

Passed by both Houses



New South Wales

Retirement Villages Amendment Bill 2008

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Retirement Villages Act 1999 No 81	2
4 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103	2
5 Repeal of Act	2
Schedule 1 Amendments	3

I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2008*



New South Wales

Retirement Villages Amendment Bill 2008

Act No , 2008

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.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Retirement Villages Amendment Act 2008*.

2 Commencement

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

3 Amendment of Retirement Villages Act 1999 No 81

The *Retirement Villages Act 1999* is amended as set out in Schedule 1.

4 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

The *Law Enforcement (Powers and Responsibilities) Act 2002* is amended by inserting, in alphabetical order, in Schedule 2 to that Act:

Retirement Villages Act 1999, section 196E

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 3 Objects of Act

Insert at the end of section 3 (e):

, and

- (f) to encourage the retirement village industry to adopt best practice management standards.

[2] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

annual management meeting means the meeting referred to in section 72A.

approved annual budget means a budget taken to be an approved annual budget under section 116.

capital maintenance means works carried out for the purpose of repairing or maintaining an item of capital and includes works prescribed by the regulations as being capital maintenance, but does not include works that are prescribed by the regulations as not being capital maintenance.

capital replacement means works carried out for the purpose of replacing an item of capital, but does not include capital maintenance.

capital works fund means a fund established under section 99.

Consumer Price Index means the Consumer Price Index (All Groups) for Sydney as published by the Australian Statistician.

general inquiry document means a document referred to in section 18 (2).

optional services 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.

Note. Examples of optional services are the provision of meals, laundry services and the cleaning of the residents' residential premises.

proposed annual budget means a proposed annual budget referred to in section 112.

Register means:

- (a) in relation to land under the *Real Property Act 1900*—the Register kept under that Act, and

(b) in relation to any other land—the General Register of Deeds kept under the *Conveyancing Act 1919*.

[3] Section 4 (1), definitions of “capital replacement”, “capital replacement fund”, “maintenance fund”, “personal services”, “statement of approved expenditure” and “statement of proposed expenditure”

Omit the definitions.

[4] Section 4 (1), definition of “Director-General”

Omit the definition. Insert instead:

Director-General means:

- (a) the Commissioner for Fair Trading, Department of Commerce, or
- (b) if there is no such position in that Department—the Director-General of that Department.

[5] Section 4 (1), definition of “disclosure statement”

Omit “section 18”. Insert instead “section 18 (3A)”.

[6] Section 4 (1), definition of “former occupant”

Omit “owns” from paragraph (b).

Insert instead “is a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.

[7] Section 4 (1), definition of “residential care facility”

Omit the definition. Insert instead:

residential aged care facility means any residential accommodation for retired people that includes:

- (a) meals and cleaning services, and
- (b) personal care or nursing care, or both, and
- (c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care.

[8] Section 4 (1), definition of “service contract”

Omit “personal”. Insert instead “optional”.

[9] Section 5 Meaning of “retirement village”

Omit section 5 (3) (e). Insert instead:

- (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,

[10] Section 6 Meaning of “ingoing contribution”

Omit section 6 (2) (c). Insert instead:

- (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 in a community land scheme on which the residential premises are located—the purchase price of the land or lot,
- (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,

[11] Sections 7 and 7A

Omit section 7. Insert instead:

7 Meaning of “registered interest holder”

- (1) For the purposes of this Act, a person is the *registered interest holder* with respect to residential premises in a retirement village if:
 - (a) the person is:
 - (i) the registered proprietor of land, or
 - (ii) the owner of a lot in a strata scheme, or
 - (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
 - (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
 - (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.

- (2) In this section:
- registered long-term lease* means a lease registered under the *Real Property Act 1900* that:
- (a) has a term of at least 50 years (including any option to renew), or
 - (b) is for the life of the lessee.

7A Meaning of “capital gain”

- (1) In this Act, *capital gain*, 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 next resident pays for a residence right for the same premises, less any costs associated with the subsequent sale or lease of the premises.
- (2) Fees and charges payable under a village contract are not to be included in the calculation of the capital gain.

[12] Section 8 “Permanent vacation” of residential premises

Omit section 8 (d). Insert instead:

- (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.

[13] Section 15 Approvals for certain facilities

Insert “aged” after “residential” wherever occurring.

[14] Section 16 Exceptions to prohibitions on advertising

Insert “aged” after “residential” in section 16 (b) and (c), wherever occurring.

[15] Section 17 Representations about retirement villages

Insert after section 17 (5):

- (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.

Maximum penalty: 50 penalty units.

[16] Section 18 General inquiry document and disclosure statement concerning retirement village

Omit section 18 (1)–(3). Insert instead:

- (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.
- (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:
 - (a) be in the form prescribed by the regulations, and
 - (b) contain the information prescribed by the regulations.
- (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:
 - (a) requests a copy, or
 - (b) expresses an interest in particular premises within the retirement village,within 14 days after the request is received or the expression of interest is made.

Maximum penalty: 20 penalty units.
- (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:
 - (a) be in the form prescribed by the regulations, and
 - (b) contain the information prescribed by the regulations, and
 - (c) be signed and dated by the operator of the retirement village.
- (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.

[17] Section 18 (4)

Insert “disclosure” before “statement” wherever occurring.

[18] Section 18 (6)

Omit the subsection. Insert instead:

- (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.

[19] Section 19

Omit the section. Insert instead:

19 Information to be provided to residents

- (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.
- (2) An operator of a retirement village must not, without reasonable excuse, fail to provide information in accordance with any such notice.
Maximum penalty: 10 penalty units.
- (3) Without limiting subsection (1), a notice may require the operator of a retirement village to provide information relating to any of the following:
 - (a) the retirement village industry generally,
 - (b) the rights and responsibilities of residents of retirement villages,
 - (c) living within a strata scheme.

[20] Section 20 Copies of certain documents to be available

Omit “statements of proposed expenditure and the statements of approved expenditure” from section 20 (1) (c).

Insert instead “proposed annual budgets (if any) and the approved annual budgets”.

[21] Section 20 (1) (c) (iii)

Omit “statements”. Insert instead “budgets”.

- [22] **Section 20 (1) (d)**
Omit “as referred to in”. Insert instead “if so required under”.
- [23] **Section 20 (1) (i)**
Omit “capital replacement fund or a maintenance fund”.
Insert instead “capital works fund”.
- [24] **Section 20 (1) (i)**
Omit “balances”. Insert instead “balance”.
- [25] **Section 20 (1) (j)**
Insert “if the operator is required to provide the residents with quarterly accounts—” before “the most”.
- [26] **Section 23 Deposits to be kept in trust**
Omit section 23 (1).
- [27] **Section 23 (3A)**
Insert after section 23 (3):
(3A) Subsection (3) does not apply to or in respect of money held by an operator of a retirement village if the operator is:
(a) a body constituted or established by an Act, or
(b) a body constituted or established for any benevolent, philanthropic or patriotic purpose.
- [28] **Section 23 (4) (a)**
Insert “or ingoing contribution” after “deposit”.
- [29] **Part 5, Division 1, heading**
Insert before section 24:
Division 1 General
- [30] **Section 24 Resident to enter village contract**
Insert “in writing” after “with the operator” in section 24 (1).

