

Queensland



# RETIREMENT VILLAGES ACT 1999

**Reprinted as in force on 1 April 2003  
(includes commenced amendments up to 2002 Act No. 74)**

**Reprint No. 1E**

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# Queensland



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# RETIREMENT VILLAGES ACT 1999

[as amended by all amendments that commenced on or before 1 April 2003]

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

### **PART 1—PRELIMINARY**

#### *Division 1—Introduction*

##### **1 Short title**

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

##### **2 Commencement**

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

#### *Division 2—Objects*

##### **3 Main objects**

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 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*

## **4 Definitions**

The dictionary in the schedule defines particular words used in this Act.

## **5 What is a “retirement village”**

(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*.

## **6 What is “retirement village land”**

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.

## **7 What is a “retirement village scheme”**

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.

## **8 Who is a “retirement village scheme operator”**

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.

## **9 Who is a “resident”**

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.

## **10 What is a “residence contract”**

(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 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.

## **11 What is an “existing residence contract”**

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

## **12 What is a “service agreement”**

(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.

### **13 What is a “public information document”**

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

### **14 What is an “ingoing contribution”**

(1) An **“ingoing 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.

### **15 What is an “exit fee”**

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

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<sup>1</sup> Section 74 (Form and content of public information document)

**16 What is an “exit entitlement”**

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.

**17 What is a “capital replacement fund”**

A **“capital replacement fund”** is a fund established under section 91<sup>2</sup> for replacing the retirement village’s capital items.

**18 What is a “capital replacement fund contribution”**

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.

**19 What is a “maintenance reserve fund”**

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

**20 What is a “maintenance reserve fund contribution”**

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.

**21 What is a “retirement village dispute”**

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.

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2 Section 91 (Capital replacement fund)

**22 What is a “retirement village issue”**

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.<sup>3</sup>

***Division 4—Operation of Act*****23 Application of Act**

This Act applies to—

- (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.

**24 Application of Body Corporate and Community Management Act 1997**

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

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<sup>3</sup> 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)

obligations under a retirement village scheme, this Act prevails to the extent of the inconsistency.

## **25 Application of Fair Trading Act 1989**

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.

## **26 Certain age restrictions on residence not unlawful**

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*

## **27 Application for registration of a retirement village scheme**

(1) A person may apply to the chief executive to register a retirement village scheme.<sup>4</sup>

(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;

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<sup>4</sup> See part 15 for transitional and savings provisions about existing retirement village schemes.

- (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.

## **28 Registration of retirement village scheme**

(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.<sup>5</sup>

(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—

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<sup>5</sup> Section 88 (Persons prohibited from operating a retirement village scheme etc.)

- (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.

## **29 Appeal to District Court**

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.

## **30 Time for making appeals**

- (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.

## **31 Starting appeals**

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.

## **32 Powers of court on appeal**

- (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.

### **33 Effect of court's decision on appeal**

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

### **34 Offence to operate etc. an unregistered retirement village scheme**

(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*

## **35 Retirement village scheme register**

(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);<sup>6</sup>
- (c) the annual financial statements given to the chief executive under section 113(3).<sup>7</sup>

(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.

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

7 Section 113 (Annual financial statements)

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

### **36 Scheme operator to give notice about inaccuracy in public information document**

(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.

(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.

### **37 Public information document forms part of residence contract**

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

(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.

**39 Additional power of chief executive to seek an order**

(1) This section applies if the chief executive considers, on reasonable grounds, that a person is contravening section 34.<sup>8</sup>

(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*****40 Applying to cancel registration**

(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—

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<sup>8</sup> Section 34 (Offence to operate etc. an unregistered retirement village scheme)

- (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;<sup>9</sup>
  - (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, 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.

## **41 Cancelling registration**

(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).

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

- (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*

#### **42 Purpose and intention of part**

(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*

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

(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.<sup>10</sup>

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<sup>10</sup> Section 52 (Termination by resident)

**44 Person signing residence contract to be given copy**

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 document has already been given to the person under section 84.<sup>11</sup>

Maximum penalty—100 penalty units.

