applications about other retirement village issues

Resident's right to apply for an order if threatened with removal, deprivation or restriction

169.(1) This section applies if a resident of a retirement village—

- (a) is threatened with removal, or is removed, from the village by the scheme operator of the retirement village; or
- (b) is threatened with deprivation, or is deprived, of the resident's right to reside in the village under a residence contract by the operator; or
- (c) is threatened with restriction of, or is restricted in, the resident's use of the retirement village land under the residence contract by the operator.

(2) The resident may apply to the chief executive for an order by a tribunal that the scheme operator do, or not do, a stated thing.

Resident may apply for order if given false or misleading documents

170.(1) This section applies if—

- (a) a scheme operator of a retirement village contravenes section 86;²⁰ and
- (b) a resident of the retirement village is materially prejudiced by the contravention.

(2) The resident may apply to the chief executive for an order by a tribunal to have the resident's residence contract set aside.

²⁰ Section 86 (False or misleading documents)

Former resident may apply for order for payment of exit entitlement

171.(1) This section applies if—

- (a) a retirement village scheme operator fails to comply with section 58(2), 60(2), 65 or 67(2);²¹ and
- (b) a former resident of the retirement village is materially prejudiced by the failure.

(2) The former resident may apply to the chief executive for an order by a tribunal that the operator pay to the former resident the former resident's exit entitlement.

Chief executive to refer application to tribunal

172.(1) Within 7 days after an application under section 169, 170 or 171 is received, the chief executive must—

- (a) appoint from the tribunal panel a tribunal to hear the application; and
- (b) give written notice to the tribunal panel members of their appointment to hear the application; and
- (c) give written notice to the resident or former resident and scheme operator of the appointment and composition of the tribunal to hear the application.

(2) The notice to the scheme operator must state the 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**

173.(1) A resident who is entitled to apply for an order under this part may, by notice to the chief executive in the approved form accompanied by

²¹ Section 58 (Scheme operator and resident to agree on work to reinstate unit to previous condition), section 60 (Scheme operator and former resident to agree on resale value of accommodation unit), section 65 (Operator to tell resident of all offers for accommodation unit), section 67 (Updating agreed resale value)

the fee prescribed under a regulation, ask the chief executive to make the application for the resident.

(2) A resident must not knowingly or recklessly give false information in a request under subsection (1).

Maximum penalty—100 penalty units.

(3) After receiving a request under subsection (1), the chief executive may make the application for the resident if the chief executive believes it is appropriate, having regard to—

- (a) the resident's physical, mental or financial state; and
- (b) the alleged facts giving rise to the resident's right to apply for the order.

(4) In this section—

“resident” includes a former resident.

PART 11—TRIBUNAL HEARINGS OF RETIREMENT VILLAGE ISSUES

Division 1—Tribunal hearings

Chairperson may hold directions hearing

174.(1) Before a tribunal hears a retirement village issue, the chairperson may decide to hold a directions hearing.

(2) If the chairperson decides to hold a directions hearing, the chairperson must give reasonable written notice to the parties to the issue of the time, date and place of the directions hearing.

(3) The provisions of this division about the conduct of, and procedure at, a tribunal's hearing of a retirement village dispute and the tribunal's powers at the hearing apply, with the necessary changes, to the directions hearing.

(4) At the directions hearing—

- (a) the tribunal is constituted by the chairperson; and

- (b) the tribunal may make the decisions and give the directions it considers appropriate.

(5) Without limiting subsection (4), the tribunal may make decisions and give directions about—

- (a) questions of law; and
- (b) the tribunal's jurisdiction; and
- (c) discovery and inspection of documents.

Presiding member

175. The chairperson of a tribunal is to preside at the tribunal's hearing of a retirement village issue.

Venues

176. When hearing a retirement village issue, the tribunal may sit at the times and places the chairperson decides.

Hearing to be held in private

177.(1) The tribunal's hearing of a retirement village issue is not open to the public.

(2) However, a person may attend the tribunal's hearing with the agreement of the tribunal and the parties to the issue.

Appearances before tribunal

178. The following persons are entitled to appear at the tribunal's hearing of a retirement village issue—

- (a) the parties to the issue;
- (b) a person granted leave to appear by the tribunal.

Right of representation

179. At the tribunal's hearing of a retirement village issue, a party to the

issue may be represented by a lawyer or another person approved by the tribunal.

Procedure

180.(1) When hearing a retirement village issue, the tribunal must—

- (a) observe natural justice; and
- (b) act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it.

