



New South Wales

Retirement Villages Amendment Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Retirement Villages Act 1999* (*the principal Act*) as follows:

- (a) to require the operators of retirement villages to hold annual management meetings and to provide certain information at those annual management meetings,
- (b) to make provision for capital maintenance and replacement in respect of property within retirement villages,
- (c) to specify the circumstances in which the operator of a retirement village may vary the recurrent charges that are payable under a village contract without the consent of the residents of the village,
- (d) to specify the circumstances in which the residents of retirement villages may elect not to have an annual budget prepared and to elect not to have the annual accounts of the village audited or to receive copies of the quarterly accounts,
- (e) to require the operator of a retirement village to make good any deficit in the accounts of the retirement village and provide that the operator is not permitted to carry forward any such deficit, or to seek a special levy from the

- residents of the retirement village to make good any such deficit except as provided by the regulations,
- (f) to require the operator of a retirement village to ensure that the retirement village is generally safe and that emergency and home care services have vehicular access to residential premises within the village,
 - (g) to provide for the keeping of records relating to land that is used as a retirement village,
 - (h) to limit the period during which a former occupant is required to pay recurrent charges after permanently vacating premises within a retirement village,
 - (i) to provide for a settling-in period during which a resident may terminate a village contract,
 - (j) to provide that an occupant of residential premises within a retirement village may add or remove fixtures, or make alterations to the premises, with the consent of the operator and that the operator must not unreasonably refuse to give such consent,
 - (k) to revise the investigation, compliance and enforcement powers under the principal Act and to bring those powers into line with the *Property, Stock and Business Agents Act 2002*,
 - (l) to create a process by which the right to receive a refund of an ingoing contribution paid under a village contract may be enforced,
 - (m) to create offences for failing to comply with certain provisions of the principal Act,
 - (n) to make other amendments of a minor or consequential nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the principal Act set out in Schedule 1.

Clause 4 makes a consequential amendment to the *Law Enforcement (Powers and Responsibilities) Act 2002*.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Amendments relating to definitions

Schedule 1 [2], [3], [7], [9] and [10] make amendments to the definitions of certain terms that are used in the principal Act. **Schedule 1 [8], [13], [14] and [121]** make consequential amendments.

Schedule 1 [4] updates a reference to the Director-General of the Department of Fair Trading.

Schedule 1 [11] omits section 7 and inserts proposed sections 7 and 7A.

Currently, section 7 of the principal Act provides a definition of the term *owner*. Proposed section 7 replaces that term with *registered interest holder*. The proposed definition includes residents of a retirement village whose residence right arises from a long term lease (that is a lease of at least 50 years including any option to renew) with a provision that entitles the resident to at least 50% of any capital gain with respect to the premises. **Schedule 1 [6], [12], [35], [50], [60], [75], [109], [110], [113], [114], [117], [119], [120], [122], [124], [128], [131]–[135], [137], [138], [140], [143]–[145] and [147]** make consequential amendments.

Proposed section 7A provides a definition of *capital gain*.

Amendments relating to meetings of residents and the Residents Committee

Schedule 1 [52] inserts proposed section 70A. The proposed section provides that a resident of a retirement village must not hold the same office, or hold an office performing the same (or substantially the same) functions, on the Residents Committee for the retirement village for more than 3 consecutive years except as provided by the regulations. The election of a person to office in contravention of the proposed section is void.

Schedule 1 [53] inserts proposed sections 72A and 72B.

Proposed section 72A provides that the operator of a retirement village is to hold an annual management meeting within 4 months of the end of a financial year for the retirement village.

Proposed section 72B provides that the operator, or operator's representative, is to respond to requests for information at that meeting or as soon as practicable afterwards.

Schedule 1 [54] makes a consequential amendment.

Schedule 1 [55] amends section 75 of the principal Act to provide that the operator of a retirement village, or representative of the operator of a retirement village, may be present at the annual management meeting for the retirement village, but must not be present during the casting of any vote at that meeting.

Schedule 1 [56] and [57] amend section 77 of the principal Act to provide that only certain persons may be appointed as a proxy for a resident of a retirement village. The amendments make it clear that neither the operator of a retirement village or a close

associate of the operator of a retirement village may be appointed as the proxy of a resident of the retirement village. **Schedule 1 [48] and [58]** make consequential amendments.

Schedule 1 [59] amends section 78 of the principal Act to provide that a person may hold no more than 2 proxies of residents of a retirement village at any one time unless a higher number is prescribed by the regulations.

Schedule 1 [164] substitutes Part 3 (proposed clauses 5 and 6) of Schedule 1 to the principal Act.

Proposed clause 5 of Schedule 1 to the principal Act provides that if a measure or action requires a special resolution, a ballot is to be conducted in accordance with the regulations.

Proposed clause 6 of Schedule 1 to the principal Act provides that a special resolution is carried only if it is passed by at least 75% of the number of residents who participate in the ballot.

Amendment relating to the recording of land within a retirement village

Schedule 1 [32] inserts proposed section 24A into the principal Act. The proposed section provides that the operator of a retirement village is to notify the Registrar-General of all land comprising the retirement village. An operator who fails to notify the Registrar-General is guilty of an offence with a maximum penalty of 100 penalty units (currently \$11,000). The proposed section also makes provision for the recording of any such notice on the Register kept under the *Real Property Act 1900* or in the General Register of Deeds kept under the *Conveyancing Act 1919* and for the removal of any such recording.

Amendments relating to capital maintenance and replacement

Currently Divisions 2 and 3 of Part 7 of the principal Act make provision for capital replacement and capital maintenance, respectively. **Schedule 1 [63]** removes those provisions and inserts proposed Division 2 of Part 7 (proposed sections 92–102) which makes provision for both capital maintenance and replacement. **Schedule 1 [23], [24] and [103]** make consequential amendments.

Proposed section 92 defines certain terms and phrases that are used in the proposed Division including item of capital for which the operator of a retirement village is responsible.

Proposed section 93 sets out the obligations of the operator of a retirement village with respect to certain capital maintenance and replacement.

Proposed section 94 sets out the obligations of a resident of a retirement village with respect to capital maintenance and replacement including an obligation for a resident of a retirement village to reimburse the operator of the village in respect of any damage (other than fair wear and tear) caused by the resident to an item of capital for which the operator of the retirement village is responsible.

Proposed section 95 provides that a resident of a retirement village may carry out urgent capital maintenance or replacement after giving the operator a reasonable opportunity to carry out the work. The proposed section also provides that the

operator is to reimburse the resident for any reasonable costs incurred in carrying out any such work.

Proposed section 96 provides that the Tribunal may make orders for capital maintenance and replacement in certain circumstances.

Proposed section 97 provides for the funding of capital maintenance and replacement generally.

Proposed section 98 provides special arrangements for the funding of capital maintenance and replacement of certain items of capital that are located within the residential premises of a resident who is a registered interest holder in respect of those premises.

Proposed section 99 requires the operator of a retirement village to supply residents with a proposal for capital maintenance and replacement in each financial year.

Proposed section 100 provides for the establishment of a capital works fund. A capital works fund is to be established if recurrent charges are to be used for funding capital maintenance or replacement that will extend beyond the end of a financial year.

Proposed section 101 provides that the operator of a retirement village is required to insure the retirement village.

Proposed section 102 provides that the operator of a retirement village must not sell an item of capital for which the operator of the retirement village is responsible to a resident or prospective resident or enter into any other contract, arrangement or scheme to pass responsibility (whether directly or indirectly) for the capital maintenance or replacement of any such item to the resident.

Amendments relating to recurrent charges and budgets

Schedule 1 [2] and [3] replace the terms *statement of proposed expenditure* and *statement of approved expenditure* with the terms *proposed annual budget* and *approved annual budget*, respectively. **Schedule 1 [20], [21], [40]–[42], [45], [47], [51], [74], [76], [78]–[80], [82]–[86], [88], [89], [91]–[94], [97]–[99], [104], [160] and [161]** make consequential amendments.

Schedule 1 [65] amends section 104 of the principal Act to provide that recurrent charges under a village contract that may be varied otherwise than in accordance with a fixed formula may only be varied once in any 12 month period and that any second or subsequent variation within that period is of no effect. **Schedule 1 [64]** makes a consequential amendment.

Schedule 1 [66] inserts proposed section 105A into the principal Act. The proposed section provides that the operator of a retirement village is required to give at least 14 days written notice to the residents of a retirement village if the operator proposes to vary the recurrent charges payable by the residents and the recurrent charges are to be varied otherwise than in accordance with a fixed formula and the variation does not exceed the variation in the Consumer Price Index for the period since the recurrent charges were last varied. **Schedule 1 [73]** makes consequential amendments.

Schedule 1 [67] amends section 106 of the principal Act to provide that the requirement to give at least 60 days' written notice to the residents of a retirement village in respect of a proposed variation in recurrent charges, as well as the other requirements set out in that section with respect to giving such a notice, only apply if the recurrent charges are to be varied otherwise than in accordance with a fixed formula and the variation exceeds the variation in the Consumer Price Index for the period since the recurrent charges were last varied. **Schedule 1 [69]** makes a consequential amendment.

Schedule 1 [68] amends section 106 of the principal Act to provide that a notice given under that section must contain a brief explanation of the reasons for the proposed variation exceeding the variation in the Consumer Price Index and give details of any action that has been taken to minimise the proposed variation.

Schedule 1 [71] inserts proposed section 106A into the principal Act. The proposed section provides that the operator of a retirement village must not increase recurrent charges that are to be varied otherwise than in accordance with a fixed formula, except as provided by proposed section 105A or section 106 of the principal Act. The proposed section also provides that any such variation must not exceed the upper limit (if any) specified in the village contract. **Schedule 1 [70]** makes a consequential amendment.

Schedule 1 [72] amends section 107 of the principal Act to provide that the Tribunal may make an order requiring the operator of a retirement village to provide information requested by the residents for the purpose of deciding whether to consent to a proposed variation of recurrent charges.

Section 112 of the principal Act provides that the operator of a retirement village must supply the residents of the retirement village with a proposed annual budget at least 60 days before the commencement of the financial year to which the budget relates. **Schedule 1 [77]** amends that section to provide that the regulations may prescribe another time within which the proposed annual budget is to be provided.

Schedule 1 [81] amends section 112 of the principal Act to provide circumstances in which the residents of a retirement village may consent to not receive the proposed annual budget.

Schedule 1 [87] amends section 114 of the principal Act to provide that the residents of a retirement village are taken to have consented to a proposed annual budget if the recurrent charges payable by the residents of the retirement village have not been varied, have been varied in accordance with a fixed formula or, in the case of charges that are varied otherwise than by fixed formula, the variation does not exceed the variation in the Consumer Price Index since the recurrent charges were last varied.

Schedule 1 [73] makes a consequential amendment.

Schedule 1 [90] inserts proposed section 115A into the principal Act. The proposed section enables the regulations to limit the amount that a proposed annual budget may allocate for any contingencies that may arise.

Section 116 of the principal Act currently provides that the operator of a retirement village that spends recurrent charges otherwise than in accordance with the approved annual budget is guilty of an offence. **Schedule 1 [95]** amends that section to provide

that an operator is not guilty of such an offence if the contravention was a variation between items in the approved annual budget and does not cause a reduction in the level of services provided by the village or cause the total expenditure to exceed the amount provided for by the approved annual budget.

Section 117 of the principal Act provides that the operator of a retirement village may seek the consent of the residents to amend an approved annual budget. **Schedule 1 [96]** amends that section to provide exceptions to the circumstances in which an operator may seek the consent of the residents to make such amendments.

Section 118 of the principal Act provides that the residents of a retirement village are to consent to the appointment of an auditor for the accounts of the retirement village if the audit fees are to be paid by the residents. **Schedule 1 [100]** amends that section to provide that the residents are not required to consent to the appointment of an auditor if the proposed auditor audited the accounts for the previous financial year.

Section 118 of the principal Act provides that the operator of a retirement village must give a copy of the quarterly accounts of the retirement village to the Residents Committee for the village or, if there is no Residents Committee for the retirement village, to any resident who requests one. **Schedule 1 [101]** amends that section to provide that the accounts must be provided to the Residents Committee within 28 days after the end of the quarter to which they relate. The amendment also provides that, if a resident requests a copy of the quarterly accounts from the operator after a certain period, the operator is to provide the resident with a copy within 7 days of receiving the request.

Schedule 1 [102] amends section 119 of the principal Act to enable the regulations to vary the period within which the operator of a retirement village is required to provide the residents of the retirement village with copies of the audited annual accounts of the retirement village.

Schedule 1 [105] amends section 119 of the principal Act to provide that, if there is no Residents Committee for a retirement village, the operator is to display a copy of the audited accounts on the common property of the village in accordance with the regulations and provide a copy to any resident of the retirement village who requests a copy. Currently, copies of the accounts are to be provided to each resident.

Schedule 1 [106] inserts proposed sections 119A and 119B into the principal Act.

Proposed section 119A provides that the annual accounts of a retirement village are not required to be audited if the total of the recurrent charges collected by the operator of the village is less than \$50,000 (or other prescribed amount) and the residents of the village consent to not have the accounts audited.

Proposed section 119B provides that the operator of a retirement village is not required to provide the residents of the village with a copy of the quarterly accounts for the village if the total of the recurrent charges collected by the operator of the village is less than \$50,000 (or other prescribed amount) and the residents of the village consent to not receive a copy. **Schedule 1 [25]** makes a consequential amendment.

Section 152 of the principal Act specifies the circumstances in which a former occupant of a retirement village who is a registered interest holder ceases to be liable for recurrent charges for general services. **Schedule 1 [127]** amends that section to provide that liability of the former occupant to fund the whole of that amount ceases 42 days after the former occupant permanently vacates the residential premises. After that period, the former occupant and operator of the retirement village are required to meet those charges in the same proportion as they are to share any capital gain under a village contract until the former occupant ceases to be liable for the recurrent charges for general services in accordance with that section. **Schedule 1 [123]** makes a consequential amendment.

Section 153 of the principal Act specifies the circumstances in which a former occupant (other than a registered interest holder) ceases to be liable for recurrent charges for general services. Currently, section 153 (2) (e) provides that the liability ceases on the date that is 6 months after the resident permanently vacates the premises (unless the liability ceases earlier in accordance with that section). **Schedule 1 [129]** amends that section to reduce that period from 6 months to 42 days.

Schedule 1 [130] amends section 153 of the principal Act to make it clear that when a former occupant (other than a registered interest holder) ceases to be liable for recurrent charges for general services the operator of the retirement village becomes liable for that amount until the operator enters into a village contract with an incoming resident for those premises.

Amendments relating to payments to former occupants

Schedule 1 [146] and [148] amend sections 180 and 181 of the principal Act, respectively. The proposed amendments provide that a former occupant may apply to the Tribunal for an order directing that the operator pay the former occupant any outstanding amount required to be paid under the Act. If the payment is not made, interest will be payable in relation to that outstanding amount.

The proposed amendments also provide that a former occupant may apply to the Tribunal for an order directing the operator to recalculate the amount that is to be paid to the former occupant in accordance with the relevant section. The Tribunal may order that interest is payable in relation to any such amount.

Amendments relating to the protection of ingoing contributions

Schedule 1 [149] inserts proposed Part 10A (proposed sections 182A–182I) into the principal Act. The proposed Part makes provision for the creation of a statutory charge over land in a retirement village to ensure that a former occupant of a retirement village (other than a registered interest holder) receives the amount to which they are entitled under a village contract on the termination of that contract.

Proposed section 182A provides that the proposed Part applies to a village contract that provides for the refund of the whole or any part of an ingoing contribution paid by a resident of the retirement village under a village contract. The proposed section also provides that the Part does not apply in respect of a village contract for residential premises, the occupant of which is a registered interest holder in respect of those premises.

Proposed section 182B provides that a statutory charge is created over the land within the retirement village on the day that a resident enters into a village contract to which the Part applies. The proposed section also provides that the charge is not created over land that is not registered as part of a retirement village or which is held by a resident as a registered interest holder.

Proposed section 182C provides that it is an offence for a person to dispose of land that is subject to such a charge otherwise than in accordance with an order of the Supreme Court. The proposed section does not prevent the sale of the retirement village as a going concern.

Proposed section 182D provides that a charge created under the proposed Part is not terminated by the transfer of title in the land.