[31] Section 24 (4)

Insert after section 24 (3):

- (4) If a refund, in whole or in part, is not made to a former occupant within the period required by subsection (3) (b):
 - (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
 - (b) interest is payable, at the rate prescribed by the regulations, on and from the date that the refund becomes overdue.

[32] Section 24A

Insert after section 24:

24A Retirement village land to be recorded on Register

- (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.
Maximum penalty: 100 penalty units.
- (2) Any such notice is to be provided:
 - (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
 - (b) in any other case—before entering into a residence contract with respect to residential premises on that land.
- (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.
- (4) **Form of notice for recording**
The notice referred to in subsection (1) must be:
 - (a) in the form approved by the Registrar-General, and
 - (b) in the case of a notice relating to land under the *Real Property Act 1900*—accompanied by the fee prescribed under that Act, and
 - (c) in the case of a notice relating to land not under the *Real Property Act 1900*—accompanied by the fee prescribed under the *Conveyancing Act 1919*.

-
- (5) **Registrar-General to record retirement village on Register**
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.
- (6) **Operator to notify of recording being made**
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:
- (a) the holder of any other registered interest in the land to which the recording relates, and
 - (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.
- (7) **Operator to notify Registrar-General of certain changes**
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.
- (8) **Use of recording on Register**
Information that is recorded under this section may be used to establish a list of retirement villages.
- (9) **Application to remove recording**
A person may apply in writing to the Registrar-General for the removal of a recording made under this section.
- (10) **Form of application for removal of recording**
The application referred to in subsection (9) must be:
- (a) in the form approved by the Registrar-General, and
 - (b) in the case of an application relating to land under the *Real Property Act 1900*—accompanied by the fee prescribed under that Act, and
 - (c) in the case of an application relating to land not under the *Real Property Act 1900*—accompanied by the fee prescribed under the *Conveyancing Act 1919*.

(11) **Registrar-General may remove recording**

If the Registrar-General receives an application referred to in subsection (9), the Registrar-General may, if satisfied that:

- (a) there are no residential premises located on the land to which the recording relates that are the subject of a village contract, and
- (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,

remove the recording to which the application relates.

[33] Section 29 Variation or replacement of village contracts

Insert after section 29 (1):

(1A) An operator must not purport:

- (a) to vary a village contract, or
- (b) to terminate a village contract and enter into a new village contract in relation to the same residential premises,

unless the resident who is a party to the contract has obtained a certificate in accordance with this section.

Maximum penalty: 100 penalty units.

[34] Section 38 Condition report for certain residential premises

Insert after section 38 (2):

(2A) Without limiting subsection (2), the regulations may make provision for, or with respect to, the following:

- (a) the time within which the condition report must be completed,
- (b) the time within which the condition report must be provided to a prospective resident.

[35] Section 38 (5) (b)

Omit the paragraph. Insert instead:

- (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.

[36] Section 41A

Insert after section 41:

41A Renovations and alteration of fixtures or fittings

- (1) A resident of a retirement village may:
 - (a) add, remove or alter any fixtures or fittings on or within the resident's residential premises, or
 - (b) make renovations to the resident's residential premises, but only with the written consent of the operator of the retirement village.
- (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.
- (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.
- (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).
- (5) A resident of a retirement village may apply to the Tribunal for (and the Tribunal may make) an order:
 - (a) permitting the addition, removal or alteration of specified fixtures or fittings on or within the resident's residential premises, or
 - (b) permitting the making of specified renovations to the resident's residential premises, or
 - (c) varying the conditions to which the operator's consent is subject.
- (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.

- (7) Despite subsection (1), the consent of the operator of the retirement village is not required:
 - (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
 - (b) to make renovations, or to add, remove or alter any fixtures or fittings, prescribed by the regulations for the purposes of this section.
- (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.
- (9) Without limiting subsection (8), nothing in this section authorises a person to carry out development (within the meaning of the *Environmental Planning and Assessment Act 1979*) in contravention of that Act.

[37] Section 43 Standard form of village contract

Insert after section 43 (7):

- (8) A village contract that provides for the payment of an ongoing contribution may also provide:
 - (a) that any such contribution is to be paid by way of instalments at such intervals as may be specified in the contract, and
 - (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.

[38] Part 5, Division 2

Insert after section 44:

Division 2 Settling-in period for residents

44A Termination of village contract during settling-in period

- (1) A resident of a retirement village may terminate a village contract to which the resident is a party:
 - (a) by permanently vacating the residential premises within the village, or

-
- (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, before the end of the settling-in period.
 - (2) For the purposes of this Division, the *end of the settling-in period* means the later of:
 - (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
 - (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
 - (c) such date as may be agreed to by the operator and the resident.
 - (3) Nothing in this section requires a resident to occupy the residential premises before terminating a village contract under this section.
 - (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.

44B Liability of former occupant if village contract terminated during settling-in period

- (1) If a village contract is terminated in accordance with this Division, the former occupant is only liable to pay:
 - (a) fair market rent for the period (if any) that the former occupant occupied the residential premises under the contract, and
 - (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
 - (c) a reasonable administration fee, and
 - (d) such other amount as may be prescribed by the regulations.
- (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.

- (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.
- (4) An administration fee referred to in this section must not exceed the amount prescribed by the regulations.

44C Operator to refund certain payments made by resident

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:

- (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
- (b) in the case of any other former occupant—any ingoing contribution paid to the operator under the village contract, and
- (c) any recurrent charges paid to the operator under the village contract, and
- (d) such other amounts as may be prescribed by the regulations.

44D Time for making of payments

- (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.
- (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.
- (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.

-
- (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:
- (a) the amount of fair market rent (if any) required to be paid under section 44B (1) (a), or
 - (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
 - (c) the reasonable administration fee (if any) required to be paid under section 44B (1) (c).
- (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).
- (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).

44E Former occupant not required to pay certain amounts

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:

- (a) any recurrent charges,
- (b) any departure fee,
- (c) the cost of refurbishment within the meaning of Division 4 of Part 10,
- (d) the costs of sale or letting of the premises,
- (e) any amount specified in the village contract as being payable for terminating the contract during the settling-in period,
- (f) any amount prescribed by the regulations for the purposes of this section.

[39] Section 51 Amendment of village rules

Insert after section 51 (3):

- (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.

[40] Section 51 (4) (b)

Omit “statement of approved expenditure”.

Insert instead “approved annual budget (if any)”.