(2) In conducting the hearing, the tribunal—

- (a) is not bound by the rules of evidence; and
- (b) may inform itself of any matter in the way it considers appropriate; and
- (c) may decide the procedures to be followed for the hearing.

(3) However, the tribunal must comply with this part and any procedural rules prescribed by regulation.

Amendment of issue

181.(1) The tribunal may at any stage of the hearing of a retirement village issue amend the particulars of the issue in the way it considers appropriate—

- (a) if asked by the party who lodged the dispute notice or applied for a tribunal order; or
- (b) on its own initiative if the parties to the issue agree.

(2) For this Act, the amended issue is taken to be the issue.

Questions to be decided by majority of tribunal

182.(1) A retirement village issue before the tribunal must be decided by a majority of the tribunal members.

(2) However, a question of law must be decided by the chairperson.

Tribunals to keep records of proceedings

- 183.(1)** The tribunal must keep a record of its proceedings.
- (2) The record may be kept in the way the tribunal considers appropriate.

Powers of tribunal

- 184.(1)** At the hearing of a retirement village issue, the tribunal may—
- (a) require a person to give evidence on oath; and
 - (b) proceed in the absence of a party to the issue; and
 - (c) by written notice (“**attendance notice**”), require a person to attend the hearing at a specified time, date and place—
 - (i) to give evidence; or
 - (ii) to produce a specified document or thing.
- (2) The tribunal may adjourn the hearing from time to time.

Inspection of documents

- 185.(1)** If a document or thing is produced to the tribunal at the hearing, the tribunal may—
- (a) inspect the document or thing; and
 - (b) make copies of, photograph, or take extracts from, the document or thing if it is relevant to the hearing.
- (2) The tribunal may also take possession of the document or thing, and keep it while it is necessary for the hearing.
- (3) While it keeps a document or thing, the tribunal must permit a person otherwise entitled to possession of the document or thing to inspect, make copies of, photograph, or take extracts from, the document or thing, at the reasonable time, date and place the tribunal decides.

Offences—hearings

- 186.(1)** A person served with an attendance notice must not—
- (a) fail, without reasonable excuse, to attend as required by the notice;

or

- (b) fail, without reasonable excuse, to continue to attend as required by the chairperson until excused from further attendance.

Maximum penalty—40 penalty units.

(2) A person appearing as a witness at the hearing must not—

- (a) fail to take an oath or make an affirmation when required by the chairperson; or
- (b) fail, without reasonable excuse, to answer a question the person is required to answer by a tribunal member; or
- (c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by an attendance notice.

Maximum penalty—40 penalty units.

Self incrimination

187.(1) It is a reasonable excuse for a person to fail to answer a question or to produce a document if answering the question or producing the document might tend to incriminate the person.

(2) Subsection (1) does not apply to a document the person is required to keep under this Act.

False or misleading information

188.(1) A person must not state anything to the tribunal that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

(2) A complaint against a person for an offence against subsection (1) is sufficient if it states the statement made was false or misleading to the person's knowledge.

False or misleading documents

189.(1) A person must not give to the tribunal a document containing information the person knows is false or misleading.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the tribunal, to the best of the person’s ability, how it is false or misleading; and
- (b) gives the correct information to the tribunal if the person has, or can reasonably obtain, the correct information.

(3) A complaint against a person for an offence against subsection (1) is sufficient if it states the document was false or misleading to the person’s knowledge.

Contempt of tribunal

190. A person must not—

- (a) insult the tribunal or a tribunal member; or
- (b) deliberately interrupt the tribunal’s hearing of a retirement village issue; or
- (c) create or continue or join in creating or continuing, a disturbance in or near a place where the tribunal is conducting the hearing; or
- (d) do anything that would be contempt of court if the tribunal were a judge acting judicially.

Maximum penalty—100 penalty units.

Division 2—Tribunal orders

Tribunal orders generally

191.(1) The tribunal may make the orders the tribunal considers to be just to resolve a retirement village issue.

(2) Without limiting subsection (1) or sections 192 to 194, the tribunal may make any 1 or more of the following orders—

- (a) an order for a party to the issue to do, or not to do, anything (an **“enforcement order”**);

- (b) an order requiring a party to the issue to pay an amount (including an amount of compensation) to a specified person (a “**payment order**”);
- (c) an order that a party to the issue is not required to pay an amount to a specified person;
- (d) if the issue is a retirement village dispute—
 - (i) an order setting aside the mediation agreement between the parties to the dispute; or
 - (ii) an order giving effect to a settlement agreed on by the parties to the dispute.

(3) An order may specify a time for compliance with it.

(4) If the person against whom the order is made is not present when the order is made, the chief executive must serve a copy of the order on the person as soon as practicable after it is made.

