



New South Wales

Retirement Villages Amendment Bill 2006

Explanatory note

Overview of Bill

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

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

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the retirement village to make good any such deficit except as provided by the regulations,

- (f) to provide that the operator is required to ensure that the retirement village is generally safe and that emergency and home care services have vehicular access to residential premises within the village,
- (g) to provide for the recording on the Register kept under the *Real Property Act 1900* that specified land is used as a retirement village,
- (h) to limit the period that a former occupant is required to pay recurrent charges after permanently vacating the premises within a retirement village,
- (i) to provide for the calculation of interest in relation to certain payments that are not paid within the time required by the principal Act,
- (j) to provide for a settling-in period during which a resident may terminate a village contract,
- (k) to provide that the resident of residential premises may add or remove fixtures, or make alterations to the premises, with the consent of the operator and that the operator must not unreasonably refuse to give such consent,
- (l) to revise the investigation, compliance and enforcement powers under the principal Act and to bring those powers into line with the *Property, Stock and Business Agents Act 2002*,
- (m) to create a process by which the right to receive a refund of an ingoing contribution paid under a village contract may be enforced,
- (n) to create offences for failing to comply with certain provisions of the principal Act,
- (o) to make other amendments of a minor or consequential nature.

Outline of provisions

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

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

Clause 3 is a formal provision that gives effect to the amendments to the *Retirement Villages Act 1999* set out in Schedule 1.

Clause 4 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendments

Schedule 1 [1] provides that encouraging the adoption of best practice management standards within the retirement village industry is an object of the principal Act.

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Schedule 1 [2], [3] and [6]–[8] make amendments to the definition of certain terms that are used in the principal Act. **Schedule 1 [117]** makes a consequential amendment.

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

Schedule 1 [9] replaces the term “owner” with the term *registered interest holder*. The new term includes residents of a retirement village whose residence right arises from a residence contract in the form of a registered long-term lease with a provision that entitles the person to at least 50% of any capital gains with respect to the premises. **Schedule 1 [5], [10], [30], [46], [56], [71], [106]–[110], [113], [115], [116], [118]–[120], [122], [125]–[132], [134], [137], [138] and [140]** make consequential amendments.

Schedule 1 [11] provides that the regulations may prohibit the operator of a retirement village from distributing written promotional material of a kind specified in the regulations.

Currently, section 18 of the principal Act provides that the operator of a retirement village is required to provide a prospective resident with a disclosure statement. **Schedule 1 [12]** limits the obligation to provide a disclosure statement to those cases where a prospective resident requests a copy. However, **Schedule 1 [12]** also provides that the operator is required to provide prospective residents with a general inquiry document. **Schedule 1 [13]–[15]** make consequential amendments.

Schedule 1 [16] requires the operator of a retirement village to provide a prospective resident with a document outlining the rights and responsibilities of a resident of a retirement village at the same time as the prospective resident is provided with the disclosure statement. **Schedule 1 [17]** makes a consequential amendment.

Schedule 1 [18], [19], [35]–[37], [40], [42], [47], [70], [72], [74], [76], [77], [79]–[83], [85], [88]–[90], [93]–[95], [100], [101], [153] and [154] replace references to statements of proposed expenditure and statements of approved expenditure with references to proposed annual budgets and approved annual budgets.

Schedule 1 [25] requires a village contract to be in writing.

Schedule 1 [26] provides that a former occupant who does not receive a refund to which he or she is entitled under section 24 of the principal Act may apply to the Consumer, Trader and Tenancy Tribunal (*the Tribunal*) for an order directing the operator to make the payment and provides that interest is payable at the rate prescribed by the regulations.

Schedule 1 [27] inserts proposed section 24A. The proposed section provides that the operator of a retirement village must notify the Registrar-General that land is to be used as a retirement village before entering into a village contract with respect to residential premises located on that land. The proposed section also provides for the recording of such information on the Register kept under the *Real Property Act 1900*

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as the Registrar-General considers necessary and for the removal of any such recording from the Register.

Schedule 1 [28] creates an offence for the operator of the retirement village to purport to vary a village contract, or to terminate a village contract and enter into a new village contract in respect of the same premises, unless the resident has obtained a written certificate in accordance with section 29 of the principal Act.

Section 38 of the principal Act provides that the operator of a retirement village must not permit a resident to occupy residential premises in the retirement village until the operator prepares, and provides the prospective resident with, a condition report. **Schedule 1 [29]** provides for the making of regulations specifying the time within which such a report must be completed and provided to the prospective resident.

Schedule 1 [31] provides that a resident of a retirement village may make renovations and alterations to fixtures or fittings on or in residential premises within the village with the consent of the operator of the village and that the operator must not unreasonably withhold consent. The proposed amendment also provides that certain renovations or alterations to fixtures or fittings may be made without the consent of the operator. **Schedule 1 [131]** makes a consequential amendment.

Schedule 1 [32] provides that a village contract may provide for the payment of an ongoing contribution by instalments and may provide for interest to be calculated on any unpaid proportion of that ongoing contribution.

Schedule 1 [33] inserts proposed Division 2 into Part 5 of the principal Act (proposed sections 44A–44E). The proposed Division makes provision with respect to a settling-in period for residents of a retirement village. **Schedule 1 [24]** makes a consequential amendment.

Proposed section 44A provides for the termination of a village contract during the settling-in period, and defines the settling-in period as being the period commencing on the day that the resident enters into a village contract and ending on the day that is 90 days after the date that the resident first occupies the residential premises or on such later date as may be agreed by the operator.

Proposed section 44B provides that a resident who terminates his or her village contract during the settling-in period is only liable to pay certain amounts in relation to the period that the resident occupied the premises. Proposed section 44E makes it clear that certain amounts are not payable by a resident who terminates a village contract during the settling-in period.

Proposed section 44C provides that the operator of a retirement village is required to refund to a former occupant who terminated his or her village contract during the settling-in period certain amounts that were paid under the village contract, and in certain cases, the proceeds from the sale of the residential premises.

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

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Schedule 1 [34] provides that the operator of a retirement village is required to notify the residents of the village of the outcome of a vote taken to obtain the consent of the residents to amend the village rules within 7 days of becoming aware of the outcome of the vote.

Schedule 1 [39] inserts proposed section 58A. The proposed section provides that the operator of a retirement village must ensure that the village is reasonably safe, and that the operator is required to conduct safety inspections. The proposed section also provides that a resident may, if the resident believes that the village is not reasonably safe, apply to the Tribunal for an order directing the operator to ensure that the village is reasonably safe.

Schedule 1 [41] provides that the operator of a retirement village must ensure that emergency and home care services personnel have unimpeded vehicular access to residential premises within the village.

Schedule 1 [44] provides that the operator of a retirement village who interferes or denies a resident of the village certain rights that are protected by the principal Act is guilty of an offence.

Section 67 of the principal Act provides that the operator of a retirement village, or a person authorised by the operator, must not enter occupied residential premises otherwise than in accordance with that section. **Schedule 1 [45]** make it an offence to enter residential premises in contravention of that section.

Schedule 1 [48] inserts proposed section 70A which provides that a resident of a retirement village must not hold the same office, or hold an office performing the same (or substantially the same) functions on the Residents Committee for the village for more than 3 consecutive years except as provided by the regulations. The appointment of a person to an office in contravention of the proposed section is void.

Schedule 1 [49] requires the operator of a retirement village to hold an annual general meeting to answer the questions put by the residents and to provide the residents with the information required by the regulations. **Schedule 1 [50] and [51]** make consequential amendments.

Schedule 1 [52] provides that a resident of a retirement village may only appoint a relative, guardian, office holder or other resident of the village or a person prescribed by the regulations as the resident's proxy. **Schedule 1 [43], [53] and [54]** make consequential amendments.

Schedule 1 [55] provides that a person may only be appointed as proxy by 2 residents of the village (or such other number of residents as may be prescribed) and that any subsequent appointment is void.

Section 84 of the principal Act provides that the Director-General may apply to the Supreme Court for an order appointing an administrator to exercise certain functions of the operator of a retirement village. **Schedule 1 [57]** provides that the Director-General may only apply for an order under that section if the Director-General is of the opinion that the well-being or financial security of the

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residents of the village will be seriously affected by the continued operation of the village by the operator, or if the Director-General is of the opinion that the operator is wilfully and repeatedly acting in contravention of the principal Act.

Schedule 1 [58] inserts proposed sections 87A and 87B.

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

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

Divisions 2 and 3 of Part 7 of the principal Act currently provide separate schemes for capital maintenance and capital replacement with respect to items of capital within a retirement village. **Schedule 1 [59]** replaces those Divisions with proposed Division 2 (proposed sections 92–102) which deals with both capital replacement and maintenance. **Schedule 1 [21]** makes a consequential amendment.

Proposed section 92 provides that the operator of a retirement village is responsible for all capital maintenance and replacement in the village except as otherwise provided by the proposed Division.

Proposed section 93 provides that the operator of a retirement village is not required to bear the cost of capital maintenance or replacement in respect of certain items of capital including items belonging to a resident of the village and the refurbishment of premises where the resident is required to bear the cost of refurbishment.

Proposed section 94 provides that the operator and a resident of a retirement village are required to share liability for capital maintenance and replacement of certain items.

Proposed section 95 provides that the operator of a retirement village is required to maintain the items of capital in the village in a reasonable state of repair having regard to the age of the village and the prospective life of the item.

Proposed section 96 provides that a resident may carry out urgent works for capital replacement or maintenance where the operator has not, when given the opportunity to do so, carried out those urgent works. If a resident carries out urgent works the operator is required to reimburse the resident for the cost of the works or that part of the works that the operator would otherwise have been liable to pay.

Proposed section 97 provides that, if a resident of a village is of the opinion that the operator of the village is failing to maintain the items of capital of the village to the

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standard required by proposed section 95, the resident may apply to the Tribunal for an order directing the operator to carry out specified works.

Proposed section 98 provides that the operator of a retirement village is to insure the village.

Proposed section 99 provides for the creation of a capital works fund to hold funds that are to be used for capital maintenance or replacement. Proposed sections 100 and 101 provide for the payment of money into the fund and payment of money from the fund, respectively.

Proposed section 102 provides that the operator of a retirement village must not sell items of capital to a resident of a retirement village.

Schedule 1 [61] provides that the recurrent charges under a village contract that may be varied otherwise than in accordance with a fixed formula may only be varied once in any 12 month period and that any second or subsequent variation is of no effect. **Schedule 1 [60]** makes a consequential amendment.

Schedule 1 [62] provides that the operator of a retirement village is not required to obtain the consent of the residents of the village to a variation in the recurrent charges payable by the residents of the village if the recurrent charges are to be varied otherwise than in accordance with a fixed formula and the proposed variation does not exceed the variation in the Consumer Price Index for the year immediately before the proposed variation. **Schedule 1 [63]–[65] and [69]** make consequential amendments.

Schedule 1 [66] makes provision for the process by which the residents of a retirement village are to consent to a proposed variation of the recurrent charges payable by the residents of the village if the recurrent charges are to be varied otherwise than in accordance with a fixed formula, and the proposed variation exceeds the variation in the Consumer Price Index for the year immediately before the proposed variation. **Schedule 1 [67]** makes a consequential amendment.