[41] Section 53 Operator’s concern that amendment will impose additional cost

Omit “statement of approved expenditure” from section 53 (1) (including the note), (3) and (4), wherever occurring.

Insert instead “approved annual budget”.

[42] Section 53 (1), note

Omit “annual statements of proposed and approved expenditure”.

Insert instead “proposed and approved annual budgets”.

[43] Section 53 (6)

Insert after section 53 (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.

[44] Section 58A

Insert after section 58:

58A Operator to provide safe premises

- (1) The operator of a retirement village must ensure that the village generally is reasonably safe.
- (2) In particular, the operator must:
 - (a) prepare written safety and emergency procedures, and
 - (b) take reasonable steps to ensure that all residents and staff are familiar with such procedures, and
 - (c) undertake a safety inspection at least once each year, and make a safety inspection report on the findings of any such inspection, and

-
- (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
 - (e) take such other action as the regulations may require to ensure that the village generally is reasonably safe.
- (3) Without limiting subsection (2) (e), the regulations may make provision for, or with respect to, the following:
- (a) the form of the written safety and emergency procedures,
 - (b) the conduct of safety inspections required under subsection (2) (c),
 - (c) the manner and form of such a safety inspection report,
 - (d) the period that the safety inspection report is to remain on the notice board as referred to in subsection (2) (d).
- (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:
- (a) an order directing the operator to comply with subsection (1) or (2),
 - (b) any other order referred to in section 128 (1).

[45] Section 59 Operator to provide village emergency system on request

Omit “statement of proposed expenditure” from section 59 (2).

Insert instead “proposed annual budget”.

[46] Section 59A

Insert after section 59:

59A Operator to provide emergency and home care service vehicles access to retirement village

The operator of a retirement village must take all reasonable steps to ensure that:

- (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
- (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.

Maximum penalty: 20 penalty units.

- [47] Section 60 Variation in services or facilities provided at village**
Omit “statement of approved expenditure” from section 60 (7), wherever occurring.
Insert instead “approved annual budget”.
- [48] Section 65 Operator not to demand appointment as proxy**
Omit the section.
- [49] Section 67 Restriction of operator’s access to residential premises**
Insert at the end of section 67 (1):
Maximum penalty: 20 penalty units.
- [50] Section 67 (2) (e) (i)**
Omit the subparagraph. Insert instead:
(i) the resident is not a registered interest holder with respect to the premises, and
- [51] Section 70 Residents Committees and organisations**
Omit “statement of approved expenditure” from section 70 (7).
Insert instead “approved annual budget”.
- [52] Section 70A**
Insert after section 70:
- 70A Membership of Residents Committee**
- (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.
 - (2) The election of a person to an office in contravention of subsection (1) is void.
 - (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.

[53] Sections 72A and 72B

Insert after section 72:

72A Annual management meeting to be held by operator

- (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.
- (2) The annual management meeting must be held not more than 4 months after the end of each financial year.
- (3) The annual management meeting must be chaired by:
 - (a) the operator of the retirement village, or
 - (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.
- (4) The operator must notify the residents of the retirement village at least 14 days before the annual management meeting of:
 - (a) the time and place of the meeting, and
 - (b) the agenda for the meeting.Maximum penalty: 20 penalty units.
- (5) The notice referred to in subsection (4) must also include an invitation to the residents of the retirement village to submit:
 - (a) written questions to the operator at least 7 days before the meeting, and
 - (b) other questions at the meeting.
- (6) The regulations may prescribe matters that must be included in the agenda for an annual management meeting.
- (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.
- (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.

- (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.

72B Questions to be answered at annual management meeting

- (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.
- (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:
- (a) if possible—in reasonable detail at the relevant meeting, and
 - (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.
- (3) Nothing in this section requires the operator or a person representing the operator to:
- (a) answer an unreasonable question, or
 - (b) answer a question relating to a matter that is prescribed by the regulations as an excluded matter for the purposes of this section.

[54] Section 73

Omit the section. Insert instead:

73 Villages without Residents Committee

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:

- (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

-
- (b) in the case of a retirement village with 10 or more occupied residential premises—the greater of:
 - (i) 5 residents of the retirement village, or
 - (ii) 10% of the residents of the retirement village.

[55] Section 75 Attendance at meetings of residents

Insert after section 75 (2):

- (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.
- (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.

[56] Section 77 Proxies

Omit section 77 (1). Insert instead:

- (1) A resident of a retirement village may, from time to time, appoint one of the following persons as the proxy of the resident:
 - (a) a relative of the resident,
 - (b) the guardian of the resident,
 - (c) a member of the Residents Committee or other resident of the retirement village,
 - (d) a person prescribed by the regulations.

[57] Section 77 (4) and (4A)

Omit section 77 (4). Insert instead:

- (4) An appointment of a person, other than a person referred to in subsection (1), as a proxy is of no effect.
- (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.

[58] Section 77 (6)

Insert after section 77 (5):

- (6) This section has effect despite any terms of the instrument appointing a person as the proxy of the resident.

[59] Section 78 Certain limitations on proxies

Omit section 78 (1). Insert instead:

- (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.

[60] Section 81 Right to become resident

Omit “owns (or owned)” from section 81 (2) (a).

Insert instead “is, or was, a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.

[61] Section 84 Application for order appointing administrator

Omit section 84 (2). Insert instead:

- (2) The Director-General may apply for an order under this section only if:
 - (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
 - (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
 - (c) the retirement village concerned is the subject of an existing order under this section.

[62] Sections 87A and 87B

Insert after section 87:

87A Expenses of administration

- (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.

-
- (2) Neither the Crown, the Minister nor the Director-General is liable for:
- (a) any expenses incurred by an administrator appointed under this Division to exercise the functions of the operator of a retirement village, or
 - (b) any liability of an operator of a retirement village in respect of which an administrator is appointed.

87B Administrator may vary village contract

- (1) Despite any other provision of this Act, an administrator appointed under this Division may, with the consent of the Director-General:
- (a) amend or revoke an approved annual budget, or
 - (b) vary the recurrent charges payable by the residents of the retirement village, or
 - (c) vary the services offered by the retirement village.
- (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:
- (a) assisting in the process of finding a new operator for the retirement village, or
 - (b) ensuring the financial viability of the retirement village.
- (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.
- (4) No compensation is payable to any person because of the operation of this section or anything done under this section.

[63] Part 7, Division 2

Omit Divisions 2 and 3. Insert instead:

Division 2 Capital maintenance and replacement

92 Interpretation

- (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:
- (a) that is owned by a resident of the retirement village, or
 - (b) that is association property under a community land scheme or common property under a strata scheme, or

- (c) that is of a class prescribed by the regulations for the purposes of this section.
- (2) 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:
 - (a) a burst water service,
 - (b) a blocked or broken lavatory service,
 - (c) a serious roof leak,
 - (d) a gas leak,
 - (e) a dangerous electrical fault,
 - (f) flooding or serious flood damage,
 - (g) serious storm or fire damage,
 - (h) a failure or breakdown of the gas, electricity or water supply to residential premises within the retirement village,
 - (i) a failure or breakdown of any essential service on the residential premises for hot water, cooking, heating or laundering,
 - (j) any fault or damage that causes the retirement village to be unsafe or insecure,
 - (k) any other matter prescribed by the regulations.

