

# RETIREMENT VILLAGES ACT 1989 No. 74

NEW SOUTH WALES



## TABLE OF PROVISIONS

### PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Definitions
4. Act binds Crown
5. Application of Act
6. Effect of Act on other legislation

### PART 2—TENANCY COMMISSIONER

7. Functions of Tenancy Commissioner
8. Tenancy Commissioner may represent resident
9. Tenancy Commissioner may take or defend proceedings
10. Conduct of proceedings by Tenancy Commissioner
11. Delegation by Tenancy Commissioner
12. Exclusion of personal liability
13. Annual report

### PART 3—RIGHTS OF RESIDENTS AND ADMINISTERING AUTHORITIES

14. Applications to Tribunal relating to disputes
15. Termination of right to occupy premises in retirement village
16. Termination of occupation on medical grounds
17. Termination of occupation on grounds of breach of residence contract or rules
18. Parties to minimise loss from breach of residence contract
19. Tribunal may waive defect in notice of intention to terminate
20. Tribunal may terminate residence contract where resident causes serious damage or injury
21. Tribunal may terminate residence contract where administering authority would otherwise suffer undue hardship
22. Suspension or refusal of orders for termination
23. Prohibition on certain recovery proceedings in courts etc.
24. Recovery of possession of premises prohibited except by order
25. Enforcement of orders for possession
26. Liability of resident remaining in possession
27. Abandoned premises
28. Right of administering authority to compensation where resident abandons premises
29. Goods abandoned by resident after residence contract is terminated
30. Operation of termination provisions etc.

*Retirement Villages 1989*

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**PART 4—PROCEEDINGS BEFORE TRIBUNAL**

- 31. Limits on orders by Tribunal
- 32. No monetary limit on jurisdiction of Tribunal
- 33. Extension of time
- 34. Notice of hearing
- 35. Proceedings before Tribunal
- 36. Presentation of cases
- 37. Reference of certain matters concerning administering authorities

**PART 5—MISCELLANEOUS**

- 38. Contracting out prohibited
- 39. Costs of administration
- 40. Disclosure of information
- 41. Proceedings for offences
- 42. Contracts Review Act 1980
- 43. Offences by corporations
- 44. Offences against this Act
- 45. Service of documents
- 46. Regulations
- 47. Savings and transitional provisions

**SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS**

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**RETIREMENT VILLAGES ACT 1989 No. 74**

NEW SOUTH WALES



**Act No. 74, 1989**

An Act relating to the termination of occupation rights of residents in retirement villages, and to confer on the Residential Tenancies Tribunal jurisdiction with respect to certain matters relating to retirement villages; and for other purposes. [Assented to 2 June 1989]

*Retirement Villages 1989*

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The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Retirement Villages Act 1989.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. (1) In this Act—

“administering authority”, in relation to a retirement village, means the person by or on whose behalf the retirement village is administered and includes a person (other than a resident) who owns land within the village;

“code” means any code of practice prescribed under the Fair Trading Act 1987 which relates to retirement villages;

“residence contract” means a contract, agreement, scheme or arrangement by which a person obtains the right to occupy residential premises in a retirement village, and may take the form of a lease or licence;

“residence rules” means the rules with which residents of a retirement village are expected by the administering authority to comply, but does not include any by-laws (to which the residents are subject) in force under the Strata Titles Act 1973 or any other prescribed Act;

“resident”, in relation to a retirement village, means a person who occupies residential premises in a retirement village under a residence contract, and includes a person who occupies such premises and who is or was the spouse or de facto partner (within the meaning of the De Facto Relationships Act 1984) of such a person;

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

“residential tenancy agreement” has the same meaning as it has in the Residential Tenancies Act 1987;

“retired person” means a person who has attained the age of 55 years or retired from full-time employment or a person who is or was the spouse or de facto partner (within the meaning of the De Facto Relationships Act 1984) of such a person;

“retirement village” means a complex containing residential premises (whether or not including hostel units) predominantly or exclusively occupied, or intended to be predominantly or exclusively occupied, by retired persons in pursuance of—

- (a) a residential tenancy agreement or any other lease or licence; or

*Retirement Villages 1989*

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- (b) a right conferred by shares; or
- (c) the ownership of residential premises subject to a right or option of repurchase or conditions restricting the subsequent disposal of the premises; or
- (d) any other scheme or arrangement prescribed for the purposes of this definition,

and for the right to occupy which those persons are or will be required to pay or donate money;

“Tenancy Commissioner” means the Tenancy Commissioner employed under the Residential Tenancies Act 1987;

“Tribunal” means the Residential Tenancies Tribunal.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) For the purpose of determining whether a contract, agreement, scheme or arrangement is a residence contract as defined in subsection (1), it does not matter that the person granted the right of occupation is a corporation if the premises are used (or intended for use) as a residence by a natural person.