**45 Content of residence contract**

(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) all conditions precedent to the resident's right to reside in the retirement village;
- (i) the resident's right to resell the right to reside in the accommodation unit;
- (j) the resident's entitlement to audited and unaudited financial statements for the village;
- (k) the dispute resolution process established under this Act;

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

- (l) the statutory charge, if relevant to the resident's title to, or interest in, the accommodation unit;
- (m) the resident's and scheme operator's rights to terminate the contract;
- (n) anything else prescribed under a regulation.

Maximum penalty—100 penalty units.

(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.<sup>12</sup>

#### **46 Dealing with ingoing contribution**

(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 Act, section 9.<sup>13</sup>

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.

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12 Section 37 (Public information documents form part of residence contract)

13 Under the Corporations Act, 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’.



- (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; or
  - (c) if the ongoing contribution relates to an accommodation unit that has not previously been occupied—the day the resident's accommodation unit is suitable for habitation and the resident is entitled to vacant possession of the unit.

Maximum penalty—100 penalty units.

**(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.

**(4A)** For subsection (3)(c), without limiting when an accommodation unit is not suitable for habitation, an accommodation unit is not suitable for habitation if—

- (a) reticulated water is not connected to the unit; or
- (b) all sanitary installations are not installed or are not operational in the unit.

**(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.

#### **47 Dealing with instruments assigning property under a residence contract**

(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*

#### **48 Residence contract may be rescinded during cooling-off period**

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.

**49 Reassignment of property acquired in cooling-off period**

(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.

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

(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*

### **51 Definition for div 4**

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.

### **52 Termination by resident**

(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.

**53 Termination by scheme operator**

(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 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.<sup>14</sup>

*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.

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

(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.

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

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

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

(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.

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

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*

#### **56 Definitions for div 5**

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.

### **57 Application of div 5**

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.

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

(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.

### **59 Scheme operator to ensure reinstatement work to be completed**

(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.

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

(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.

### **61 Who pays for work in freehold interest scheme**

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

### **62 Who pays for work in leasehold or licence scheme**

(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.

### **63 When former resident's exit entitlement payable**

(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.

#### **64 Units not sold within 6 months**

(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.

#### **65 Operator to tell resident of all offers for accommodation unit**

(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.

## **66 Accepting offers at less than agreed resale value**

(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.

## **67 Updating agreed resale value**

(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.

### **68 Costs of selling**

(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.

### **69 Limited ground for scheme operator to refuse to accept offer**

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 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.

## **70 Valuer**

(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*

## **71 Enforcing residence contract**

(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—
  - (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.

## **72 Restriction on enforcing residence contract**

(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.

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

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**

### **74 Form and content of public information document**

(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.<sup>15</sup>

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

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

- (i) dispute resolution information.

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

## **75 Accommodation information**

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.

## **76 Residents' contributions information**

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.

## **77 Information about payments scheme operator must make to a resident**

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.



**78 Funds information**

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.

**79 Facilities information**

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).

**80 Information about retirement village land**

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.

**81 Residents' rights information**

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.

## **82 Resale process information**

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.

## **83 Dispute resolution information**

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.

## **84 Public information document to be given to prospective resident**

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.

**85 Residents' access to certain documents**

(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.

**86 False or misleading documents**

(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***87 Definitions for div 1**

In this division—

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

**“criminal history”**, of a person, means criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than a spent conviction.

**“insolvent under administration”** has the meaning given by the Corporations Act, section 9.

**“relevant conviction”** means a conviction, other than a spent 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.

**“spent conviction”** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.<sup>16</sup>

## **88 Persons prohibited from operating a retirement village scheme etc.**

**(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

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<sup>16</sup> *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 11 (Revival of convictions)

- (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.

### **88A Investigations about scheme operators etc.**

(1) The chief executive may ask the commissioner of the police service for a written report about the criminal history of a person who—

- (a) applies to the chief executive to register a retirement village scheme; or
- (b) the chief executive reasonably suspects—
  - (i) is a scheme operator; or
  - (ii) promotes a retirement village scheme; or
  - (iii) sells rights to reside in a retirement village; or
  - (iv) is concerned, directly or indirectly, in managing a retirement village.