93 Obligations of operator with respect to certain capital maintenance or replacement

- (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:
 - (a) the age of the item,
 - (b) the prospective life of the item,
 - (c) the money paid to the operator by the residents under a village contract (including ingoing contributions).
- (2) If it is not practical to maintain an item of capital in accordance with this section, the operator may replace the item.
- (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.

94 Obligations of residents with respect to capital maintenance or replacement

- (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.
- (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.
- (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 capital maintenance or capital replacement in respect of an item of capital for which the operator is responsible.

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.

95 Resident may carry out urgent capital maintenance or replacement

- (1) A resident of a retirement village may carry out capital maintenance or capital replacement in respect of an item of capital for which the operator of the retirement village is responsible if:
 - (a) the maintenance or replacement of the item is urgent, and
 - (b) the resident first gives the operator a reasonable opportunity to carry out the maintenance or replace the item.
- (2) 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.
- (3) 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.

96 Tribunal may make orders for capital maintenance and replacement

- (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 necessary, the resident may apply to the Tribunal for (and the Tribunal may make) an order directing the operator:
 - (a) to carry out specified maintenance of an item of capital within the time specified in the order, or
 - (b) to replace a specified item of capital within the time specified in the order.
- (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.
- (3) Subsection (2) does not apply to damage caused by fair wear and tear.

97 Funding of certain capital maintenance and capital replacement

- (1) The operator of a retirement village may fund the cost of capital maintenance in respect of which the operator is responsible from the following sources:
 - (a) the capital works fund for the retirement village (if any),
 - (b) recurrent charges.
- (2) The operator of a retirement village must bear the cost of capital replacement in respect of an item of capital for which the operator is responsible.
- (3) This section does not authorise the funding of any of the following from the capital works fund or recurrent charges for the retirement village:
 - (a) the construction of a new building or a new stage of the retirement village,
 - (b) any work arising from the breach of a statutory warranty (within the meaning of the *Home Building Act 1989*) in respect of which proceedings may be commenced under Part 2C of that Act,
 - (c) the depreciation of items of capital,

-
- (d) the refurbishment of vacant residential premises within the retirement village,
 - (e) such other things as may be prescribed by the regulations.

98 Capital maintenance to be included in proposed annual budget

- (1) This section applies only if:
 - (a) the operator of the retirement village is required to supply the residents of the retirement village with a proposed annual budget, and
 - (b) the operator proposes to use any recurrent charges or any part of the capital works fund (if any) for the retirement village to fund capital maintenance.
- (2) The operator of a retirement village must, in the proposed annual budget:
 - (a) list each item of capital maintenance that is proposed to be carried out, and
 - (b) specify, in respect of each item, the expected cost, and
 - (c) include, in respect of each item, any quotes that the operator has obtained, and
 - (d) include provision for urgent capital maintenance.

99 Capital works fund

- (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 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.
- (2) However, this section does not require that a separate fund be established in respect of each financial year.
- (3) A capital works fund must be held in an account with an authorised deposit-taking institution or as otherwise prescribed by the regulations.
- (4) The operator of a retirement village is to pay into the capital works fund:
 - (a) such portion of the recurrent charges as may be required under an approved annual budget, and
 - (b) any interest received from the investment of the whole, or any part of, the capital works fund.

- (5) The operator of a retirement village must not use money from the capital works fund except:
 - (a) to meet the cost of capital maintenance, or
 - (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 to the residents of the retirement village in equal shares—in accordance with that proposal, or
 - (c) as prescribed by the regulations.Maximum penalty: 100 penalty units.
- (6) A proposal under subsection (5) (b) may be made by the operator of the retirement village or the Residents Committee (if any).
- (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:
 - (a) the distribution is not to be made, or
 - (b) approves or varies the proposed distribution.
- (8) In making an order under subsection (7) the Tribunal may consider the following:
 - (a) the proportion of the capital works fund that is proposed to be distributed,
 - (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,
 - (c) any other matter that the Tribunal considers appropriate.

100 Retirement village to be insured

- (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.
- (2) The village must have insurance that:
 - (a) covers the following:
 - (i) damage,
 - (ii) costs incidental to the reinstatement or replacement of insured buildings,
 - (iii) public liability, and

-
- (b) provides for the reinstatement of property to its condition when new.
 - (3) The regulations may prescribe a minimum amount of public liability insurance that is required under this section.
 - (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.
 - (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.
 - (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.

101 Operator not to sell items of capital to residents

- (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.
- (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).
- (3) This section does not apply to the sale of residential premises within a retirement village, including fixtures in any such premises.

[64] Section 104 Variation of recurrent charges

Omit “at specified intervals (or on specified dates)” from section 104 (1) (b).

[65] Section 104 (2)

Omit the subsection. Insert instead:

- (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.

[66] Section 105A

Insert after section 105:

105A Recurrent charges varied otherwise than by a fixed formula—not exceeding variation in CPI

- (1) This section applies to the variation of recurrent charges payable under a village contract if:
 - (a) the contract provides that recurrent charges are to be varied otherwise than in accordance with a fixed formula, and
 - (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.
- (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:
 - (a) the Consumer Price Index published most recently before those charges were last varied, and
 - (b) the Consumer Price Index published most recently before the written notice of the proposed variation is given.
- (3) The operator of a retirement village must give at least 14 days' written notice of any proposed variation to the recurrent charges.
- (4) The notice must specify:
 - (a) the amount of the new recurrent charges, and
 - (b) the date from which the new recurrent charges are payable, and
 - (c) such other information as may be prescribed by the regulations.
- (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.
- (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.

[67] Section 106 Recurrent charges varied otherwise than by fixed formula—exceeding variation in CPI

Omit section 106 (1) (except the note to that subsection). Insert instead:

- (1) This section applies to a variation of recurrent charges payable under a village contract if:
 - (a) the contract provides that recurrent charges are to be varied otherwise than in accordance with a fixed formula, and
 - (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.
- (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:
 - (a) the Consumer Price Index published most recently before those charges were last varied, and
 - (b) the Consumer Price Index published most recently before the written notice of the proposed variation is given.
- (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.

[68] Section 106 (2) (c) and (c1)

Omit section 106 (2) (c). Insert instead:

- (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
- (c1) include details of any action taken to minimise the proposed variation in recurrent charges, and

[69] Section 106 (3)

Omit “(if any)”.

[70] Section 106 (7)

Omit the subsection.