Proposed section 182E provides that certain persons may apply for an order of the Supreme Court to dispose of land that is the subject of a charge if it appears that it is unlikely that the operator of the retirement village will be able to refund any part of an ingoing contribution that a resident or former occupant is entitled to be refunded.

Proposed section 182F provides that the Supreme Court may, on the application of a person referred to in proposed section 182E, order that land that is the subject of a charge is to be sold and may appoint a person to act as an agent for the sale. The proposed section also provides that the Court may make orders with respect to the distribution of the proceeds of the sale having regard to the order that interests are to be satisfied in accordance with proposed section 182G.

Proposed section 182G provides the order in which interests in land that is subject to a charge are to be satisfied from the proceeds of the sale of that land.

Proposed section 182H provides that the Supreme Court may only make an order under proposed section 182F if the Court is satisfied that the making of such an order is in the best interests of the majority of the residents of the retirement village.

Proposed section 182I provides that a charge created under proposed Part 10A remains in force until the village contract that caused the creation of the charge has been terminated and all of the operator's liabilities under that contract have been met or the land has been sold in accordance with an order under the Part.

Amendments relating to the settling-in period for residents of a retirement village

Schedule 1 [38] inserts proposed Division 2 in Part 5 of the principal Act (proposed sections 44A–44E). The proposed Division makes provision for a settling-in period to apply to new residents of a retirement village. **Schedule 1 [29]** makes a consequential amendment.

Proposed section 44A enables the resident of a retirement village to terminate a village contract before the end of the settling-in period. The proposed section provides that the end of the settling-in period is the later of 90 days after the resident is entitled to occupy the premises or, if the resident first occupies the premises during that period, 90 days after the resident first occupies the premises or such other date as the operator and resident agree.

Proposed section 44B provides that a resident who terminates a village contract before the end of the settling-in period is only required to make certain payments under the contract.

Proposed section 44C provides that the operator is required to refund certain payments made by the resident under a village contract that is terminated in accordance with the proposed Division and, in certain cases, the proceeds from the sale of the premises.

Proposed section 44D sets out the time within which a refund that a former occupant is entitled to receive under proposed section 44C must be made and provides that the Tribunal may resolve disputes relating to any such refund.

Proposed section 44E provides that a resident who has terminated a village contract before the end of the settling-in period is not required to pay certain fees on the termination of the village contract.

Miscellaneous amendments

Schedule 1 [1] amends section 3 of the principal Act to provide that encouraging the retirement village industry to adopt best practice management standards is an object of the principal Act.

Schedule 1 [15] amends section 17 of the principal Act to provide that the operator of a retirement village must not publish or distribute promotional material of a type prescribed by the regulations.

Section 18 of the principal Act currently provides that the operator of a retirement village is required to provide a prospective resident with a disclosure statement.

Schedule 1 [16] amends that section to provide that the operator of a retirement village must provide a prospective resident with a general inquiry document, and must provide the prospective resident with a disclosure statement if the prospective resident expresses an interest in specific premises within the village, or requests a copy of that statement. An operator who fails to provide a disclosure statement is guilty of an offence with a maximum penalty of 20 penalty units (currently \$2,200).

Schedule 1 [5], [17] and [18] make consequential amendments.

Schedule 1 [19] replaces section 19 of the principal Act. Currently section 19 of the principal Act requires the operator of a retirement village to provide certain information about the retirement village. The proposed section 19 provides that the Director-General may, by notice in writing to the operator of a retirement village, require the operator to provide specified information to the residents of the retirement village or a prospective resident. It is an offence to fail to comply with any such notice without reasonable excuse.

Section 23 of the Principal Act currently provides that deposit paid to the operator of a retirement village under a village contract is to be held in trust and specifies the type of account in which such amounts may be held as well as providing the circumstances in which the amounts may be removed from the trust. Section 23 (1) provides that the section does not apply to the operator of a retirement village if the operator is a body constituted or established under an Act, or is a body constituted or established for a benevolent, philanthropic or patriotic purpose. **Schedule 1 [26] and**

[27] amend that section to provide that the requirement that any such amounts are to be held in trust applies to all retirement villages, and that the provision specifying the type of account in which such an amount may be held does not apply to the operator of a retirement village if the operator is a body constituted or established under an Act, or is a body constituted or established for a benevolent, philanthropic or patriotic purpose. **Schedule 1 [28]** amends that section to provide that any money that is so held may form part of a resident's ingoing contribution.

Schedule 1 [30] amends section 24 of the principal Act to provide that a village contract must be in writing.

Schedule 1 [31] amends section 24 of the principal Act to provide that, if the operator of a retirement village does not make a refund to a former occupant within the time required by that section, the former occupant may apply to the Tribunal for an order directing the operator to make the payment.

Schedule 1 [33] amends section 29 of the principal Act to provide that it is an offence for the operator of a retirement village to vary a village contract or to terminate a village contract and enter into a new village contract unless the resident affected has obtained a written certificate under that section. The maximum penalty for such an offence is 100 penalty units (currently \$11,000).

Section 38 of the principal Act provides that the operator of a retirement village must not permit a resident to occupy residential premises within the retirement village until the operator prepares, and provides the prospective resident with, a condition report. **Schedule 1 [34]** amends that section to provide that the regulations may prescribe the time within which such a report is to be provided.

Schedule 1 [36] inserts proposed section 41A into the principal Act. The proposed section provides that a resident of a retirement village may add, remove or alter fixtures and fittings, and make renovations to residential premises, with the consent of the operator of the retirement village. The operator must not unreasonably withhold consent. The proposed section also provides that the consent of the operator is not required in respect of certain alterations or renovations. **Schedule 1 [137]** makes a consequential amendment.

Schedule 1 [37] amends section 43 of the principal Act to provide that a village contract may make provision for the payment of ingoing contributions by way of instalments and for the interest to be calculated in respect of the unpaid portion.

Schedule 1 [39] amends section 51 of the principal Act to provide that the operator of a retirement village is required to notify the residents of the retirement village of the outcome of a vote to amend the village rules within 7 days after the operator becomes aware of the outcome of the vote.

Schedule 1 [44] inserts proposed section 58A into the principal Act. The proposed section provides that the operator of a retirement village must ensure that the village is reasonably safe, and that the operator is required to conduct safety inspections. The proposed section also provides that a resident may, if the resident believes that the village is not reasonably safe, apply to the Tribunal for an order directing the operator to ensure that the village is reasonably safe.

Schedule 1 [46] inserts proposed section 59A into the principal Act. The proposed section provides that the operator of a retirement village must ensure that emergency and home care service personnel have unimpeded vehicular access to residential premises within the retirement village at all times.

Section 67 of the principal Act provides that the operator of a retirement village or any person authorised by the operator of a retirement village, must not enter occupied residential premises otherwise than in accordance with that section. **Schedule 1 [49]** amends that section to make it an offence to enter residential premises in contravention of that section.

Section 84 of the principal Act provides that the Director-General may apply to the Supreme Court for an order appointing an administrator to exercise certain functions of the operator of a retirement village. **Schedule 1 [61]** amends that section to provide that the Director-General may only apply for an order under that section if the Director-General is of the opinion that the well-being or financial security of the residents of the village will be seriously affected by the continued operation of the village by the operator, or if the Director-General is of the opinion that the operator is wilfully and repeatedly acting in contravention of an order made by the Tribunal or a court.

Schedule 1 [62] inserts proposed sections 87A and 87B into the principal Act.

Proposed section 87A provides that expenses incurred by an administrator appointed under Division 6 of Part 6 of the principal Act are payable from recurrent charges, and such other funds as would be available to the operator, and that the appointment of such an administrator does not make the Director-General liable for the expenses incurred in operating the village or any other liability of the operator of the village in respect of which the administrator is appointed.

Proposed section 87B provides that an administrator appointed under the principal Act has power, with the consent of the Director-General, to vary the approved annual budget, recurrent charges payable or the services offered by the village to assist in finding a new operator for the village and to maintain the financial viability of the village.

Schedule 1 [108] inserts proposed Division 7 into Part 7 of the principal Act (proposed sections 120A–120C). **Schedule 1 [107]** makes a consequential amendment.

Proposed section 120A defines certain terms that are used in the proposed Division.

Proposed section 120B provides that any surplus in the annual accounts of a retirement village is to be carried forward into the next financial year unless the residents of the village consent to a proposal for the expenditure of the surplus or consent to a proposal that the whole or part of the surplus be distributed to the residents of the village. The proposed section also provides that the Tribunal may order that the surplus is not to be distributed to the residents.

Proposed section 120C provides that the operator of a retirement village is to make good any deficit in the annual accounts of the retirement village and prevents the operator from requiring the residents to contribute to the making good of any such deficit except as provided by the regulations.

Schedule 1 [111], [112], [125], [126] and [136] make minor amendments to ensure that consistent terminology is used with respect to the permanent vacation of residential premises.

Schedule 1 [115] inserts proposed Division 3A into Part 9 of the principal Act (proposed section 136A).

Proposed section 136A provides that the administrator of a retirement village may apply to the Supreme Court for an order terminating village contracts with respect to that retirement village if there is no reasonable prospect of finding a new operator for the retirement village.

Section 139 of the principal Act provides that a person must not enter residential premises for the purpose of recovering possession of the premises except as provided by that section. **Schedule 1 [116]** extends the operation of the section to provide that a person must not remove a resident from the premises, or take action that is likely, or intended, to cause a resident to permanently vacate the premises.

Section 147 of the principal Act provides that the operator of a retirement village may apply to the Tribunal for an order relating to uncollected goods or sell or dispose of those goods in accordance with the regulations. **Schedule 1 [118]** makes it an offence to sell or otherwise dispose of uncollected goods except in accordance with that section.

Section 170 of the principal Act provides that the operator of a retirement village and a resident (who is a registered interest holder) are to share the costs of the sale of the resident's residential premises in the same proportions as they are to share any capital gains under the village contract. **Schedule 1 [139]** amends that section to provide that the regulations may prescribe costs that are, or are not, included in the calculation of the costs of sale.

Schedule 1 [141] amends section 175 of the principal Act to make it clear that the Tribunal may order that the operator of a retirement village is to pay compensation if the operator's refusal to consent to the letting or subletting of premises within the retirement village was unreasonable.

Schedule 1 [142] makes a minor amendment in the nature of statute law revision.

Schedule 1 [150] and [151] amend section 189 of the principal Act to make it clear that the Director-General's functions under the principal Act include the function of prosecuting any offence under the principal Act or the regulations.

Schedule 1 [152] inserts proposed section 189A into the principal Act. The proposed section provides that the Director-General may authorise the publication of a notice warning persons of the risks involved in dealing with a person who is (or appears to be) the operator of a retirement village and has a history of unconscionable conduct in dealing with consumers.

Schedule 1 [153] amends section 190 of the principal Act to remove the requirement that the Director-General must be satisfied, before taking or defending proceedings on behalf of a resident of a retirement village, that the Director-General is acting in the public interest.

Schedule 1 [155]–[157] amend section 196 of the principal Act to exonerate the Registrar-General and persons acting under the direction of the Registrar-General from personal liability incurred in respect of any act done or omitted in good faith for the purposes of the principal Act.

Schedule 1 [158] inserts proposed Part 12A (proposed sections 196A–196E) into the principal Act. **Schedule 1 [154]** makes a consequential amendment.

Proposed section 196A gives investigators appointed under the *Fair Trading Act 1987* powers of entry and inspection in relation to the investigation of matters under the principal Act.

Proposed section 196B sets out the powers of investigators to obtain information, documents and evidence.

Proposed section 196C creates offences relating to the obstruction of investigators.

Proposed section 196D provides for an investigator to take documents to be used as evidence.

Proposed section 196E provides for the issue of search warrants to investigators.

Schedule 1 [159] inserts proposed section 197A. The proposed section provides that it is an offence for the operator of a retirement village to give information that the operator knows to be false or misleading in a material particular in purported compliance with a requirement of the principal Act.

Schedule 1 [162] amends section 202 to provide that the Minister may fund the provision of advisory and advocacy services to the residents and prospective residents of retirement villages in the course of administering the principal Act.

Schedule 1 [163] amends section 203 to provide that the regulations may exempt a specified village contract or a specified class of village contracts from any provision of the principal Act.

Schedule 1 [165]–[167] insert provisions of a savings and transitional nature.

First print



New South Wales

Retirement Villages Amendment Bill 2008

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Retirement Villages Amendment Bill 2008

No. , 2008

A Bill for

An Act to amend the *Retirement Villages Act 1999* to make further provision with respect to the rights and obligations of residents and operators of retirement villages; to establish a scheme for the enforcement of a resident's right to receive payment under a village contract; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Retirement Villages Amendment Act 2008</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Retirement Villages Act 1999 No 81	6
The <i>Retirement Villages Act 1999</i> is amended as set out in Schedule 1.	7
4 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103	8
The <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> is amended by inserting, in alphabetical order, in Schedule 2 to that Act:	9
<i>Retirement Villages Act 1999</i> , section 196E	10
5 Repeal of Act	11
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	12
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	13

Schedule 1 Amendments

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	(Section 3)	2
[1] Section 3 Objects of Act		3
Insert at the end of section 3 (e):		4
, and		5
(f) to encourage the retirement village industry to adopt best practice management standards.		6 7
[2] Section 4 Definitions		8
Insert in alphabetical order in section 4 (1):		9
<i>annual management meeting</i> means the meeting referred to in section 72A.		10 11
<i>approved annual budget</i> means a budget taken to be an approved annual budget under section 116.		12 13
<i>capital works fund</i> means a fund established under section 100.		14
<i>Consumer Price Index</i> means the Consumer Price Index (All Groups) for Sydney as published by the Australian Statistician.		15 16
<i>general inquiry document</i> means a document referred to in section 18 (2).		17 18
<i>optional services</i> means optional services made available, by or on behalf of the operator, to individual residents of a retirement village, and includes such services as may be prescribed by the regulations for the purposes of this definition.		19 20 21 22
Note. Examples of optional services are the provision of meals, laundry services and the cleaning of the residents' residential premises.		23 24
<i>proposed annual budget</i> means a proposed annual budget referred to in section 112.		25 26
Register means:		27
(a) in relation to land under the <i>Real Property Act 1900</i> —the Register kept under that Act, and		28 29
(b) in relation to any other land—the General Register of Deeds kept under the <i>Conveyancing Act 1919</i> .		30 31
[3] Section 4 (1), definitions of “capital replacement fund”, “maintenance fund”, “personal services”, “statement of approved expenditure” and “statement of proposed expenditure”		32 33 34
Omit the definitions.		35