(2) The commissioner must give the report to the chief executive.

(3) However, the report is required to contain only criminal history in the commissioner's possession or to which the commissioner has access.

### **88B Criminal history is confidential document**

(1) An officer, employee or agent of the department (“**representative**”) must not, directly or indirectly, disclose to anyone else a report about a person's criminal history, or information contained in the report, given under section 88A.

Maximum penalty—100 penalty units.

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

- (a) disclosure of the report or information to someone else is authorised by the chief executive to the extent necessary to perform a function under or in relation to this Act; or
- (b) the disclosure is otherwise required or permitted by law.

(3) The chief executive must destroy the report as soon as practicable after considering it unless the report is to be used for a prosecution.

### *Division 2—Exercise of power of attorney by scheme operator*

## **89 Power of attorney**

(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 *spouse or other 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.<sup>17</sup>

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<sup>17</sup> *Body Corporate and Community Management Act 1997*, section 168 (Restriction on powers of attorney in favour of original owner) or 176 (Restriction on powers of attorney in favour of seller)

*Division 3—Capital improvement***90 Responsibility for capital improvement**

(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***91 Capital replacement fund**

(1) A scheme operator must—

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

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(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.

## **92 Amount of capital replacement fund**

(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.<sup>18</sup>

(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 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).

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18 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)

**93 Capital replacement fund budget**

(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.

**94 Payments into capital replacement fund**

(1) The scheme operator must ensure that the following amounts are 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.

## **95 Restriction on investing capital replacement fund amounts**

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.

## **96 Resident liable for replacing certain capital items**

(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*

## **97 Maintenance reserve fund**

(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.

## **98 Amount of maintenance reserve fund**

(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.<sup>19</sup>

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

## **99 Maintenance reserve fund budget**

(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—

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<sup>19</sup> Section 232 (Apportionment of balance where separate funds maintained), section 233 (Apportionment of balance where single fund maintained for maintenance and repairs) and -I-234 (Apportionment of balance where single fund maintained for capital replacement and maintenance and repairs)

- (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.

**100 Payments into maintenance reserve fund**

(1) The scheme operator must ensure that the following amounts are 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.

**101 Restriction on investing maintenance reserve fund amounts**

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*****102 Charges for personal services for former residents**

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*****103 Working out and paying charges for general services for residents**

(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).

### **104 Working out and paying general services charges for former residents**

(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.



**105 General services charges for unsold right to reside in accommodation units**

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.

**106 Increasing general services charges**

(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.

**107 Resident’s responsibility for paying increased general services charge**

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.

### **108 New services to be approved by majority of residents**

(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***

#### **109 Definitions for div 8**

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.

### **110 Scheme operator must insure village**

(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) The scheme operator must ensure that insurance taken out under this section—

- (a) covers, 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) provides for the reinstatement of property to its condition when new.

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

### ***Division 9—Financial accounts and statements***

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

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.

**112 Quarterly financial statements**

(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) For subsection (1), the statement need not be audited, but must be in a form capable of being audited.

**113 Annual financial statements**

(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*

#### **114 Application of pt 6**

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*

#### **115 Definition for div 2**

In this division—

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

#### **116 Creating a charge**

(1) Immediately the chief executive registers a retirement village scheme, 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.

### **117 Charge extends to new land**

(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*.

### **118 Effect of charge**

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.

### **119 Priority of charge**

(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*

### **120 Enforcing a charge**

(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.

### **121 Orders court may make**

(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.

### **122 Effect of court order**

(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*

### **123 Extinguishing a charge**

(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.

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

(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
- (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.

**125 Chief executive to release charge**

(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
- (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 charges*****126 Exemption from charges**

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 of titles, is exempt from the payment of registration or other fees under the *Land Title Act 1994*.

**PART 7—RESIDENTS PARTICIPATION*****Division 1—Residents committee*****127 Residents committee**

(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.

### **128 Residents constitution**

- (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.

### **129 Committee's function**

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*

### **130 Residents may make, change or revoke by-laws**

- (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*

#### **131 Annual meeting**

(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 113<sup>20</sup> 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.

#### **132 Other meetings**

(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

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20 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*

**133 Voting**

(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*

#### **134 Appointment**

(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.