[71] Section 106A

Insert after section 106:

106A Recurrent charges varied otherwise than by fixed formula to be increased in accordance with Act

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:

- (a) beyond any upper limit specified in the relevant village contract, or
- (b) otherwise than in accordance with section 105A or 106.

Maximum penalty: 50 penalty units.

[72] Section 107 Residents' consent to variation

Insert after section 107 (4):

- (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.
- (6) The regulations may prescribe:
 - (a) the period within which information requested under subsection (4) must be provided, and
 - (b) information that the operator of a retirement village is not required to provide despite a request under subsection (4).

[73] Section 108 Determination by Tribunal

Omit section 108 (1). Insert instead:

- (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:
 - (a) the consent of the residents of the retirement village is required before the proposed variation can take effect, and
 - (b) the residents do not consent to the proposed variation under section 107.

[74] Section 108 (4) (b)

Omit “statement of proposed expenditure or approved expenditure”.
Insert instead “proposed annual budget or approved annual budget”.

[75] Section 111 Abatement of recurrent charges

Omit “owns” from the note to section 111 (1).
Insert instead “is a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.

[76] Part 7, Division 5, heading

Omit the heading. Insert instead:

Division 5 Proposed and approved annual budgets

[77] Section 112 Proposed annual budget

Insert “, or such other time as may be prescribed by the regulations” after “retirement village” in section 112 (1).

[78] Section 112 (1), (3) (a) and (6)

Omit “statement of proposed expenditure” wherever occurring.
Insert instead “proposed annual budget”.

[79] Section 112 (2), (3) (c), (4) and (5)

Omit “statement” wherever occurring. Insert instead “budget”.

[80] Section 112 (6)

Omit “amended statement”. Insert instead “amended budget”.

[81] Section 112 (7)–(11)

Insert after section 112 (6):

- (7) The residents of a retirement village may consent to not being supplied with a proposed annual budget if, in the year in which the consent is given, the total amount of the recurrent charges that are to be collected for the year does not exceed \$50,000 or such other amount as may be prescribed by the regulations.
- (8) If the residents of a retirement village consent to not being supplied with a proposed annual budget under this section, subsections (1)–(6) and sections 113–117 do not apply in respect of the retirement village while the consent remains in force.

Retirement Villages Amendment Bill 2008

Schedule 1 Amendments

- (9) Consent given under subsection (7) remains in force until such time as:
 - (a) the consent is revoked by a resolution of the residents of the village, or
 - (b) the total of the recurrent charges to be collected for a financial year to which the consent relates exceeds \$50,000 or such other amount as may be prescribed by the regulations.
- (10) The operator is required to notify the residents of the name of the auditor of the accounts at the annual management meeting if:
 - (a) consent given under subsection (7) is in force, and
 - (b) the operator of the village is required to have the accounts of the village audited under section 118.
- (11) The operator of a retirement village does not commit an offence under subsection (1) if consent given under subsection (7) is in force at the time that the operator is required to supply the proposed annual budget.

[82] Section 113 Order for proposed annual budget

Omit “statement of proposed expenditure”.

Insert instead “proposed annual budget”.

[83] Section 113

Omit “the statement”. Insert instead “the budget”.

[84] Section 114 Residents’ consent to expenditure

Omit “statement of proposed expenditure” from section 114 (1) and (4), wherever occurring.

Insert instead “proposed annual budget”.

[85] Section 114 (2) and (4)–(6)

Omit “the statement” wherever occurring. Insert instead “the budget”.

[86] Section 114 (4)

Omit “amended statement”. Insert instead “amended budget”.

[87] Section 114 (8)

Insert after section 114 (7):

- (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:
 - (a) have not been varied, or
 - (b) have been varied in accordance with section 104 (1) (a) or 105A.

[88] Section 115 Determination of expenditure by Tribunal

Omit “statement of proposed expenditure” from section 115 (1)–(3), wherever occurring.

Insert instead “proposed annual budget”.

[89] Section 115 (3) (b)

Omit “a statement of approved expenditure”.

Insert instead “an approved annual budget”.

[90] Section 115A

Insert after section 115:

115A Proposed annual budget may provide for contingencies

The regulations may limit the amount that a proposed annual budget may allocate for contingencies.

[91] Section 116 Expenditure to be in accordance with approved annual budget

Omit section 116 (1). Insert instead:

- (1) A proposed annual budget is taken to be an approved annual budget if:
 - (a) the residents of a retirement village consent to expenditure in accordance with the proposed annual budget, or
 - (b) the Tribunal orders that the expenditure of the operator is to be as itemised in the proposed annual budget.

[92] Section 116 (2) and (4) (b)

Omit “statement of proposed expenditure” wherever occurring.

Insert instead “proposed annual budget”.

[93] Section 116 (2) and (3)

Omit “statement of approved expenditure” wherever occurring.
Insert instead “approved annual budget”.

[94] Section 116 (2)

Omit “that statement”. Insert instead “that budget”.

[95] Section 116 (3A)

Insert after section 116 (3):

- (3A) An operator does not contravene subsection (3) if the expenditure that was otherwise than in accordance with the budget:
- (a) was a variation in expenditure between items in the approved annual budget, and
 - (b) does not reduce the level of services provided by the retirement village, and
 - (c) does not cause the total expenditure provided for by the approved annual budget to be exceeded.

[96] Section 117 Amendment of approved annual budget

Omit section 117 (1). Insert instead:

- (1) The operator of a retirement village may seek the consent of the residents to amend an approved annual budget except if:
- (a) the budget is taken to be an approved annual budget because of section 116 (1) (b), or
 - (b) the budget is a proposed annual budget modified in accordance with an order of the Tribunal as referred to in section 116 (2).

[97] Section 117 (2) and (3)

Omit “amended statement of approved expenditure” wherever occurring.
Insert instead “approved annual budget as amended”.

[98] Section 117 (4) (b)

Omit “statement of proposed expenditure”.
Insert instead “proposed annual budget”.

[99] Section 118 Auditing of accounts

Omit “statement of proposed expenditure” from section 118 (2) (a).

Insert instead “proposed annual budget (if any)”.

[100] Section 118 (2) (c)

Omit the paragraph. Insert instead:

- (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.

[101] Section 118 (3) and (4)

Omit the subsections. Insert instead:

- (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.
- (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.

[102] Section 119 Copies of annual accounts to be provided to residents

Insert “, or such other period as may be prescribed by the regulations,” after “4 months” in section 119 (1).

[103] Section 119 (2) (a) (i) and (ii)

Omit the subparagraphs. Insert instead:

- (i) details of the income and expenditure of the village during the financial year, including income and expenditure of the capital works fund (if any),
- (ii) details of the balance of the capital works fund (if any),

[104] Section 119 (4)

Omit “statement of proposed expenditure”.

Insert instead “proposed annual budget”.