[4] Section 4 (1), definition of “Director-General”	1
Omit the definition. Insert instead:	2
<i>Director-General</i> means:	3
(a) the Commissioner for Fair Trading, Department of Commerce, or	4 5
(b) if there is no such position in that Department—the Director-General of that Department.	6 7
[5] Section 4 (1), definition of “disclosure statement”	8
Omit “section 18”. Insert instead “section 18 (3A)”.	9
[6] Section 4 (1), definition of “former occupant”	10
Omit “owns” from paragraph (b).	11
Insert instead “is a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.	12 13
[7] Section 4 (1), definition of “residential care facility”	14
Omit the definition. Insert instead:	15
<i>residential aged care facility</i> means any residential accommodation for retired people that includes:	16 17
(a) meals and cleaning services, and	18
(b) personal care or nursing care, or both, and	19
(c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care.	20 21
[8] Section 4 (1), definition of “service contract”	22
Omit “personal”. Insert instead “optional”.	23
[9] Section 5 Meaning of “retirement village”	24
Omit section 5 (3) (e). Insert instead:	25
(e) any residential premises the subject of a residential tenancy agreement to which the NSW Aboriginal Housing Office or the New South Wales Land and Housing Corporation is a party,	26 27 28 29
[10] Section 6 Meaning of “ingoing contribution”	30
Omit section 6 (2) (c). Insert instead:	31
(c) if the resident is the registered proprietor of land, the owner of a lot in a strata scheme or the proprietor of a lot	32 33

	in a community land scheme on which the residential premises are located—the purchase price of the land or lot,	1
	(c1) if the person is the owner of shares in a company title scheme that give rise to a residence right in respect of the premises—the purchase price of the shares,	2
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[11] Sections 7 and 7A		6
Omit section 7. Insert instead:		7
7 Meaning of “registered interest holder”		8
(1) For the purposes of this Act, a person is the <i>registered interest holder</i> with respect to residential premises in a retirement village if:		9
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(a) the person is:		12
(i) the registered proprietor of land, or		13
(ii) the owner of a lot in a strata scheme, or		14
(iii) the proprietor of a lot in a community land scheme, within a retirement village and as such has a residence right in respect of residential premises within the retirement village, or		15
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(b) the person is the owner of shares in a company title scheme that give rise to a residence right in respect of residential premises within a retirement village, or		19
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(c) the person’s residence contract is in the form of a registered long-term lease that includes a provision that entitles the person to at least 50% of any capital gain.		22
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(2) In this section:		25
<i>registered long-term lease</i> means a lease registered under the <i>Real Property Act 1900</i> that:		26
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(a) has a term of at least 50 years (including any option to renew), or		28
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(b) is for the life of the lessee.		30
7A Meaning of “capital gain”		31
(1) In this Act, <i>capital gain</i> , in relation to a resident’s entitlement under a residence contract or the sharing of a capital gain under a village contract between the operator and a resident, means any increase between the amount that the resident paid for the residence right for the relevant premises and the amount that the		32
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Schedule 1 Amendments

	next resident pays for a residence right for the same premises, less any costs associated with the subsequent sale or lease of the premises.	1 2 3
	(2) Fees and charges payable under a village contract are not to be included in the calculation of the capital gain.	4 5
[12]	Section 8 “Permanent vacation” of residential premises	6
	Omit section 8 (d). Insert instead:	7
	(d) if the person is a registered interest holder in relation to residential premises or is taken to be a resident of the premises by the operation of section 4 (2)—the person dies or moves out of the premises.	8 9 10 11
[13]	Section 15 Approvals for certain facilities	12
	Insert “aged” after “residential” wherever occurring.	13
[14]	Section 16 Exceptions to prohibitions on advertising	14
	Insert “aged” after “residential” in section 16 (b) and (c), wherever occurring.	15
[15]	Section 17 Representations about retirement villages	16
	Insert after section 17 (5):	17
	(5A) The operator of a retirement village must not publish or distribute written promotional material that makes a representation in relation to the retirement village of a kind prescribed by the regulations.	18 19 20 21
	Maximum penalty: 50 penalty units.	22
[16]	Section 18 General inquiry document and disclosure statement concerning retirement village	23 24
	Omit section 18 (1)–(3). Insert instead:	25
	(1) The operator of a retirement village must provide a person with a general inquiry document within 14 days after becoming aware that the person is a prospective resident or is acting on behalf of a prospective resident.	26 27 28 29
	(2) A general inquiry document is to give a basic explanation of the residential premises, services and facilities that are available within a retirement village, and must:	30 31 32
	(a) be in the form prescribed by the regulations, and	33
	(b) contain the information prescribed by the regulations.	34

(3)	The operator of a retirement village must provide a disclosure statement to a prospective resident, or person acting on behalf of a prospective resident, who:	1
	(a) requests a copy, or	2
	(b) expresses an interest in particular premises within the retirement village,	3
	within 14 days after the request is received or the expression of interest is made.	4
	Maximum penalty: 20 penalty units.	5
(3A)	A disclosure statement is to give specific details of particular residential premises in a retirement village (including details of the fees and charges that will be payable by the resident of the premises) and must:	6
	(a) be in the form prescribed by the regulations, and	7
	(b) contain the information prescribed by the regulations, and	8
	(c) be signed and dated by the operator of the retirement village.	9
(3B)	The regulations may prescribe different forms for, or information to be contained in, general inquiry documents or disclosure statements in respect of different classes of general inquiry documents or disclosure statements or different circumstances in which they are provided.	10
[17]	Section 18 (4)	11
	Insert “disclosure” before “statement” wherever occurring.	12
[18]	Section 18 (6)	13
	Omit the subsection. Insert instead:	14
	(6) If the operator of a retirement village fails to provide a general inquiry document or disclosure statement in accordance with this section, the prospective resident, or person acting on behalf of the prospective resident, to whom the document or statement should have been provided may apply to the Tribunal for (and the Tribunal may make) an order requiring the operator to provide the general inquiry document or disclosure statement.	15
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[19] Section 19	1
Omit the section. Insert instead:	2
19 Information to be provided to residents	3
(1) The Director-General may, by notice in writing to the operator of a retirement village, require the operator of the retirement village to provide specified information to the residents of the retirement village or to a prospective resident of the retirement village.	4 5 6 7
(2) An operator of a retirement village must not, without reasonable excuse, fail to provide information in accordance with any such notice.	8 9 10
Maximum penalty: 10 penalty units.	11
(3) Without limiting subsection (1), a notice may require the operator of a retirement village to provide information relating to any of the following:	12 13 14
(a) the retirement village industry generally,	15
(b) the rights and responsibilities of residents of retirement villages,	16 17
(c) living within a strata scheme.	18
[20] Section 20 Copies of certain documents to be available	19
Omit “statements of proposed expenditure and the statements of approved expenditure” from section 20 (1) (c).	20 21
Insert instead “proposed annual budgets (if any) and the approved annual budgets”.	22 23
[21] Section 20 (1) (c) (iii)	24
Omit “statements”. Insert instead “budgets”.	25
[22] Section 20 (1) (d)	26
Omit “as referred to in”. Insert instead “if so required under”.	27
[23] Section 20 (1) (i)	28
Omit “capital replacement fund or a maintenance fund”.	29
Insert instead “capital works fund”.	30
[24] Section 20 (1) (i)	31
Omit “balances”. Insert instead “balance”.	32

[25] Section 20 (1) (j)	1
Insert “if the operator is required to provide the residents with quarterly accounts—” before “the most”.	2 3
[26] Section 23 Deposits to be kept in trust	4
Omit section 23 (1).	5
[27] Section 23 (3A)	6
Insert after section 23 (3):	7
(3A) Subsection (3) does not apply to or in respect of money held by an operator of a retirement village if the operator is:	8
(a) a body constituted or established by an Act, or	9 10
(b) a body constituted or established for any benevolent, philanthropic or patriotic purpose.	11 12
[28] Section 23 (4) (a)	13
Insert “or ingoing contribution” after “deposit”.	14
[29] Part 5, Division 1, heading	15
Insert before section 24:	16
Division 1 General	17
[30] Section 24 Resident to enter village contract	18
Insert “in writing” after “with the operator” in section 24 (1).	19
[31] Section 24 (4)	20
Insert after section 24 (3):	21
(4) If a refund, in whole or in part, is not made to a former occupant within the period required by subsection (3) (b):	22 23
(a) the former occupant may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to make the payment, and	24 25 26
(b) interest is payable, at the rate prescribed by the regulations, on and from the date that the refund becomes overdue.	27 28

[32] Section 24A	1
Insert after section 24:	2
24A Retirement village land to be recorded on Register	3
(1) The operator of a retirement village must, in accordance with this section, notify the Registrar-General in writing that the land comprising the retirement village (or land that is part of the retirement village) is used as a retirement village.	4
Maximum penalty: 100 penalty units.	5
(2) Any such notice is to be provided:	6
(a) in the case of land that, immediately before the commencement of this section, was used as a retirement village—within 3 months after the commencement of this section, or	7
(b) in any other case—before entering into a residence contract with respect to residential premises on that land.	8
(3) Nothing in this section requires the operator of a retirement village to notify the Registrar-General before entering into a residence contract regarding residential premises on land that is already the subject of a recording under this section.	9
(4) Form of notice for recording	10
The notice referred to in subsection (1) must be:	11
(a) in the case of land that, immediately before the commencement of this section, was used as a retirement village—within 3 months after the commencement of this section, or	12
(b) in any other case—before entering into a residence contract with respect to residential premises on that land.	13
(c) in the case of a notice relating to land not under the <i>Real Property Act 1900</i> —accompanied by the fee prescribed under that Act, and	14
(d) in the case of a notice relating to land under the <i>Real Property Act 1900</i> —accompanied by the fee prescribed under that Act, and	15
(e) in the case of a notice relating to land not under the <i>Real Property Act 1900</i> —accompanied by the fee prescribed under the <i>Conveyancing Act 1919</i> .	16
(5) Registrar-General to record retirement village on Register	17
On receipt of a notice under subsection (1), the Registrar-General is to make a recording on the relevant Register indicating that the land to which the notice relates comprises, or is part of, a retirement village.	18
(6) Operator to notify of recording being made	19
As soon as practicable after the Registrar-General makes a recording under this section, the operator of the retirement village is to notify, in writing:	20
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	(a) the holder of any other registered interest in the land to which the recording relates, and	1 2
	(b) the Residents Committee (if any) of the retirement village, that the recording has been made. The operator must also, when notifying a person referred to in paragraph (a), include a statement in the form approved by the Director-General that sets out the effect of Part 10A.	3 4 5 6 7
(7)	Operator to notify Registrar-General of certain changes	8
	The operator of a retirement village must notify the Registrar-General if any of the information contained in a notice lodged under subsection (1) ceases to be accurate by submitting a new notice under that subsection.	9 10 11 12
(8)	Use of recording on Register	13
	Information that is recorded under this section may be used to establish a list of retirement villages.	14 15
(9)	Application to remove recording	16
	A person may apply in writing to the Registrar-General for the removal of a recording made under this section.	17 18
(10)	Form of application for removal of recording	19
	The application referred to in subsection (9) must be:	20
	(a) in the form approved by the Registrar-General, and	21
	(b) in the case of an application relating to land under the <i>Real Property Act 1900</i> —accompanied by the fee prescribed under that Act, and	22 23 24
	(c) in the case of an application relating to land not under the <i>Real Property Act 1900</i> —accompanied by the fee prescribed under the <i>Conveyancing Act 1919</i> .	25 26 27
(11)	Registrar-General may remove recording	28
	If the Registrar-General receives an application referred to in subsection (9), the Registrar-General may, if satisfied that:	29 30
	(a) there are no residential premises located on the land to which the recording relates that are the subject of a village contract, and	31 32 33
	(b) there are no amounts outstanding that are payable under a village contract relating to residential premises located on the land to which the recording relates,	34 35 36
	remove the recording to which the application relates.	37

[33] Section 29 Variation or replacement of village contracts	1
Insert after section 29 (1):	2
(1A) An operator must not purport:	3
(a) to vary a village contract, or	4
(b) to terminate a village contract and enter into a new village contract in relation to the same residential premises,	5
unless the resident who is a party to the contract has obtained a certificate in accordance with this section.	6
Maximum penalty: 100 penalty units.	7
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[34] Section 38 Condition report for certain residential premises	10
Insert after section 38 (2):	11
(2A) Without limiting subsection (2), the regulations may make provision for, or with respect to, the following:	12
(a) the time within which the condition report must be completed,	13
(b) the time within which the condition report must be provided to a prospective resident.	14
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[35] Section 38 (5) (b)	18
Omit the paragraph. Insert instead:	19
(b) the prospective resident is, or will be, a registered interest holder in respect of the residential premises that the prospective resident intends to occupy.	20
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[36] Section 41A	23
Insert after section 41:	24
41A Renovations and alteration of fixtures or fittings	25
(1) A resident of a retirement village may:	26
(a) add, remove or alter any fixtures or fittings on or within the resident's residential premises, or	27
(b) make renovations to the resident's residential premises,	28
but only with the written consent of the operator of the retirement village.	29
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(2) The consent of the operator may be subject to such reasonable conditions as the operator may include in, or attach to, the written consent.	32
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| (3) | Without limiting subsection (2), the operator may consent to any addition, removal or alteration of fixtures or fittings, or to any renovations, referred to in subsection (1) subject to the condition that, on the termination of the resident's village contract, the premises will be returned to the same condition as they were in immediately before the consent was given. | 1
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| (4) | The operator of a retirement village must not unreasonably withhold consent to any addition, removal or alteration of any fixtures or fittings, or to any renovations, referred to in subsection (1). | 7
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| (5) | A resident of a retirement village may apply to the Tribunal for (and the Tribunal may make) an order: | 11
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| (a) | permitting the addition, removal or alteration of specified fixtures or fittings on or within the resident's residential premises, or | 13
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| (b) | permitting the making of specified renovations to the resident's residential premises, or | 16
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| (c) | varying the conditions to which the operator's consent is subject. | 18
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| (6) | If the Tribunal is satisfied that the operator of the retirement village has unreasonably withheld consent under this section, or that the conditions to which such consent is subject are unreasonable in the circumstances, the Tribunal may make the order sought and the operator is taken to have given consent in accordance with the terms of the order. | 20
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| (7) | Despite subsection (1), the consent of the operator of the retirement village is not required: | 26
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| (a) | to remove or alter any fixtures or fittings that were added by a resident (including fixtures or fittings that were added before the commencement of this section) unless the removal or alteration of the fixtures or fittings is likely to cause significant damage to the residential premises, or | 28
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| (b) | to make renovations, or to add, remove or alter any fixtures or fittings, prescribed by the regulations for the purposes of this section. | 33
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| (8) | Nothing in this section authorises a person to add, remove or alter any fixtures or fittings in, or renovate any residential premises within, a retirement village if consent to do so is required under any Act and the consent has not been obtained. | 36
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(9)	Without limiting subsection (8), nothing in this section authorises a person to carry out development (within the meaning of the <i>Environmental Planning and Assessment Act 1979</i>) in contravention of that Act.	1 2 3 4
[37]	Section 43 Standard form of village contract	5
	Insert after section 43 (7):	6
(8)	A village contract that provides for the payment of an ingoing contribution may also provide:	7 8
(a)	that any such contribution is to be paid by way of instalments at such intervals as may be specified in the contract, and	9 10 11
(b)	if any such contribution is to be paid by instalments, for interest on the unpaid portion of any such contribution to be payable, as calculated at the rate prescribed by the regulations.	12 13 14 15
[38]	Part 5, Division 2	16
	Insert after section 44:	17
	Division 2 Settling-in period for residents	18
44A	Termination of village contract during settling-in period	19
(1)	A resident of a retirement village may terminate a village contract to which the resident is a party:	20 21
(a)	by permanently vacating the residential premises within the village, or	22 23
(b)	in the case of a contract other than a residence contract—by notice in writing to the operator of the retirement village indicating an intention to terminate the contract,	24 25 26
	before the end of the settling-in period.	27
(2)	For the purposes of this Division, the <i>end of the settling-in period</i> means the later of:	28 29
(a)	the day that is 90 days after the date on which the resident is entitled to occupy the residential premises concerned under the residence contract for the premises, or	30 31 32
(b)	if the resident occupies the premises before the day specified in paragraph (a), the day that is 90 days after the resident first occupies the residential premises, or	33 34 35
(c)	such date as may be agreed to by the operator and the resident.	36 37

(3)	Nothing in this section requires a resident to occupy the residential premises before terminating a village contract under this section.	1 2 3
(4)	The termination of a village contract in accordance with this Division is not to be regarded as a breach of contract or otherwise as a civil wrong.	4 5 6
44B	Liability of former occupant if village contract terminated during settling-in period	7 8
(1)	If a village contract is terminated in accordance with this Division, the former occupant is only liable to pay:	9 10
(a)	fair market rent for the period (if any) that the former occupant occupied the residential premises under the contract, and	11 12 13
(b)	in the case of a village contract that is a residence contract, the cost of any repairs for damage to the residential premises in excess of fair wear and tear, and	14 15 16
(c)	a reasonable administration fee, and	17
(d)	such other amount as may be prescribed by the regulations.	18
(2)	Despite subsection (1), if the former occupant has not occupied the residential premises prior to terminating a village contract in accordance with this Division, the occupant is only liable to pay the cost of any repairs for damage to the residential premises in excess of fair wear and tear and a reasonable administration fee.	19 20 21 22 23
(3)	The amount that the former occupant is liable to pay under this section may be offset against any amounts that are to be refunded to the former occupant under section 44C.	24 25 26
(4)	An administration fee referred to in this section must not exceed the amount prescribed by the regulations.	27 28
44C	Operator to refund certain payments made by resident	29
	If a village contract is terminated in accordance with this Division, the operator of the retirement village is to refund or pay to the former occupant:	30 31 32
(a)	in the case of a former occupant who is a registered interest holder (other than a person referred to in section 7 (1) (c))—the proceeds from the sale of the residential premises to which the resident is entitled under the village contract, and	33 34 35 36 37