Schedule 1 [68] provides that the Residents Committee (or a resident) of a retirement village may apply to the Tribunal for an order directing the operator of the retirement village to provide the residents of the village with the information requested by the residents for the purpose of deciding whether consent should be given to the variation.

Section 112 of the principal Act provides that the operator of a retirement village must supply the residents of the village with a copy of the proposed annual budget within 60 days of the commencement of the financial year to which the budget relates. **Schedule 1 [73]** provides that the regulations may prescribe another time within which the residents must be supplied with the proposed budget.

Schedule 1 [78] provides circumstances in which the residents of a retirement village may consent not to have a proposed annual budget provided. **Schedule 1 [38]** makes a consequential amendment.

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Schedule 1 [84] provides that in certain circumstances the residents of a retirement village are taken to have consented to a proposed annual budget where there has been no substantial change in the services offered by the village and the recurrent charges have been varied in a manner that does not require the consent of the residents for the proposed variation in the recurrent charges to take effect. **Schedule 1 [87]** makes a consequential amendment.

Schedule 1 [86] provides that a proposed annual budget may allow for a specified amount (not exceeding the amount prescribed by the regulations) to be allocated for any contingencies that may arise.

Section 116 of the principal Act provides that the operator of a retirement village is required to spend funds in accordance with a proposed budget and that spending money received from recurrent charges otherwise than in accordance with the budget is an offence. **Schedule 1 [91]** provides that the operator of a retirement village is not guilty of an offence under that provision if the variation was between line items in the budget, was reasonable in the circumstances and did not significantly reduce the level of services provided by the village.

Section 117 of the principal Act provides that the operator of a retirement village may seek the consent of the residents to amend an approved budget. **Schedule 1 [92]** provides that the operator may only seek such consent in certain circumstances.

Section 118 (2) (c) of the principal Act requires the residents of a retirement village to consent to the appointment of an auditor to audit the annual accounts of the village. **Schedule 1 [97]** removes that requirement. **Schedule 1 [96]** makes a consequential amendment.

Schedule 1 [98] provides that the operator of a retirement village is required to provide a copy of the quarterly accounts of the retirement village to the Residents Committee of the retirement village (or if there is no Residents Committee in respect of the village, to any resident who requests a copy) not more than 28 days after the end of the quarter to which the accounts relate.

Section 119 of the principal Act provides that the operator of a retirement village is required to provide the Residents Committee of the village with a copy of the audited annual accounts within 4 months after the end of the financial year to which the accounts relate. **Schedule 1 [99]** provides that the regulations may prescribe some other time within which the audited accounts are to be provided to the Residents Committee. **Schedule 1 [102]** provides that if there is no Residents Committee, the operator is to display the audited accounts on the property of the village and to provide a copy to any resident who requests a copy.

Schedule 1 [103] inserts proposed sections 119A and 119B.

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

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Proposed section 119B provides that the operator of a retirement village is not required to provide the residents of the village with quarterly accounts for the village if the total recurrent charges collected by the operator of the village is less than \$50,000 and the residents of the village consent to not receive a copy. **Schedule 1 [20] and [22]** make consequential amendments.

Schedule 1 [105] inserts proposed Division 7 into Part 7 of the principal Act (proposed sections 120A–120C).

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

Proposed section 120B provides that any surplus in the annual accounts of a retirement village is to be carried forward into subsequent years unless the residents of the village consent to a proposal for the expenditure of the surplus or consent to a proposal that the whole or part of the surplus be returned to the residents of the village. **Schedule 1 [104]** makes a consequential amendment.

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

Schedule 1 [111] provides that an administrator appointed under Division 6 of Part 6 of the principal Act may apply to the Supreme Court for an order terminating the village contracts with respect to the village where there is no reasonable prospect of finding a new operator for the retirement village.

Section 139 of the principal Act provides that a person must not enter residential premises in the retirement village for the purpose of recovering possession of the premises. **Schedule 1 [112]** extends the operation of that section to provide that a person must not remove a resident from the premises, or take action that is likely to cause the resident to permanently vacate the premises, for the purpose of recovering possession of the premises.

Section 147 of the principal Act provides that the operator may apply to the Tribunal for an order relating to uncollected goods or to sell or dispose of goods in accordance with the regulations. **Schedule 1 [114]** makes it an offence to sell or dispose of uncollected goods otherwise than in accordance with that section or the regulations.

Schedule 1 [121] provides that, in the case of a former occupant who is a registered interest holder with respect to residential premises in a retirement village, the former occupant's liability to pay recurrent charges after permanently vacating the premises are to be met by the former occupant in respect of those recurrent charges incurred during the period of 42 days immediately after the former occupant vacates the premises. After that 42 day period, the former occupant and the operator of the village are required to meet the former occupant's liability in the same proportions as they are to share in any capital gains under the contract. **Schedule 1 [75] and [120]** make consequential amendments.

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Schedule 1 [124] provides that, in the case of a former occupant of a retirement village who is not a registered interest holder with respect to residential premises in the village, the former occupant's liability to pay recurrent charges after permanently vacating the premises are to be met by the former occupant in respect of those recurrent charges incurred during the period of 42 days immediately after the former occupant vacates the premises. After that 42 day period, the former occupant is no longer liable for recurrent charges in respect of the premises. **Schedule 1 [123]** makes a consequential amendment.

Section 170 of the principal Act provides that the operator of a retirement village and the resident of a retirement village are to share the costs of sale of the resident's residential premises in the same proportions as they are to share in any capital gains in accordance with the village contract. **Schedule 1 [133]** provides that the regulations may prescribe, without limiting the ordinary meaning of the term "costs of sale", certain costs relating to the sale as being included in the costs of sale and may prescribe such other costs relating to the sale of residential premises as not being included in the costs of sale.

Section 174 of the principal Act provides that, if the operator of a retirement village refuses to consent to an agreement relating to the letting or subletting of residential premises in the village, the operator must apply to the Tribunal for an order declaring that the operator is not obliged to consent to the agreement. **Schedule 1 [135]** provides that, if the Tribunal makes an order directing the operator to consent to the agreement, the Tribunal may also direct the operator to pay such compensation as is specified in the order.

Schedule 1 [136] makes an amendment in the nature of statute law revision.

Schedule 1 [139] and [141] make amendments relating to payments that are to be made to former occupants who are registered interest holders with respect to residential premises in a retirement village, and to former occupants who are not registered interest holders with respect to residential premises in the village, respectively.

The proposed amendments provide that a former occupant may apply to the Tribunal for an order directing the operator to make a payment that the former occupant is entitled to receive. The Tribunal may also order that interest is payable in respect of any such order at the rate prescribed by the regulations.

The proposed amendments also provide that a former occupant may apply to the Tribunal for an order directing the operator to recalculate the amount that is to be paid to the former occupant in accordance with the directions of the Tribunal if, in the opinion of the occupant, the amount has not been calculated in accordance with the principal Act or the village contract or that the conduct of the operator has unfairly had a negative financial impact on the former occupant.

Schedule 1 [142] inserts proposed Part 10A (proposed sections 182A–182H) which provides a process by which a resident (other than a registered interest holder) or former occupant of a retirement village may recover a refund of an ingoing

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contribution paid under a village contract that the resident or former occupant is entitled to be paid on the termination of that contract.

Proposed section 182A provides that the proposed Part applies to a village contract that provides for a refund of the whole, or any part, of an ingoing contribution that was paid by a resident (other than a registered interest holder) under the contract, if the refund exceeds the amount prescribed by the regulations.

Proposed section 182B provides that a charge over the land on which residential premises are located is created by the proposed section on the date that a person enters into a village contract to which the proposed Part applies.

Proposed section 182C provides that a person must not dispose of land in respect of which a charge created by proposed section 182B is in force, except in accordance with an order made under proposed section 182E.

Proposed section 182D provides that a resident or former occupant of a retirement village may apply to the Supreme Court for an order if the operator of the village has become insolvent, or an administrator has been appointed under Division 6 of Part 6 of the principal Act, and the resident or former occupant is of the opinion that the operator is unlikely to be able to refund that part of the ingoing contribution that the resident or former occupant is entitled to receive under a village contract.

Proposed section 182E provides that the Supreme Court can order the sale of the whole, or any part, of the land in respect of which the application was made and make orders relating to the distribution of the proceeds of the sale.

Proposed section 182F provides the priority in which certain interests are required to be satisfied from the proceeds of the sale ordered under proposed section 182E.

Proposed section 182G provides that the Supreme Court may only make an order under section 182E if the Court is satisfied that the order is in the best interests of the majority of the residents of the retirement village.

Proposed section 182H provides that a charge created by proposed section 182B remains in force until 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.

Schedule 1 [143] provides that the Director-General may authorise the publication of a notice warning persons of particular risks associated with a specified operator of a retirement village or a person who appears to be the operator of a retirement village.

Schedule 1 [144]–[147] provide that the Director-General may take or defend proceedings if a resident of a retirement village makes a complaint to the Director-General and the Director-General is satisfied that the resident may have a right to take or defend the proceedings.

Schedule 1 [149]–[151] exonerates the Registrar-General and persons acting under the direction of the Registrar-General from personal liability incurred in respect of any act done or omitted in good faith for the purposes of the principal Act.

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Schedule 1 [152] inserts proposed Part 12A (proposed sections 196A–196E).
Schedule 1 [148] makes a consequential amendment.

Proposed section 196A gives investigators appointed under the *Fair Trading Act 1987* powers of entry and inspection.

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

Proposed section 196C creates offences involving the obstruction of investigators.

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

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

Schedule 1 [155] provides that the Minister may fund the provision of advisory and advocacy services to residents and prospective residents in the course of administering the principal Act.

Schedule 1 [156] provides that the regulations may exempt a specified village contract or specified class of village contracts from any specified provisions of the principal Act.

Schedule 1 [157] provides for the regulations to prescribe the process by which a ballot of the residents of a retirement village is to be conducted for the purpose of obtaining consent of the residents if a special resolution is required.

Schedule 1 [158] amends clause 1 of Schedule 4 to the principal Act so as to enable regulations of a savings or transitional nature to be made in connection with the proposed Act.

Schedule 1 [159] inserts proposed Part 3 into Schedule 4 to the principal Act. The proposed Part contains various provisions of a savings or transitional nature in connection with the proposed Act. In particular, the proposed Part makes provision for the making good of deficits in the annual accounts that accrued on or before the end of the financial year of a retirement village occurring immediately before 14 August 2006.