Tribunal orders under section 169

192.(1) This section applies if a resident applies for a tribunal order under section 169.²²

(2) In making the order, the tribunal must be satisfied that the actual or threatened removal, deprivation or restriction mentioned in the application—

- (a) is, or would be, a breach of the resident’s residence contract; or
- (b) is not, or would not be, reasonably justified.

(3) Without limiting subsection (2), the tribunal in deciding the application may have regard to the rights and interests of all persons who may be affected if the order is made.

(4) The order may be made on the conditions and for the period the tribunal decides is appropriate.

²² Section 169 (Resident’s right to apply for an order if threatened with removal, deprivation or restriction)

Tribunal orders under section 170

193.(1) This section applies if a resident applies for a tribunal order under section 170.²³

(2) In setting a contract aside, the tribunal may make the orders it considers appropriate including, for example, the following—

- (a) an order that the scheme operator refund to the resident the ingoing contribution or another amount paid under the contract;
- (b) an order that the scheme operator compensate the resident for damages or loss caused by the contravention.

Tribunal orders under section 171

194.(1) This section applies if a resident applies for a tribunal order under section 171.²⁴

(2) In ordering a scheme operator to pay the exit entitlement to the former resident, the tribunal must base the exit entitlement on the following—

- (a) if the resale value of the right to reside in the unit has been agreed under section 60 or 67²⁵—that value; or
- (b) if the resale value of the right to reside in the unit has not been agreed—the resale value of the right to reside in the unit decided by the tribunal under subsection (3).

(3) For subsection (2)(b), the tribunal must obtain an independent valuation of the right to reside in the unit from a valuer.

Enforcement of particular tribunal orders

195.(1) This section applies if the tribunal makes an enforcement order.

(2) The person in whose favour the order is made may enforce the order

²³ Section 170 (Resident may apply for order if given false or misleading documents)

²⁴ Section 171 (Former resident may apply for order for payment of exit entitlement)

²⁵ Section 60 (Scheme operator and former resident to agree on resale value of accommodation unit), section 67 (Updating agreed resale value)

by—

- (a) filing in the District Court registry—
 - (i) a copy of the order certified by the chief executive to be a true copy; and
 - (ii) the person's affidavit about the failure of the person against whom the order is made to comply with the order; and
- (b) serving a copy of each of the documents mentioned in paragraph (a) on the person against whom the order was made.

(3) If the registrar of the District Court is satisfied there has been, and still exists, a failure to comply with the order, the registrar must endorse a certificate of noncompliance on the copy of the order.

(4) The endorsed order is taken to be a properly entered order of the District Court and may be enforced accordingly.

(5) A court fee is not payable for the filing or endorsement of the order.

Orders requiring payments

196.(1) This section applies if the tribunal makes a payment order.

(2) The order may be made to take effect immediately or on the failure of a party to comply with another order made by the tribunal.

(3) The person to whom payment is to be made under the order may enforce the order by—

- (a) filing in the appropriate court's registry nearest the place where the person ordered to make the payment lives or carries on business—
 - (i) a copy of the order certified by the chief executive to be a true copy; and
 - (ii) the person's affidavit about the failure of the person against whom the order is made to pay the amount under the order; and
- (b) serving a copy of each of the documents mentioned in paragraph (a) on the person against whom the order was made.

(4) If the registrar of the court is satisfied there has been, and still exists, a

failure to comply with the order, the registrar must endorse a certificate of noncompliance on the copy of the order.

(5) The endorsed order is taken to be a properly entered judgment of the court and may be enforced accordingly.

(6) A court fee is not payable for the filing or endorsement of the order.

(7) In this section—

“**appropriate court**”, for an order, means the court having jurisdiction to order the payment of the amount required to be paid by the order.

Orders of tribunal to be complied with

197. A person must not fail to comply with a tribunal order unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

Tribunal’s order final and binding

198. A tribunal order is final and binding on each party to the retirement village issue, whether or not the party has appeared or been represented at the tribunal’s hearing.

Restricted right to question tribunal’s hearing and order

199. A tribunal’s hearing of the retirement village issue and the tribunal’s order must not be questioned in a proceeding other than a proceeding based on an error of law.

Division 3—Other provisions

Parties to pay own costs

200. Each party to a retirement village issue must bear the party’s own costs of the tribunal’s hearing of the issue.

Allowance to witness

201. A witness who appears before a tribunal in the conduct of the hearing of a retirement village issue is entitled to the allowance prescribed by regulation for attendance at the hearing or, if no allowance is prescribed, the reasonable allowance decided by the chairperson.