#### **135 Limitation of inspector's powers**

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.

#### **136 Inspector's appointment conditions**

(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.

**137 Inspector's identity card**

(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.

**138 Production or display of inspector's identity card**

(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***139 Power to enter places**

(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*

#### **140 Entry with consent**

(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.

### **141 Application for warrant**

(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.

### **142 Issue of warrant**

(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.

### **143 Warrants—procedure before entry**

(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*

### **144 General powers after entering places**

(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.

### **145 Failure to help inspector or give inspector information**

(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*****146 Power to seize evidence from places**

(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.

**147 Receipts for seized things**

(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.

**148 Inspector to allow inspection etc.**

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.

**149 Obligation to return seized things**

(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*****150 Power to require production of documents**

(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*****151 Obstructing etc. an inspector**

(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.

### **152 Compensation**

(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*

#### **153 Parties’ rights under this part preserved**

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.

#### **154 Preliminary negotiation**

(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—

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- (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***155 Mediator’s function**

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

**156 Matters that may be mediated**

(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***157 Notice of retirement village dispute**

(1) A party to a retirement village dispute that a mediator may mediate may apply to the registrar 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 registrar.

(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.

### **158 Registrar to act on dispute notice**

(1) Within 14 days after receiving the dispute notice, the registrar 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.

### **159 Right of representation**

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.

### **160 Conference to be held in private**

A mediation conference is not open to the public.

### **161 Parties attendance at conference not compellable**

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

### **162 Parties to mediation conference**

(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.

### **163 Mediation agreements**

(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 registrar as soon as practicable after it is signed.

### **164 No official record of mediation conference**

(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).

### **165 Withdrawal of dispute**

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

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

(3) The registrar 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*

#### **166 Applications generally**

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 registrar.

### *Division 2—Applications about retirement village disputes*

#### **167 Application for reference of dispute**

A party to a retirement village dispute may apply to the registrar 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 registrar; 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.

#### **168 Referral of dispute, appointment of tribunal panel and notice**

(1) Within 14 days after the application is made, the registrar must refer the dispute to the chairperson.

(2) The chairperson 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.

(3) The registrar must 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*

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

(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 registrar for an order by a tribunal that the scheme operator do, or not do, a stated thing.

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

(1) This section applies if—

- (a) a scheme operator of a retirement village contravenes section 86;<sup>21</sup> and
- (b) a resident of the retirement village is materially prejudiced by the contravention.

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

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21 Section 86 (False or misleading documents)

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

(1) This section applies if—

- (a) a retirement village scheme operator fails to comply with section 58(2), 60(2), 65 or 67(2);<sup>22</sup> and
- (b) a former resident of the retirement village is materially prejudiced by the failure.

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

**172 Referral of application, appointment of tribunal panel and notice**

(1) Within 7 days after an application for an order under section 169, 170 or 171 is received, the registrar must refer the application to the chairperson.

(2) The chairperson must—

- (a) appoint from tribunal panel members a tribunal (which may include the chairperson) to hear the application; and
- (b) give written notice to the tribunal panel members of their appointment to hear the application.

(3) The registrar must give written notice to the applicant and scheme operator of the appointment and composition of the tribunal to hear the application.

(4) The notice to the scheme operator must state the grounds on which the order is sought.

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<sup>22</sup> 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) or -67 (Updating agreed resale value)

***Division 4—Requests to chief executive to make application*****173 Resident may ask chief executive to make application for the resident**

(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 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*****174 Directions hearings**

(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 or, for a prescribed application or matter under the *Queensland Building Tribunal Act 2000*, section 26C,<sup>23</sup> the presiding case manager except as otherwise provided under that section; 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.

### **175 Presiding member**

(1) If the chairperson is a member of the tribunal for a hearing of a retirement village issue or a directions hearing, the chairperson is the presiding member for the hearing.

(2) If the chairperson is not a member of the tribunal for the hearing, the presiding member for the hearing must be—

- (a) if the presiding case manager alone is constituting the tribunal at a directions hearing under section 174—the presiding case manager; or
- (b) otherwise—a person mentioned in section 207(1)(a) or (2).