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Retirement Villages Amendment Bill 2006

No. , 2006

A Bill for

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

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Clause 1 Retirement Villages Amendment Bill 2006

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Retirement Villages Amendment Act 2006</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Retirement Villages Act 1999 No 81	6
The <i>Retirement Villages Act 1999</i> is amended as set out in Schedule 1.	7
4 Repeal of Act	8
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	9 10
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	11 12

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Amendments

Schedule 1

Schedule 1 Amendments

	(Section 3)	1
		2
[1] Section 3 Objects of Act		3
Insert at the end of section 3 (e):		4
, and		5
(f) to encourage the adoption of best practice management standards within the retirement village industry.		6
		7
[2] Section 4 Definitions		8
Insert in alphabetical order in section 4 (1):		9
<i>annual general meeting</i> means the meeting referred to in section 72A.		10
		11
<i>approved annual budget</i> means a statement referred to in section 116.		12
		13
<i>capital works fund</i> means a fund established under section 99.		14
<i>optional services</i> means optional services provided, or 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.		15
		16
		17
		18
Note. Examples of optional services are the provision of meals, laundry services and the cleaning of the resident's residential premises.		19
		20
<i>proposed annual budget</i> means a statement referred to in section 112.		21
		22
<i>Register</i> means the Register kept under the <i>Real Property Act 1900</i> .		23
		24
[3] Section 4 (1), definitions of "capital replacement fund", "maintenance fund", "personal services", "statement of approved expenditure" and "statement of proposed expenditure"		25
		26
		27
Omit the definitions.		28
[4] Section 4 (1), definition of "Director-General"		29
Omit the definition. Insert instead:		30
Director-General means:		31
(a) the Commissioner for Fair Trading, Department of Commerce, or		32
		33
(b) if there is no such position in that Department—the Director-General of that Department.		34
		35

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Schedule 1 Amendments

[5] Section 4 (1), definition of “former occupant”	1
Omit “owns” from paragraph (b).	2
Insert instead “is a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.	3 4
[6] Section 4 (1), definition of “residential care facility”	5
Omit the definition. Insert instead:	6
<i>residential care facility</i> has the same meaning as in the <i>State Environmental Planning Policy (Seniors Living) 2004</i> .	7 8
Note. <i>State Environmental Planning Policy (Seniors Living) 2004</i> defines <i>residential care facility</i> as “residential accommodation for seniors or people with a disability that includes:	9 10 11
(a) meals and cleaning services, and	12
(b) personal care or nursing care, or both, and	13
(c) appropriate staffing, furniture, furnishings and equipment for the provision of that accommodation and care,	14 15
not being a dwelling, hostel, hospital or psychiatric facility”.	16
[7] Section 4 (1), definition of “service contract”	17
Omit “personal”. Insert instead “optional”.	18
[8] Section 6 Meaning of “ingoing contribution”	19
Omit section 6 (2) (c). Insert instead:	20
(c) if the resident is the registered proprietor of land within a strata scheme or community land scheme on which the residential premises are located—the purchase price of the premises,	21 22 23 24
(c1) if the person is the owner of shares in a company title scheme that gives rise to a residence right in respect of the premises—the purchase price of the shares,	25 26 27
[9] Section 7	28
Omit the section. Insert instead:	29
7 Meaning of “registered interest holder”	30
(1) For the purposes of this Act, a person is the <i>registered interest holder</i> with respect to residential premises in a retirement village if:	31 32 33
(a) the person is the registered proprietor of a lot (within the meaning of the <i>Strata Schemes Management Act 1996</i>) within a strata scheme or land within a community land	34 35 36

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	scheme that gives rise to a residence right in respect of residential premises located on that lot or land, or	1 2
	(b) the person is the owner of shares in a company title scheme that gives rise to a residence right in respect of the premises, or	3 4 5
	(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 gains in respect of the premises.	6 7 8 9
(2)	In this section, <i>registered long-term lease</i> means a lease registered under the <i>Real Property Act 1900</i> that:	10 11
	(a) has a term of at least 50 years (including any option to renew), or	12 13
	(b) is for the life of the lessee.	14
[10]	Section 8 "Permanent vacation" of residential premises	15
	Omit section 8 (d). Insert instead:	16
	(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.	17 18 19 20
[11]	Section 17 Representations about retirement villages	21
	Insert after section 17 (6) (before the note):	22
	(7) The regulations may prohibit the operator of a retirement village from distributing written promotional material making a representation of a kind prescribed by the regulations.	23 24 25
[12]	Section 18 General inquiry document and disclosure statements concerning a village	26 27
	Omit section 18 (1)–(3). Insert instead:	28
	(1) The operator of a retirement village must provide a prospective resident (or person acting on behalf of a prospective resident) with a general inquiry document within 14 days of the prospective resident expressing interest in becoming a resident.	29 30 31 32
	(2) The operator of a retirement village must provide a prospective resident (or a person acting on behalf of the prospective resident) with a disclosure statement within 14 days of the prospective resident requesting the statement.	33 34 35 36
	Maximum penalty: 20 penalty units.	37

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(3)	A general inquiry document or disclosure statement under this section must:	1
		2
(a)	be in the form prescribed by the regulations, and	3
(b)	contain the information required by that form, and	4
(c)	in the case of a disclosure statement—be signed and dated by the operator.	5
		6
	Note. The purpose of a general inquiry document is to give a basic explanation of the residential premises, services and facilities that are available within the retirement village. The purpose of a disclosure statement is to provide specific information in respect of particular residential premises within a retirement village including information relating to fees and charges that are payable by the resident of the premises.	7
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(3A)	The regulations may prescribe different forms for general inquiry documents or disclosure statements in respect of different types of care within a retirement village.	14
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		16
[13]	Section 18 (4)	17
	Insert “disclosure” before “statement” wherever occurring.	18
[14]	Section 18 (6)	19
	Insert “general inquiry document or” after “resident with a”.	20
[15]	Section 18 (6)	21
	Insert “general inquiry document or” after “to provide the”.	22
[16]	Section 19 General information about retirement villages	23
	Omit “general information about the retirement village industry” from section 19 (1).	24
		25
	Insert instead “a document outlining the rights and responsibilities of a resident of a retirement village”.	26
		27
[17]	Section 19 (2)	28
	Omit “general information”. Insert instead “document”.	29
[18]	Section 20 Copies of certain documents to be available	30
	Omit “statements of proposed expenditure and the statements of approved expenditure” from section 20 (1) (c).	31
		32
	Insert instead “proposed annual budgets (if any) and the approved annual budgets”.	33
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[19] Section 20 (1) (c) (iii)	1
Omit “statements”. Insert instead “proposed or approved budgets”.	2
[20] Section 20 (1) (d)	3
Omit “as referred to in”. Insert instead “if so required under”.	4
[21] Section 20 (1) (i)	5
Omit “capital replacement fund or a maintenance fund”.	6
Insert instead “capital works fund”.	7
[22] Section 20 (1) (j)	8
Insert “if the operator is required to provide the residents with quarterly accounts—” before “the most”.	9 10
[23] Section 23 Deposits to be kept in trust	11
Omit “This section does” from section 23 (1).	12
Insert instead “Subsections (2) and (3) do”.	13
[24] Part 5, Division 1, heading	14
Insert before section 24:	15
Division 1 General	16
[25] Section 24 Resident to enter village contract	17
Insert “in writing” after “with the operator” in section 24 (1).	18
[26] Section 24 (4)	19
Insert after section 24 (3):	20
(4) If a refund is not made to a former occupant within the time required by subsection (3) (b):	21 22
(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	23 24 25
(b) interest is payable, at the rate prescribed by the regulations, on and from the date that the refund becomes overdue.	26 27

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[27] Section 24A	1
Insert after section 24:	2
24A Retirement village land to be recorded on Register	3
(1) The operator of a retirement village must, in accordance with this section, notify the Registrar-General in writing that the land comprising the retirement village (or that is part of the retirement village) is used as a retirement village.	4
Maximum penalty: 100 penalty units.	5
(2) Any such notice is to be provided:	6
(a) in the case of land that, immediately before the commencement of this section, was used as a retirement village—within 3 months immediately after the commencement of this section, or	7
(b) in any other case—before entering into a village contract with respect to residential premises on that land.	8
(3) Form of notice for recording	9
The notice referred to in subsection (1) must be:	10
(a) in the case of land that, immediately before the commencement of this section, was used as a retirement village—within 3 months immediately after the commencement of this section, or	11
(b) in any other case—before entering into a village contract with respect to residential premises on that land.	12
(4) Registrar-General to record retirement village on Register	13
If the Registrar-General receives notice referred to in subsection (1), the Registrar-General is to record on the Register, on the folio relating to the land to which the notice relates, a statement to the effect that the land comprises, or is part of, a retirement village.	14
(5) Operator to notify of recording being made	15
As soon as practicable after the Registrar-General makes a recording on the Register under this section, the operator of the retirement village is to notify, in writing:	16
(a) the holder of any other registered interest in the land to which the recording relates, and	17
(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 the form (if any) prescribed by regulations setting out the effect of Part 10A.	18
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(6)	Operator may apply to remove recording	1
	The operator of a retirement village may apply in writing to the Registrar-General for a recording made under this section to be removed from the Register.	2 3 4
(7)	Form of application for removal of recording	5
	The application referred to in subsection (6) must be:	6
	(a) in the form approved by the Registrar-General, and	7
	(b) accompanied by the fee prescribed under the <i>Real Property Act 1900</i> .	8 9
(8)	Registrar-General may remove recording	10
	If the Registrar-General receives the application referred to in subsection (5), the Registrar-General may, if satisfied that:	11 12
	(a) there are no residential premises located on the land to which the recording relates that are the subject of a village contract, and	13 14 15
	(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,	16 17 18
	remove from the Register the recording to which the application relates.	19 20
[28]	Section 29 Variation or replacement of village contracts	21
	Insert after section 29 (1):	22
	(1A) An operator must not purport:	23
	(a) to vary a village contract, or	24
	(b) to terminate a village contract and enter into a new village written contract in relation to the same residential premises,	25 26 27
	unless the resident who is a party to the contract has obtained a certificate in accordance with this section.	28 29
	Maximum penalty: 100 penalty units.	30
[29]	Section 38 Condition report	31
	Insert after section 38 (2):	32
	(2A) Without limiting subsection (2), the regulations may make provision for or with respect to the following:	33 34
	(a) the time within which the condition report must be completed,	35 36

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	(b) the time within which the condition report must be provided to a prospective resident.	1 2
[30]	Section 38 (5) (b)	3
	Omit the paragraph. Insert instead:	4
	(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.	5 6 7
[31]	Section 41A	8
	Insert after section 41:	9
41A	Renovations and alteration of fixtures or fittings	10
	(1) A resident of a retirement village may:	11
	(a) add, remove or alter any fixtures or fittings on or within the resident's residential premises, or	12 13
	(b) make renovations to the resident's residential premises, but only with the written consent of the operator of the retirement village.	14 15 16
	(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.	17 18 19
	(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 their condition as they were immediately before the consent was given.	20 21 22 23 24 25
	(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).	26 27 28 29
	(5) A resident of a retirement village may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to consent to:	30 31 32
	(a) the addition, removal or alteration of specified fixtures or fittings on or within the resident's residential premises, or	33 34
	(b) the making of specified renovations to the resident's residential premises.	35 36