Withdrawal of application

202.(1) A person may, by written notice given to the chief executive, withdraw an application given by the person to the chief executive—

- (a) to refer a retirement village dispute to a tribunal; or
- (b) for an order by a tribunal.

(2) The notice may be given before or after a tribunal has started hearing the matter.

(3) The chief executive must advise the tribunal, if appointed, and the other parties to the matter of the withdrawal as soon as practicable after receipt of the notice.

PART 12—COMPOSITION AND FUNCTIONS OF TRIBUNAL

Division 1—Tribunal panel

Appointment of members of tribunal panel

203. The Governor in Council may appoint as members of a panel of retirement village tribunal members (the “**tribunal panel**”)—

- (a) 1 or more persons who—
 - (i) have been Supreme or District Court judges; or
 - (ii) are lawyers of at least 5 years standing; and

- (b) the number of representatives of scheme operators and residents of retirement villages the Governor in Council considers necessary for this Act.

Duration of appointment

204.(1) A tribunal panel member must be appointed for a term not longer than 3 years.

(2) A tribunal panel member may resign by signed notice of resignation given to the Minister.

Conditions of appointment

205.(1) A tribunal panel member is to be paid the remuneration and allowances decided by the Governor in Council.

(2) A tribunal panel member holds office—

- (a) on the conditions stated in this Act; and
- (b) the other conditions decided by the Governor in Council.

Removal from office

206. The Governor in Council may remove a tribunal panel member from office, by written notice given to the member, if the Governor in Council considers the member—

- (a) is incapable of properly discharging the functions of a tribunal member; or
- (b) is unfit to hold the office.

Division 2—Composition of retirement village tribunals

Composition of retirement village tribunals

207. A tribunal is to consist of the following tribunal members—

- (a) a person appointed under section 203(a);

- (b) a representative of scheme operators;
- (c) a representative of residents of retirement villages.

Chairperson

208. The tribunal member mentioned in section 207(a) is the chairperson of the tribunal to which the member is appointed.

Tribunal's function

209. A tribunal's function is to hear retirement village issues that—

- (a) are within a tribunal's jurisdiction; and
- (b) it is appointed to hear.

Tribunal's jurisdiction

210.(1) A tribunal has jurisdiction to hear retirement village issues, other than a retirement village dispute—

- (a) about an issue between the parties that—
 - (i) is the subject of arbitration; or
 - (ii) has been the subject of an award (interim or final) in an arbitration proceeding; or
 - (iii) is before, or has been decided by, a court; or
- (b) if the amount, value or damages in dispute is more than the monetary limit of the District Court within the meaning of the *District Court Act 1967*, section 68.²⁶

(2) For subsection (1)(a)(i), a retirement village dispute is only the subject of arbitration if the arbitration proceeding has started.

Tribunal's general powers

211.(1) A tribunal may do all things necessary or convenient to be done

²⁶ *District Court Act 1967*, section 68 (District Courts' civil jurisdiction)

for, or in relation to, the performance of its function.

(2) Without limiting subsection (1), a tribunal has the powers conferred on it by this Act.

Transfer of hearings between tribunals and courts

212.(1) If a proceeding about a retirement village issue is started in a court and a tribunal has jurisdiction to hear the issue, the court may, on the application of a party, order that the proceeding be removed to a tribunal.

(2) If a tribunal considers that a retirement village issue being, or about to be, heard by the tribunal should be heard by a court, the tribunal may order that the issue be removed, wholly or partly, to a court.

PART 13—OTHER PROVISIONS FOR MEDIATION CONFERENCES AND TRIBUNAL HEARINGS

Division 1—Privilege and immunity

Ordinary protection and immunity allowed

213.(1) A mediator or tribunal member has, in the performance of the mediator's or member's function, the same protection and immunity as a Supreme Court judge carrying out the functions of a judge.

(2) A party appearing at a mediation conference or tribunal hearing of a retirement village issue has the same protection and immunity as a party to a proceeding before the Supreme Court.

(3) A lawyer appearing at a mediation conference or tribunal hearing of a retirement village issue has the same protection and immunity as a lawyer appearing for a party in a proceeding before the Supreme Court.

(4) A person appearing at a mediation conference or tribunal hearing of a retirement village issue as a witness has the same protection and immunity as a witness appearing in a proceeding before the Supreme Court.

(5) A document produced at, or used for, a mediation conference or

tribunal hearing of a retirement village issue has the same protection as a document produced at or used for a proceeding before the Supreme Court.

Admissions made during hearing of retirement village issue

214.(1) Evidence of anything said in a mediation conference for a retirement village dispute is not admissible in any proceeding before any court or a tribunal.