[105] Section 119 (7)

Omit the subsection. Insert instead:

- (7) If there is no Residents Committee for the village concerned, a copy of the accounts is to be:
 - (a) displayed on the common property of the village in accordance with the regulations, and
 - (b) provided to any individual resident of the village who requests a copy.

[106] Sections 119A and 119B

Insert after section 119:

119A Accounts not required to be audited in certain cases

- (1) Despite section 118 (1), the operator of a retirement village is not required to have the accounts of the retirement village audited if:
 - (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
 - (b) the residents have consented to the operator not having the accounts of the village audited and that consent is in force.
- (2) If the operator of a retirement village is not required to have the accounts of the village audited:
 - (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
 - (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.
- (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.
Maximum penalty: 100 penalty units.

-
- (4) The residents of a retirement village may revoke any consent given under this section at any time.
 - (5) Consent given under this section remains in force until:
 - (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
 - (b) the consent is revoked by the residents of the village, whichever happens first.

119B Quarterly accounts not required to be given to residents in certain circumstances

- (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:
 - (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
 - (b) the residents have consented to the operator not giving them copies of the quarterly accounts and that consent is in force.
- (2) The residents of a retirement village may revoke any consent given under this section at any time.
- (3) Consent given under this section remains in force until:
 - (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
 - (b) the consent is revoked by the residents of the village, whichever happens first.

[107] Section 120 Any surplus or deficit to be carried over

Omit the section.

[108] Part 7, Division 7

Insert after Division 6 of Part 7:

Division 7 Surplus or deficit of accounts

120A Definitions

In this Division:

deficit means a deficit in the annual accounts of a retirement village for any financial year ending on or after 23 November 2006.

surplus means a surplus in the annual accounts of a retirement village for any year.

120B Any surplus to be carried over

- (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:
 - (a) the residents of the village consent to a proposal for the expenditure of the whole or any part of the surplus, or
 - (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.
- (2) A proposal under subsection (1) may be made by the operator of the retirement village or the Residents Committee (if any).
- (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:
 - (a) the distribution is not to be made, or
 - (b) approves or varies the proposed distribution.
- (4) In making an order under subsection (3), the Tribunal may consider the following:
 - (a) the proportion of the surplus that is proposed to be distributed,
 - (b) any other matter that the Tribunal considers appropriate.

120C Making good of deficit

- (1) A deficit is to be made good by the operator of the retirement village.

-
- (2) Except as provided by the regulations referred to in subsection (3), an operator of a retirement village must not:
 - (a) carry forward a deficit to a subsequent financial year, or
 - (b) request or receive from the residents of the retirement village any special additional payments for the purpose of making good a deficit, or
 - (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
 - (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
 - (e) use the whole or any part of the capital works fund for the retirement village to make good a deficit.
 - (3) The regulations may prescribe circumstances in which the operator of a retirement village may:
 - (a) increase the recurrent charges payable by the residents of a retirement village for the purpose of making good a deficit, or
 - (b) use the whole or any part of the recurrent charges collected by the operator for the purpose of making good a deficit, or
 - (c) carry forward a deficit to a subsequent financial year.
 - (4) The operator of a retirement village must not charge the residents of a retirement village interest in respect of a deficit.

[109] Section 129 How and when residence right or contract is terminated

Omit “that are owned by the resident” from section 129 (1).

Insert instead “in respect of which the resident is a registered interest holder (other than a person referred to in section 7 (1) (c))”.

[110] Section 129 (2)

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”.

Insert instead “(other than a contract referred to in subsection (1) or (1A)) and the residence right under the contract, terminate”.

[111] Section 129 (2) (a) and (c)

Omit “delivers up vacant possession of the residential premises to the operator” wherever occurring.

Insert instead “permanently vacates the premises”.

[112] Section 129 (2) (b)

Omit the paragraph. Insert instead:

- (b) on the date on which the resident permanently vacates the premises, or

[113] Section 130 Tribunal cannot terminate certain residence contracts

Omit “owns” from section 130 (a).

Insert instead “is a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.

[114] Section 132 Termination if residence contract frustrated

Omit “owns” from section 132 (1).

Insert instead “is a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.

[115] Part 9, Division 3A

Insert after Division 3:

Division 3A Termination by Supreme Court on application of administrator

136A Termination on grounds of retirement village ceasing to operate

- (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.
- (2) If the Court makes an order under this section, the Court:
 - (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

-
- (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
 - (c) may make such other orders as it thinks fit.

[116] Section 139 Operator not to recover possession of premises except by order

Omit section 139 (1) and (2). Insert instead:

- (1) A person must not (whether acting on his or her own behalf or on behalf of another):
 - (a) enter, or attempt to enter, residential premises within a retirement village, or
 - (b) remove, or attempt to remove, a resident from residential premises within a retirement village, or
 - (c) take any other action that is intended, or is likely, to cause a resident to vacate residential premises within a retirement village,

for the purpose of recovering possession of the residential premises otherwise than in accordance with this or any other Act or law.

Maximum penalty: 200 penalty units.

[117] Sections 142 (2) and 145

Omit "owned by the resident" wherever occurring.

Insert instead "occupied by a resident who is a registered interest holder in respect of the premises".

[118] Section 147 Disposal of uncollected goods

Insert after section 147 (4):

- (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.

Maximum penalty (subsection (5)): 20 penalty units.

[119] Section 150 References to sale of "residential premises"

Omit section 150 (1) and (3).

[120] Section 150 (2)

Omit "subsection (1) (b)". Insert instead "section 7 (1) (c)".

- [121] Section 151 Recurrent charges in respect of optional services**
Omit “personal services” wherever occurring.
Insert instead “optional services”.
- [122] Section 152 Recurrent charges in respect of general services: registered interest holders**
Omit “owns” from section 152 (1).
Insert instead “is a registered interest holder in respect of”.
- [123] Section 152 (2)**
Omit “The”. Insert instead “Subject to subsection (3), the”.
- [124] Section 152 (2) (d)**
Omit “section 150 (1) (b)”. Insert instead “section 7 (1) (c)”.
- [125] Sections 152 (2) (d) (i) and (ii), 153 (2) (c)–(e), 159 (2) (d) (i) and (ii) and 160 (2) (c)–(e)**
Omit “delivered up vacant possession of the premises to the operator” wherever occurring.
Insert instead “permanently vacated the premises”.
- [126] Sections 152 (2) (d) (ii), 153 (2) (d), 159 (2) (d) (ii) and 160 (2) (d)**
Omit “vacant possession was delivered” wherever occurring.
Insert instead “the former occupant permanently vacated the premises”.
- [127] Section 152 (3)**
Insert after section 152 (2):
- (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:
 - (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
 - (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.

-
- [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”.
- [129] Section 153 (2) (e)**
Omit “6 months”. Insert instead “42 days”.
- [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.
- [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”.
- [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”.
- [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”.
- [134] Section 159 (2) (d)**
Omit “section 150 (1) (b)”. Insert instead “section 7 (1) (c)”.
- [135] Section 160 Period for which departure fee may be charged after permanent vacation of premises: old contracts—generally**
Omit “does not own” from section 160 (1) (a).
Insert instead “is not a registered interest holder in respect of”.