### **176 Venues**

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

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23 *Queensland Building Tribunal Act 2000*, section 26C (Presiding case manager's power to deal with particular applications to central tribunals)

**177 Hearing to be held in private**

(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.

**178 Appearances before tribunal**

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.

**179 Right of representation**

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.

**180 Procedure**

(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.



**181 Amendment of issue**

(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.

**182 Questions to be decided by majority of tribunal**

(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 presiding member.

**183 Tribunals to keep records of proceedings**

(1) The tribunal must keep a record of its proceedings.

(2) The record may be kept in the way the tribunal considers appropriate.

**184 Powers of tribunal**

(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 issue an attendance notice on the application of a party to a proceeding or on its own initiative.

(3) The tribunal may adjourn the hearing from time to time.

**185 Inspection of documents**

(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.

**186 Offences—hearings**

(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 presiding member 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 presiding member; 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.

**187 Self incrimination**

(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.

### **188 False or misleading information**

(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.

### **189 False or misleading documents**

(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.

### **190 Contempt of tribunal**

(1) 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.

(2) In this section—

“**member**” includes presiding case manager.

### *Division 2—Tribunal orders*

#### **191 Tribunal orders generally**

(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.

**192 Tribunal orders under section 169**

(1) This section applies if a resident applies for a tribunal order under section 169.<sup>24</sup>

(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.

**193 Tribunal orders under section 170**

(1) This section applies if a resident applies for a tribunal order under section 170.<sup>25</sup>

(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.

**194 Tribunal orders under section 171**

(1) This section applies if a resident applies for a tribunal order under section 171.<sup>26</sup>

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

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

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

(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 67<sup>27</sup>—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.

### **195 Enforcement of particular tribunal orders**

(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 by—

- (a) filing in the District Court registry—
  - (i) a copy of the order certified by the registrar 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 of the District Court 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.

### **196 Orders requiring payments**

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

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<sup>27</sup> Section 60 (Scheme operator and former resident to agree on resale value of accommodation unit) or 67 (Updating agreed resale value)

(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 registrar 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 of the court 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.

### **197 Orders of tribunal to be complied with**

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

Maximum penalty—100 penalty units.

### **198 Tribunal's order final and binding**

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.

**199 Restricted right to question tribunal's hearing and order**

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*****200 Parties to pay own costs**

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

**201 Allowance to witness**

(1) A person required to appear before the tribunal is entitled to—

- (a) the witness fees and expenses prescribed under a regulation; or
- (b) if no fees or expenses are prescribed—the reasonable witness fees and expenses decided by the tribunal.

(2) If the notice requiring a person to attend at a proceeding is issued on an application by a party to the proceeding, the party must pay the fees and expenses to which the person is entitled.

**202 Withdrawal of application**

(1) A person may, by written notice given to the registrar, withdraw an application given by the person to the registrar—

- (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 registrar 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—THE TRIBUNAL**

### *Division 1—Tribunal panel*

#### **203 Appointment of members of tribunal panel**

(1) 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.

(2) The Governor in Council must appoint 1 of the persons mentioned in subsection (1)(a) as the chairperson of tribunals.

(3) The chairperson may hold, or act in, and perform the functions of, another public office in addition to the office of chairperson if the chairperson is appointed to, or appointed to act in, the other office by the Governor in Council.

#### **203A Advertising for nominations for appointment**

Before recommending a person to the Governor in Council for appointment as a member of the tribunal panel, the Minister must advertise in a newspaper circulating throughout the State for applications or expressions of interest from suitably qualified persons to be considered for selection as a member of the tribunal panel.

#### **204 Duration of appointment**

(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.

**205 Conditions of appointment**

(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.

**206 Termination of appointment**

(1) The Governor in Council may terminate the appointment of a tribunal panel member if the Governor in Council is satisfied the member—

- (a) is mentally or physically incapable of satisfactorily performing the member's duties; or
- (b) performed the member's duties carelessly, incompetently or inefficiently; or
- (c) has engaged in conduct that could warrant dismissal from the public service if the member were a public service officer; or
- (d) is affected by bankruptcy action.