**Act binds Crown**

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

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

**Application of Act**

5. This Act applies to retirement villages, to which a code applies, established before or after the commencement of this section, and so applies despite the terms of any contract, agreement, scheme or arrangement, whether made before or after the commencement of this section.

**Effect of Act on other legislation**

6. This Act shall, except as otherwise provided by this Act, be construed as being in addition to and not in derogation of any other law of the State.

**PART 2—TENANCY COMMISSIONER****Functions of Tenancy Commissioner**

7. The Tenancy Commissioner has, in addition to any other functions conferred or imposed on the Tenancy Commissioner, the following functions:

- (a) to investigate and carry out research into matters relating to or affecting retirement villages;
- (b) to investigate and attempt to resolve complaints by residents and administering authorities of retirement villages and to take such action, including prosecution for any offence, as the Tenancy Commissioner thinks appropriate;
- (c) to distribute information about the services provided by the Tenancy Commissioner and the Tribunal in relation to residents of retirement villages and to promote awareness of the rights and responsibilities of residents and persons involved in the retirement village industry;
- (d) to investigate and report on any matters, or make inquiries in relation to any matters, referred to the Tenancy Commissioner by the Minister or by the Tribunal in connection with this Act.

**Tenancy Commissioner may represent resident**

8. In any proceedings before the Tribunal, a resident of a retirement village may, despite anything in this or any other Act, be represented by the Tenancy Commissioner or by a barrister, solicitor or agent for the Tenancy Commissioner.

**Tenancy Commissioner may take or defend proceedings**

9. (1) If a resident of a retirement village has made a complaint to the Tenancy Commissioner and the Tenancy Commissioner—

- (a) after investigating the complaint, is satisfied that the resident may have a right to take or defend proceedings before the Tribunal; and
- (b) is of the opinion that it is in the public interest that the Tenancy Commissioner should take or defend those proceedings on behalf of the resident,

the Tenancy Commissioner may, with the consent of the resident, take or defend those proceedings on behalf of and in the name of the resident.

(2) If the Minister so directs and the resident consents, the Tenancy Commissioner shall take or defend proceedings before the Tribunal on behalf of a resident.

*Retirement Villages 1989*

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**Conduct of proceedings by Tenancy Commissioner**

10. If the Tenancy Commissioner takes or defends proceedings before the Tribunal on behalf of a resident of a retirement village—

- (a) the Tenancy Commissioner shall have the conduct of those proceedings on behalf of the resident, may appear personally or by barrister, solicitor or agent and may do all such things as are necessary or expedient to give effect to an order or a decision of the Tribunal; and
- (b) the Tenancy Commissioner is liable to pay the costs (if any) of the resident; and
- (c) the resident is liable to pay any other amount that the Tribunal orders the resident to pay.

**Delegation by Tenancy Commissioner**

11. The Tenancy Commissioner may delegate to a person any of the Tenancy Commissioner's functions under this Act, other than this power of delegation.

**Exclusion of personal liability**

12. No personal liability is incurred by the Tenancy Commissioner for any act done or omitted in good faith for the purpose of executing this Act.

**Annual report**

13. (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Tenancy Commissioner shall prepare and forward to the Minister a report on the operation of this Act during that year.

(2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

(3) A report under subsection (1) may be included in a report prepared by the Tenancy Commissioner under the Residential Tenancies Act 1987.

**PART 3—RIGHTS OF RESIDENTS AND ADMINISTERING AUTHORITIES****Applications to Tribunal relating to disputes**

14. (1) If a resident or the administering authority of a retirement village claims that—

- (a) a dispute has arisen between the resident and the authority or the authority and one or more residents or the resident and another resident; and

*Retirement Villages 1989*

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- (b) all procedures for settlement of the dispute under any applicable code (otherwise than by reference of the dispute to the Tribunal) have been exhausted without resolving the dispute to the satisfaction of the resident or the authority or, if there are no such procedures, the dispute has not been resolved,

the resident or authority may apply to the Tribunal for an order in respect of the dispute.