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(6)	If the Tribunal is satisfied that the operator of the retirement village has unreasonably withheld consent under this section, or that the conditions on any such consent are unreasonable in the circumstances, the Tribunal may make the order sought.	1 2 3 4
(7)	Despite subsection (1), the consent of the operator of the retirement village is not required:	5 6
(a)	to remove or alter any fixtures or fittings that were added to the residential premises by the resident unless the removal or alteration of the fixture or fitting is likely to cause significant damage to the residential premises, or	7 8 9 10
(b)	to make renovations, or to add, remove or alter any fixtures or fittings, prescribed by the regulations for the purposes of this section.	11 12 13
[32]	Section 43 Standard form of village contract	14
	Insert after section 43 (7):	15
(8)	A village contract that provides for the payment of an ongoing contribution may also provide:	16 17
(a)	that any such contribution is to be paid by way of instalments at such intervals as may be specified in the contract, and	18 19 20
(b)	if such contribution is to be paid by instalments, for interest on the unpaid portion of any such contribution to be calculated at the rate prescribed by the regulations.	21 22 23
[33]	Part 5, Division 2	24
	Insert at the end of the Part:	25
	Division 2 Settling-in period for residents	26
44A	Termination of village contract during settling-in period	27
(1)	A resident of a retirement village (or executor or administrator of the estate of a resident) may terminate the village contract giving rise to the resident's residence right by:	28 29 30
(a)	notice in writing to the operator of the retirement village indicating an intention to terminate the village contract, and	31 32 33
(b)	permanently vacating the residential premises, within the settling-in period.	34 35

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- (2) For the purposes of this Division, the *settling-in period* means the period commencing on the day that the resident enters into the village contract and ending on:
- (a) the day that is 90 days after the resident first occupies the residential premises, or
 - (b) such later date as may be agreed 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.
- 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) 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) 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.
- (3) The administration fee referred to in subsection (1) (c) 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, and
 - (b) in the case of any other former occupant—any ingoing contribution that was paid to the operator under the village contract, and

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(c)	any recurrent charges paid to the operator under the village contract, and	1 2
(d)	such other amount as may be prescribed by the regulations.	3
44D	Time for making of payments	4
(1)	A refund that is required to be made under this Division is to be made within 14 days of the termination of the contract or such other time as the Tribunal may order.	5 6 7
(2)	Despite subsection (1), a payment referred to in section 44C (a) is to be paid on the date as determined in accordance with section 180 (2).	8 9 10
(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 resident may apply to the Tribunal for (and the Tribunal may make) an order requiring the amount to be paid within a specified time.	11 12 13 14 15
(4)	If the operator of the retirement village and the former resident are unable to agree on an amount required to be paid under this Division, the operator or resident may apply to the Tribunal for (and the Tribunal may make) an order with respect to:	16 17 18 19
(a)	the amount of fair market rent (if any) required to be paid under section 44B (1) (a), or	20 21
(b)	any damage to the residential premises in excess of fair wear and tear, and the amount (if any) required to be paid under section 44B (1) (b), or	22 23 24
(c)	the administration fee (if any) required to be paid under section 44B (1) (c).	25 26
44E	Former occupant not required to pay departure fees etc	27
	If a village contract is terminated in accordance with this Division, the former occupant is not required to pay:	28 29
(a)	any recurrent charges under Division 2 of Part 10, or	30
(b)	any departure fees under Division 3 of Part 10, or	31
(c)	the cost of refurbishment under Division 4 of Part 10, or	32
(d)	the costs of sale under Division 5 of Part 10, or	33
(e)	any amount specified in the village contract as being payable for terminating the contract during the settling-in period, or	34 35 36

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	(f) any amount prescribed by the regulations for the purposes of this Division,	1
		2
	that would, but for this section, be payable by the former occupant.	3
		4
[34]	Section 51 Amendment of village rules	5
	Insert after section 51 (3):	6
	(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 under this section within 7 days after the operator becomes aware of the outcome of the vote.	7
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		9
		10
[35]	Section 51 (4) (b)	11
	Omit “statement of approved expenditure”.	12
	Insert instead “approved annual budget (if any)”.	13
[36]	Section 53 Operator’s concern that amendment will impose additional cost	14
		15
	Omit “statement of approved expenditure” wherever occurring in section 53 (1) (including the note), (3) and (4).	16
		17
	Insert instead “approved annual budget”.	18
[37]	Section 53 (1), note	19
	Omit “annual statements of proposed and approved expenditure”.	20
	Insert instead “proposed and approved annual budgets”.	21
[38]	Section 53 (6)	22
	Insert after section 53 (5):	23
	(6) This section does not apply in respect of a retirement village where the residents have consented under section 112 (7) to not have an annual budget provided.	24
		25
		26
[39]	Section 58A	27
	Insert after section 58:	28
	58A Operator to provide safe premises	29
	(1) The operator of a retirement village must ensure that the village generally is reasonably safe.	30
		31
	(2) In particular, the operator must:	32
	(a) prepare written safety and emergency procedures, and	33

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(b)	take reasonable steps to ensure that all residents and staff are familiar with such procedures, and	1 2
(c)	undertake a safety inspection at least once each year, and make a safety inspection report on the findings of any such inspection, and	3 4 5
(d)	make a copy of the inspection report available to the Residents Committee and place a copy of the report on the notice board in a communal area within the retirement village, and	6 7 8 9
(e)	take such other action as the regulations may require to ensure that the village generally is reasonably safe.	10 11
(3)	Without limiting subsection (2) (e), the regulations may make provision for or with respect to the following:	12 13
(a)	the form of the written safety and emergency procedures,	14
(b)	the conduct of safety inspections required under subsection (2) (c),	15 16
(c)	the manner and form of a safety inspection report,	17
(d)	the period that the safety inspection report is to remain on the notice board as referred to in subsection (2) (d).	18 19
(4)	Any resident who believes in good faith that the retirement village is not reasonably safe may apply to the Tribunal for any of the following:	20 21 22
(a)	an order directing the operator to comply with subsection (1) or (2),	23 24
(b)	any other order referred to in section 128 (1).	25
[40]	Section 59 Operator to provide village emergency system on request	26
	Omit “statement of proposed expenditure” from section 59 (2).	27
	Insert instead “proposed annual budget”.	28
[41]	Section 59A	29
	Insert after section 59:	30
59A	Operator to provide emergency and home care service vehicles access to retirement village	31 32
	The operator of a retirement village must take all reasonable steps to ensure that:	33 34
(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	35 36 37

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	(b) the residents of the village, and emergency and home care service agencies, are consulted and kept informed as to any arrangements made to secure that access.	1 2 3
	Maximum penalty: 20 penalty units.	4
[42]	Section 60 Variation in services or facilities provided at village	5
	Omit “statement of approved expenditure” wherever occurring in section 60 (7).	6 7
	Insert instead “approved annual budget”.	8
[43]	Section 65 Operator not to demand appointment as proxy	9
	Omit the section.	10
[44]	Section 66 Operator to respect rights of residents	11
	Insert after section 66 (4):	12
	(5) If an operator of a retirement village contravenes any provision of subsection (2) in relation to a resident of a retirement village, the operator is guilty of an offence.	13 14 15
	Maximum penalty: 20 penalty units.	16
[45]	Section 67 Restriction of operator’s access to residential premises	17
	Insert at the end of section 67 (1):	18
	Maximum penalty: 20 penalty units.	19
[46]	Section 67 (2) (e) (i)	20
	Omit the subparagraph. Insert instead:	21
	(i) the resident is not a registered interest holder with respect to the premises, and	22 23
[47]	Section 70 Residents Committees and organisations	24
	Omit “statement of approved expenditure” from section 70 (7).	25
	Insert instead “approved annual budget”.	26

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[48] Section 70A	1
Insert after section 70:	2
70A Membership of Residents Committee	3
(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.	4 5 6 7
(2) The appointment of a person to an office in contravention of subsection (1) is void.	8 9
[49] Section 72A	10
Insert after section 72:	11
72A Annual general meeting to be held by operator	12
(1) The operator of a retirement village must call an annual general meeting of the residents of the village. Maximum penalty: 20 penalty units.	13 14 15
(2) The annual general meeting must be held not more than 4 months after the end of each financial year.	16 17
(3) The annual general meeting must be chaired by:	18
(a) the operator of the retirement village, or	19
(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.	20 21 22
(4) The operator must notify the residents of the retirement village at least 14 days before the annual general meeting of:	23 24
(a) the time and place of the meeting, and	25
(b) the business to be transacted at the meeting.	26
(5) The notice referred to in subsection (4) must also include an invitation to the residents of the retirement village to submit:	27 28
(a) written questions to the operator at least 7 days before the meeting, and	29 30
(b) other questions at the meeting.	31
(6) The chair of the annual general meeting must ensure:	32
(a) that the residents of the retirement village have a reasonable opportunity to put questions to the operator or a representative of the operator at the meeting, and	33 34 35

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(b)	that questions submitted in writing under subsection (5)	1
	(a), or asked at the meeting, are answered:	2
(i)	if possible—in reasonable detail at the relevant	3
	meeting, or	4
(ii)	to the extent that compliance with subparagraph (i)	5
	is not possible—in reasonable detail, as soon as is	6
	reasonably practicable after the meeting, in writing	7
	to each of the residents of the retirement village.	8
(7)	Nothing in this section requires the operator or a person	9
	representing the operator to:	10
(a)	answer an unreasonable question, or	11
(b)	answer a question relating to a matter that is prescribed by	12
	the regulations as an excluded matter for the purposes of	13
	this section.	14
(8)	The regulations may prescribe information that must be provided	15
	or business that must be transacted at the annual general meeting.	16
(9)	Nothing in this section prevents the operator of a retirement	17
	village from calling a meeting of the residents of the village at	18
	any other time.	19
[50]	Section 73	20
	Omit the section. Insert instead:	21
73	Villages without Residents Committee	22
	If there is no Residents Committee elected for a retirement	23
	village, the operator of the village must call a meeting of the	24
	residents (to be held in or near the village) if requested to do so	25
	by:	26
(a)	in the case of a retirement village with fewer than 10	27
	occupied residential premises—the majority of the	28
	residents of the village, or	29
(b)	in the case of a retirement village with 10 or more occupied	30
	residential premises—the greater of:	31
(i)	at least 5 residents of the village, or	32
(ii)	10% of the residents of the village.	33

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[51] Section 75 Attendance at meetings of residents	1
Insert after section 75 (2):	2
(2A) Despite subsection (2), the operator of a retirement village, or person representing the operator of a retirement village, must be present at the annual general meeting of the retirement village. However, the operator or operator's representative must not be present at the meeting during the casting of any vote that is to be taken by the residents at the meeting.	3 4 5 6 7 8
[52] Section 77 Proxies	9
Omit section 77 (1). Insert instead:	10
(1) A resident of a retirement village may, from time to time, appoint one of the following persons as the proxy of the resident:	11 12
(a) a relative of the resident,	13
(b) the guardian of the resident,	14
(c) an office holder on the Residents Committee or other resident of the retirement village,	15 16
(d) a person prescribed by the regulations.	17
[53] Section 77 (4)	18
Omit the subsection. Insert instead:	19
(4) An appointment of a person, other than a person referred to in subsection (1), as a proxy is of no effect.	20 21
[54] Section 77 (6)	22
Insert after section 77 (5):	23
(6) This section has effect despite any terms of the instrument appointing a person as the proxy of the resident.	24 25
[55] Section 78 Certain limitations on proxies	26
Omit section 78 (1). Insert instead:	27
(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 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.	28 29 30 31 32