(2) Evidence of anything said in a tribunal hearing of a retirement village issue is not admissible in any proceeding before any court.

(3) Subsections (1) and (2) do not apply to a proceeding—

- (a) about an offence or other misconduct that happens during the mediation conference or hearing; or
- (b) in which the falsity or misleading nature of the thing said is relevant.

Division 2—General

Exclusion of other jurisdictions

215.(1) On and after an application about a retirement village issue under part 9 or 10 is given to the chief executive, the issue must not be referred to arbitration or heard by any court.

(2) Subsection (1) does not apply if—

- (a) the application is withdrawn; or
- (b) a proceeding about the issue in dispute was started in a court before the application was given to the chief executive and the proceeding has not been removed to a tribunal; or
- (c) an application for an order in the nature of an injunction about the issue is made to a court; or
- (d) the tribunal orders the issue to be removed to a court under section 210.

Register

216.(1) The chief executive must keep a register of mediators, tribunal panel members and retirement village issues.

(2) The register of retirement village issues must contain the following particulars for each issue—

- (a) the date the dispute notice, application to refer the dispute to a tribunal or application for an order by the tribunal was given to the chief executive;
- (b) the names of the parties;
- (c) the subject matter of the issue;
- (d) the results of the mediation process;
- (e) the results of the tribunal's hearing, including any tribunal order.

(3) The chief executive must—

- (a) keep the register open for inspection by members of the public at the department's head office when the office is open to the public; and
- (b) permit a person to take extracts from the register or, on payment by a person of the fee prescribed under a regulation, give the person a copy of the register or part of it.

Reports on discharge of tribunals' function

217.(1) Within 2 months after the end of each financial year, a tribunal member nominated by the chief executive must give a report to the chief executive on each tribunal's discharge of its function throughout the year.

(2) The report must include details of all matters that—

- (a) the member becomes aware of during the discharge of the tribunal's function; and
- (b) significantly affect relationships between scheme operators and residents.

Chief executive's responsibility

218. For the efficient and proper administration of this Act, the chief executive—

- (a) is responsible for ensuring scheme operators and residents are advised about the practices and procedures of the department, mediators and tribunals; and
- (b) may advise scheme operators and residents about potential retirement village issues.

PART 14—MISCELLANEOUS**Starting offence proceedings**

219. A proceeding for an offence against this Act must be started within—

- (a) 1 year after the offence is committed; or
- (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

Appointments and authority

220.(1) It is not necessary to prove in a proceeding under this Act—

- (a) the chief executive's appointment; or
- (b) an inspector's appointment; or
- (c) the authority of the chief executive or an inspector to do anything under this Act.

(2) Subsection (1) does not apply if reasonable notice is given to the party relying on the appointment or authority that the appointment or authority is to be challenged.

Evidentiary provisions

221.(1) This section applies to a proceeding under this Act.

(2) A signature purporting to be the signature of the chief executive or an inspector is evidence of the signature it purports to be.

(3) A certificate purporting to be signed by the chief executive or an inspector and stating any of the following matters is evidence of the matter—

- (a) a particular retirement village scheme has or has not been registered at a time stated in the certificate;
- (b) the documents relating to a particular retirement village scheme that are or were, at a time stated in the certificate, included in the register under this Act;
- (c) on a stated day, a stated person was given a stated notice under this Act;
- (d) a stated fee or other amount is payable by a stated person to someone else and has not been paid;
- (e) any matter within the control or knowledge of the chief executive and relevant to the proceeding.

(5) A certificate signed by the chief executive and stating that a stated document is a copy of a financial or other record, contract or document is evidence of the matter.

Act's remedies not exclusive

222. Nothing in this Act prevents a party to a residence contract from seeking or enforcing another remedy the party may have under another law.

Protection from liability

223.(1) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents civil liability attaching to an official, the liability attaches instead to the State.

(3) In this section—

“official” means—

- (a) the chief executive; or
- (b) an employee of the department.

Responsibility for acts or omissions of representatives

224.(1) Subsections (2) and (3) apply in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—

- (a) the act was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

“representative” means—

- (a) of a corporation—an executive officer, employee or agent of the corporation; or
- (b) of an individual—an employee or agent of the individual.

“state of mind” of a person, includes—

- (a) the person’s knowledge, intention, opinion, belief or purpose; and
- (b) the person’s reasons for the intention, opinion, belief or purpose.

Executive officers must ensure corporation complies with Act

225.(1) The executive officers of a corporation must ensure the corporation complies with this Act.

(2) If a corporation commits an offence against a provision of this Act,

each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

(3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with the provision.