(2) The Tribunal shall not hear an application under subsection (1) (other than an application relating to a dispute arising out of the transfer or the proposed transfer of a resident of a retirement village from one kind of accommodation in the retirement village to another) unless it is of the opinion that—

- (a) the dispute materially affects a party to the dispute; or
- (b) it is in the public interest to do so.

(3) The Tribunal may, on application by a resident or an administering authority under this section, make one or more of the following orders:

- (a) an order that—
  - (i) restrains the administering authority from transferring the resident from one kind of accommodation in the retirement village to another; or
  - (ii) requires the resident to transfer, or the authority to transfer the resident, from one kind of accommodation in the village to another; or
- (b) an order terminating the residence contract of the resident; or
- (c) an order that—
  - (i) restrains any action in breach of any residence contract or residence rule; or
  - (ii) requires the performance of any residence contract or residence rule; or
- (d) an order that the resident or authority perform such work or take such other steps as the order specifies to remedy a breach of a residence contract; or
- (e) an order for the payment of an amount of money; or
- (f) an order for compensation; or
- (g) an order that requires payment to the Tribunal of part or all of any money payable by a resident to the authority until the whole or part of any residence contract has been performed or any application for compensation has been determined; or
- (h) an order that requires payment (out of money paid to the Tribunal) towards the cost of remedying a breach of a residence contract or towards the cost of any compensation.



*Retirement Villages 1989*

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(4) An order under subsection (3) (c) may be made even though it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such a remedy would not otherwise be available.

(5) If a resident or an administering authority of a retirement village claims that—

- (a) a residence rule is unconscionable, harsh or oppressive or contravenes any applicable code; and
- (b) all procedures for settlement of a dispute relating to the rule under any applicable code (otherwise than by reference of the dispute to the Tribunal) have been exhausted without resolving the dispute to the satisfaction of the resident or authority or, if there are no such procedures, the dispute has not been resolved,

the resident or authority may apply to the Tribunal for an order under subsection (6).

(6) The Tribunal may, on application by a resident or an administering authority under subsection (5), make an order—

- (a) setting aside the residence rule; or
- (b) modifying the operation of the rule, either in its application to the resident or to some or all of the residents of the retirement village.

(7) If the Tribunal makes an order terminating a residence contract under this section, the Tribunal shall fix in the order a date by which the resident must vacate the residential premises.

(8) In addition to any other order it may make under this section, the Tribunal may make an order for the payment or refund of money by an administering authority to a resident or by a resident to an administering authority.

(9) An application under this section may be made during the currency or after the termination of a residence contract.

(10) For the purpose of determining any application under this section with respect to a dispute arising out of the transfer or proposed transfer of a resident of a retirement village from one kind of accommodation in the retirement village to another, the Tribunal may—

- (a) with the consent of the resident, request the Secretary of the Department of Health or any other person or any body to prepare a report with respect to the resident's physical or mental capacity; and
- (b) have regard to any such report and any other report prepared on behalf of the resident or the administering authority of the retirement village.

**Termination of right to occupy premises in retirement village**

15. A resident of a retirement village who is entitled to occupy residential premises under a residence contract has a right of occupation that terminates only in one of the following circumstances:

- (a) when the resident dies; or
- (b) if the residence contract is terminated by the resident in accordance with the residence contract; or
- (c) if the resident abandons the residential premises; or
- (d) if the residence contract is terminated by the Tribunal under this Act.

**Termination of occupation on medical grounds**

16. (1) If the administering authority of a retirement village is of the opinion that residential premises occupied by a resident of the retirement village are, because of the resident's physical or mental incapacity, unsuitable for occupation by the resident, the authority may apply to the Tribunal for an order terminating the resident's residence contract and fixing a date by which the resident must vacate the residential premises occupied by the resident.

(2) The Tribunal may, on application by an administering authority under this section, make an order terminating the residence contract, but only if—

- (a) it is satisfied that any procedures specified under any applicable code or the residence contract for giving notice of intention to terminate the residence contract and for termination of the contract have been complied with by the authority; and
- (b) it is of the opinion that—
  - (i) the residential premises occupied by the resident are, because of the resident's physical or mental incapacity, unsuitable for occupation by the resident; and
  - (ii) having considered the circumstances of the case, it is otherwise appropriate to make an order terminating the residence contract.