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[56] Section 81 Right to become resident	1
Omit “owns (or owned)” from section 81 (2) (a).	2
Insert instead “is, or was, a registered interest holder in respect of”.	3
[57] Section 84 Application for order appointing administrator	4
Omit section 84 (2). Insert instead:	5
(2) The Director-General may apply for an order under this section only if:	6
(a) the Director-General is of the opinion that the well-being or financial security of the residents of the village concerned has been, or is likely to be, seriously affected by the continued operation of the retirement village by the operator, or	7
(b) the Director-General is of the opinion that the operator of the village concerned is wilfully and repeatedly acting in contravention of an order made by the Tribunal or a court, or	8
(c) the village concerned is the subject of an existing order under this section.	9
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[58] Sections 87A and 87B	19
Insert after section 87:	20
87A Expenses of administration	21
(1) The expenses incurred by an administrator appointed under this Division to exercise the functions of the operator of a retirement village are payable by the operator from recurrent charges and such other funds as would be available to the operator if the administrator had not been appointed.	22
(2) Neither the Crown, the Minister nor the Director-General is liable for:	23
(a) any expenses incurred by an administrator appointed under this Division to exercise the functions of the operator of a retirement village, or	24
(b) any liability of an operator of a retirement village in respect of which an administrator is appointed.	25
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Schedule 1

87B Administrator may vary village contract	1
(1) Despite any other provision of this Act, an administrator appointed under this Division may, with the consent of the Director-General:	2
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	4
(a) amend or revoke an approved annual budget, or	5
(b) vary the recurrent charges payable by the residents of the retirement village, or	6
	7
(c) vary the services offered by the retirement village.	8
(2) The Director-General may only give consent under subsection (1) if, in the opinion of the Director-General, the proposed revocation, variation or amendment is done for the purpose of:	9
	10
	11
(a) assisting in the process of finding a new operator for the retirement village, or	12
	13
(b) ensuring the financial viability of the retirement village.	14
[59] Part 7, Divisions 2 and 3	15
Omit the Divisions. Insert instead:	16
Division 2 Capital replacement and maintenance	17
92 Responsibility for capital replacement and maintenance	18
(1) The operator of a retirement village is, except as otherwise provided by this Division:	19
	20
(a) to arrange all capital maintenance and replacement in the village, including fixed and non-fixed items of capital on common property and items of capital inside residential premises, and	21
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	24
(b) to bear the costs of all such capital maintenance and replacement in the village,	25
	26
so as to ensure that capital items are maintained to the standard required by section 95.	27
	28
(2) The operator of the retirement village may fund the costs of capital replacement and maintenance from the following:	29
	30
(a) the capital works fund for the village,	31
(b) ingoing contributions,	32
(c) recurrent charges,	33
(d) departure fees,	34
(e) any other funds that are available to the operator.	35

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- (3) The operator of a retirement village must not fund more than 50% (or such other proportion or amount as may be prescribed by the regulations) of the costs of capital replacement or maintenance in any financial year from the capital works fund or recurrent charges collected by the operator. 1
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- 93 Operator not liable for maintenance or replacement of certain items of capital** 6
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- (1) The operator of a retirement village is not required to bear any costs of capital maintenance or replacement in respect of any item of capital: 8
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- (a) belonging to a resident of the village, or 11
- (b) within residential premises the refurbishment of which: 12
- (i) is the responsibility of a resident of the village under the resident's residence contract (as referred to in section 165), or 13
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- (ii) is necessary because of wilful damage or wear and tear in excess of fair wear and tear (as referred to in section 163). 16
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18
- (2) Neither the operator nor the residents of the retirement village are required to bear any costs of capital maintenance or replacement in respect of any item of capital: 19
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21
- (a) that is association property under a community land scheme or common property under a strata scheme, or 22
23
- (b) that is subject to a company title scheme. 24
- Note.** The relevant association under the *Community Land Management Act 1989*, the owners corporation under the *Strata Schemes Management Act 1996* and the relevant company, respectively, are liable for the capital replacement and maintenance of the items of capital referred to in subsection (2). 25
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- 94 Resident and operator to share liability for certain items of capital** 30
- (1) This section applies in respect of a resident of a retirement village who is a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of his or her residential premises in the village. 31
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- (2) The operator and resident of a retirement village are to share the cost of capital maintenance and replacement in respect of internal items of capital (other than internal items of capital owned by the resident) that were supplied with the residential premises in the same proportions (if any) as they are to share any capital gains on the sale of the residential premises in accordance with a village contract or as otherwise prescribed by the regulations. 35
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Schedule 1

95	Operator to maintain items of capital in reasonable state of repair	1
(1)	The operator of a retirement village must maintain items of capital in the village in a reasonable state of repair, having regard to:	2
		3
		4
	(a) the age of the village, and	5
	(b) the prospective life of the item.	6
(2)	For the purposes of subsection (1), maintaining items of capital may include replacing such items when necessary.	7
		8
96	Resident may carry out urgent capital replacement or maintenance	9
(1)	A resident of a retirement village may carry out, or cause to be carried out, urgent works for capital replacement or maintenance if the resident first gives the operator a reasonable opportunity to carry out, or cause to be carried out the relevant works.	10
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(2)	If a resident carries out, or causes to be carried out, urgent works for capital replacement or maintenance in accordance with subsection (1), the resident is entitled to be reimbursed by the operator of the village for the costs, or such part of the costs, incurred by the resident in doing so as would otherwise have been payable by the operator.	14
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(3)	If the operator of a retirement village fails, or refuses, to reimburse a resident for an amount referred to in subsection (2), the resident may apply to the Tribunal for (and the Tribunal may make) an order requiring the operator to reimburse the resident for the costs of the capital replacement or maintenance.	20
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(4)	For the purposes of this section, <i>urgent works</i> means such works for capital replacement or maintenance as may be prescribed by the regulations.	25
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97	Tribunal may order operator to carry out capital maintenance or replacement	28
		29
	A resident of a retirement village who is of the opinion that the operator is not carrying out the works necessary for the maintenance of items of capital in accordance with this Division may apply to the Tribunal for (and the Tribunal may make) an order directing the operator to:	30
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	(a) carry out, or cause to be carried out, specified works of maintenance within the time specified in the order, or	35
		36
	(b) replace, or cause to be replaced, specified capital items within the time specified in the order.	37
		38

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Schedule 1 Amendments

- 98 Operator to insure village** 1
- (1) The operator of a retirement village must insure the village (and keep it insured) in accordance with this section. 2
Maximum penalty: 100 penalty units. 3
4
- (2) The village is to be insured to full replacement value. 5
- (3) Insurance required by this section: 6
- (a) must cover the following: 7
- (i) damage, 8
- (ii) costs incidental to the reinstatement or replacement of insured buildings, 9
10
- (iii) public liability, and 11
- (b) must provide for the reinstatement of property to its condition when new. 12
13
- (4) The regulations may specify the minimum amount of public liability insurance required under this section. 14
15
- (5) This section does not apply in respect of the part (if any) of a retirement village that is subject to a community land scheme, company title scheme or strata scheme. 16
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- Note.** Insurance of property subject to company title is the responsibility of the relevant company. Insurance of a building or structure on association property in a community land scheme, and of common property in a strata scheme, is the responsibility of the relevant association or owners corporation, respectively. 19
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- 99 Capital works fund** 24
- (1) If an approved annual budget provides for the setting aside of a proportion of recurrent charges for the purpose of financing capital replacement and maintenance in a period that extends beyond the financial year to which the approved annual budget relates, the operator of the retirement village must establish and maintain a capital works fund. 25
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Maximum penalty: 100 penalty units. 31
- (2) However, this section does not require a separate fund to be established in respect of each financial year. 32
33
- (3) The operator must not hold money in the capital works fund otherwise than: 34
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- (a) in an account with an authorised deposit-taking institution, or 36
37
- (b) by way of an investment as provided by this section, or 38

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Schedule 1

(c)	as otherwise prescribed by the regulations.	1
	Maximum penalty: 100 penalty units.	2
(4)	Money in the capital works fund may be invested in any manner permitted by law for the investment of trust funds.	3 4
(5)	Any interest received on an investment under this section forms part of the fund.	5 6
100	Payment into capital works fund	7
	The operator of a retirement village is to pay into the capital works fund:	8 9
(a)	such proportion of recurrent charges as may be required by the approved annual budget, and	10 11
(b)	all money received by way of settlement or other discharge of insurance claims made in respect of any matter referred to in section 98 (3) (a) (i) or (ii) that is not used for the purposes of repairing damage or meeting costs incidental to the reinstatement or replacement of insured buildings.	12 13 14 15 16
101	Payment from capital works fund	17
(1)	The operator of a retirement village must not pay money from the capital works fund except:	18 19
(a)	to meet the costs of capital maintenance or replacement in the village, or	20 21
(b)	if the residents of the village consent to a proposal that the operator of the village distribute the whole, or part of, the fund that is not required to fund capital replacement or maintenance to the residents of the retirement village in equal shares—in accordance with that proposal, or	22 23 24 25 26
(c)	as prescribed by the regulations.	27
	Maximum penalty: 100 penalty units.	28
(2)	A proposal under subsection (1) (b) may be made by the operator of the village or the Residents Committee of the village.	29 30
102	Operator not to sell items of capital to residents	31
	The operator of a retirement village must not sell items of capital to a resident, or prospective resident, of the retirement village (under a village contract or otherwise) except as provided by the regulations.	32 33 34 35
	Maximum penalty: 20 penalty units.	36

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Schedule 1 Amendments

[60] Section 104 Variation of recurrent charges	1
Omit “at specified intervals (or on specified dates)” from section 104 (1) (b).	2
[61] Section 104 (2)	3
Omit the subsection. Insert instead:	4
(2) A village contract that provides for any recurrent charges payable under it to be varied otherwise than according to a fixed formula 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.	5 6 7 8 9
[62] Section 105A	10
Insert after section 105:	11
105A Recurrent charges varied otherwise than by a fixed formula—not exceeding variation in CPI	12 13
(1) If:	14
(a) a village contract provides that recurrent charges are to be varied otherwise than according to a fixed formula, and	15 16
(b) the operator of the retirement village proposes to vary the recurrent charges under the contract by an amount that does not exceed the variation in the Consumer Price Index (All Groups) for Sydney (<i>the CPI</i>) as published from time to time by the Australian Statistician for the 12 months immediately before the proposed variation (or such other amount as may be prescribed by the regulations),	17 18 19 20 21 22 23
the operator must give at least 14 days’ written notice of any proposed variation to each resident concerned.	24 25
(2) The notice must specify:	26
(a) the amount of the new recurrent charges, and	27
(b) the date from which the new recurrent charges are payable, and	28 29
(c) such other information as may be prescribed by the regulations.	30 31
(3) A resident of the retirement village who is a party to a village contract referred to in subsection (1) (a) is not required to pay any increase in his or her recurrent charges until notice of the increase is given as required by this section.	32 33 34 35