(2) The Governor in Council must terminate the appointment of a tribunal panel member if the member—

- (a) ceases to be eligible for appointment as a member; or
- (b) is convicted of an indictable offence, whether dealt with on indictment or summarily.

(3) This section applies to a tribunal panel member whether appointed before or after the commencement of this section.

*Division 1A—Administration of tribunal***206A Chairperson's role**

(1) The chairperson's role includes the following—

- (a) directing the adjudicative operations of tribunals to ensure they are as fair, economical, informal and speedy as practical;

- (b) developing, with the participation of other tribunal panel members, guiding principles that promote high quality and consistent decisions by tribunals;
- (c) developing and implementing procedures and policies for the adjudicative operations of tribunals;
- (d) issuing practice directions of general application to proceedings;
- (e) managing the overall performance of tribunal panel members;
- (f) being responsible for the professional development and training of tribunal panel members in relation to the discharge of their functions.

(2) The chairperson may do all things necessary or convenient to be done for the performance of the chairperson's role.

### **206B Chairperson and registrar to work cooperatively**

The chairperson and the registrar must work cooperatively to promote the effective and efficient operation of tribunals.

### **206C Tribunal panel member's role**

(1) A tribunal panel member's role includes professionally and efficiently performing the functions of a tribunal assigned or given to the member under this Act.

(2) A tribunal panel member must comply with the procedures and policies implemented by the chairperson for the adjudicative operations of tribunals.

### **206D Delegation by chairperson**

(1) The chairperson may delegate the chairperson's powers under this Act or another Act to another tribunal panel member.

(2) The chairperson may delegate the chairperson's power under section 168(2)(a) or 172(2) to the registrar.

(3) The registrar may subdelegate the delegated power to another appropriately qualified officer of the staff of the registry.

(4) In this section—

**“appropriately qualified”**, for a subdelegated power, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

A person’s level of employment in the registry.

**“registry”** means the central tribunals registry under the *Queensland Building Tribunal Act 2000*.

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

#### **207 Composition of retirement village tribunals**

(1) A tribunal is to consist of the following tribunal members selected by the chairperson—

- (a) a person appointed under section 203(1)(a);
- (b) a representative of scheme operators;
- (c) a representative of residents of retirement villages.

(2) However, if the tribunal is to be constituted for a prescribed application or matter under the *Queensland Building Tribunal Act 2000*, section 26C,<sup>28</sup> the presiding case manager must constitute the tribunal except as otherwise provided under that section.

#### **208 Chairperson**

The tribunal member mentioned in section 207(1)(a) is the presiding member of the tribunal to which the member is appointed.

#### **209 Tribunal’s function**

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.

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28 *Queensland Building Tribunal Act 2000*, section 26C (Presiding case manager’s power to deal with particular applications to central tribunals)

**210 Tribunal's jurisdiction**

(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.<sup>29</sup>

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

**211 Tribunal's general powers**

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

**212 Transfer of hearings between tribunals and courts**

(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.

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<sup>29</sup> Now see *District Court of Queensland Act 1967*, sections 140 (Transitional—change of name to District Court of Queensland) and 68 (Civil jurisdiction).

## **PART 13—OTHER PROVISIONS FOR MEDIATION CONFERENCES AND TRIBUNAL HEARINGS**

### *Division 1—Privilege and immunity*

#### **213 Ordinary protection and immunity allowed**

(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.

#### **214 Admissions made during hearing of retirement village issue**

(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*****215 Exclusion of other jurisdictions**

(1) On and after an application about a retirement village issue under part 9 or 10 is given to the registrar, 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 registrar 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.

**216 Register**

(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.

**218 Chief executive's responsibility**

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**

### **219 Starting offence proceedings**

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.

### **220 Appointments and authority**

(1) It is not necessary to prove in a proceeding under this Act—

- (a) the chief executive's appointment; or
- (b) the registrar's appointment; or
- (c) an inspector's appointment; or
- (d) the authority of the chief executive, the registrar 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.

### **221 Evidentiary provisions**

(1) This section applies to a proceeding under this Act.

(2) A signature purporting to be the signature of the chief executive, the registrar, the presiding case manager or an inspector is evidence of the signature it purports to be.