(3) The Tribunal shall not form an opinion under subsection (2) (b) (i) unless it has considered a medical report with respect to the resident prepared by a medical practitioner nominated by the resident or, if such a report is not supplied or a nomination is not made, has given the resident a reasonable opportunity to supply such a report or make such a nomination.

*Retirement Villages 1989*

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(4) In determining whether to terminate a residence contract under this section, the Tribunal may—

- (a) with the consent of the resident, request the Secretary of the Department of Health or any other person or any body to prepare a report with respect to the resident's physical or mental capacity; and
- (b) have regard to any such report and any other report prepared on behalf of the resident or the administering authority,

and shall have regard to any terms of the residence contract relating to the transfer of the resident to other residential premises in the retirement village.

(5) If the Tribunal makes an order terminating a residence contract under this section, the Tribunal shall fix in the order a date by which the resident must vacate the residential premises occupied by the resident.

(6) In addition to any other order it may make under this section, the Tribunal may make an order for the payment or refund of money by an administering authority to a resident or by a resident to an administering authority.

**Termination of occupation on grounds of breach of residence contract or rules**

17. (1) If—

- (a) a resident of a retirement village breaches the resident's residence contract or the residence rules of a retirement village; and
- (b) any procedures specified under any applicable code or the residence contract for giving notice of intention to terminate the residence contract and for termination of the residence contract have been complied with by the administering authority of the retirement village,

the authority may apply to the Tribunal for an order terminating the contract and fixing a date by which the resident must vacate the residential premises occupied by the resident.

(2) The Tribunal may, on application by an administering authority under this section, make an order terminating the residence contract, but only if it is satisfied that—

- (a) the breach, in the circumstances of the case, is such as to justify termination of the contract; or
- (b) persistent breaches by the resident are, in the circumstances of the case, such as to justify termination of the contract; or
- (c) having considered the circumstances of the case, it is otherwise appropriate to do so.

(3) In addition to any order the Tribunal may make under subsection (2), it may in proceedings under this section make an order—

- (a) setting aside a residence rule; or

*Retirement Villages 1989*

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(b) modifying the operation of a rule, either in its application to a resident or to some or all of the residents of a retirement village, if it is of the opinion that the rule is unconscionable, harsh or oppressive or contravenes any applicable code.

(4) The Tribunal may make an order under subsection (3) whether or not any procedures specified under any applicable code or the residence contract for giving notice of intention to terminate a residence contract or for termination of the residence contract or for the settlement of a dispute have been complied with.

(5) If the Tribunal makes an order terminating a residence contract under this section, the Tribunal shall fix in the order a date by which the resident must vacate the residential premises occupied by the resident.

(6) In addition to any other order it may make under this section, the Tribunal may make an order for the payment or refund of money by an administering authority to a resident or by a resident to an administering authority.

**Parties to minimise loss from breach of residence contract**

18. (1) The rules of law relating to mitigation of loss or damage on breach of a contract apply to a breach of a residence contract.

(2) Nothing in this section affects the operation of section 28 (which also deals with mitigation of loss).

**Tribunal may waive defect in notice of intention to terminate**

19. The Tribunal may, if it thinks it appropriate to do so in the special circumstances of the case, make an order terminating a residence contract under section 16 or 17 even though any procedures specified under any applicable code or the residence contract for giving notice of intention to terminate the residence contract have not been complied with.

**Tribunal may terminate residence contract where resident causes serious damage or injury**

20. (1) The Tribunal may, on application by the administering authority of a retirement village, make an order terminating a residence contract if it is satisfied that the resident has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit—

- (a) serious damage to the residential premises; or
- (b) injury to the authority or an employee of the authority or any other resident.

(2) If the Tribunal makes an order terminating a residence contract under this section, the Tribunal—

- (a) shall fix in the order a date by which the resident must vacate the residential premises; and

*Retirement Villages 1989*

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

(3) An application under this section may be made whether or not the administering authority has given notice of intention to terminate the residence contract.

**Tribunal may terminate residence contract where administering authority would otherwise suffer undue hardship**

21. (1) The Tribunal may, on application by the administering authority of a retirement village, make an order terminating a residence contract if it is satisfied that the authority would, in the special circumstances of the case, suffer undue hardship if the contract were not terminated.