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Schedule 1

(4)	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 (if any) specified in the earlier notice.	1 2 3
[63]	Section 106 Recurrent charges varied otherwise than by fixed formula—exceeding variation in CPI	4 5
	Omit section 106 (1) (except the note to that subsection). Insert instead:	6
(1)	If:	7
(a)	a village contract provides that recurrent charges are to be varied otherwise than according to a fixed formula, and	8 9
(b)	the operator of the retirement village proposes to vary the recurrent charges under the contract by an amount that exceeds the variation in the CPI for the 12 months immediately before the proposed variation (or such other amount as may be prescribed by the regulations),	10 11 12 13 14
	the operator must give at least 60 days’ written notice of any proposed variation to each resident concerned.	15 16
[64]	Section 106 (2) (c), (d) and (d1)	17
	Omit section 106 (2) (c) and (d). Insert instead:	18
(c)	contain a brief explanation of the reasons for the variation exceeding the variation in the CPI or the prescribed rate or amount (if any), and	19 20 21
(d)	include details of any action taken to minimise the proposed variation in recurrent charges, and	22 23
(d1)	include a statement that the variation will not take effect unless the residents concerned consent to the variation or the Tribunal orders that it take effect, and	24 25 26
[65]	Section 106 (7) (b)	27
	Insert “or section 105A” after “this section”.	28
[66]	Section 107 Residents’ consent to variation	29
	Omit section 107 (2). Insert instead:	30
(2)	Consent of the residents to a proposed variation is obtained for the purposes of this section if:	31 32
(a)	the proposed variation is put to a meeting of the residents of the retirement village, and	33 34

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Schedule 1 Amendments

- (b) the residents are given at least 21 days' notice of the proposed meeting to consider the proposed variation, and 1
2
 - (c) at the time of the vote on the proposed variation there is a quorum of: 3
4
 - (i) if the village has 10 or more occupied residential premises—a minimum of 5 persons entitled to vote on the proposed variation, or at least 25% of the number of persons entitled to vote on the proposed variation (whichever is the greater), or 5
6
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 - (ii) if the village has fewer than 10 occupied residential premises—one person entitled to vote on the proposed variation from at least half of the occupied residential premises in the retirement village, and 10
11
12
13
 - (d) the variation is approved by at least half of the residents that are present (whether in person or by proxy) and who are entitled to vote at the meeting, and 14
15
16
 - (e) the operator of the retirement village is advised that the residents of the retirement village consent to the proposed variation. 17
18
19
- (2A) Subsection (2) has effect despite section 9. 20
- [67] Section 107 (3)** 21
Omit “subsection (2) (b)”. Insert instead “subsection (2) (e)”. 22
- [68] Section 107 (5) and (6)** 23
Insert after section 107 (4): 24
- (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. 25
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 - (6) The regulations may prescribe: 31
 - (a) the period that information requested under subsection (4) must be provided within, and 32
33
 - (b) information that the operator of a retirement village is not required to provide despite a request under subsection (4). 34
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Amendments

Schedule 1

[69] Section 108 Determination by Tribunal	1
Omit section 108 (1). Insert instead:	2
(1) If:	3
(a) the consent of the residents is required for a proposed variation to have effect, and	4
(b) the residents do not consent to the proposed variation under section 107,	6
the operator may apply to the Tribunal for an order in respect of the proposed variation.	8
[70] Section 108 (4) (b)	10
Omit “statement of proposed expenditure or approved expenditure”.	11
Insert instead “proposed annual budget or approved annual budget”.	12
[71] Section 111 Abatement of recurrent charges	13
Omit “owns” from the note to section 111 (1).	14
Insert instead “is a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.	15
[72] Part 7, Division 5, heading	17
Omit the heading. Insert instead:	18
Division 5 Proposed and approved annual budgets	19
[73] Section 112 Proposed annual budget	20
Insert “, or such other time as may be prescribed by the regulations” after “retirement village” in section 112 (1).	21
[74] Section 112 (1), (3) (a) and (6)	23
Omit “statement of proposed expenditure” wherever occurring.	24
Insert instead “proposed annual budget”.	25
[75] Section 112 (1)	26
Omit “from the residents of the village”.	27
[76] Section 112 (2), (3) (c), (4) and (5)	28
Omit “statement” wherever occurring. Insert instead “budget”.	29

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Retirement Villages Amendment Bill 2006

Schedule 1 Amendments

[77] Section 112 (6)	1
Omit “amended statement”. Insert instead “amended budget”.	2
[78] Section 112 (7)–(11)	3
Insert after section 112 (6):	4
(7) The residents of a retirement village may, by special resolution, consent to not have a proposed annual budget provided.	5 6
(8) If the residents of a retirement village consent to not being provided a proposed annual budget under this section, subsections (1)–(6) and sections 113–117 do not apply in respect of the retirement village.	7 8 9 10
(9) The residents of a retirement village may, by special resolution, revoke any consent given under subsection (7).	11 12
(10) Consent given under subsection (7) remains in force until such time as it is revoked by special resolution of the residents.	13 14
(11) If:	15
(a) consent given under subsection (7) is in force, and	16
(b) the operator of the village is required to have the accounts of the village audited under section 118,	17 18
the operator is required to notify the residents of the name of the auditor of the accounts at the annual general meeting.	19 20
[79] Section 113 Order for proposed annual budget	21
Omit “statement of proposed expenditure”.	22
Insert instead “proposed annual budget”.	23
[80] Section 113	24
Omit “the statement”. Insert instead “the budget”.	25
[81] Section 114 Residents’ consent to expenditure	26
Omit “statement of proposed expenditure” wherever occurring in section 114 (1) and (4).	27 28
Insert instead “proposed annual budget”.	29
[82] Section 114 (2) and (4)–(6)	30
Omit “the statement” wherever occurring. Insert instead “the budget”.	31

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Schedule 1

[83] Section 114 (4)	1
Omit “amended statement”. Insert instead “amended budget”.	2
[84] Section 114 (8)	3
Insert after section 114 (7):	4
(8) For the purposes of this section, the residents of a retirement village are taken to have consented to a proposed annual budget if:	5
(a) there has not been a significant change in the services that are proposed to be provided by the operator of the village, and	6
(b) the recurrent charges to be collected by the operator under Division 4 during the financial year to which the proposed annual budget applies have varied in accordance with:	7
(i) section 104 (1) (a), or	8
(ii) section 105A.	9
[85] Section 115 Determination of expenditure by Tribunal	10
Omit “statement of proposed expenditure” wherever occurring in section 115 (1)–(3).	11
Insert instead “proposed annual budget”.	12
[86] Section 115A	13
Insert after section 115:	14
115A Budget may provide for contingencies	15
A proposed annual budget may provide that a specified amount is, in accordance with the regulations, to be allocated for any contingencies that may arise.	16
[87] Section 116 Expenditure to be in accordance with approved annual budget	17
Omit section 116 (1). Insert instead:	18
(1) A proposed annual budget is taken to be an approved annual budget if:	19
(a) the residents of a retirement village consent to the expenditure in accordance with the proposed annual budget, or	20
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Schedule 1 Amendments

	(b) the operator is not required to seek consent under section 114 to the expenditure in accordance with the proposed annual budget, or	1 2 3
	(c) the Tribunal orders that the expenditure of the operator is to be as itemised in the proposed annual budget.	4 5
[88]	Section 116 (2) and (4)	6
	Omit “statement of proposed expenditure” wherever occurring.	7
	Insert instead “proposed annual budget”.	8
[89]	Section 116 (2)	9
	Omit “that statement”. Insert instead “that budget”.	10
[90]	Section 116 (2) and (3)	11
	Omit “statement of approved expenditure” wherever occurring.	12
	Insert instead “approved annual budget”.	13
[91]	Section 116 (3A)	14
	Insert after section 116 (3):	15
	(3A) An operator does not contravene subsection (3) if the expenditure that was otherwise than in accordance with the budget:	16 17
	(a) was a variation in expenditure between line items in the approved annual budget, and	18 19
	(b) was such that it did not reduce the level of services provided by the retirement village, and	20 21
	(c) does not cause the total expenditure provided for by the approved annual budget to be exceeded.	22 23
[92]	Section 117 Amendment of approved annual budget	24
	Omit section 117 (1). Insert instead:	25
	(1) The operator of a retirement village may seek the consent of the residents to amend an approved annual budget except in the case where:	26 27 28
	(a) the budget is taken to be an approved annual budget because of section 116 (1) (c), or	29 30
	(b) the budget is a proposed annual budget modified in accordance with an order of the Tribunal as referred to in section 116 (2).	31 32 33

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Amendments

Schedule 1

[93] Section 117 (2) and (3)	1
Omit “amended statement of approved expenditure” wherever occurring.	2
Insert instead “approved annual budget as amended”.	3
[94] Section 117 (4) (b)	4
Omit “statement of proposed expenditure”.	5
Insert instead “proposed annual budget”.	6
[95] Section 118 Auditing of accounts	7
Omit “statement of proposed expenditure” from section 118 (2) (a).	8
Insert instead “proposed annual budget (if any)”.	9
[96] Section 118 (2) (b)	10
Omit “, and”.	11
[97] Section 118 (2) (c)	12
Omit the paragraph.	13
[98] Section 118 (3)	14
Omit section 118 (3) and (4). Insert instead:	15
(3) Within 28 days after the end of the quarter to which the quarterly	16
accounts relate, or such other period as may be prescribed by the	17
regulations, the operator of a retirement village must provide the	18
Residents Committee (or, if there is no Residents Committee, any	19
resident who requests one) with a copy of the quarterly accounts	20
of the income and expenditure of the village.	21
Maximum penalty: 20 penalty units.	22
[99] Section 119 Copies of audited accounts to be provided to residents	23
Insert “, or such other period as may be prescribed by the regulations,” after “4	24
months” in section 119 (1).	25
[100] Section 119 (2) (a) (i)	26
Omit section 119 (2) (a) (i) and (ii). Insert instead:	27
(i) details of the income and expenditure of the village	28
during the financial year,	29

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Schedule 1 Amendments

[101] Section 119 (4)	1
Omit “statement of proposed expenditure”.	2
Insert instead “proposed annual budget”.	3
[102] Section 119 (7)	4
Omit the subsection. Insert instead:	5
(7) However, if there is no Residents Committee for the village concerned, a copy of the accounts is to be:	6
(a) displayed on the common property of the village in accordance with the regulations, and	7
(b) provided to any resident of the village who requests a copy.	8
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[103] Sections 119A and 119B	12
Insert after section 119:	13
119A Accounts not required to be audited in certain cases	14
(1) Despite section 118 (1), the operator of a retirement village is not required to have the accounts of the retirement village audited if:	15
(a) the total of the recurrent charges collected in respect of the village does not exceed \$50,000 or such other amount as may be prescribed by the regulations, and	16
(b) the consent of the residents to not have the accounts of the village audited is in force.	17
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(2) If the operator of a retirement village is not required to have the accounts of the village audited:	22
(a) the provisions of section 119 (section 119 (3) excepted) apply to the accounts of the retirement village in the same way as they would apply to audited accounts, and	23
(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.	24
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(3) The operator of a retirement village must not make a statement under subsection (2) (b) that is false or misleading.	31
Maximum penalty: 100 penalty units.	32
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(4) The residents of a retirement village may revoke any consent given under this section at any time.	34
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Schedule 1