[136] Section 161 Reduction or waiver of departure fee

Omit “after the former occupant’s permanent vacation of” from section 161 (1).

Insert instead “after the former occupant has permanently vacated”.

[137] Section 163 Condition of premises on termination

Omit section 163 (1) and (2). Insert instead:

- (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.
- (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.

[138] Section 166 Application of Division

Omit “owns”. Insert instead “is a registered interest holder in respect of”.

[139] Section 170 Costs of sale

Insert after section 170 (3):

- (4) In this section, *costs of sale* 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.

[140] Section 174 Letting or subletting of premises

Omit “section 150 (1) (b)” from section 174 (1).

Insert instead “section 7 (1) (c)”.

[141] Section 175 Determination by Tribunal concerning proposed tenant or subtenant

Insert “and pay such compensation (if any) as is specified in the order” after “concerned” in section 175 (3) (a).

[142] Section 175 (4)

Omit “subsection (3) (b)”. Insert instead “subsection (3) (a)”.

[143] Section 179 Legal ability to sublet

Omit “section 150 (1) (b)” from section 179 (1).

Insert instead “section 7 (1) (c)”.

[144] Section 180 Payments to former occupants who were registered interest holders

Omit “owns” from section 180 (1).

Insert instead “is, or was, a registered interest holder in respect of”.

[145] Section 180 (3) (e)

Omit “section 150 (1) (b)”. Insert instead “section 7 (1) (c)”.

[146] Section 180 (4)–(6)

Omit section 180 (4) and (5). Insert instead:

- (4) If a payment is not made to the former occupant within the time required by subsection (2):
 - (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
 - (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.
- (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:
 - (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
 - (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.
- (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:

- (a) are substantially different from those contained in the village contract to which the former occupant was a party, and
- (b) will have a negative financial impact on the former occupant to the benefit of the operator.

[147] Section 181 Payments to former occupants who were not registered interest holders

Omit “does not own” from section 181 (1).

Insert instead “is not, or was not, a registered interest holder in respect of”.

[148] Section 181 (7)–(9)

Omit section 181 (7) and (8). Insert instead:

- (7) If a payment is not made to the former occupant within the time required by this section:
 - (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
 - (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.
- (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:
 - (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
 - (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.
- (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:
 - (a) are substantially different from those contained in the village contract to which the former occupant was a party, and

- (b) will have a negative financial impact on the former occupant to the benefit of the operator.

[149] Part 10A

Insert after Part 10:

Part 10A Protection of ingoing contributions paid by residents other than registered interest holders

182A Application of Part

- (1) This Part applies to a village contract if:
 - (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
 - (b) any such refund exceeds the amount prescribed by the regulations.
- (2) This Part extends to any such village contract that was in force immediately before the commencement of this section.
- (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.

182B Creation of charge

- (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.
- (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.
- (3) Nothing in this section creates a charge over land:
 - (a) that is not recorded as a retirement village under section 24A, or
 - (b) in respect of which a resident is a registered interest holder.

182C Disposal of land subject to charge

- (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.
- (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.

182D Effect of charge on successors in title

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.

182E Application for enforcement of charge

- (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:
 - (a) the operator of the retirement village has become insolvent or an administrator has been appointed under Division 6 of Part 6, and
 - (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.
- (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:
 - (a) the operator of the retirement village has become insolvent or an administrator has been appointed under Division 6 of Part 6, and
 - (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.

182F Order for enforcement of charge

The Supreme Court may, on an application made under section 182E with respect to land within a retirement village:

- (a) order that land within the retirement village, in respect of which a charge is in force, is to be sold, and
- (b) appoint a person to act as the agent for the sale, and
- (c) make a determination as to the entitlements of each of the residents or former occupants of the retirement village, having regard to:
 - (i) the refund entitlement of each resident or former occupant under their respective village contracts, and
 - (ii) the dates on which charges were created under this Part with respect to those contracts, and
- (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
- (e) make such other orders as the Court sees fit.

182G Priority of interests

For the purposes of any order made under this Part, interests in the land concerned are to be satisfied in the following order:

- (a) the costs of the sale of the land and the applicant's costs in seeking the order,
- (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,
- (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,
- (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,
- (e) the interest of the registered proprietor of the land immediately before the sale of the land.

182H Order not to disadvantage residents

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.

182I Removal of charge

A charge over land created under this Part remains in force until:

- (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
- (b) the land is sold in accordance with an order under this Part.

[150] Section 189 Functions of Director-General

Omit “, including prosecution for any offence,” from section 189 (1) (b).

[151] Section 189 (1) (bi)

Insert after section 189 (1) (b):

- (bi) the function of prosecuting any offence under this Act or the regulations,

[152] Section 189A

Insert after section 189:

189A Director-General may issue warning notices

- (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.
- (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.
- (3) The Director-General may authorise the publication of such a notice in any one or more of the following ways:
 - (a) to any persons making inquiries to the Director-General about the person concerned,
 - (b) by advertisement by the use of any medium,
 - (c) to any media representatives.

-
- (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).
 - (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) 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.
 - (7) No liability is incurred by any person for publishing in good faith:
 - (a) a notice under this section, or
 - (b) a fair report or summary of such a notice.

[153] Section 190 Director-General may take or defend proceedings

Omit section 190 (1) (b). Insert instead:

- (b) after investigating the complaint, the Director-General is satisfied that the resident may have a right to take or defend the proceedings, and

[154] Sections 193–195

Omit the sections.

[155] Section 196 Exclusion of personal liability

Insert “, the Registrar-General” after “by the Director-General”.

[156] Section 196

Insert “or Registrar-General” after “of the Director-General”.

[157] Section 196

Insert “, the Registrar-General” after “subject the Director-General”.

[158] Part 12A

Insert after Part 12:

Part 12A Powers of investigation

196A Powers of entry, inspection etc

- (1) An investigator may exercise the powers conferred by this section for the purposes of:
 - (a) ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened, or
 - (b) investigating a complaint made under this Act, or
 - (c) obtaining evidence, documents or information in relation to a matter that constitutes or may constitute a contravention of this Act or the regulations.
- (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.
- (3) While on premises entered under this section, an investigator may do any one or more of the following:
 - (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,
 - (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,
 - (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,
 - (d) take such photographs, films and audio, video and other recordings as the investigator considers necessary,
 - (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,

-
- (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.
 - (4) An investigator is not entitled to enter a part of premises used for residential purposes except:
 - (a) with the consent of the occupier, or
 - (b) under the authority of a search warrant.
 - (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.

196B Power of investigator to obtain information, documents and evidence

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:

- (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
- (b) to produce to an investigator, in accordance with the notice, any such documents, or
- (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.