(2) If the Tribunal makes an order terminating a residence contract under this section, the Tribunal—

- (a) shall fix in the order a date by which the resident must vacate the residential premises; and
- (b) may make such other orders (including an order that the administering authority pay to the resident compensation for the resident's loss of rights under the contract) as it thinks fit.

**Suspension or refusal of orders for termination**

22. (1) The Tribunal may suspend the operation of an order fixing a date by which a resident of a retirement village must vacate residential premises if it is satisfied that it is desirable to do so, having regard to the relative hardship likely to be caused by the suspension to—

- (a) the resident; and
- (b) other residents or the administering authority of the retirement village.

(2) The Tribunal may, as a condition of the suspension of the operation of an order for possession, require the resident to pay to the administering authority an occupation fee specified by the Tribunal for the period for which the order for possession is suspended.

(3) The Tribunal may refuse to make an order terminating a residence contract if it is satisfied that—

- (a) the administering authority was wholly or partly motivated to terminate the contract by the fact that—
  - (i) the resident had applied or proposed to apply to the Tribunal for an order; or
  - (ii) the resident had complained to a governmental authority or had taken some other action to secure or enforce his or her rights as a resident; or

*Retirement Villages 1989*

- (iii) an order of the Tribunal was in force in relation to the resident and the authority; or
- (b) in the case of an application by an authority under section 17—the resident remedied the breach concerned.

**Prohibition on certain recovery proceedings in courts etc.**

23. No proceedings in the Supreme Court, the District Court or a Local Court to obtain recovery of possession of residential premises occupied by a resident of a retirement village under a residence contract shall be commenced by the administering authority of the retirement village against the resident.

**Recovery of possession of premises prohibited except by order**

24. (1) A person shall not, except in accordance with a judgment, warrant or order of a court or an order of the Tribunal, enter residential premises occupied by a resident of a retirement village under a residence contract for the purpose of recovering possession of the premises.

Maximum penalty: 200 penalty units.

(2) This section applies to a person who enters residential premises, whether on his or her own behalf or on behalf of another person.

(3) A court before which proceedings for an offence under this section are brought may (in addition to any other penalty) order the person who committed the offence or any person on whose behalf that person acted to pay to the person entitled to occupy the premises concerned such compensation as it thinks fit.

**Enforcement of orders for possession**

25. (1) If an order fixing a date for vacation of residential premises occupied by a resident of a retirement village under a residence contract is made by the Tribunal, then the Chairperson, any other member, the Registrar or a Deputy Registrar of the Tribunal may—

- (a) on the application of the person in whose favour the order was made; and
- (b) if satisfied that the order or a condition of suspension of the order has not been complied with,

issue a warrant, in or to the effect of the prescribed form, authorising a sheriff's officer to enter the residential premises and to give possession to the person in whose favour the order was made.

(2) A sheriff's officer enforcing an order for possession of residential premises may enter the premises and take all such steps as are reasonably necessary to enforce the order and shall produce to any person occupying the premises the warrant authorising the enforcement.

*Retirement Villages 1989*

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(3) A member of the Police Force may, at the request of a sheriff's officer, assist the sheriff's officer to enforce the order for possession.

(4) A sheriff's officer enforcing an order for possession of residential premises may use such force as is reasonably necessary for that purpose.

(5) A person shall not hinder or obstruct a sheriff's officer in the exercise of the functions conferred by this section.

(6) No matter or thing done by a sheriff's officer or member of the Police Force, in the exercise or purported exercise of functions conferred by this section, shall, if the matter or thing was done in good faith for the purpose of enforcing an order for possession, subject the sheriff's officer or member of the Police Force personally to any action, liability, claim or demand.

**Liability of resident remaining in possession**

26. (1) If a resident of a retirement village fails to comply with an order made by the Tribunal fixing a date for vacation of residential premises, the resident is liable to pay compensation to the administering authority of the retirement village for any loss caused to the authority by that failure.

(2) The Tribunal may, on application by an administering authority under this section made not later than 30 days after the day on which the order fixing the date for vacation of the residential premises took effect, order the resident to pay to the authority such compensation as it thinks fit.

**Abandoned premises**

27. (1) The Tribunal may, on application by the administering authority of a retirement village, make an order that declares that residential premises occupied by a resident of the retirement village were abandoned by the resident on a day specified by the Tribunal.

(2) The resident shall be taken for the purposes of this Act to have abandoned the residential premises on that day.