(b)	in the case of any other former occupant—any ingoing contribution paid to the operator under the village contract, and	1 2 3
(c)	any recurrent charges paid to the operator under the village contract, and	4 5
(d)	such other amounts as may be prescribed by the regulations.	6 7
44D	Time for making of payments	8
(1)	Except as provided by subsection (2), a refund or payment under this Division is to be made within 14 days after the termination of the village contract or within such other period as the Tribunal may order.	9 10 11 12
(2)	A payment referred to in section 44C (a) or (b) that is to be made to a former occupant who was a registered interest holder is to be made within the period after the termination that is the same period as that required for a payment under section 180 (2) to a former occupant following the sale of premises.	13 14 15 16 17
(3)	If a payment that is required to be made under this Division is not paid within the time required by this section, the operator or former occupant may apply to the Tribunal for (and the Tribunal may make) an order requiring the amount to be paid within a specified time.	18 19 20 21 22
(4)	If the operator of a retirement village and a former occupant are unable to agree on an amount required to be paid under this Division, the operator or former occupant may apply to the Tribunal for (and the Tribunal may make) an order with respect to:	23 24 25 26 27
(a)	the amount of fair market rent (if any) required to be paid under section 44B (1) (a), or	28 29
(b)	what damage (if any) to the residential premises is in excess of fair wear and tear, and the amount (if any) required to be paid under section 44B (1) (b), or	30 31 32
(c)	the reasonable administration fee (if any) required to be paid under section 44B (1) (c).	33 34
(5)	The Tribunal may consider, but is not bound by, the rent (if any) specified in the village contract when determining the fair market rent for the purposes of making an order under subsection (4) (a).	35 36 37

(6)	The Tribunal may consider, but is not bound by, the administration fee (if any) specified in the village contract when determining a reasonable administration fee for the purposes of making an order under subsection (4) (c).	1 2 3 4
44E	Former occupant not required to pay certain amounts	5
	If a village contract is terminated in accordance with this Division, the former occupant is not required to pay any of the following amounts that would, but for this section, be payable by the former occupant under that contract:	6 7 8 9
	(a) any recurrent charges,	10
	(b) any departure fee,	11
	(c) the cost of refurbishment within the meaning of Division 4 of Part 10,	12 13
	(d) the costs of sale or letting of the premises,	14
	(e) any amount specified in the village contract as being payable for terminating the contract during the settling-in period,	15 16 17
	(f) any amount prescribed by the regulations for the purposes of this section.	18 19
[39]	Section 51 Amendment of village rules	20
	Insert after section 51 (3):	21
	(3A) The operator of a retirement village is to notify the residents of the village of the outcome of any vote taken to obtain the consent of the residents of the retirement village under this section within 7 days after the operator of the retirement village becomes aware of the outcome of the vote.	22 23 24 25 26
[40]	Section 51 (4) (b)	27
	Omit “statement of approved expenditure”.	28
	Insert instead “approved annual budget (if any)”.	29
[41]	Section 53 Operator’s concern that amendment will impose additional cost	30 31
	Omit “statement of approved expenditure” from section 53 (1) (including the note), (3) and (4), wherever occurring.	32 33
	Insert instead “approved annual budget”.	34

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[42] Section 53 (1), note	1
Omit “annual statements of proposed and approved expenditure”.	2
Insert instead “proposed and approved annual budgets”.	3
[43] Section 53 (6)	4
Insert after section 53 (5):	5
(6) This section does not apply in respect of a retirement village where the residents have consented under section 112 (7) to not being supplied with a proposed annual budget.	6 7 8
[44] Section 58A	9
Insert after section 58:	10
58A Operator to provide safe premises	11
(1) The operator of a retirement village must ensure that the village generally is reasonably safe.	12 13
(2) In particular, the operator must:	14
(a) prepare written safety and emergency procedures, and	15
(b) take reasonable steps to ensure that all residents and staff are familiar with such procedures, and	16 17
(c) undertake a safety inspection at least once each year, and make a safety inspection report on the findings of any such inspection, and	18 19 20
(d) make a copy of the inspection report available to the Residents Committee for the retirement village (if any) and place a copy of the report on the notice board in a communal area within the retirement village, and	21 22 23 24
(e) take such other action as the regulations may require to ensure that the village generally is reasonably safe.	25 26
(3) Without limiting subsection (2) (e), the regulations may make provision for, or with respect to, the following:	27 28
(a) the form of the written safety and emergency procedures,	29
(b) the conduct of safety inspections required under subsection (2) (c),	30 31
(c) the manner and form of such a safety inspection report,	32
(d) the period that the safety inspection report is to remain on the notice board as referred to in subsection (2) (d).	33 34

(4)	Any resident who believes in good faith that the retirement village is not reasonably safe may apply to the Tribunal for (and the Tribunal may make) any of the following:	1
(a)	an order directing the operator to comply with subsection (1) or (2),	2
(b)	any other order referred to in section 128 (1).	3
[45]	Section 59 Operator to provide village emergency system on request	4
	Omit “statement of proposed expenditure” from section 59 (2).	5
	Insert instead “proposed annual budget”.	6
[46]	Section 59A	7
	Insert after section 59:	8
59A	Operator to provide emergency and home care service vehicles access to retirement village	9
	The operator of a retirement village must take all reasonable steps to ensure that:	10
(a)	emergency and home care service personnel have unimpeded vehicular access to the residential premises in the village at all times, both by day and by night, and	11
(b)	the residents of the village, and local emergency and home care service agencies, are consulted and kept informed about any arrangements made to secure that access.	12
	Maximum penalty: 20 penalty units.	13
[47]	Section 60 Variation in services or facilities provided at village	14
	Omit “statement of approved expenditure” from section 60 (7), wherever occurring.	15
	Insert instead “approved annual budget”.	16
[48]	Section 65 Operator not to demand appointment as proxy	17
	Omit the section.	18
[49]	Section 67 Restriction of operator’s access to residential premises	19
	Insert at the end of section 67 (1):	20
	Maximum penalty: 20 penalty units.	21

[50] Section 67 (2) (e) (i)	1
Omit the subparagraph. Insert instead:	2
(i) the resident is not a registered interest holder with respect to the premises, and	3 4
[51] Section 70 Residents Committees and organisations	5
Omit “statement of approved expenditure” from section 70 (7).	6
Insert instead “approved annual budget”.	7
[52] Section 70A	8
Insert after section 70:	9
70A Membership of Residents Committee	10
(1) A person must not hold the same office, or hold an office performing the same (or substantially the same) functions, on the Residents Committee of a retirement village for more than 3 consecutive years, except as provided by the regulations.	11 12 13 14
(2) The election of a person to an office in contravention of subsection (1) is void.	15 16
(3) Any act, matter or thing done by a Residents Committee, in good faith, even though at the time that the act, matter or thing was done the election of a member of the Committee was void under subsection (2), is valid as if the election of the member was not void under that subsection.	17 18 19 20 21
[53] Sections 72A and 72B	22
Insert after section 72:	23
72A Annual management meeting to be held by operator	24
(1) The operator of a retirement village must hold, in each financial year of the retirement village, an annual management meeting of the residents of the retirement village in accordance with this section. Maximum penalty: 20 penalty units.	25 26 27 28 29
(2) The annual management meeting must be held not more than 4 months after the end of each financial year.	30 31
(3) The annual management meeting must be chaired by:	32
(a) the operator of the retirement village, or	33

(b)	a representative of the operator of the retirement village who is authorised to answer questions put at the meeting in accordance with this section.	1 2 3
(4)	The operator must notify the residents of the retirement village at least 14 days before the annual management meeting of:	4 5
(a)	the time and place of the meeting, and	6
(b)	the agenda for the meeting.	7
	Maximum penalty: 20 penalty units.	8
(5)	The notice referred to in subsection (4) must also include an invitation to the residents of the retirement village to submit:	9 10
(a)	written questions to the operator at least 7 days before the meeting, and	11 12
(b)	other questions at the meeting.	13
(6)	The regulations may prescribe matters that must be included in the agenda for an annual management meeting.	14 15
(7)	If the operator of the retirement village is required, by section 75 (2B) to be absent from any part of the meeting, the meeting is to be chaired by a resident agreed upon by the residents at the meeting for that purpose.	16 17 18 19
(8)	Nothing in this section prevents the operator of a retirement village from calling a meeting of the residents of the retirement village at any other time.	20 21 22
(9)	For the avoidance of doubt, the annual management meeting is a meeting of the residents of a retirement village and, accordingly, the provisions of this Act applying to meetings of the residents also apply to an annual management meeting.	23 24 25 26
72B	Questions to be answered at annual management meeting	27
(1)	The chair of the annual management meeting must ensure that the residents of a retirement village have a reasonable opportunity to put questions to the operator of the retirement village or a representative of the operator at the meeting.	28 29 30 31
(2)	The operator of a retirement village or representative of the operator must answer questions submitted in writing (under section 72A (5) (a)) or put to the operator or representative at the meeting:	32 33 34 35
(a)	if possible—in reasonable detail at the relevant meeting, and	36 37

(b)	to the extent that compliance with paragraph (a) is not possible—in reasonable detail, as soon as is practicable after the meeting, in a notice in writing given to all of the residents of the retirement village.	1 2 3 4
(3)	Nothing in this section requires the operator or a person representing the operator to:	5 6
(a)	answer an unreasonable question, or	7
(b)	answer a question relating to a matter that is prescribed by the regulations as an excluded matter for the purposes of this section.	8 9 10
[54]	Section 73	11
	Omit the section. Insert instead:	12
	73 Villages without Residents Committee	13
	If there is no Residents Committee elected for a retirement village, the operator of the village must call a meeting of the residents (to be held in or near the village) if requested to do so by:	14 15 16 17
(a)	in the case of a retirement village with fewer than 10 occupied residential premises—residents from a majority of the occupied residential premises, or	18 19 20
(b)	in the case of a retirement village with 10 or more occupied residential premises—the greater of:	21 22
(i)	5 residents of the retirement village, or	23
(ii)	10% of the residents of the retirement village.	24
[55]	Section 75 Attendance at meetings of residents	25
	Insert after section 75 (2):	26
(2A)	Subsection (2) does not apply to the operator of a retirement village, or a person representing the operator of a retirement village, during the annual management meeting of the retirement village.	27 28 29 30
(2B)	The operator or operator’s representative must not be present at a meeting of residents during the casting of any vote that is to be taken by the residents at the meeting, but may return to the meeting after the vote has been cast.	31 32 33 34

[56] Section 77 Proxies	1
Omit section 77 (1). Insert instead:	2
(1) A resident of a retirement village may, from time to time, appoint one of the following persons as the proxy of the resident:	3
(a) a relative of the resident,	4
(b) the guardian of the resident,	5
(c) a member of the Residents Committee or other resident of the retirement village,	6
(d) a person prescribed by the regulations.	7
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[57] Section 77 (4) and (4A)	10
Omit section 77 (4). Insert instead:	11
(4) An appointment of a person, other than a person referred to in subsection (1), as a proxy is of no effect.	12
	13
(4A) An appointment of the operator of a retirement village or close associate of the operator of a retirement village as a proxy is of no effect.	14
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[58] Section 77 (6)	17
Insert after section 77 (5):	18
(6) This section has effect despite any terms of the instrument appointing a person as the proxy of the resident.	19
	20
[59] Section 78 Certain limitations on proxies	21
Omit section 78 (1). Insert instead:	22
(1) If a person holds appointments as the proxy of 2 residents (or such other number of residents as may be prescribed by the regulations) in any one retirement village at any one time, any appointment of the person as proxy of another resident of the village, while the person continues to hold the other appointments, is void.	23
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[60] Section 81 Right to become resident	29
Omit “owns (or owned)” from section 81 (2) (a).	30
Insert instead “is, or was, a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.	31
	32

[61] Section 84 Application for order appointing administrator	1
Omit section 84 (2). Insert instead:	2
(2) The Director-General may apply for an order under this section only if:	3
(a) the Director-General is of the opinion that the well-being or financial security of the residents of the retirement village concerned has been, or is likely to be, seriously affected by the continued operation of the retirement village by the operator, or	4
(b) the Director-General is of the opinion that the operator of the retirement village concerned is wilfully and repeatedly acting in contravention of an order made by the Tribunal or a court in relation to the retirement village, or	5
(c) the retirement village concerned is the subject of an existing order under this section.	6
[62] Sections 87A and 87B	7
Insert after section 87:	8
87A Expenses of administration	9
(1) The expenses incurred by an administrator appointed under this Division in exercising the functions of the operator of a retirement village are payable from recurrent charges and such other funds as would be available to the operator for such expenses if the administrator had not been appointed.	10
(2) Neither the Crown, the Minister nor the Director-General is liable for:	11
(a) any expenses incurred by an administrator appointed under this Division to exercise the functions of the operator of a retirement village, or	12
(b) any liability of an operator of a retirement village in respect of which an administrator is appointed.	13
87B Administrator may vary village contract	14
(1) Despite any other provision of this Act, an administrator appointed under this Division may, with the consent of the Director-General:	15
(a) amend or revoke an approved annual budget, or	16
(b) vary the recurrent charges payable by the residents of the retirement village, or	17

(c)	vary the services offered by the retirement village.	1
(2)	The Director-General may give consent under subsection (1) only if, in the opinion of the Director-General, the proposed revocation, variation or amendment is done for the purpose of:	2 3 4
(a)	assisting in the process of finding a new operator for the retirement village, or	5 6
(b)	ensuring the financial viability of the retirement village.	7
(3)	Nothing done by the administrator in accordance with this section is to be regarded as a breach of contract or otherwise as a civil wrong.	8 9 10
(4)	No compensation is payable to any person because of the operation of this section or anything done under this section.	11 12
[63] Part 7, Division 2		13
	Omit Divisions 2 and 3. Insert instead:	14
Division 2	Capital maintenance and replacement	15
92	Interpretation	16
(1)	In this Division, an item of capital for which an operator of a retirement village is responsible means any item of capital within the retirement village other than an item of capital:	17 18 19
(a)	that is owned by a resident of the retirement village, or	20
(b)	that is association property under a community land scheme or common property under a strata scheme, or	21 22
(c)	that is of a class prescribed by the regulations for the purposes of this section.	23 24
(2)	In this Division, <i>capital maintenance or replacement</i> means the maintenance or replacement of items of capital for which the operator of a retirement village is responsible.	25 26 27
(3)	For the purposes of this Division, maintenance or replacement of an item of capital is urgent if it is for the purpose of rectifying any of the following:	28 29 30
(a)	a burst water service,	31
(b)	a blocked or broken lavatory service,	32
(c)	a serious roof leak,	33
(d)	a gas leak,	34
(e)	a dangerous electrical fault,	35

(f)	flooding or serious flood damage,	1
(g)	serious storm or fire damage,	2
(h)	a failure or breakdown of the gas, electricity or water supply to residential premises within the retirement village,	3 4 5
(i)	a failure or breakdown of any essential service on the residential premises for hot water, cooking, heating or laundering,	6 7 8
(j)	any fault or damage that causes the retirement village to be unsafe or insecure,	9 10
(k)	any other matter prescribed by the regulations.	11
93	Obligations of operator with respect to certain capital maintenance or replacement	12 13
(1)	The operator of a retirement village is to maintain each item of capital for which the operator is responsible in a reasonable condition having regard to the following:	14 15 16
(a)	the age of the item,	17
(b)	the prospective life of the item,	18
(c)	the money paid to the operator by the residents under a village contract (including ingoing contributions).	19 20
(2)	If it is not practical to maintain an item of capital in accordance with this section, the operator may replace the item.	21 22
(3)	The operator of a retirement village must carry out the maintenance of, or replace, an item of capital for which the operator is responsible within a reasonable time after becoming aware of the need for the maintenance or replacement of the item.	23 24 25 26
(4)	Nothing in this section requires the operator of a retirement village to carry out maintenance of, or replace, any item of capital unless the maintenance or replacement is in accordance with a proposal that has been consented to under section 99 or is urgent.	27 28 29 30
94	Obligations of residents with respect to capital maintenance or replacement	31 32
(1)	A resident of a retirement village is to notify the operator of the retirement village of the need for maintenance to be carried out on, or the replacement of, an item of capital for which the operator is responsible and that is located within the resident's residential premises as soon as the resident becomes aware of the need for the maintenance or replacement of the item.	33 34 35 36 37 38