(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

Annual report on operation of Act

226. The department's annual report for a financial year must include a report on the operation of this Act during the year.

Approval of forms

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

Delegation of chief executive's powers

227A.(1) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified public service officer.

(2) In this section—

“appropriately qualified” means having qualifications, experience or standing appropriate to exercise the power.

Example of 'standing'—

A person's classification level in the public service.

Regulation-making power

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

(2) In particular, a regulation may—

- (a) provide for the fees payable under this Act; or
- (b) create offences and prescribe penalties of not more than 20 penalty units for each offence.

PART 15—TRANSITIONAL AND SAVINGS PROVISIONS

Existing retirement village schemes

229.(1) An existing retirement village scheme is taken to be registered under this Act if, at the commencement of this section the scheme was approved under the repealed Act and the approval is in force.

(2) The chief executive must promptly give the scheme operator of the existing retirement village scheme a registration certificate in the approved form.

(3) The scheme operator must, within 6 months after the commencement—

- (a) give the chief executive the following—
 - (i) the public information document for the retirement village;
 - (ii) the particulars mentioned in section 27(2)(a);²⁷ and
- (b) give each resident of the retirement village a written statement detailing the changes to the resident's residence contract required by this Act.

Maximum penalty for subsection (3)—540 penalty units.

²⁷ Section 27 (Application for registration of a retirement village scheme)

Existing exempt organisations and retirement villages

230.(1) An exemption given to an organisation or an existing retirement village under the repealed Act and in force at the commencement of this section continues under this Act and is to be read with the changes necessary to adapt its operation to the provisions of this Act.

(2) If the exemption operated to exclude a person or retirement village from the operation of a provision of the repealed Act, the exemption continues to operate to exclude the person or village from the operation of a corresponding provision of this Act, other than this provision.

(3) The exemption remains subject, after the commencement, to any condition or time limitation that applied to the exemption immediately before the commencement.

(4) The exemption expires 2 years after the commencement of this section.

(5) Despite subsections (1) to (3), a regulation may prescribe provisions of this Act to which the exemption does not apply.

Releasing certain existing charges

231.(1) This section applies if the land of an existing retirement village was subject to a statutory charge under section 33 of the repealed Act immediately before its repeal and either—

- (a) the existing retirement village is not a retirement village for this Act; or
- (b) a person's right to reside in the existing retirement village depends on the person holding a registered lease over a part of the retirement village land.

(2) The operator of the existing retirement village may apply to the chief executive to release the charge.

(3) The application must be in writing and state the particulars of a ground mentioned in subsection (1) on which it is made.

(4) The chief executive's decision whether or not to release the charge must be made within 60 days of the later of—

- (a) the day the application is received; or

- (b) if the particulars with the application do not conform with the requirements of subsection (3) and the chief executive requests further particulars, the day the particulars are given.

(5) If the chief executive decides to release the charge—

- (a) the chief executive must, as soon as practicable after making the decision, give the registrar of titles written notice that the charge is released; and
- (b) on receipt of the notice, the registrar must register the release of the charge.

(6) If the chief executive refuses to release the charge, the chief executive must give the operator a signed notice stating—

- (a) the reasons for the refusal; and
- (b) the operator may appeal against the decision under section 29.

(7) Sections 29 to 33, other than section 30(1)(b), apply to an appeal under subsection (6)(b) as if the decision to refuse to release the charge were a decision to refuse an application to register a retirement village.

Apportionment of balance where separate funds maintained

232.(1) This section applies if immediately before the commencement of this section a scheme operator of an existing retirement village maintains separate funds for the retirement village for—

- (a) capital replacement; and
- (b) maintenance and repairs.

(2) The scheme operator must, within 90 days after the commencement of this section, transfer the balance in those funds to—

- (a) for a fund mentioned in subsection (1)(a)—the capital replacement fund; or
- (b) for a fund mentioned in subsection (1)(b)—the maintenance reserve fund.

Maximum penalty for subsection (2)—200 penalty units.

Apportionment of balance where single fund maintained for maintenance and repairs

233.(1) This section applies if immediately before the commencement of this section a scheme operator of an existing retirement village maintains a single fund for maintenance and repairs for the retirement village.

(2) The scheme operator must, within 90 days after the commencement of this section, transfer the balance in the fund to the maintenance reserve fund.

Maximum penalty for subsection (2)—200 penalty units.

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

234.(1) This section applies if immediately before the commencement of this section a scheme operator of an existing retirement village maintains a single fund for capital replacement and maintenance and repairs for the retirement village.