(3) A certificate purporting to be signed by the chief executive or the registrar 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 or the registrar and relevant to the proceeding.

(4) A certificate signed by the chief executive or the registrar and stating that a stated document is a copy of a financial or other record, contract or document is evidence of the matter.

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

Nothing in this Act prevents a party to a residence contract from seeking or enforcing another remedy the party may have under another law.

## **223 Protection from liability**

(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.

**224 Responsibility for acts or omissions of representatives**

(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.

**225 Executive officers must ensure corporation complies with Act**

(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.

### **226 Annual report on operation of Act**

(1) As soon as practicable after each financial year, but not later than 30 September, the chairperson must give the Minister a report containing—

- (a) a review of the operation of tribunals during the preceding financial year; and
- (b) proposals for improving the operation of, and forecasts of the workload of, tribunals in the present financial year.

(2) The department's annual report for a financial year must include a report on the operation of tribunals during the financial year.

### **227 Approval of forms**

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

### **227A Delegation of chief executive's powers**

(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.

**228 Regulation-making power**

- (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****229 Existing retirement village schemes**

(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);<sup>30</sup> 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.

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30 Section 27 (Application for registration of a retirement village scheme)

**230 Existing exempt organisations and retirement villages**

(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.

**231 Releasing certain existing charges**

(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 of titles 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.

### **232 Apportionment of balance where separate funds maintained**

(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.

**233 Apportionment of balance where single fund maintained for maintenance and repairs**

(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.

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

(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.<sup>31</sup>

*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.

**235 Existing regulations**

(1) The regulations in force under the repealed Act immediately before the commencement of this section—

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<sup>31</sup> Section 92 (Amount of capital replacement fund) and 98 (Amount of maintenance reserve fund)

- (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.

### **236 Existing by-laws**

(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,<sup>32</sup> 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.

### **237 Retirement Villages Act 1988 references**

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**

### **238 Repeal**

The *Retirement Villages Act 1988* is repealed.

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32 Section 130 (Residents may make, change or revoke by-laws)



**SCHEDULE****DICTIONARY**

section 4

**“accommodation unit”** means the part of a retirement village in which a resident has an exclusive right to reside.

**“affected by bankruptcy action”**, in relation to an individual, means the individual, in any jurisdiction—

- (a) is bankrupt; or
- (b) has compounded with creditors; or
- (c) has otherwise taken, or applied to take, advantage of any law about bankruptcy.

**“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.<sup>33</sup>

**“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)—*

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33 The rulings are available from the Australian Taxation Office.

## SCHEDULE (continued)

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.

**“capital replacement fund”** see section 17.

**“capital replacement fund contribution”** see section 18.

**“chairperson”** means the person appointed as chairperson of tribunals under section 203(2).

**“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<sup>34</sup> whether or not the approved provider is entitled to receive a residential care subsidy.

**“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.

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34 *Aged Care Act 1997*, (Cwlth), chapter 4 (Responsibilities of approved providers)

## SCHEDULE (continued)

**“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.

**“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.<sup>35</sup>

**“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;<sup>36</sup> or
- (b) approved as a mediator under the *Uniform Civil Procedure Rules 1999*; or

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<sup>35</sup> The rulings are available from the Australian Taxation Office.

<sup>36</sup> *Dispute Resolution Centres Act 1990*, section 19 (Mediators)

## SCHEDULE (continued)

(c) approved as a mediator by the Bar Association of Queensland or the Queensland Law Society Incorporated.

**“personal services”** see section 12(3).

**“presiding case manager”** means the presiding case manager under the *Queensland Building Tribunal Act 2000*.

**“public information document”** see section 13.

**“quarter”** means the 3 month period ending on 31 March, 30 June, 30 September or 31 December.

**“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 Act, part 9.2.

**“registrar”** means the director, central tribunals registry under the *Queensland Building Tribunal Act 2000*.

**“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.<sup>37</sup>

**“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.<sup>38</sup>

**“residence contract”** see section 10.

**“resident”**—

(a) see section 9; and

(b) for part 3, division 4, see section 51.