**Right of administering authority to compensation where resident abandons premises**

28. (1) If a resident of a retirement village abandons the residential premises, the resident is liable to pay compensation to the administering authority of the retirement village for any loss (including loss of rent) caused by the abandonment.

(2) The administering authority shall take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by taking those steps.

(3) The Tribunal may, on application by the administering authority, order the resident to pay to the authority such compensation (including compensation for loss of rent) as it thinks fit.

**Goods abandoned by resident after residence contract is terminated**

29. (1) If a residence contract is terminated and goods are left on the residential premises by a former resident of a retirement village, the administering authority of the retirement village may—

- (a) apply to the Tribunal for an order under this section; or
- (b) dispose of the goods in accordance with any provision made for the purpose by the regulations,

or both.

(2) The Tribunal may, on application by an administering authority under this section, make any one or more of the following orders:

- (a) an order authorising the removal, destruction or disposal of the goods;
- (b) an order authorising the sale of the goods;
- (c) an order directing that notice of any action or proposed action in relation to the goods be given to the former resident or any other person;
- (d) an order as to the manner of sale of the goods;
- (e) an order as to the proceeds of sale of the goods;
- (f) any ancillary order which the Tribunal, in the circumstances, thinks appropriate.

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

(4) An administering authority does not incur any liability in respect of the removal, destruction, disposal or sale of goods in accordance with an order of the Tribunal or the regulations.

**Operation of termination provisions etc.**

30. (1) Sections 14, 15, 23, 24 and 26–29 and the rights of termination of residence contracts and of recovery of possession of residential premises under this Part are subject to any rights of a resident of a retirement village—

- (a) arising because the resident has the freehold of residential premises; or
- (b) acquired under a contract between the administering authority and the resident.

(2) The Tribunal does not have jurisdiction under this Act to determine any question as to the title to any land.



*Retirement Villages 1989*

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**PART 4—PROCEEDINGS BEFORE TRIBUNAL****Limits on orders by Tribunal**

**31. (1)** The Tribunal shall not make orders under this Act that are—

- (a) inconsistent with any applicable code; or
- (b) inconsistent with a residence contract.

(2) Subsection (1) does not apply to a provision of a residence contract that contravenes section 38.

**No monetary limit on jurisdiction of Tribunal**

**32.** Notwithstanding anything in any other Act, the Tribunal is not, in exercising its jurisdiction under this Act, limited in the amount of money of which it may order payment.

**Extension of time**

**33. (1)** Notwithstanding any other provision of this Act, the Tribunal may, of its own motion or on application by any person, extend or reduce the period of time for the doing of anything under an applicable code, this Act or the regulations.

(2) Such an application may be made even though the relevant period of time has expired.

**Notice of hearing**

**34. (1)** If a person who is a party to proceedings before the Tribunal under this Act—

- (a) is a protected person within the meaning of the Protected Estates Act 1983; or
- (b) has a guardian,

or both, the Registrar of the Tribunal shall cause notice of the proceedings to be given to the Protective Commissioner, any guardian of the person and any other person prescribed for the purposes of this section.

(2) The Tribunal may cause notice to be given of proceedings under this Act to such persons as it thinks fit.

**Proceedings before Tribunal**

**35. (1)** Proceedings before the Tribunal under this Act may, at the discretion of the Tribunal, be held as in closed court.

(2) The Tribunal or the Registrar may, in respect of any proceedings or proposed proceedings before the Tribunal under this Act, request a report or other assistance from the Tenancy Commissioner, the Secretary of the Department of Health or any other person or any body.

*Retirement Villages 1989*

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**Presentation of cases**

36. (1) The administering authority of a retirement village may, in addition to any other representation permitted under the Residential Tenancies Act 1987 and with the approval of the Tribunal, be represented by the authority's agent in proceedings before the Tribunal under this Act.

(2) The Tribunal shall not approve of an administering authority's agent representing the authority in proceedings unless it appears to the Tribunal that the agent should be permitted to represent the authority in the course of carrying out his or her usual functions as the authority's agent.

**Reference of certain matters concerning administering authorities**

37. The Tribunal may, where it considers it appropriate, bring or cause to be brought to the attention of the Tenancy Commissioner the conduct of the administering authority of a retirement village in a particular matter.

**PART 5—MISCELLANEOUS****Contracting out prohibited**

38. (1) Except as provided by subsection (2), the provisions of this Act have effect despite any stipulation to the contrary in any contract, agreement, scheme or arrangement, and no residence contract or other contract, agreement, scheme or arrangement (whether oral or wholly or partly in writing, and whether made or entered into before or after the commencement of this section) operates to annul, vary or exclude any of the provisions of this Act.