(2)	A resident of a retirement village must reimburse the operator of the village in respect of any damage (other than fair wear and tear) caused by the resident to an item of capital for which the operator is responsible.	1 2 3 4
(3)	A resident of a retirement village must not hinder or obstruct the operator of the retirement village or a person authorised by the operator, from carrying out the maintenance of or replacing any item of capital for which the operator is responsible.	5 6 7 8
	Note. Section 67 sets out the circumstances in which an operator of a retirement village or a person authorised by the operator may enter residential premises in respect of which a person has a residence right.	9 10 11
95	Resident may carry out urgent capital maintenance or replacement	12
(1)	A resident of a retirement village may carry out maintenance of an item of capital for which the operator of the retirement village is responsible, or replace any such item, if:	13 14 15
(a)	the maintenance or replacement of the item is urgent, and	16
(b)	the resident first gives the operator a reasonable opportunity to carry out the maintenance or replace the item.	17 18 19
(2)	Except as provided by subsection (3), a resident of a retirement village who carries out the maintenance of or replaces an item of capital in accordance with this section is entitled to be reimbursed by the operator of the retirement village for the reasonable costs incurred by the resident in doing so.	20 21 22 23 24
(3)	A resident of a retirement village who is a registered interest holder and carries out the maintenance of or replaces an item of capital located within the residential premises of the resident in accordance with this section is entitled to be reimbursed by the operator of the retirement village for the reasonable costs incurred by the resident for which the operator is liable under section 98.	25 26 27 28 29 30 31
(4)	If the operator of a retirement village fails or refuses to reimburse a resident for costs in accordance with this section, the resident may apply to the Tribunal for (and the Tribunal may make) an order requiring the operator to reimburse the resident for those costs.	32 33 34 35 36
96	Tribunal may make orders for capital maintenance and replacement	37 38
(1)	If a resident of a retirement village is of the opinion that the operator of the retirement village is not maintaining or replacing items of capital for which the operator is responsible when	39 40 41

necessary, the resident may apply to the Tribunal for (and the Tribunal may make) an order directing the operator:	1
(a) to carry out specified maintenance of an item of capital within the time specified in the order, or	2
(b) to replace a specified item of capital within the time specified in the order.	3
(2) If the operator of a retirement village is of the opinion that a resident of the retirement village has caused damage to an item of capital for which the operator is responsible, the operator may apply to the Tribunal for (and the Tribunal may make) an order directing the resident to reimburse the operator for the cost of the maintenance or replacement of the item of capital as a result of the damage.	4
(3) Subsection (2) does not apply to damage caused by fair wear and tear.	5
97 Funding of certain capital maintenance or replacement	6
(1) The operator of a retirement village may, in accordance with a proposal that is consented to under section 99, fund up to 50% (or such other proportion as may be prescribed by the regulations) of the cost of capital maintenance or replacement from the following sources:	7
(a) the capital works fund for the retirement village (if any),	8
(b) recurrent charges.	9
(2) Despite subsection (1), the operator of a retirement village may fund the whole cost of capital maintenance or replacement from the capital works fund for the retirement village (if any) and recurrent charges if the operator does not receive:	10
(a) ingoing contributions, or	11
(b) departure fees, or	12
(c) any other source of income (other than recurrent charges) from the residents of the retirement village.	13
(3) This section does not authorise the funding of any of the following from the capital works fund or recurrent charges:	14
(a) the maintenance or replacement of an item of capital to which section 98 applies,	15
(b) the construction of a new building or a new stage of the retirement village,	16

(c)	any work arising from the breach of a statutory warranty (within the meaning of the <i>Home Building Act 1989</i>) in respect of which proceedings may be commenced under Part 2C of that Act,	1 2 3 4
(d)	the depreciation of items of capital,	5
(e)	the refurbishment of vacant residential premises within the retirement village,	6 7
(f)	maintenance or replacement of roads or footpaths within a retirement village,	8 9
(g)	such other things as may be prescribed by the regulations.	10
(4)	For the avoidance of doubt, capital maintenance or replacement is not carried out in accordance with a proposal consented to under section 99 if:	11 12 13
(a)	the proportion of the actual cost of carrying out the maintenance or replacement of an item of capital funded from the sources referred to in subsection (1) exceeds the proportion specified in the proposal, or	14 15 16 17
(b)	the amount paid for the maintenance or replacement of an item of capital from the sources referred to in subsection (1), exceeds the amount to be paid from those sources under the proposal.	18 19 20 21
98	Funding of capital maintenance or replacement of items within registered interest holder's premises	22 23
(1)	This section applies to an item of capital for which the operator of a retirement village is responsible and that is located within the residential premises of a resident who is a registered interest holder.	24 25 26 27
(2)	The operator of a retirement village and a resident who is a registered interest holder are to share the cost of the maintenance or replacement of an item of capital to which this section applies in the same proportion as they are to share any capital gain under the village contract.	28 29 30 31 32
99	Capital maintenance and replacement to be consented to by residents	33 34
(1)	The operator of a retirement village must, in each financial year, supply each resident of the village with a proposal for the capital maintenance and replacement to be carried out in the next financial year:	35 36 37 38
(a)	at the same time as the operator must supply each resident of the village with a proposed annual budget, or	39 40

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- (b) if the operator is not required to supply a proposed annual budget—at least 30 days before the meeting at which the proposal will be submitted to the residents. 1
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- (2) The proposal must: 4
- (a) list each item of capital maintenance and replacement that is proposed to be carried out, and 5
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- (b) specify in respect of each item the expected cost, including the proportion of the expected cost that is intended to be funded from the capital works fund or recurrent charges, and 7
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- (c) include any quotes that the operator has obtained with respect to the proposed capital maintenance and replacement, and 11
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- (d) include provision for urgent capital maintenance and replacement, including the proportion of the cost that is intended to be funded from the capital works fund or recurrent charges. 14
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- (3) The proposal must be submitted to the residents of the retirement village at a meeting of the residents, whether at the annual management meeting or otherwise. 18
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- (4) A proposal may be varied during the course of the meeting prior to the residents granting consent to the proposal. 21
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- (5) If the residents of a retirement village refuse to consent to a proposal submitted under this section, the operator of the retirement village may apply to the Tribunal for (and the Tribunal may make) an order with respect to the capital maintenance and replacement that is to be carried out. 23
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- (6) An order made by the Tribunal under this section is taken to be a proposal to which the residents of the retirement village have consented. 28
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- (7) In making an order under this section, the Tribunal may have regard to the following: 31
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- (a) whether the proposed capital maintenance and replacement is necessary or appropriate, 33
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- (b) whether the expected total cost of the capital maintenance and replacement is fair and reasonable, 35
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- (c) whether the proportion of the cost that is intended to be funded from the capital works fund or recurrent charges is fair and reasonable, 37
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- (d) such other matters as the Tribunal considers appropriate. 40

(8)	This section applies to the operator of a retirement village only if the operator proposes to use any recurrent charges or any part of the capital works fund for the retirement village (if any) to fund capital maintenance and replacement.	1 2 3 4
(9)	If the residents of a retirement village consent to a proposal submitted under this section, the operator must, on the request of a resident of the retirement village, provide the resident with a copy of the invoice for any work carried out in accordance with the proposal.	5 6 7 8 9
100	Capital works fund	10
(1)	If an approved annual budget provides for the setting aside of any part of the recurrent charges for the purpose of funding capital maintenance and replacement in a period that extends beyond the end of the financial year to which the budget relates, the operator of the retirement village must establish and maintain a capital works fund.	11 12 13 14 15 16
(2)	However, this section does not require that a separate fund be established in respect of each financial year.	17 18
(3)	A capital works fund must be held in an account with an authorised deposit-taking institution or as otherwise prescribed by the regulations.	19 20 21
(4)	The operator of a retirement village is to pay into the capital works fund:	22 23
(a)	such portion of the recurrent charges as may be required under an approved annual budget, and	24 25
(b)	any interest received from the investment of the whole, or any part of, the capital works fund.	26 27
(5)	The operator of a retirement village must not use money from the capital works fund except:	28 29
(a)	to meet the cost of capital maintenance and replacement in accordance with a proposal under section 99, or	30 31
(b)	if the residents of the village consent to a proposal that the operator of the village distribute the whole, or any part, of the capital works fund that is not required to fund capital maintenance and replacement to the residents of the retirement village in equal shares—in accordance with that proposal, or	32 33 34 35 36 37
(c)	as prescribed by the regulations.	38
	Maximum penalty: 100 penalty units.	39

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(6)	A proposal under subsection (5) (b) may be made by the operator of the retirement village or the Residents Committee (if any).	1 2
(7)	If the residents consent under subsection (5) (b) to a proposal made by the Residents Committee, the operator may apply to the Tribunal for (and the Tribunal may make) an order that:	3 4 5
	(a) the distribution is not to be made, or	6
	(b) approves or varies the proposed distribution.	7
(8)	In making an order under subsection (7) the Tribunal may consider the following:	8 9
	(a) the proportion of the capital works fund that is proposed to be distributed,	10 11
	(b) whether the proportion of the capital works fund that is proposed to be distributed is reasonably likely to be required to fund capital maintenance and replacement,	12 13 14
	(c) any other matter that the Tribunal considers appropriate.	15
101	Retirement village to be insured	16
(1)	The operator of a retirement village must cause the retirement village to be insured (and remain insured) in accordance with this section. Maximum penalty: 100 penalty units.	17 18 19 20
(2)	The village must have insurance that:	21
	(a) covers the following:	22
	(i) damage,	23
	(ii) costs incidental to the reinstatement or replacement of insured buildings,	24 25
	(iii) public liability, and	26
	(b) provides for the reinstatement of property to its condition when new.	27 28
(3)	The regulations may prescribe a minimum amount of public liability insurance that is required under this section.	29 30
(4)	Insurance for damage and costs incidental to the reinstatement or replacement of insured buildings must cover the full replacement value of the retirement village.	31 32 33
(5)	Nothing in this section requires the operator of a retirement village to insure an item of capital other than an item of capital for which the operator is responsible.	34 35 36

(6)	The operator of a retirement village may fund insurance required under this section from recurrent charges if the cost of any such insurance is included in the approved annual budget.	1 2 3
102	Operator not to sell items of capital to residents	4
(1)	The operator of a retirement village must not sell any item of capital for which the operator is responsible, or pass responsibility for any such item of capital (whether directly or indirectly), to a resident or prospective resident of the retirement village under a village contract or otherwise except as provided by the regulations. Maximum penalty: 20 penalty units.	5 6 7 8 9 10 11
(2)	Any contract, agreement or scheme is unenforceable to the extent that it purports to sell or pass responsibility for the maintenance or replacement of items of capital in contravention of subsection (1).	12 13 14 15
(3)	This section does not apply to the sale of residential premises within a retirement village, including fixtures in any such premises.	16 17 18
[64]	Section 104 Variation of recurrent charges Omit “at specified intervals (or on specified dates)” from section 104 (1) (b).	19 20
[65]	Section 104 (2) Omit the subsection. Insert instead:	21 22
(2)	If a village contract provides for any recurrent charges payable under it to be varied otherwise than according to a fixed formula, the recurrent charges must not be varied more than once in any 12 month period. Any second or subsequent purported variation within that 12 month period is of no effect.	23 24 25 26 27
[66]	Section 105A Insert after section 105:	28 29
105A	Recurrent charges varied otherwise than by a fixed formula—not exceeding variation in CPI	30 31
(1)	This section applies to the variation of recurrent charges payable under a village contract if:	32 33
(a)	the contract provides that recurrent charges are to be varied otherwise than in accordance with a fixed formula, and	34 35

(b)	the variation does not exceed the variation that would result from the recurrent charges being increased in proportion to the variation in the Consumer Price Index (since the recurrent charges were last varied) and rounded to the nearest whole dollar.	1 2 3 4 5
(2)	In relation to a proposed variation in recurrent charges, the variation in the Consumer Price Index since the recurrent charges were last varied is taken to be the difference between:	6 7 8
(a)	the Consumer Price Index published most recently before those charges were last varied, and	9 10
(b)	the Consumer Price Index published most recently before the written notice of the proposed variation is given.	11 12
(3)	The operator of a retirement village must give at least 14 days' written notice of any proposed variation to the recurrent charges.	13 14
(4)	The notice must specify:	15
(a)	the amount of the new recurrent charges, and	16
(b)	the date from which the new recurrent charges are payable, and	17 18
(c)	such other information as may be prescribed by the regulations.	19 20
(5)	A resident of a retirement village is not required to pay any increase in his or her recurrent charges to which this section applies until notice of the increase is given as required by this section.	21 22 23 24
(6)	A notice given under this section may be cancelled by a later notice or a later notice may provide for a lesser increase than the increase specified in the earlier notice.	25 26 27
[67]	Section 106 Recurrent charges varied otherwise than by fixed formula—exceeding variation in CPI	28 29
	Omit section 106 (1) (except the note to that subsection). Insert instead:	30
(1)	This section applies to a variation of recurrent charges payable under a village contract if:	31 32
(a)	the contract provides that recurrent charges are to be varied otherwise than in accordance with a fixed formula, and	33 34
(b)	the variation exceeds the variation that would result from the recurrent charges being increased in proportion to the variation in the Consumer Price Index (since the recurrent charges were last varied) and rounded to the nearest whole dollar.	35 36 37 38 39

(1A)	In relation to a proposed variation in recurrent charges, the variation in the Consumer Price Index since the recurrent charges were last varied is taken to be the difference between:	1 2 3
(a)	the Consumer Price Index published most recently before those charges were last varied, and	4 5
(b)	the Consumer Price Index published most recently before the written notice of the proposed variation is given.	6 7
(1B)	The operator of a retirement village must give the resident concerned notice in accordance with this section at least 60 days before any proposed variation.	8 9 10
[68]	Section 106 (2) (c) and (c1)	11
	Omit section 106 (2) (c). Insert instead:	12
(c)	contain a brief explanation of the reasons for the proposed variation exceeding the variation in the Consumer Price Index or the prescribed rate or amount (if any), and	13 14 15
(c1)	include details of any action taken to minimise the proposed variation in recurrent charges, and	16 17
[69]	Section 106 (3)	18
	Omit “(if any)”.	19
[70]	Section 106 (7)	20
	Omit the subsection.	21
[71]	Section 106A	22
	Insert after section 106:	23
106A	Recurrent charges varied otherwise than by fixed formula to be increased in accordance with Act	24 25
	The operator of a retirement village must not increase (or attempt to increase) recurrent charges that are to be varied otherwise than according to a fixed formula if the increase would be:	26 27 28
(a)	beyond any upper limit specified in the relevant village contract, or	29 30
(b)	otherwise than in accordance with section 105A or 106.	31
	Maximum penalty: 50 penalty units.	32

[72] Section 107 Residents' consent to variation	1
Insert after section 107 (4):	2
(5) If the operator of a retirement village fails to provide information requested under subsection (4) within the time prescribed by the regulations, the Residents Committee (or a resident of the retirement village) may apply to the Tribunal for (and the Tribunal may make) an order requiring the operator to provide the residents with the information specified in the order.	3 4 5 6 7 8
(6) The regulations may prescribe:	9
(a) the period within which information requested under subsection (4) must be provided, and	10 11
(b) information that the operator of a retirement village is not required to provide despite a request under subsection (4).	12 13
[73] Section 108 Determination by Tribunal	14
Omit section 108 (1). Insert instead:	15
(1) An operator of a retirement village may apply to the Tribunal for (and the Tribunal may make) an order in respect of a proposed variation of recurrent charges if:	16 17 18
(a) the consent of the residents of the retirement village is required before the proposed variation can take effect, and	19 20
(b) the residents do not consent to the proposed variation under section 107.	21 22
[74] Section 108 (4) (b)	23
Omit "statement of proposed expenditure or approved expenditure".	24
Insert instead "proposed annual budget or approved annual budget".	25
[75] Section 111 Abatement of recurrent charges	26
Omit "owns" from the note to section 111 (1).	27
Insert instead "is a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of".	28 29
[76] Part 7, Division 5, heading	30
Omit the heading. Insert instead:	31
Division 5 Proposed and approved annual budgets	32