(2) The scheme operator must, within 90 days after the commencement of this section, transfer the balance in the fund to the capital replacement fund and the maintenance reserve fund in the proportion that the amount decided by the quantity surveyor under section 92 as expected capital replacement costs is to the amount decided by the quantity surveyor under section 98 as expected maintenance costs.²⁸

Example—

If there is \$600 000 in an existing fund for capital replacement and maintenance and repairs for the retirement village and the quantity surveyor has decided the amounts required under sections 92 and 98 as \$500 000 and \$250 000 respectively, out of the \$600 000 available, \$400 000 is to be transferred to the capital replacement fund and \$200 000 is to be transferred to the maintenance reserve fund.

Maximum penalty for subsection (2)—200 penalty units.

²⁸ Section 92 (Amount of capital replacement fund), section 98 (Amount of maintenance reserve fund)

Existing regulations

235.(1) The regulations in force under the repealed Act immediately before the commencement of this section—

- (a) continue in force under this Act, subject to amendment or repeal by a regulation under this Act; and
- (b) are to be read with the changes necessary to make them consistent with this Act and adapt their operation to the provisions of this Act.

(2) The regulations expire 1 year after the commencement.

Existing by-laws

236.(1) A by-law made under the repealed Act and in force immediately before the commencement of this section continues in force under this Act, subject to amendment or repeal by a by-law under this Act.

(2) Despite section 130,²⁹ if there is an inconsistency between a by-law made under section 130(1) and by-law made before 1 November 1989 (an “**existing by-law**”) and in force immediately before the commencement of this section, the existing by-law prevails to the extent of the inconsistency.

Retirement Villages Act 1988 references

237. In an Act or document, a reference to the *Retirement Villages Act 1988* may, if the context permits, be taken as a reference to this Act.

PART 16—REPEAL AND AMENDMENT**Repeal**

238. The *Retirement Villages Act 1988* is repealed.

²⁹ Section 130 (Residents may make, change or revoke by-laws)

SCHEDULE 2**DICTIONARY**

section 4

“accommodation unit” means the part of a retirement village in which a resident has an exclusive right to reside.

“annual meeting” means an annual meeting called under section 131.

“approved form” see section 227.

“approved provider” means an approved provider under the *Aged Care Act 1997* (Cwlth).

“capital improvement” see the rulings of the Commissioner for Taxation under the *Income Tax Assessment Act 1936* (Cwlth) dealing with capital improvement.³⁰

“capital items” include the following—

- (a) all buildings and structures located in the retirement village and owned by the scheme operator, including the communal facilities, amenities and accommodation units, other than items that are a resident’s contracted responsibility;
- (b) all plant, machinery and equipment used in the operation of the village;

Examples for paragraph (b)—

Communal hot water and air conditioning services, kitchen and dining room equipment, community facility furnishings, gardening equipment, village bus or transportation services.

- (c) all village infrastructure owned by the scheme operator.

Examples for paragraph (c)—

Roadways, pathways, drainage, sewerage mains, landscaping, electrical distribution systems, water services and connections and distribution systems.

³⁰ The rulings are available from the Australian Taxation Office.

SCHEDULE 2 (continued)

“capital replacement fund” see section 17.

“capital replacement fund contribution” see section 18.

“conviction” for part 5, division 1, see section 87.

“cooling-off period”, for a residence contract, means a 14 day period starting on the day the contract is made.

“dispute notice” see section 157.

“excluded contract” means a written contract between an approved provider and a person under which—

- (a) the approved provider provides the person with residential care; and
- (b) the approved provider meets the responsibilities of an approved provider stated in the *Aged Care Act 1997* (Cwlth), chapter 4 whether or not the approved provider is entitled to receive a residential care subsidy.³¹

“executive officer”, of a corporation, means a person who is concerned with, or takes part in, the corporation’s management, whether or not the person is a director or the person’s position is given the name of executive officer.

“existing residence contract” see section 11.

“existing retirement village” means a retirement village existing immediately before the commencement of this Act.

“exit entitlement” see section 16.

“exit fee” see section 15(1).

“former resident” includes—

- (a) a person who, personally or for someone else, entered into a residence contract to secure the person’s or other person’s right to reside in a retirement village; and
- (b) the former resident’s personal representative.

³¹ *Aged Care Act 1997*, (Cwlth), chapter 4 (Responsibilities of approved providers).

SCHEDULE 2 (continued)

“freehold interest” means a fee simple interest in a lot under the *Land Title Act 1994*.

“general services” see section 12(3).

“ingoing contribution” see section 14.

“insolvent under administration” for part 5, division 1 see section 87.