(2) Nothing in subsection (1) derogates from the rights of a resident arising out of a residence contract entered into before the commencement of that subsection.

(3) A person shall not enter into any contract, agreement, scheme or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act.

Maximum penalty—subsection (3): 20 penalty units.

**Costs of administration**

39. (1) There shall be paid such contributions from—

- (a) the Rental Bond Interest Account established under the Landlord and Tenant (Rental Bonds) Act 1977; and
- (b) such fund, established under the Auctioneers and Agents Act 1941, as the Minister may, with the approval of the Treasurer, nominate,

*Retirement Villages 1989*

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as are agreed on annually by the Minister, the Minister administering the Landlord and Tenant (Rental Bonds) Act 1977 and the Minister administering the Auctioneers and Agents Act 1941, for payment of the costs of the administration of this Act (including the costs of obtaining a report or other assistance from the Secretary of the Department of Health) in the year ending 30 June next succeeding the year in which an agreement is made.

(2) Contributions referred to in this section shall be paid in the manner determined by the Treasurer.

**Disclosure of information**

40. A person shall not disclose any information obtained in connection with the administration or execution of this Act unless the disclosure is made—

- (a) with the consent of the person from whom the information was obtained; or
- (b) in connection with the execution of this Act; or
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
- (d) in accordance with a requirement imposed under the Ombudsman Act 1974; or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

**Proceedings for offences**

41. (1) Proceedings for an offence against this Act or the regulations shall be dealt with summarily by—

- (a) a Local Court constituted by a Magistrate sitting alone; or
- (b) with the consent of the Minister—the Supreme Court in its summary jurisdiction.

(2) The maximum monetary penalty that may be imposed by a Local Court in proceedings for an offence against this Act is 50 penalty units or such other amount as may be prescribed.

**Contracts Review Act 1980**

42. Nothing in this Act limits the operation of the Contracts Review Act 1980.

**Offences by corporations**

43. (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation shall be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

**Offences against this Act**

44. A person who—

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

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

**Service of documents**

45. (1) A notice or other document required to be given under this Act or the regulations to a resident of a retirement village may be given—

- (a) by delivering it personally to the resident; or
- (b) by delivering it to the residential premises occupied by the resident and by leaving it there with some person apparently of or above the age of 16 years for the resident; or
- (c) by sending it by post to the residential premises occupied by the resident and addressed to the resident; or
- (d) in such other manner as may be prescribed for the purposes of this section or approved by the Tribunal.

(2) A notice or other document required to be given to the administering authority of a retirement village under this Act or the regulations may be given—

- (a) by delivering it personally to the authority's agent; or
- (b) by sending it by post to the authority's usual place of business; or

*Retirement Villages 1989*

- (c) by sending it by facsimile transmission to the authority's usual place of business; or
- (d) in such other manner as may be prescribed for the purposes of this section or approved by the Tribunal.

**Regulations**

**46. (1)** The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**(2)** In particular, the regulations may make provision for or with respect to—

- (a) the service of notices or other documents under this Act or a code; and
- (b) goods abandoned or apparently abandoned by a resident of a retirement village; and
- (c) the practice and procedure to be followed in proceedings before the Tribunal under this Act (including the practice and procedure to be followed in the office of the Registrar of the Tribunal) and any incidental or related matters; and
- (d) fees to be paid under this Act.

**(3)** A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

**(4)** A provision of a regulation may exempt from the operation of this Act or any specified provision of this Act any specified person, organisation, residence contract or retirement village or any persons, organisations, residence contracts or retirement villages of a specified class, either unconditionally or subject to conditions.

**Savings and transitional provisions**

**47.** Schedule 1 has effect.

**SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS**

(Sec. 47)

**Existing disputes and other matters**

1. This Act does not apply to disputes which occurred, or proceedings to terminate residence contracts or regain possession of residential premises which commenced, before the commencement of this clause.

**Regulations**

2. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.

*Retirement Villages 1989*

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SCHEDULE 1—SAVINGS AND TRANSITIONAL PROVISIONS—*continued*

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the commencement of this Schedule or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
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[*Minister's second reading speech made in—  
Legislative Assembly on 30 November 1988  
Legislative Council on 28 February 1989*]