196C Obstruction etc of investigator

- (1) A person must not:
 - (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

- (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
- (c) wilfully delay, hinder or obstruct an investigator in the exercise of the investigator's functions under this Part.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

- (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.

196D Taking possession of documents to be used as evidence

- (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.
- (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.
- (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.

196E Search warrants

- (1) An investigator may apply to an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002* for the issue of a search warrant for premises if the investigator believes on reasonable grounds:
 - (a) that a provision of this Act or the regulations is being contravened on the premises, or
 - (b) that there is on the premises evidence of a contravention of this Act or the regulations.
- (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:

- (a) to enter and inspect premises, and
- (b) to exercise on the premises any function of an investigator under this Part.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.

[159] Section 197A

Insert after section 197:

197A False or misleading information

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.

Maximum penalty: 20 penalty units.

[160] Section 198 Costs of operator's legal advice or proceedings

Omit "statement of approved expenditure" from section 198 (1) (a).

Insert instead "approved annual budget".

[161] Section 198 (2)

Omit "statement of proposed expenditure".

Insert instead "proposed annual budget".

[162] Section 202 Costs of administration

Insert at the end of the section:

- (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.

[163] Section 203 Regulations

Insert after section 203 (3):

- (4) The regulations may exempt specified village contracts or a specified class of village contracts from any provision of this Act.

[164] Schedule 1 Consent of residents

Omit Part 3. Insert instead:

Part 3 Consent requiring special resolution

5 Notice of special resolution

If a measure or action requires a special resolution, a ballot must be conducted in accordance with the regulations.

6 How special resolution is carried

A special resolution is carried only if it is passed by at least 75% of the number of residents who participate in the ballot.

[165] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Retirement Villages Amendment Act 2008

[166] Schedule 4, clause 1 (1A)

Insert after clause 1 (1):

(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).

[167] Schedule 4, Part 3

Insert after Part 2:

Part 3 Provisions consequent on enactment of Retirement Villages Amendment Act 2008

Division 1 General

15 Definition

In this Part:

2008 amending Act means the *Retirement Villages Amendment Act 2008*.

16 Amendments extend to existing contracts

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.

Division 2 Recurrent charges**17 Liability of former occupant of residential premises for recurrent charges where former occupant is registered interest holder**

- (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).
- (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 42 days after that commencement.
- (3) In this clause, a reference to recurrent charges is a reference to recurrent charges in respect of general services.

18 Liability of former occupant of residential premises for recurrent charges where former occupant is not registered interest holder

- (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.
- (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:
 - (a) the date that is 42 days after the commencement of this clause, or

- (b) the date that is 6 months after the former occupant delivered up vacant possession of those premises to the operator,
whichever date occurs first.
- (3) In this clause, a reference to recurrent charges is a reference to recurrent charges in respect of general services.

Division 3 Making good of outstanding deficits

19 Definition

In this Division, *outstanding deficit* 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.

20 Making good of deficit

- (1) The operator of a retirement village may:
 - (a) make good the whole, or any part, of any outstanding deficit from any funds, other than recurrent charges, available to the operator, or
 - (b) propose that the residents of the village make good the whole, or any part, of any outstanding deficit:
 - (i) by making special additional payments, or
 - (ii) from any surplus in the annual accounts of the retirement village in any financial year.
- (2) The residents of a retirement village may, by special resolution, consent to a proposal under subclause (1) (b) (i) or (ii).
- (3) A proposal under subclause (1) (b) may only be put to the residents of the retirement village once.
- (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.
- (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).

-
- (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.

21 Tribunal may make orders for making good of deficit

- (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:
- (a) the amount of any such deficit that is to be made good by the operator of the retirement village, and
 - (b) the amount of any such deficit that is to be made good by the residents of the retirement village, and
 - (c) the date by which any such deficit is to be made good.
- (2) In making an order under this clause, the Tribunal must give consideration to such matters as may be prescribed by the regulations.
- (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.

Division 4 Capital replacement and maintenance

22 Definitions

In this Division:

capital replacement fund means a capital replacement fund established under section 95 (as in force immediately before its substitution by the 2008 amending Act).

capital works fund means a capital works fund established under section 99 (as substituted by the 2008 amending Act).

maintenance fund means a maintenance fund established under section 100 (as in force immediately before its substitution by the 2008 amending Act).

23 Reimbursement for urgent capital replacement or maintenance carried out by resident

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.

24 Existing capital replacement funds and maintenance funds

- (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.
- (2) Any funds held in a capital replacement fund for a retirement village that is dissolved by subclause (1) are to be paid to the operator of the retirement village.
- (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.

25 Sale of items of capital to residents

- (1) Except as provided by this clause, section 101, 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.
- (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:
 - (a) the item was purchased from the operator of the village on or after 23 November 2006, and
 - (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).
- (3) On the giving of such a notice to the operator of a retirement village:
 - (a) ownership of the item of capital referred to in the notice is transferred to the operator, and
 - (b) the resident is entitled to receive a payment equal to the amount the resident paid for the item.
- (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.
- (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.
- (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.

26 Contract, agreement or scheme for the replacement or maintenance of items of capital

- (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:
 - (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
 - (b) was entered into before the substitution of section 101.
- (2) Except as provided by this clause, section 101 does not apply in respect of a contract, agreement or scheme to which this clause applies.
- (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 101 (2) to apply to the contract, agreement or scheme.
- (4) On the giving of the notice, section 101 (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.
- (5) A notice may only be given under this clause within the period of 3 months immediately after the commencement of section 101.
- (6) A reference in this clause to section 101 is a reference to that section as substituted by the 2008 amending Act.

Division 5 Miscellaneous**27 Amendments relating to annual budgets**

- (1) A statement of proposed expenditure or a statement of approved expenditure under this Act (as in force immediately before the repeal of the definition of *statement of approved expenditure* in section 4 (1)) is taken, on that repeal, to be a proposed annual budget or approved annual budget respectively.
- (2) An amendment made by the 2008 amending Act does not affect expenditure from recurrent charges of a retirement village that was approved, in accordance with this Act, by the residents of the retirement village before the commencement of that amendment. Any such expenditure may be made after that commencement from the recurrent charges of the retirement village.

28 General inquiry document and disclosure statement concerning a village

- (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.
- (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.
- (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.

29 Amendment relating to residents entering village contract

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.

30 Amendment relating to renovations and alteration of fixtures or fittings

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.

31 Settling-in period provisions

- (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.
- (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:
 - (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
 - (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
 - (c) such date as may be agreed to by the operator and the resident.

32 Membership of Residents Committee

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.

33 Holding of first annual management meeting

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.

34 Existing proxies

- (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.
- (2) However, any such proxy expires at the end of the financial year of the retirement village commencing after the commencement of the amendment.

35 Variation of recurrent charges

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.

36 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.