[77] Section 112 Proposed annual budget	1
Insert “, or such other time as may be prescribed by the regulations” after	2
“retirement village” in section 112 (1).	3
[78] Section 112 (1), (3) (a) and (6)	4
Omit “statement of proposed expenditure” wherever occurring.	5
Insert instead “proposed annual budget”.	6
[79] Section 112 (2), (3) (c), (4) and (5)	7
Omit “statement” wherever occurring. Insert instead “budget”.	8
[80] Section 112 (6)	9
Omit “amended statement”. Insert instead “amended budget”.	10
[81] Section 112 (7)–(11)	11
Insert after section 112 (6):	12
(7) The residents of a retirement village may, by special resolution,	13
consent to not being supplied with a proposed annual budget.	14
(8) If the residents of a retirement village consent to not being	15
supplied with a proposed annual budget under this section,	16
subsections (1)–(6) and sections 113–117 do not apply in respect	17
of the retirement village while the consent remains in force.	18
(9) Consent given under subsection (7) remains in force until such	19
time as it is revoked by a further special resolution of the	20
residents.	21
(10) The operator is required to notify the residents of the name of the	22
auditor of the accounts at the annual management meeting if:	23
(a) consent given under subsection (7) is in force, and	24
(b) the operator of the village is required to have the accounts	25
of the village audited under section 118.	26
(11) The operator of a retirement village does not commit an offence	27
under subsection (1) if consent given under subsection (7) is in	28
force at the time that the operator is required to supply the	29
proposed annual budget.	30
[82] Section 113 Order for proposed annual budget	31
Omit “statement of proposed expenditure”.	32
Insert instead “proposed annual budget”.	33

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[83] Section 113	1
Omit “the statement”. Insert instead “the budget”.	2
[84] Section 114 Residents’ consent to expenditure	3
Omit “statement of proposed expenditure” from section 114 (1) and (4), wherever occurring.	4 5
Insert instead “proposed annual budget”.	6
[85] Section 114 (2) and (4)–(6)	7
Omit “the statement” wherever occurring. Insert instead “the budget”.	8
[86] Section 114 (4)	9
Omit “amended statement”. Insert instead “amended budget”.	10
[87] Section 114 (8)	11
Insert after section 114 (7):	12
(8) Subsections (1)–(6) do not apply, and the residents are taken to have consented to the proposed annual budget, if the recurrent charges payable by the residents:	13 14 15
(a) have not been varied, or	16
(b) have been varied in accordance with section 104 (1) (a) or 105A.	17 18
[88] Section 115 Determination of expenditure by Tribunal	19
Omit “statement of proposed expenditure” from section 115 (1)–(3), wherever occurring.	20 21
Insert instead “proposed annual budget”.	22
[89] Section 115 (3) (b)	23
Omit “a statement of approved expenditure”.	24
Insert instead “an approved annual budget”.	25
[90] Section 115A	26
Insert after section 115:	27
115A Proposed annual budget may provide for contingencies	28
The regulations may limit the amount that a proposed annual budget may allocate for contingencies.	29 30

[91] Section 116 Expenditure to be in accordance with approved annual budget	1
	2
Omit section 116 (1). Insert instead:	3
(1) A proposed annual budget is taken to be an approved annual budget if:	4
	5
(a) the residents of a retirement village consent to expenditure in accordance with the proposed annual budget, or	6
	7
(b) the Tribunal orders that the expenditure of the operator is to be as itemised in the proposed annual budget.	8
	9
[92] Section 116 (2) and (4) (b)	10
Omit “statement of proposed expenditure” wherever occurring.	11
Insert instead “proposed annual budget”.	12
[93] Section 116 (2) and (3)	13
Omit “statement of approved expenditure” wherever occurring.	14
Insert instead “approved annual budget”.	15
[94] Section 116 (2)	16
Omit “that statement”. Insert instead “that budget”.	17
[95] Section 116 (3A)	18
Insert after section 116 (3):	19
(3A) An operator does not contravene subsection (3) if the expenditure that was otherwise than in accordance with the budget:	20
	21
(a) was a variation in expenditure between items in the approved annual budget, and	22
	23
(b) does not reduce the level of services provided by the retirement village, and	24
	25
(c) does not cause the total expenditure provided for by the approved annual budget to be exceeded.	26
	27
[96] Section 117 Amendment of approved annual budget	28
Omit section 117 (1). Insert instead:	29
(1) The operator of a retirement village may seek the consent of the residents to amend an approved annual budget except if:	30
	31
(a) the budget is taken to be an approved annual budget because of section 116 (1) (b), or	32
	33

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	(b) the budget is a proposed annual budget modified in accordance with an order of the Tribunal as referred to in section 116 (2).	1 2 3
[97]	Section 117 (2) and (3)	4
	Omit “amended statement of approved expenditure” wherever occurring.	5
	Insert instead “approved annual budget as amended”.	6
[98]	Section 117 (4) (b)	7
	Omit “statement of proposed expenditure”.	8
	Insert instead “proposed annual budget”.	9
[99]	Section 118 Auditing of accounts	10
	Omit “statement of proposed expenditure” from section 118 (2) (a).	11
	Insert instead “proposed annual budget (if any)”.	12
[100]	Section 118 (2) (c)	13
	Omit the paragraph. Insert instead:	14
	(c) the residents’ consent to that appointment is required in the same way that it is required for the expenditure of the fees concerned, but only if the auditor to be appointed did not audit the accounts for the previous financial year.	15 16 17 18
[101]	Section 118 (3) and (4)	19
	Omit the subsections. Insert instead:	20
	(3) Within 28 days after the end of the quarter to which the quarterly accounts relate, or such other period as may be prescribed by the regulations, the operator of a retirement village must provide the Residents Committee (if any) with a copy of the quarterly accounts of the income and expenditure of the village. Maximum penalty: 20 penalty units.	21 22 23 24 25 26
	(4) If, more than 28 days after the end of the quarter to which the quarterly accounts relate, a resident of the retirement village requests that the operator of the retirement village provide a copy of the quarterly accounts of the income and expenditure for the retirement village, the operator must provide a copy of the accounts to the resident within 7 days after receiving the request.	27 28 29 30 31 32

[102]	Section 119 Copies of annual accounts to be provided to residents	1
	Insert “, or such other period as may be prescribed by the regulations,” after	2
	“4 months” in section 119 (1).	3
[103]	Section 119 (2) (a) (i), (ii) and (iia)	4
	Omit section 119 (2) (a) (i) and (ii). Insert instead:	5
	(i) details of the income and expenditure of the village	6
	during the financial year, including income and	7
	expenditure of the capital works fund (if any),	8
	(ii) details of the balance of the capital works fund (if	9
	any),	10
	(iia) if capital maintenance or replacement has been	11
	carried out in accordance with a proposal under	12
	section 99—details of the expenditure on each item	13
	in that proposal, including the proportion of that	14
	expenditure that was funded from recurrent charges	15
	or the capital works fund (if any),	16
[104]	Section 119 (4)	17
	Omit “statement of proposed expenditure”.	18
	Insert instead “proposed annual budget”.	19
[105]	Section 119 (7)	20
	Omit the subsection. Insert instead:	21
	(7) If there is no Residents Committee for the village concerned, a	22
	copy of the accounts is to be:	23
	(a) displayed on the common property of the village in	24
	accordance with the regulations, and	25
	(b) provided to any individual resident of the village who	26
	requests a copy.	27
[106]	Sections 119A and 119B	28
	Insert after section 119:	29
	119A Accounts not required to be audited in certain cases	30
	(1) Despite section 118 (1), the operator of a retirement village is not	31
	required to have the accounts of the retirement village audited if:	32
	(a) the total of the recurrent charges collected in respect of the	33
	village in the financial year to which the accounts relate	34

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does not exceed \$50,000 or such other amount as may be prescribed by the regulations, and	1
(b) the residents have consented to the operator not having the accounts of the village audited and that consent is in force.	2
(2) If the operator of a retirement village is not required to have the accounts of the village audited:	3
(a) the provisions of section 119 (section 119 (3) excepted) apply to the accounts of the retirement village in the same way as they apply to audited accounts, and	4
(b) the operator of the village must include a statement as to whether or not the operator will be able to meet the liabilities relating to the village as and when they fall due during the financial year immediately following.	5
(3) The operator of a retirement village must not make a statement under subsection (2) (b) knowing that it is false or misleading in a material particular.	6
Maximum penalty: 100 penalty units.	7
(4) The residents of a retirement village may revoke any consent given under this section at any time.	8
(5) Consent given under this section remains in force until:	9
(a) the total of the recurrent charges to be collected by the village in a financial year exceeds \$50,000 or such other amount as may be prescribed by the regulations, or	10
(b) the consent is revoked by the residents of the village, whichever happens first.	11
119B Quarterly accounts not required to be given to residents in certain circumstances	12
(1) Despite section 118 (3), the operator of a retirement village is not required to give the Residents Committee a copy of the quarterly accounts for a retirement village if:	13
(a) the total of the recurrent charges collected in respect of the village in the financial year to which the accounts relate does not exceed \$50,000 or such other amount as may be prescribed by the regulations, and	14
(b) the residents have consented to the operator not giving them copies of the quarterly accounts and that consent is in force.	15
(2) The residents of a retirement village may revoke any consent given under this section at any time.	16

(3)	Consent given under this section remains in force until:	1
(a)	the total of the recurrent charges to be collected by the village in a financial year exceeds \$50,000 or such other amount as may be prescribed by the regulations, or	2 3 4
(b)	the consent is revoked by the residents of the village, whichever happens first.	5 6
[107]	Section 120 Any surplus or deficit to be carried over	7
	Omit the section.	8
[108]	Part 7, Division 7	9
	Insert after Division 6 of Part 7:	10
	Division 7 Surplus or deficit of accounts	11
120A	Definitions	12
	In this Division:	13
	<i>deficit</i> means a deficit in the annual accounts of a retirement village for any financial year ending on or after 23 November 2006.	14 15 16
	<i>surplus</i> means a surplus in the annual accounts of a retirement village for any year.	17 18
120B	Any surplus to be carried over	19
(1)	Any surplus in the annual accounts of a retirement village is to be carried forward to the accounts for the next financial year unless:	20 21
(a)	the residents of the village consent to a proposal for the expenditure of the whole or any part of the surplus, or	22 23
(b)	the residents of the village consent to a proposal that the operator distribute the whole or any part of the surplus to the existing residents of the village in equal shares.	24 25 26
(2)	A proposal under subsection (1) may be made by the operator of the retirement village or the Residents Committee (if any).	27 28
(3)	If the residents consent under subsection (1) (b) to a proposal made by the Residents Committee, the operator may apply to the Tribunal for (and the Tribunal may make) an order that:	29 30 31
(a)	the distribution is not to be made, or	32
(b)	approves or varies the proposed distribution.	33

(4)	In making an order under subsection (3), the Tribunal may consider the following:	1
(a)	the proportion of the surplus that is proposed to be distributed,	2
(b)	any other matter that the Tribunal considers appropriate.	3
		4
		5
120C	Making good of deficit	6
(1)	A deficit is to be made good by the operator of the retirement village.	7
		8
(2)	Except as provided by the regulations referred to in subsection (3), an operator of a retirement village must not:	9
		10
(a)	carry forward a deficit to a subsequent financial year, or	11
(b)	request or receive from the residents of the retirement village any special additional payments for the purpose of making good a deficit, or	12
		13
		14
(c)	increase or purport to increase recurrent charges payable by the residents of a retirement village in any financial year for the purpose of making good a deficit, or	15
		16
		17
(d)	use the whole or any part of the recurrent charges collected by the operator in a financial year to make good a deficit, or	18
		19
		20
(e)	use the whole or any part of the capital works fund for the retirement village to make good a deficit.	21
		22
(3)	The regulations may prescribe circumstances in which the operator of a retirement village may:	23
		24
(a)	increase the recurrent charges payable by the residents of a retirement village for the purpose of making good a deficit, or	25
		26
		27
(b)	use the whole or any part of the recurrent charges collected by the operator for the purpose of making good a deficit, or	28
		29
(c)	carry forward a deficit to a subsequent financial year.	30
(4)	The operator of a retirement village must not charge the residents of a retirement village interest in respect of a deficit.	31
		32
[109]	Section 129 How and when residence right or contract is terminated	33
	Omit “that are owned by the resident” from section 129 (1).	34
	Insert instead “in respect of which the resident is a registered interest holder (other than a person referred to in section 7 (1) (c))”.	35
		36

[110] Section 129 (2)	1
Omit “relating to premises other than premises owned by the resident or premises that are subject to an assignable lease (and the residence right under the contract) terminates”.	2 3 4
Insert instead “(other than a contract referred to in subsection (1) or (1A)) and the residence right under the contract, terminate”.	5 6
[111] Section 129 (2) (a) and (c)	7
Omit “delivers up vacant possession of the residential premises to the operator” wherever occurring.	8 9
Insert instead “permanently vacates the premises”.	10
[112] Section 129 (2) (b)	11
Omit the paragraph. Insert instead:	12
(b) on the date on which the resident permanently vacates the premises, or	13 14
[113] Section 130 Tribunal cannot terminate certain residence contracts	15
Omit “owns” from section 130 (a).	16
Insert instead “is a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.	17 18
[114] Section 132 Termination if residence contract frustrated	19
Omit “owns” from section 132 (1).	20
Insert instead “is a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.	21 22
[115] Part 9, Division 3A	23
Insert after Division 3:	24
Division 3A Termination by Supreme Court on application of administrator	25 26
136A Termination on grounds of retirement village ceasing to operate	27
(1) The Supreme Court may, on application by the administrator of a retirement village appointed under Division 6 of Part 6, make an order terminating the village contracts with respect to the retirement village if the Court is satisfied there is no reasonable prospect of finding a new operator for the retirement village.	28 29 30 31 32

(2)	If the Court makes an order under this section, the Court:	1
(a)	must, insofar as the order relates to residence contracts, fix in the order a date by which the residents who are affected by the order must vacate their residential premises in the village, and	2 3 4 5
(b)	may order an operator or former operator (other than an administrator appointed under Division 6 of Part 6) to pay compensation to each resident affected by the order for the resident’s loss of rights under a village contract, and	6 7 8 9
(c)	may make such other orders as it thinks fit.	10
[116]	Section 139 Operator not to recover possession of premises except by order	11 12
	Omit section 139 (1) and (2). Insert instead:	13
(1)	A person must not (whether acting on his or her own behalf or on behalf of another):	14 15
(a)	enter, or attempt to enter, residential premises within a retirement village, or	16 17
(b)	remove, or attempt to remove, a resident from residential premises within a retirement village, or	18 19
(c)	take any other action that is intended, or is likely, to cause a resident to vacate residential premises within a retirement village,	20 21 22
	for the purpose of recovering possession of the residential premises otherwise than in accordance with this or any other Act or law.	23 24 25
	Maximum penalty: 200 penalty units.	26
[117]	Sections 142 (2) and 145	27
	Omit “owned by the resident” wherever occurring.	28
	Insert instead “occupied by a resident who is a registered interest holder in respect of the premises”.	29 30
[118]	Section 147 Disposal of uncollected goods	31
	Insert after section 147 (4):	32
(5)	An operator of a retirement village must not sell, remove, destroy or dispose of goods referred to in subsection (1) otherwise than as provided by this section.	33 34 35
	Maximum penalty (subsection (5)): 20 penalty units.	36

[119] Section 150 References to sale of “residential premises”	1
Omit section 150 (1) and (3).	2
[120] Section 150 (2)	3
Omit “subsection (1) (b)”. Insert instead “section 7 (1) (c)”.	4
[121] Section 151 Recurrent charges in respect of optional services	5
Omit “personal services” wherever occurring.	6
Insert instead “optional services”.	7
[122] Section 152 Recurrent charges in respect of general services: registered interest holders	8
	9
Omit “owns” from section 152 (1).	10
Insert instead “is a registered interest holder in respect of”.	11
[123] Section 152 (2)	12
Omit “The”. Insert instead “Subject to subsection (3), the”.	13
[124] Section 152 (2) (d)	14
Omit “section 150 (1) (b)”. Insert instead “section 7 (1) (c)”.	15
[125] Sections 152 (2) (d) (i) and (ii), 153 (2) (c)–(e), 159 (2) (d) (i) and (ii) and 160 (2) (c)–(e)	16
	17
Omit “delivered up vacant possession of the premises to the operator” wherever occurring.	18
	19
Insert instead “permanently vacated the premises”.	20
[126] Sections 152 (2) (d) (ii), 153 (2) (d), 159 (2) (d) (ii) and 160 (2) (d)	21
Omit “vacant possession was delivered” wherever occurring.	22
Insert instead “the former occupant permanently vacated the premises”.	23
[127] Section 152 (3)	24
Insert after section 152 (2):	25
(3) The former occupant’s liability to pay recurrent charges (being recurrent charges in respect of general services) that arise after the former occupant has permanently vacated the residential premises is to be met:	26
	27
	28
	29
(a) in respect of a liability arising during the 42 days immediately after the former occupant permanently vacated the premises—by the former occupant, and	30
	31
	32