“leasehold interest” means an interest created by an instrument of lease for a lot under the *Land Title Act 1994*.

“maintenance”, of a capital item, see the rulings of the Commissioner for Taxation under the *Income Tax Assessment Act 1936* (Cwlth) dealing with maintenance of capital items.³²

“maintenance reserve fund” see section 19.

“maintenance reserve fund contribution” see section 20.

“manager”, of a retirement village, means the person in charge of its day to day operation.

“mediation agreement” see section 163.

“mediator” means a person who is—

- (a) accredited as a mediator under the *Dispute Resolution Centres Act 1990*, section 19;³³ or
- (b) approved as a mediator under the *Uniform Civil Procedure Rules 1999*; or
- (c) approved as a mediator by the Bar Association of Queensland or the Queensland Law Society Incorporated.

“personal services” see section 12(3).

“public information document” see section 13.

“quarter” means the 3 month period ending on 31 March, 30 June, 30 September or 31 December.

³² The rulings are available from the Australian Taxation Office.

³³ *Dispute Resolution Centres Act 1990*, section 19 (Mediators)

SCHEDULE 2 (continued)

“real estate agent” means a real estate agent licensed under the *Auctioneers and Agents Act 1971*.

“registered”, for part 6, division 2, see section 115.

“registered company auditor” means a person registered as an auditor, or taken to be registered as an auditor, under the Corporations Law, part 9.2.

“relevant conviction” for part 5, division 1, see section 87.

“repairs”, to a capital item, see the rulings of the Commissioner for Taxation under the *Income Tax Assessment Act 1936* (Cwlth) dealing with repairs to capital items.³⁴

“repealed Act” means the repealed *Retirement Villages Act 1988*.

“replacement”, of a capital item, see the rulings of the Commissioner for Taxation under the *Income Tax Assessment Act 1936* (Cwlth) dealing with replacement of capital items.³⁵

“residence contract” see section 10.

“resident”—

(a) see section 9; and

(b) for part 3, division 4, see section 51.

“residential care” has the meaning given by the *Aged Care Act 1997* (Cwlth).

“residential care subsidy” has the meaning given by the *Aged Care Act 1997* (Cwlth).

“residents committee” means a committee established under section 127.

“retirement village” see section 5.

“retirement village dispute” see section 21.

“retirement village issue” see section 22.

³⁴ The rulings are available from the Australian Taxation Office.

³⁵ The rulings are available from the Australian Taxation Office.

SCHEDULE 2 (continued)

“**retirement village land**” see section 6.

“**retirement village scheme**” see section 7.

“**retirement village scheme operator**” see section 8.

“**scheme**” means a retirement village scheme.

“**scheme operator**” means a retirement village scheme operator.

“**security**” means an interest, mortgage or other charge in or over land.

“**service agreement**” see section 12.

“**services charge**” means a charge payable by a resident for a general or personal service under a residence contract.

“**sold**”, for a right to reside in an accommodation unit, means when a contract for the sale of the right is settled.

“**special resolution**”, at a resident’s meeting, means a resolution passed—

- (a) at the meeting of which the residents are given at least 21 days written notice stating the intention to propose the resolution as a special resolution; and
- (b) by a majority of at least three-quarters of the residents entitled to vote and voting personally at the meeting or by postal ballot.

“**termination date**”, for part 3, division 5, see section 56.

“**tribunal**” means a tribunal appointed under section 172.

“**tribunal panel**” see section 203.

“**valuer**”, for part 3, division 5, see section 70.

ENDNOTES

1 Index to endnotes

		Page
2	Date to which amendments incorporated	124
3	Key	124
4	List of legislation	125
5	List of annotations	125

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 7 July 2000. Future amendments of the Retirement Villages Act 1999 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

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

4 List of legislation

Retirement Villages Act 1999 No. 71

date of assent 6 December 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (2000 SL No. 119)

as amended by—

GST and Related Matters Act 2000 No. 20 ss 1, 2(4), 29 sch 3

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(4))

Equity and Fair Trading (Miscellaneous Provisions) Act 2000 No. 24 pts 1, 13

date of assent 27 June 2000

commenced on date of assent

5 List of annotations

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

s 50 amd 2000 No. 20 s 29 sch 3

Amount of maintenance reserve fund

s 98 amd 2000 No. 24 s 46

Maintenance reserve fund budget

s 99 amd 2000 No. 24 s 47

Delegation of chief executive's powers

s 227A ins 2000 No. 24 s 48

Amendment—sch 1

s 239 om R1 (see RA s 40)

SCHEDULE 1—ACT AMENDED

om R1 (see RA s 40)