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37 The rulings are available from the Australian Taxation Office.

38 The rulings are available from the Australian Taxation Office.

## SCHEDULE (continued)

**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.

**“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

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 April 2003. 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

Key	Explanation	Key	Explanation
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	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

### TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	to 2000 Act No. 24	1 July 2000	7 July 2000
1A	to 2001 Act No. 71	15 July 2001	16 November 2001
1B	to 2001 Act No. 71	1 March 2002	8 March 2002
1C	to 2002 Act No. 13	24 April 2002	8 May 2002 (Column discontinued) Notes
1D	to 2002 Act No. 51	6 December 2002	
1E	to 2002 Act No. 74	1 April 2003	

## 5 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)

amending legislation—

### **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

### **Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

**Duties Act 2001 No. 71 ss 1–2(1), 551 sch 1**

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 10)

**Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002 No. 13 s 1, pt 19, s 124 sch**

date of assent 24 April 2002

commenced on date of assent

**Tribunals Provisions Amendment Act 2002 No. 51 pts 1, 6, s 101 sch**

date of assent 24 September 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 6 December 2002 (2002 SL No. 325)

**Discrimination Law Amendment Act 2002 No. 74 ss 1–2, 90 sch**

date of assent 13 December 2002

ss 1–2 commenced on date of assent

s 90 commenced 31 March 2003 (2003 SL No. 51)

remaining provisions commenced 1 April 2003 (2003 SL No. 51)

## **6 List of annotations**

**Definitions**

s 4 amd 2002 No. 51 s 83

**What is a “residence contract”**

s 10 amd 2002 No. 13 s 124 sch

**Content of residence contract**

s 45 amd 2002 No. 13 s 115

**Dealing with ingoing contribution**

s 46 amd 2001 No. 45 s 29 sch 3; 2002 No. 13 s 116

**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

**Definitions for div 1**s 87 def “**criminal history**” ins 2002 No. 13 s 117def “**insolvent under administration**” amd 2001 No. 45 s 29 sch 3def “**relevant conviction**” amd 2002 No. 13 s 117def “**spent conviction**” ins 2002 No. 13 s 117**Investigations about scheme operators etc.**

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**Payments into capital replacement fund**

s 94      amd 2002 No. 13 s 119

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**Scheme operator must insure village**

s 110     amd 2002 No. 13 s 121

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**PART 6—STATUTORY CHARGES OVER RETIREMENT VILLAGE LAND****Division 5—Exemption from charges**

div hdg    amd 2001 No. 71 s 551 sch 1

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**Exemption from charges**

prov hdg   amd 2001 No. 71 s 551 sch 1

s 126     amd 2001 No. 71 s 551 sch 1; 2002 No. 51 s 101 sch

**Notice of retirement village dispute**

s 157     amd 2002 No. 51 s 101 sch

**Registrar to act on dispute notice**

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s 158     amd 2002 No. 51 s 101 sch

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s 170     amd 2002 No. 51 s 101 sch

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s 227A ins 2000 No. 24 s 48

**Releasing certain existing charges**

s 231 amd 2002 No. 51 s 101 sch

**Amendment—sch 1**

s 239 om R1 (see RA s 40)

**SCHEDULE 1—ACT AMENDED**

om R1 (see RA s 40)

**SCHEDULE—DICTIONARY**

sch hdg (prev sch 2 hdg) amd 2002 No. 51 s 100(2)

def “**affected by bankruptcy action**” ins 2002 No. 51 s 100(1)def “**chairperson**” ins 2002 No. 51 s 100(1)def “**presiding case manager**” ins 2002 No. 51 s 100(1)def “**registered company auditor**” amd 2001 No. 45 s 29 sch 3def “**registrar**” ins 2002 No. 51 s 100(1)**7 List of forms notified or published in the gazette****Certificate of Registration**

pubd gaz 11 August 2000 p 1300

**Public Information Document**

pubd gaz 11 August 2000 p 1301

**Retirement Villages Tribunal Dispute Notice/Application for Tribunal Hearing**

pubd gaz 11 August 2000 p 1302

**Application for Registration as a Retirement Village Scheme**

pubd gaz 11 August 2000 p 1303