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	(b) in respect of a liability arising after the period referred to in paragraph (a)—by the former occupant and the operator of the retirement village in the same proportions as the former occupant and the operator of the retirement village would share any capital gain under the village contract.	1 2 3 4 5
[128]	Section 153 Recurrent charges in respect of general services: generally Omit “the owner” from section 153 (1). Insert instead “a registered interest holder in respect”.	6 7 8
[129]	Section 153 (2) (e) Omit “6 months”. Insert instead “42 days”.	9 10
[130]	Section 153 (3) Insert after section 153 (2): (3) On and from the date that the former occupant’s liability to pay recurrent charges (being recurrent charges in respect of general services) ceases under subsection (2), the operator of the retirement village must pay the recurrent charges payable in relation to those residential premises until the date on which the operator of the village enters into a village contract with an incoming resident.	11 12 13 14 15 16 17 18 19
[131]	Section 154 Time of payment of recurrent charges Omit “owns” from section 154 (1) (b) (i). Insert instead “is a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.	20 21 22 23
[132]	Section 157 Payment of departure fee Omit “owns (or owned)” from section 157 (3). Insert instead “is, or was, a registered interest holder in respect of”.	24 25 26
[133]	Section 159 Period for which departure fee may be charged after permanent vacation of premises: old contracts—registered interest holders Omit “owns” from section 159 (1) (a). Insert instead “is a registered interest holder in respect of”.	27 28 29 30 31
[134]	Section 159 (2) (d) Omit “section 150 (1) (b)”. Insert instead “section 7 (1) (c)”.	32 33

[135]	Section 160 Period for which departure fee may be charged after permanent vacation of premises: old contracts—generally	1
	Omit “does not own” from section 160 (1) (a).	2
	Insert instead “is not a registered interest holder in respect of”.	3
[136]	Section 161 Reduction or waiver of departure fee	5
	Omit “after the former occupant’s permanent vacation of” from section 161 (1).	6
	Insert instead “after the former occupant has permanently vacated”.	7
[137]	Section 163 Condition of premises on termination	9
	Omit section 163 (1) and (2). Insert instead:	10
	(1) This section does not apply to or in respect of a former occupant who is, or was, a registered interest holder in respect of his or her residential premises.	11
	(2) A former occupant of a retirement village must, allowing for any renovations or alterations to fixtures or fittings made with the consent of the operator under section 41A, leave his or her residential premises as nearly as possible in the same condition (fair wear and tear excepted) as the premises were in at the beginning of the residence contract.	12
		13
		14
		15
		16
		17
		18
		19
[138]	Section 166 Application of Division	20
	Omit “owns”. Insert instead “is a registered interest holder in respect of”.	21
[139]	Section 170 Costs of sale	22
	Insert after section 170 (3):	23
	(4) In this section, <i>costs of sale</i> includes (without limiting the ordinary meaning of that term) such costs relating to the sale of residential premises in a retirement village as may be prescribed by the regulations, but does not include such other costs relating to the sale of residential premises as may be prescribed by the regulations.	24
		25
		26
		27
		28
		29
[140]	Section 174 Letting or subletting of premises	30
	Omit “section 150 (1) (b)” from section 174 (1).	31
	Insert instead “section 7 (1) (c)”.	32

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[141] Section 175 Determination by Tribunal concerning proposed tenant or subtenant	1 2
Insert “and pay such compensation (if any) as is specified in the order” after “concerned” in section 175 (3) (a).	3 4
[142] Section 175 (4)	5
Omit “subsection (3) (b)”. Insert instead “subsection (3) (a)”.	6
[143] Section 179 Legal ability to sublet	7
Omit “section 150 (1) (b)” from section 179 (1).	8
Insert instead “section 7 (1) (c)”.	9
[144] Section 180 Payments to former occupants who were registered interest holders	10 11
Omit “owns” from section 180 (1).	12
Insert instead “is, or was, a registered interest holder in respect of”.	13
[145] Section 180 (3) (e)	14
Omit “section 150 (1) (b)”. Insert instead “section 7 (1) (c)”.	15
[146] Section 180 (4)–(6)	16
Omit section 180 (4) and (5). Insert instead:	17
(4) If a payment is not made to the former occupant within the time required by subsection (2):	18 19
(a) the former occupant may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to make the payment, and	20 21 22
(b) interest is payable, at the rate prescribed by the regulations, on that unpaid amount on and from the date that the amount becomes overdue.	23 24 25
(5) If, in the opinion of the former occupant, the amount of a payment made under this section was not calculated in accordance with this Act or any relevant village contract, or the conduct of the operator has unfairly had a negative financial impact on the former occupant:	26 27 28 29 30
(a) the former occupant may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to recalculate the amount in accordance with the directions of the Tribunal and pay any additional amount due to the former occupant as a result of the recalculation, and	31 32 33 34 35

	(b) if the Tribunal considers it appropriate, the Tribunal may order the payment of interest on that additional amount at the rate prescribed by the regulations.	1 2 3
	(6) Without limiting subsection (5), conduct of the operator that may unfairly have a negative impact on a former occupant includes entering into a village contract with a subsequent resident that contains terms that:	4 5 6 7
	(a) are substantially different from those contained in the village contract to which the former occupant was a party, and	8 9 10
	(b) will have a negative financial impact on the former occupant to the benefit of the operator.	11 12
[147]	Section 181 Payments to former occupants who were not registered interest holders	13 14
	Omit “does not own” from section 181 (1).	15
	Insert instead “is not, or was not, a registered interest holder in respect of”.	16
[148]	Section 181 (7)–(9)	17
	Omit section 181 (7) and (8). Insert instead:	18
	(7) If a payment is not made to the former occupant within the time required by this section:	19 20
	(a) the former occupant may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to make the payment, and	21 22 23
	(b) interest is payable, at the rate prescribed by the regulations, on that unpaid amount on and from the date that the amount becomes overdue.	24 25 26
	(8) If, in the opinion of the former occupant, the amount of a payment made under this section was not calculated in accordance with this Act or any relevant village contract, or the conduct of the operator has unfairly had a negative financial impact on the former occupant:	27 28 29 30 31
	(a) the former occupant may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to recalculate the amount in accordance with the directions of the Tribunal and pay any additional amount due to the former occupant as a result of the recalculation, and	32 33 34 35 36
	(b) if the Tribunal considers it appropriate, the Tribunal may order the payment of interest on that additional amount at the rate prescribed by the regulations.	37 38 39

(9)	Without limiting subsection (8), conduct of the operator that may unfairly have a negative impact on a former occupant includes entering into a village contract with a subsequent resident that contains terms that:	1 2 3 4
(a)	are substantially different from those contained in the village contract to which the former occupant was a party, and	5 6 7
(b)	will have a negative financial impact on the former occupant to the benefit of the operator.	8 9
[149] Part 10A		10
	Insert after Part 10:	11
	Part 10A Protection of ingoing contributions paid by residents other than registered interest holders	12 13 14
182A	Application of Part	15
(1)	This Part applies to a village contract if:	16
(a)	there has been an ingoing contribution paid by a resident (other than a registered interest holder) under a village contract that includes a provision that entitles the resident to a refund of the whole, or any part, of that ingoing contribution, and	17 18 19 20 21
(b)	any such refund exceeds the amount prescribed by the regulations.	22 23
(2)	This Part extends to any such village contract that was in force immediately before the commencement of this section.	24 25
(3)	Despite subsections (1) and (2), this Part does not apply to a village contract with respect to residential premises in a retirement village that gives rise to the residence right of a registered interest holder.	26 27 28 29
182B	Creation of charge	30
(1)	On the date on which a village contract to which this Part applies is entered into with respect to residential premises within a retirement village, there is created by virtue of this section a charge over all land within the retirement village that secures the entitlement to a refund under the contract.	31 32 33 34 35

(2)	In the case of a village contract in force immediately before the commencement of this section, any such charge is created on that commencement.	1 2 3
(3)	Nothing in this section creates a charge over land:	4
(a)	that is not recorded as a retirement village under section 24A, or	5 6
(b)	in respect of which a resident is a registered interest holder.	7
182C	Disposal of land subject to charge	8
(1)	A person must not dispose of land in respect of which a charge is in force under this Part except pursuant to an order under section 182F. Maximum penalty: 100 penalty units.	9 10 11 12
(2)	Subsection (1) does not apply in respect of the disposal of any such land in the course of the sale of a retirement village as a going concern.	13 14 15
182D	Effect of charge on successors in title	16
	A charge that is created over land under this Part is binding on, and is enforceable against, the owner of the land from time to time while the charge is in force.	17 18 19
182E	Application for enforcement of charge	20
(1)	A person may apply to the Supreme Court for an order under section 182F in relation to land within a retirement village in respect of which the person is a resident or former occupant if:	21 22 23
(a)	the operator of the retirement village has become insolvent or an administrator has been appointed under Division 6 of Part 6, and	24 25 26
(b)	the person is of the opinion that it is unlikely that the operator will be able to refund the part of the ingoing contribution that the applicant is entitled to be refunded under a village contract relating to that retirement village.	27 28 29 30
(2)	A mortgagee, receiver or administrator of land within a retirement village may apply to the Supreme Court for an order under section 182F in relation to land within a retirement village if:	31 32 33 34
(a)	the operator of the retirement village has become insolvent or an administrator has been appointed under Division 6 of Part 6, and	35 36 37

(b)	the applicant is of the opinion that it is unlikely that the operator will be able to refund any part of an ingoing contribution that a resident or former resident is entitled to be refunded under a village contract relating to that retirement village.	1 2 3 4 5
182F	Order for enforcement of charge	6
	The Supreme Court may, on an application made under section 182E with respect to land within a retirement village:	7 8
(a)	order that land within the retirement village, in respect of which a charge is in force, is to be sold, and	9 10
(b)	appoint a person to act as the agent for the sale, and	11
(c)	make a determination as to the entitlements of each of the residents or former occupants of the retirement village, having regard to:	12 13 14
(i)	the refund entitlement of each resident or former occupant under their respective village contracts, and	15 16 17
(ii)	the dates on which charges were created under this Part with respect to those contracts, and	18 19
(d)	make such orders relating to the distribution of the proceeds of the sale as the Court thinks fit, having regard to the order that interests are to be satisfied in accordance with section 182G, and	20 21 22 23
(e)	make such other orders as the Court sees fit.	24
182G	Priority of interests	25
	For the purposes of any order made under this Part, interests in the land concerned are to be satisfied in the following order:	26 27
(a)	the costs of the sale of the land and the applicant's costs in seeking the order,	28 29
(b)	any interest, mortgage, lien or other charge on or over the land created or registered before the creation of a charge under this Part, or otherwise taking priority over a charge over the land that has been created under this Part,	30 31 32 33
(c)	the entitlements of residents and former occupants of the retirement village arising from village contracts in respect of which a charge over the land has been created under this Part,	34 35 36 37

	(d) any interest, mortgage, lien or other charge on or over the land created or registered after the creation of a charge over the land under this Part,	1 2 3
	(e) the interest of the registered proprietor of the land immediately before the sale of the land.	4 5
182H	Order not to disadvantage residents	6
	The Supreme Court must not make an order under this Part unless satisfied that the order is in the best interests of the majority of the residents of the retirement village.	7 8 9
182I	Removal of charge	10
	A charge over land created under this Part remains in force until:	11
	(a) the village contract that caused the charge to be created is terminated and all of the operator's liabilities under that contract have been met, or	12 13 14
	(b) the land is sold in accordance with an order under this Part.	15
[150]	Section 189 Functions of Director-General	16
	Omit “, including prosecution for any offence,” from section 189 (1) (b).	17
[151]	Section 189 (1) (bi)	18
	Insert after section 189 (1) (b):	19
	(bi) the function of prosecuting any offence under this Act or the regulations,	20 21
[152]	Section 189A	22
	Insert after section 189:	23
189A	Director-General may issue warning notices	24
	(1) The Director-General may authorise publication of a notice warning persons of particular risks involved in dealing with a specified operator of a retirement village or with a person who appears to be the operator of a retirement village.	25 26 27 28
	(2) For example, a notice may relate to the risks involved in dealing with an operator or person who has a history of unconscionable conduct in the operator's or person's dealings with consumers.	29 30 31
	(3) The Director-General may authorise the publication of such a notice in any one or more of the following ways:	32 33
	(a) to any persons making inquiries to the Director-General about the person concerned,	34 35

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(b)	by advertisement by the use of any medium,	1
(c)	to any media representatives.	2
(4)	Publication of such a notice may not be authorised unless an investigation has been conducted by the Director-General (whether or not the investigation is in relation to a complaint).	3 4 5
(5)	Before authorising the publishing of such a notice, the Director-General must give the person concerned an opportunity, for a period of not less than 48 hours, to make representations to the Director-General about the proposed notice unless the Director-General is not able, after making reasonable efforts to do so, to contact the person promptly and advise the person of the opportunity to make representations.	6 7 8 9 10 11 12
(6)	The opportunity to make representations is not required to be given if, in the opinion of the Director-General, there is an immediate risk to the public.	13 14 15
(7)	No liability is incurred by any person for publishing in good faith:	16
(a)	a notice under this section, or	17
(b)	a fair report or summary of such a notice.	18
[153]	Section 190 Director-General may take or defend proceedings	19
	Omit section 190 (1) (b). Insert instead:	20
(b)	after investigating the complaint, the Director-General is satisfied that the resident may have a right to take or defend the proceedings, and	21 22 23
[154]	Sections 193–195	24
	Omit the sections.	25
[155]	Section 196 Exclusion of personal liability	26
	Insert “, the Registrar-General” after “by the Director-General”.	27
[156]	Section 196	28
	Insert “or Registrar-General” after “of the Director-General”.	29
[157]	Section 196	30
	Insert “, the Registrar-General” after “subject the Director-General”.	31

[158] Part 12A	1
Insert after Part 12:	2
Part 12A Powers of investigation	3
196A Powers of entry, inspection etc	4
(1) An investigator may exercise the powers conferred by this section for the purposes of:	5
(a) ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened, or	6
(b) investigating a complaint made under this Act, or	7
(c) obtaining evidence, documents or information in relation to a matter that constitutes or may constitute a contravention of this Act or the regulations.	8
(2) An investigator may enter and inspect at any reasonable time any premises that the investigator believes on reasonable grounds are used for the management of or carrying on of the business of a retirement village.	9
(3) While on premises entered under this section, an investigator may do any one or more of the following:	10
(a) require any person on those premises to produce any documents in the possession or under the control of that person relating to the carrying on of the business of a retirement village and, in the case of documents stored electronically, to produce any such documents in written form,	11
(b) inspect, take copies of or extracts from, or make notes from, any such documents and, for that purpose, take temporary possession of any such documents,	12
(c) take possession of such documents if the investigator considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction,	13
(d) take such photographs, films and audio, video and other recordings as the investigator considers necessary,	14
(e) require any person on those premises to answer questions or otherwise furnish information in relation to the carrying on of the business of a retirement village or a contravention of a provision of this Act,	15
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(f)	require the owner or occupier (including a resident) of those premises to provide the investigator with such assistance and facilities as is or are reasonably necessary to enable the investigator to exercise the functions of an investigator under this Part.	1 2 3 4 5
(4)	An investigator is not entitled to enter a part of premises used for residential purposes except:	6 7
(a)	with the consent of the occupier, or	8
(b)	under the authority of a search warrant.	9
(5)	An investigator may not exercise in any premises a function conferred by this Part unless the investigator produces a certificate of identification if requested to do so by a person apparently in charge of those premises or apparently in charge of any work being performed on those premises.	10 11 12 13 14
196B	Power of investigator to obtain information, documents and evidence	15 16
	If an investigator believes on reasonable grounds that a person is capable of giving information, producing documents, or giving evidence in relation to a matter that constitutes, or may constitute, an offence under this Act or the regulations, the investigator may, by notice in writing given to the person, require the person:	17 18 19 20 21
(a)	to provide an investigator, by writing signed by the person (or, in the case of a corporation, by a competent officer of the corporation) and given to the investigator within the time and in the manner specified in the notice, with any such information, or	22 23 24 25 26
(b)	to produce to an investigator, in accordance with the notice, any such documents, or	27 28
(c)	to appear before an investigator at a time and place specified in the notice and give any such evidence, either orally or in writing, and produce any such documents.	29 30 31
196C	Obstruction etc of investigator	32
(1)	A person must not:	33
(a)	without reasonable excuse, refuse or fail to comply with any notice given or requirement made, or to answer any question asked, by an investigator under this Part, or	34 35 36