(5) Consent given under this section remains in force until:	1
(a) the total of the recurrent charges to be collected by the village in the financial year exceeds \$50,000 or such other amount as may be prescribed by the regulations, or	2 3 4
(b) such time as the consent is revoked by the residents of the village,	5 6
whichever is the earlier.	7
119B Quarterly accounts not required to be given to residents in certain cases	8 9
(1) The operator of a retirement village may, by notice in writing to each of the residents of a retirement village, propose that the quarterly accounts of the retirement village not be provided as required by section 118 (3).	10 11 12 13
(2) The residents of a retirement village may consent to a proposal referred to in subsection (1).	14 15
(3) Section 118 (3) does not apply in respect of the operator of a retirement village if:	16 17
(a) the total of the recurrent charges to be collected by the village in the financial year does not exceed \$50,000 or such other amount as may be prescribed by the regulations, and	18 19 20 21
(b) the residents of the retirement village have consented under subsection (2).	22 23
(4) The residents of a retirement village may revoke any consent given under this section at any time.	24 25
(5) Consent given under this section remains in force until:	26
(a) the total of the recurrent charges to be collected by the village in the financial year exceeds \$50,000 or such other amount as may be prescribed by the regulations, or	27 28 29
(b) such time as the consent is revoked by the residents of the village.	30 31
[104] Section 120 Any surplus or deficit to be carried over	32
Omit the section.	33

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Schedule 1 Amendments

[105] Part 7, Division 7	1
Insert at the end of the Part:	2
Division 7 Surplus or deficit of accounts	3
120A Definitions	4
In this Division:	5
<i>deficit</i> means a deficit in the annual accounts of a retirement village for any financial year ending on or after 14 August 2006.	6
<i>surplus</i> means a surplus in the annual accounts of a retirement village for any year.	7
120B Any surplus to be carried over	8
(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:	9
(a) the residents of the village consent to a proposal for the expenditure of the whole or any part of the surplus, or	10
(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.	11
(2) A proposal under subsection (1) may be made by the operator of the retirement village or the Residents Committee (if any).	12
120C Making good of deficit	13
(1) A deficit is to be made good by the operator of the retirement village.	14
(2) Except as provided by this section, an operator of a retirement village must not:	15
(a) allow a deficit to remain outstanding from one financial year into any subsequent financial year, or	16
(b) request or receive from the residents of the retirement village any special additional payments for the purpose of making good a deficit, or	17
(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	18
(d) use the whole, or any part, of the recurrent charges collected by the operator in a financial year to make good a deficit.	19
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(3)	The regulations may prescribe exceptional circumstances in which the operator of a retirement village may:	1
(a)	increase the recurrent charges payable by the residents of a retirement village for the purpose of making good a deficit, or	2
(b)	use the whole, or any part, of the recurrent charges collected by the operator for the purpose of making good a deficit, or	3
(c)	carry forward a deficit into a subsequent financial year.	4
(4)	The operator of a retirement village must not charge the residents of a retirement village interest in respect of a deficit.	5
[106]	Section 129 How and when residence right or contract is terminated	6
	Omit “owned by the resident” wherever occurring in section 129 (1) and (2).	7
	Insert instead “occupied by a resident who is a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of the premises”.	8
[107]	Section 129 (2) (a) and (c)	9
	Omit “delivers up vacant possession of the residential premises to the operator” wherever occurring.	10
	Insert instead “permanently vacates the premises”.	11
[108]	Section 129 (2) (b)	12
	Omit the paragraph. Insert instead:	13
	(b) on the date on which the resident, with the consent of the operator, permanently vacates the premises, or	14
[109]	Section 130 Tribunal cannot terminate certain residence contracts	15
	Omit “owns” from section 130 (a).	16
	Insert instead “is a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.	17
[110]	Section 132 Termination if residence contract frustrated	18
	Omit “owns” from section 132 (1).	19
	Insert instead “is a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.	20

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Retirement Villages Amendment Bill 2006

Schedule 1 Amendments

[111] Part 9, Division 3A	1
Insert after Division 3:	2
Division 3A Termination by Supreme Court on application of administrator	3
136A Termination on grounds of retirement village ceasing to operate	4
(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 village if it is satisfied there is no reasonable prospect of finding a new operator for the retirement village.	5
(2) An administrator may only make an application under subsection (1) if, in the opinion of the administrator, there is no reasonable prospect of finding a new operator for the retirement village.	6
(3) If the Court makes an order under this section, the Court:	7
(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	8
(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	9
(c) may make such other orders as it thinks fit.	10
[112] Section 139 Operator not to recover possession of premises except by order	11
Omit section 139 (1). Insert instead:	12
(1) A person must not (whether acting on his or her own behalf or on behalf of another):	13
(a) enter, or attempt to enter, residential premises within a retirement village, or	14
(b) remove, or attempt to remove, a resident from residential premises within a retirement village, or	15
(c) take any other action that is intended, or is likely, to cause a resident to vacate residential premises within a retirement village,	16
for the purpose of recovering possession of the residential premises otherwise than in accordance with this Act.	17

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Retirement Villages Amendment Bill 2006

Amendments

Schedule 1

[113] Sections 142 (2) and 145	1
Omit “owned by the resident” wherever occurring.	2
Insert instead “occupied by a resident who is a registered interest holder in respect of the premises”.	3 4
[114] Section 147 Disposal of uncollected goods	5
Insert after section 147 (4):	6
(5) An operator must not sell or dispose of goods referred to in subsection (1) otherwise than as provided by this section or the regulations.	7 8 9
Maximum penalty: 20 penalty units.	10
[115] Section 150 References to sale of “residential premises”	11
Omit section 150 (1) and (3).	12
[116] Section 150 (2)	13
Omit “subsection (1) (b)”. Insert instead “section 7 (1) (c)”.	14
[117] Section 151 Recurrent charges in respect of optional services	15
Omit “personal services” wherever occurring in the section.	16
Insert instead “optional services”.	17
[118] Section 152 Recurrent charges in respect of general services: registered interest holder	18 19
Omit “owns” from section 152 (1).	20
Insert instead “is a registered interest holder in respect of”.	21
[119] Section 152 (2) (d)	22
Omit “section 150 (1) (b)”. Insert instead “section 7 (1) (c)”.	23
[120] Sections 152 (2) (d) (i) and (ii) and 153 (2) (c)–(e)	24
Omit “delivered up vacant possession of the premises to the operator” wherever occurring.	25 26
Insert instead “permanently vacated the premises”.	27

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Retirement Villages Amendment Bill 2006

Schedule 1 Amendments

[121] Section 152 (3)	1
Insert after section 152 (2):	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:	3
(a) in respect of such liability arising during the 42 days immediately after the former occupant permanently vacated the premises—by the former occupant, and	4
(b) in respect of such 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 in any capital gains under the village contract.	5
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[122] Section 153 Recurrent charges in respect of general services: generally	16
Omit “the owner” from section 153 (1).	17
Insert instead “a registered interest holder (other than a person referred to in section 7 (1) (c)) in respect”.	18
	19
[123] Section 153 (2) (e)	20
Omit “6 months”. Insert instead “42 days”.	21
[124] Section 153 (3)	22
Insert after section 153 (2):	23
(3) On and from the date that the former occupant’s liability to pay recurrent charges 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.	24
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[125] Section 154 Time of payment of recurrent charges	30
Omit “owns” from section 154 (1) (b) (i).	31
Insert instead “is the registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.	32
	33

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Retirement Villages Amendment Bill 2006

Amendments

Schedule 1

[126]	Section 157 Payment of departure fee	1
	Omit “owns (or owned)” from section 157 (3).	2
	Insert instead “is, or was, the registered interest holder (other than a person referred to in section 7 (1) (c)) in respect of”.	3 4
[127]	Section 159 Period for which departure fee may be charged after permanent vacation of premises: old contracts—registered interest holders	5 6 7
	Omit “owns” from section 159 (1) (a).	8
	Insert instead “is a registered interest holder in respect of”.	9
[128]	Section 159 (2) (d)	10
	Omit “section 150 (1) (b)”. Insert instead “section 7 (1) (c)”.	11
[129]	Section 160 Period for which departure fee may be charged after permanent vacation of premises: old contracts—generally	12 13
	Omit “does not own” from section 160 (1) (a).	14
	Insert instead “is not a registered interest holder in respect of”.	15
[130]	Section 161 Reduction or waiver of departure fee	16
	Omit “after the former occupant’s permanent vacation of” from section 161 (1).	17 18
	Insert instead “after the former occupant has permanently vacated”.	19
[131]	Section 163 Condition of premises on termination	20
	Omit section 163 (1) and (2). Insert instead:	21
	(1) This section does not apply to or in respect of a former resident who is, or was, a registered interest holder in respect of his or her residential premises.	22 23 24
	(2) A former occupant of a retirement village must, subject to 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.	25 26 27 28 29 30
[132]	Section 166 Application of Division	31
	Omit “owns”.	32
	Insert instead “is a registered interest holder in respect of”.	33

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Retirement Villages Amendment Bill 2006

Schedule 1 Amendments

[133] Section 170 Costs of sale	1
Insert after section 170 (3):	2
(4) In this section, <i>costs of sale</i> includes (without limiting the ordinary meaning of that term) such costs relating to the sale of residential premises in a retirement village as may be prescribed by the regulations, but does not include such other costs relating to the sale of residential premises as may be prescribed by the regulations.	3 4 5 6 7 8
[134] Section 174 Letting or subletting of premises	9
Omit “section 150 (1) (b)” from section 174 (1).	10
Insert instead “section 7 (1) (c)”.	11
[135] Section 175 Determination by Tribunal concerning proposed tenant or subtenant	12 13
Insert “and pay such compensation (if any) as is specified in the order” after “concerned” in section 175 (3) (a).	14 15
[136] Section 175 (4)	16
Omit “subsection (3) (b)”. Insert instead “subsection (3) (a)”.	17
[137] Section 179 Legal ability to sublet	18
Omit “section 150 (1) (b)” from section 179 (1).	19
Insert instead “section 7 (1) (c)”.	20
[138] Section 180 Payments to former occupants who were registered interest holders	21 22
Omit “owns” from section 181 (1).	23
Insert instead “is, or was, a registered interest holder in respect of”.	24
[139] Section 180 (4) and (5)	25
Omit the subsections. Insert instead:	26
(4) If a payment is not made to the former occupant within the time required by subsection (2):	27 28
(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	29 30 31
(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.	32 33 34

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Retirement Villages Amendment Bill 2006

Amendments

Schedule 1

(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:	1
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(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	6
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(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.	11
		12
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[140]	Section 181 Payments to former occupants who were not registered interest holders	14
		15
	Omit “does not own” from section 181 (1).	16
	Insert instead “is, or was, not a registered interest holder in respect of”.	17
[141]	Section 181 (7) and (8)	18
	Omit the subsections. Insert instead:	19
(7)	If a payment is not made to the former occupant within the time required by this section:	20
		21
(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	22
		23
		24
(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.	25
		26
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(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:	28
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(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	33
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Retirement Villages Amendment Bill 2006

Schedule 1 Amendments

- (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.

[142] Part 10A

Insert after Part 10:

Part 10A Protection of ingoing contributions paid by residents

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 Part.

182B Creation of charge

- (1) If a village contract to which this Part applies is entered into, there is created by virtue of this section, on the date that the contract is entered into, a charge over land within a retirement village on which residential premises are located, that secures an entitlement to a refund under the contract relating to those premises.
- (2) In the case of a village contract in force immediately before the commencement of this Part, any such charge is created on the commencement of this Part.