(b)	provide information or give evidence in purported compliance with a requirement made or question asked by an investigator under this Part knowing the information or evidence to be false or misleading in a material particular, or	1 2 3 4 5
(c)	wilfully delay, hinder or obstruct an investigator in the exercise of the investigator's functions under this Part.	6 7
	Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.	8 9
(2)	Despite any other provision of this Part, a natural person is excused from answering any question, providing any information, giving evidence or producing or permitting the inspection of a document in accordance with this Part on the ground that the answer, information, evidence or document may tend to incriminate the person.	10 11 12 13 14 15
196D	Taking possession of documents to be used as evidence	16
(1)	If an investigator takes possession of any documents under this Part for the purpose of obtaining evidence or protecting evidence from destruction, they may be retained by the investigator until the completion of proceedings (including proceedings on appeal) in which they may be evidence.	17 18 19 20 21
(2)	The person from whom the documents are taken must be provided, within a reasonable time after the documents are taken, with a copy of the documents certified by an investigator as a true copy.	22 23 24 25
(3)	A copy of documents provided under this section is, as evidence, of equal validity to the documents of which it is certified to be a true copy.	26 27 28
196E	Search warrants	29
(1)	An investigator may apply to an authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> for the issue of a search warrant for premises if the investigator believes on reasonable grounds:	30 31 32 33
(a)	that a provision of this Act or the regulations is being contravened on the premises, or	34 35
(b)	that there is on the premises evidence of a contravention of this Act or the regulations.	36 37
(2)	An authorised officer to whom such an application is made may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an investigator named in the warrant:	38 39 40

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	(a) to enter and inspect premises, and	1
	(b) to exercise on the premises any function of an investigator under this Part.	2 3
	(3) Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to a search warrant issued under this section.	4 5 6
[159]	Section 197A	7
	Insert after section 197:	8
	197A False or misleading information	9
	An operator of a retirement village must not, in purported compliance with any requirement of this Act, give to any resident or prospective resident any information that the operator knows to be false or misleading in a material particular.	10 11 12 13
	Maximum penalty: 20 penalty units.	14
[160]	Section 198 Costs of operator’s legal advice or proceedings	15
	Omit “statement of approved expenditure” from section 198 (1) (a).	16
	Insert instead “approved annual budget”.	17
[161]	Section 198 (2)	18
	Omit “statement of proposed expenditure”.	19
	Insert instead “proposed annual budget”.	20
[162]	Section 202 Costs of administration	21
	Insert at the end of the section:	22
	(2) In the course of the administration of this Act, the Minister may fund the provision of advisory and advocacy services to residents and prospective residents of retirement villages.	23 24 25
[163]	Section 203 Regulations	26
	Insert after section 203 (3):	27
	(4) The regulations may exempt specified village contracts or a specified class of village contracts from any provision of this Act.	28 29

[164]	Schedule 1 Consent of residents	1
	Omit Part 3. Insert instead:	2
	Part 3 Consent requiring special resolution	3
	5 Notice of special resolution	4
	If a measure or action requires a special resolution, a ballot must be conducted in accordance with the regulations.	5 6
	6 How special resolution is carried	7
	A special resolution is carried only if it is passed by at least 75% of the number of residents who participate in the ballot.	8 9
[165]	Schedule 4 Savings, transitional and other provisions	10
	Insert at the end of clause 1 (1):	11
	<i>Retirement Villages Amendment Act 2008</i>	12
[166]	Schedule 4, clause 1 (1A)	13
	Insert after clause 1 (1):	14
	(1A) For the avoidance of doubt, any such provision may, if the regulations so provide, have effect despite any specified provision of this Act (including a provision of this Schedule).	15 16 17
[167]	Schedule 4, Part 3	18
	Insert after Part 2:	19
	Part 3 Provisions consequent on enactment of Retirement Villages Amendment Act 2008	20 21
	Division 1 General	22
	15 Definition	23
	In this Part:	24
	<i>2008 amending Act</i> means the <i>Retirement Villages Amendment Act 2008</i> .	25 26

16	Amendments extend to existing contracts	1
	Except as otherwise provided by this Part or the regulations, an amendment made by the 2008 amending Act extends to a village contract that was in force immediately before the commencement of that amendment.	2 3 4 5
Division 2	Recurrent charges	6
17	Liability of former occupant of residential premises for recurrent charges where former occupant is registered interest holder	7 8
	(1) This clause applies to a former occupant of residential premises in a retirement village who is the registered interest holder in relation to those premises and who had vacated the premises before the commencement of section 152 (3) (as inserted by the 2008 amending Act).	9 10 11 12 13
	(2) If a former occupant of residential premises in a retirement village was still liable to pay recurrent charges in respect of those premises immediately before the commencement of section 152 (3) (as inserted by the 2008 amending Act), a reference in section 152 (3) (a) to 42 days immediately after the former occupant permanently vacated the premises is to be read as a reference to 6 months after that commencement.	14 15 16 17 18 19 20
	(3) In this clause, a reference to recurrent charges is a reference to recurrent charges in respect of general services.	21 22
18	Liability of former occupant of residential premises for recurrent charges where former occupant is not registered interest holder	23 24
	(1) This clause applies to a former occupant of residential premises in a retirement village who is not a registered interest holder in relation to those premises and who had vacated the premises before the amendment of section 153 (2) (e) by the 2008 amending Act.	25 26 27 28 29
	(2) If a former occupant of residential premises in a retirement village was still liable to pay recurrent charges in respect of those premises immediately before the amendment of section 153 (2) (e) by the 2008 amending Act, a reference in that paragraph to the date that is 42 days after the date on which the former occupant otherwise permanently vacated the premises is to be read as a reference to:	30 31 32 33 34 35 36
	(a) the date that is 42 days after the commencement of this clause, or	37 38

(b)	the date that is 6 months after the former occupant delivered up vacant possession of those premises to the operator,	1
	whichever date occurs first.	2
(3)	In this clause, a reference to recurrent charges is a reference to recurrent charges in respect of general services.	3
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Division 3	Making good of outstanding deficits	5
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19	Definition	7
	In this Division, <i>outstanding deficit</i> means the total deficit in the annual accounts of a retirement village that accrued on or before the end of a financial year of the retirement village occurring most recently before 23 November 2006.	8
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20	Making good of deficit	13
(1)	The operator of a retirement village may:	14
(a)	make good the whole, or any part, of any outstanding deficit from any funds, other than recurrent charges, available to the operator, or	15
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(b)	propose that the residents of the village make good the whole, or any part, of any outstanding deficit:	18
(i)	by making special additional payments, or	19
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(ii)	from any surplus in the annual accounts of the retirement village in any financial year.	21
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(2)	The residents of a retirement village may, by special resolution, consent to a proposal under subclause (1) (b) (i) or (ii).	23
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(3)	A proposal under subclause (1) (b) may only be put to the residents of the retirement village once.	25
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(4)	Despite section 120B (as inserted by the 2008 amending Act), if the residents of a retirement village consent to a proposal under subclause (1) (b) (ii), the operator of the retirement village may make good the whole, or any part, of that outstanding deficit from a surplus in the annual accounts of the village in accordance with the proposal.	27
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(5)	The regulations may prescribe expenditure or circumstances resulting in, or contributing to, the outstanding deficit in respect of which the operator is prevented from making a proposal under subclause (1) (b) (i) or (ii).	33
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(6)	Nothing in this clause authorises the making good of the whole or any part of an outstanding deficit by using money from the capital works fund.	1 2 3
21	Tribunal may make orders for making good of deficit	4
(1)	If a retirement village has an outstanding deficit on or after 23 November 2011 or such later date as may be prescribed by the regulations, the operator may apply to the Tribunal for (and the Tribunal may make) an order specifying:	5 6 7 8
(a)	the amount of any such deficit that is to be made good by the operator of the retirement village, and	9 10
(b)	the amount of any such deficit that is to be made good by the residents of the retirement village, and	11 12
(c)	the date by which any such deficit is to be made good.	13
(2)	In making an order under this clause, the Tribunal must give consideration to such matters as may be prescribed by the regulations.	14 15 16
(3)	If the operator of the retirement village does not apply to the Tribunal for an order under this clause within 30 days after 23 November 2011, or such later date as may be prescribed by the regulations, the operator must make good the whole of the outstanding deficit.	17 18 19 20 21
Division 4	Capital replacement and maintenance	22
22	Definitions	23
	In this Division:	24
	<i>capital replacement fund</i> means a capital replacement fund established under section 95 (as in force immediately before its substitution by the 2008 amending Act).	25 26 27
	<i>capital works fund</i> means a capital works fund established under section 100 (as substituted by the 2008 amending Act).	28 29
	<i>maintenance fund</i> means a maintenance fund established under section 100 (as in force immediately before its substitution by the 2008 amending Act).	30 31 32
23	Reimbursement for urgent capital replacement or maintenance carried out by resident	33 34
	Section 95 (as substituted by the 2008 amending Act) does not apply in respect of any capital replacement or maintenance carried out, or caused to be carried out, by a resident of a retirement village before the commencement of that amendment.	35 36 37 38

24	Application of capital replacement and maintenance provisions	1
	For the purposes of section 98 (as substituted by the 2008 amending Act), the cost to a resident of a retirement village (who was a resident of the village immediately before that substitution) for capital maintenance or replacement must not, in any financial year, exceed \$1,000 or such other amount as may be prescribed by the regulations.	2 3 4 5 6 7
25	Existing capital replacement funds and maintenance funds	8
(1)	On the substitution of Division 2 of Part 7 by the 2008 amending Act, any capital replacement fund existing immediately before that substitution is dissolved.	9 10 11
(2)	Any funds held in a capital replacement fund for a retirement village that is dissolved by subclause (1) are to be held by the operator and may be used by the operator to fund the operator's proportion of any capital maintenance and replacement.	12 13 14 15
(3)	Any maintenance fund for a retirement village existing immediately before the repeal of Division 3 of Part 7 by the 2008 amending Act is taken, on that repeal, to be a capital works fund.	16 17 18
26	Sale of items of capital to residents	19
(1)	Except as provided by this clause, section 102, as substituted by the 2008 amending Act, does not apply in respect of the sale of an item of capital before the substitution of that section.	20 21 22
(2)	A resident of a retirement village may, by notice in writing to the operator of the village, advise that this clause applies to a specified item of capital owned by the resident if:	23 24 25
(a)	the item was purchased from the operator of the village on or after 23 November 2006, and	26 27
(b)	but for the purchase of the item, it is an item for which the operator would be responsible (within the meaning of section 92, as substituted by the 2008 amending Act).	28 29 30
(3)	On the giving of such a notice to the operator of a retirement village:	31 32
(a)	ownership of the item of capital referred to in the notice is transferred to the operator, and	33 34
(b)	the resident is entitled to receive a payment equal to the amount the resident paid for the item.	35 36

(4)	A payment that a resident is entitled to receive under this clause is required to be made at the same time as the operator is required to make a payment to the resident under section 44D (2), 180 (2) or 181 (2) as the case may be.	1 2 3 4
(5)	The operator of a retirement village may apply to the Tribunal for (and the Tribunal may make) an order, reducing the amount to which a resident is entitled under subclause (3) (b), having regard to the condition of the item of capital concerned.	5 6 7 8
(6)	An application made by an operator under subclause (5) may relate to more than one item of capital or more than one notice under this clause.	9 10 11
27	Contract, agreement or scheme for the replacement or maintenance of items of capital	12 13
(1)	This clause applies to any contract, agreement or scheme between the operator of a retirement village and a resident of the retirement village that:	14 15 16
(a)	purports to pass responsibility for the maintenance or replacement of an item of capital for which the operator is responsible (within the meaning of section 92) to the resident, and	17 18 19 20
(b)	was entered into before the substitution of section 102.	21
(2)	Except as provided by this clause, section 102 does not apply in respect of a contract, agreement or scheme to which this clause applies.	22 23 24
(3)	A resident who is a party to a contract, agreement or scheme to which this clause applies may give notice in writing to the operator who is a party to the contract, agreement or scheme that the resident intends section 102 (2) to apply to the contract, agreement or scheme.	25 26 27 28 29
(4)	On the giving of the notice, section 102 (2) and (3) are taken to extend to the contract, agreement or scheme, but only in relation to anything required to be done under the contract, agreement or scheme after the giving of the notice.	30 31 32 33
(5)	A notice may only be given under this clause within the period of 3 months immediately after the commencement of section 102.	34 35
(6)	A reference in this clause to section 102 is a reference to that section as substituted by the 2008 amending Act.	36 37

Division 5	Miscellaneous	1
28	Amendments relating to annual budgets	2
	A statement of proposed expenditure or a statement of approved expenditure under this Act (as in force immediately before the commencement of this clause) is taken, on that commencement, to be a proposed annual budget or an approved annual budget, respectively.	3 4 5 6 7
29	General inquiry document and disclosure statement concerning a village	8 9
(1)	An amendment made to section 18 (1) by the 2008 amending Act does not apply to or in respect of a person if the operator of a retirement village was aware, before the commencement of that amendment, that the person was a prospective resident or was acting on behalf of a prospective resident.	10 11 12 13 14
(2)	However, the operator of a retirement village must provide any such person with a general inquiry document within 14 days after the commencement of that amendment.	15 16 17
(3)	An amendment made to section 18 (3) by the 2008 amending Act does not apply to a request or expression of interest made before the commencement of that amendment.	18 19 20
30	Amendment relating to residents entering village contract	21
	An amendment made to section 24 (1) by the 2008 amending Act does not extend to an agreement entered into before the commencement of that amendment.	22 23 24
31	Amendment relating to renovations and alteration of fixtures or fittings	25 26
	Section 41A (as inserted by the 2008 amending Act) does not apply to any renovations or alterations of fixtures or fittings that were commenced, but not completed, before the insertion of that section.	27 28 29 30
32	Settling-in period provisions	31
(1)	Division 2 of Part 5 (as inserted by the 2008 amending Act) extends to a village contract entered into before the insertion of that Division.	32 33 34
(2)	For the avoidance of doubt, the end of the settling-in period with respect to a village contract to which Division 2 of Part 5 applies because of subclause (1) is the later of:	35 36 37

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(a)	the day that is 90 days after the date on which the resident is entitled to occupy the residential premises concerned under the residence contract for the premises, or	1 2 3
(b)	if the resident occupies the premises before the day specified in paragraph (a), the day that is 90 days after the resident first occupies the residential premises, or	4 5 6
(c)	such date as may be agreed to by the operator and the resident.	7 8
33	Membership of Residents Committee	9
	For the purposes of section 70A (as inserted by the 2008 amending Act), any term of office concluded before the commencement of that section is disregarded.	10 11 12
34	Holding of first annual management meeting	13
	Section 72A (as inserted by the 2008 amending Act) applies to each financial year for a retirement village ending after the insertion of that section and extends to a financial year of a retirement village that ended within the 2 months occurring immediately before that insertion.	14 15 16 17 18
35	Existing proxies	19
(1)	An amendment made to this Act by the 2008 amending Act does not affect the casting of a vote by means of a proxy in force immediately before the commencement of the amendment.	20 21 22
(2)	However, any such proxy expires at the end of the financial year of the retirement village commencing after the commencement of the amendment.	23 24 25
36	Variation of recurrent charges	26
	Section 104 (2) (as substituted by the 2008 amending Act) applies to a village contract that is referred to in that subsection and was in existence before that substitution on and from the date that the village contract was last varied before that substitution.	27 28 29 30

37 Amendments relating to quarterly accounts

An amendment made to section 118 by the 2008 amending Act does not apply to the quarterly accounts for a retirement village in respect of a quarter that had ended before the commencement of the amendment.

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