182C Disposal of land subject to charge

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 182E.

Maximum penalty: 100 penalty units.

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Amendments

Schedule 1

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

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Retirement Villages Amendment Bill 2006

Schedule 1 Amendments

(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,	1 2 3 4
(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,	5 6 7
(e)	the interest of the registered proprietor of the land immediately before the sale of the land.	8 9
182G	Order not to disadvantage residents	10
	The Supreme Court must not make an order under this Part unless satisfied that the order is in the best interest of the majority of the residents of the retirement village.	11 12 13
182H	Removal of charge	14
	A charge over land created under this Part remains in force until 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.	15 16 17 18
[143]	Section 189A	19
	Insert after section 189:	20
189A	Director-General may issue warning notices	21
(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.	22 23 24 25
(2)	Such a warning may relate to the risks involved in dealing with a person who has a recent history of unconscionable conduct in the person's dealings with consumers.	26 27 28
(3)	The Director-General may authorise the publication of such a notice in any one or more of the following ways:	29 30
(a)	to any persons making inquiries to the Director-General about the person concerned,	31 32
(b)	by advertisement by the use of any medium,	33
(c)	to any media representatives.	34
(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).	35 36 37

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Retirement Villages Amendment Bill 2006

Amendments

Schedule 1

(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:	1 2 3 4
(a)	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, or	5 6 7
(b)	the person refuses to make any representations.	8
(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.	9 10 11
(7)	No liability is incurred by any person for publishing in good faith:	12
(a)	a notice under this section, or	13
(b)	a fair report or summary of such a notice.	14
[144]	Section 190 Director-General may take or defend proceedings	15
	Omit “on behalf of a resident of a retirement village” from section 190 (1).	16
[145]	Section 190 (1) (a)	17
	Omit “the resident”. Insert instead “a resident of a retirement village”.	18
[146]	Section 190 (1) (b) (ii)	19
	Omit “, and”.	20
[147]	Section 190 (1) (c)	21
	Omit the paragraph.	22
[148]	Sections 193–195	23
	Omit the sections.	24
[149]	Section 196 Exclusion of personal liability	25
	Insert “, the Registrar-General” after “by the Director-General”.	26
[150]	Section 196	27
	Insert “or Registrar-General” after “of the Director-General”.	28
[151]	Section 196	29
	Insert “, the Registrar-General” after “subject the Director-General”.	30

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Retirement Villages Amendment Bill 2006

Schedule 1 Amendments

[152] Part 12A	1
Insert after Part 12:	2
Part 12A Powers of investigation	3
196A Powers of entry, inspection etc	4
(1) An investigator may exercise the powers conferred by this section for the purposes of:	5
(a) ascertaining whether the provisions of this Act or the regulations are being complied with or have been contravened, or	6
(b) investigating a complaint made or intended to be made under this Act, or	7
(c) obtaining evidence, records or information in relation to a matter that constitutes or may constitute a contravention of this Act or the regulations.	8
(2) An investigator may enter and inspect at any reasonable time any premises that the investigator believes on reasonable grounds are used for the carrying on of the business of a retirement village.	9
(3) While on premises entered under this section, an investigator may do any one or more of the following:	10
(a) require any person on those premises to produce any records 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 records stored electronically, to produce any such record in written form,	11
(b) inspect, take copies of or extracts from, or make notes from, any such records and, for that purpose, take temporary possession of any such records,	12
(c) take possession of such records if the investigator considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction,	13
(d) take such photographs, films and audio, video and other recordings as the investigator considers necessary,	14
(e) require any person on those premises to answer questions or otherwise furnish information in relation to the carrying on of the business of a retirement village or a contravention of a provision of this Act or the regulations,	15
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Amendments

Schedule 1

(f)	require the owner or occupier (including a resident) of those premises to provide the investigator with such assistance and facilities as is or are reasonably necessary to enable the investigator to exercise the functions of an investigator under this Part.	1 2 3 4 5
(4)	An investigator is not entitled to enter a part of premises used for residential purposes except:	6 7
(a)	with the consent of the occupier, or	8
(b)	under the authority of a search warrant.	9
(5)	An investigator may not exercise in any premises a function conferred by this Part unless the investigator produces a certificate of identification if requested to do so by a person apparently in charge of those premises or apparently in charge of any work being performed on those premises.	10 11 12 13 14
196B	Power of investigator to obtain information, records and evidence	15
	If an investigator believes on reasonable grounds that a person is capable of giving information, producing records, 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:	16 17 18 19 20
(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	21 22 23 24 25
(b)	to produce to an investigator, in accordance with the notice, any such records, or	26 27
(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 such records.	28 29 30
196C	Obstruction etc of investigator	31
	A person must not:	32
(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	33 34 35
(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	36 37 38 39 40

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Retirement Villages Amendment Bill 2006

Schedule 1 Amendments

(c)	wilfully delay, hinder or obstruct an investigator in the exercise of the investigator's functions under this Part.	1 2
	Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.	3 4
196D	Taking possession of records to be used as evidence	5
(1)	If an investigator takes possession of any records 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.	6 7 8 9 10
(2)	The person from whom the records are taken must be provided, within a reasonable time after the records are taken, with a copy of the records certified by an investigator as a true copy.	11 12 13
(3)	A copy of records provided under this section is, as evidence, of equal validity to the records of which it is certified to be a copy.	14 15
196E	Search warrants	16
(1)	An investigator may apply to an authorised officer within the meaning of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> for the issue of a search warrant for premises if the investigator believes on reasonable grounds:	17 18 19 20
(a)	that a provision of this Act or the regulations is being contravened on the premises, or	21 22
(b)	that there is on the premises evidence of a contravention of this Act or the regulations.	23 24
(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:	25 26 27
(a)	to enter and inspect premises, and	28
(b)	to exercise on the premises any function of an investigator under this Part.	29 30
(3)	Division 4 of Part 5 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> applies to a search warrant issued under this section.	31 32 33
[153]	Section 198 Costs of operator's legal advice or proceedings	34
	Omit "statement of approved expenditure" from section 198 (1) (a).	35
	Insert instead "approved annual budget".	36

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Retirement Villages Amendment Bill 2006

Amendments

Schedule 1

[154] Section 198 (2)	1
Omit “statement of proposed expenditure”.	2
Insert instead “proposed annual budget”.	3
[155] Section 202 Costs of administration	4
Insert at the end of the section:	5
(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.	6 7 8
[156] Section 203 Regulations	9
Insert after section 203 (3):	10
(4) The regulations may exempt specified village contracts or a specified class of village contracts from any specified provision of this Act.	11 12 13
[157] Schedule 1 Consent of residents	14
Omit Part 3. Insert instead:	15
Part 3 Consent requiring special resolution	16
5 Notice of special resolution	17
If a measure or action requires a special resolution, a ballot must be conducted in accordance with the regulations.	18 19
6 How special resolution is carried	20
A special resolution is carried only if it is passed by at least 75% of the number of residents who are entitled to participate in the ballot.	21 22 23
[158] Schedule 4 Savings, transitional and other provisions	24
Insert at the end of clause 1 (1):	25
<i>Retirement Villages Amendment Act 2006</i>	26

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Retirement Villages Amendment Bill 2006

Schedule 1 Amendments

[159] Schedule 4, Part 3	1
Insert after Part 2:	2
Part 3 Provisions consequent on enactment of Retirement Villages Amendment Act 2006	3 4
Division 1 General	5
15 Definition	6
In this Part:	7
<i>2006 amending Act</i> means the <i>Retirement Villages Amendment Act 2006</i> .	8 9
16 Recurrent charges provisions	10
(1) Section 152 (as in force immediately before the commencement of Schedule 1 [121] to the 2006 amending Act) continues to apply in respect of residential premises that were vacant immediately before the commencement of that provision until those premises have been vacant for a period of 6 months.	11 12 13 14 15
(2) Section 153, as amended by Schedule 1 [124] to the 2006 amending Act:	16 17
(a) extends to residential premises that were vacant immediately before the commencement of that provision, but	18 19 20
(b) in the case of premises that have been vacant for more than 42 days, does not entitle a former occupant to a refund for any recurrent charges incurred before that commencement.	21 22 23
17 Settling-in period provisions	24
(1) Division 2 of Part 5 (as inserted by Schedule 1 [33] to the 2006 amending Act) extends to a village contract entered into before the commencement of that Division.	25 26 27
(2) For the avoidance of doubt, the settling-in period with respect to a village contract to which Division 2 of Part 5 applies because of subclause (1) commenced on the day that the resident entered into the village contract.	28 29 30 31

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Schedule 1

18	Membership of Residents Committee	1
	For the purposes of section 70A (as inserted by Schedule 1 [48] to the 2006 amending Act), any person who immediately before the insertion of that section held office on a Residents Committee of a retirement village is taken to be in the person's first year of office.	2 3 4 5 6
19	Holding of first annual general meeting	7
	If a financial year for a retirement village ends during the period of 2 months immediately preceding the commencement of section 72A (as inserted by Schedule 1 [49] to the 2006 amending Act), the first annual general meeting to be held by the operator of the retirement village concerned must be held within 4 months of the end of that financial year.	8 9 10 11 12 13
20	Variation of recurrent charges	14
	Section 104 (2) (as substituted by Schedule 1 [61] to the 2006 amending Act) applies to a village contract on and from the date that a village contract referred to in that subsection was last varied before the substitution of that subsection.	15 16 17 18
Division 2	Making good of outstanding deficits	19
21	Definition	20
	In this Division, <i>outstanding deficit</i> means the total deficit in the annual accounts of a retirement village that accrued on or before the end of a financial year of the retirement village occurring immediately before 14 August 2006.	21 22 23 24
22	Making good of deficit	25
	(1) The operator of a retirement village may:	26
	(a) make good the whole, or any part of, any outstanding deficit from any funds, other than recurrent charges, available to the operator, or	27 28 29
	(b) propose that the residents of the village make good the whole, or any part of, any outstanding deficit:	30
	(i) by making special additional payments, or	31 32
	(ii) from any surplus in the annual accounts of the retirement village in any financial year.	33 34
	(2) The residents of a retirement village may, by special resolution, consent to a proposal under subclause (1) (b) (i) or (ii).	35 36

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Schedule 1 Amendments

- (3) A proposal under subclause (1) (b) may only be put to the residents of the retirement village once. 1
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- (4) Despite section 120B (as inserted by Schedule 1 [105] to the 2006 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. 3
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- (5) The regulations may prescribe expenditure or circumstances resulting in, or contributing to, the outstanding deficit in respect of which the operator is prevented from making a proposal under subclause (1) (b) (i) or (ii). 9
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- 23 Tribunal may make orders for making good of deficit 13**
- (1) If a retirement village has an outstanding deficit on or after 14 August 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: 14
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- (a) the amount of any such deficit that is to be made good by the operator of the retirement village, and 18
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- (b) the amount of any such deficit that is to be made good by the residents of the retirement village, and 20
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- (c) the date that any such deficit is to be made good. 22
- (2) In making an order under this clause, the Tribunal must give consideration to such matters as may be prescribed by the regulations. 23
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- (3) If the operator of the retirement village does not apply to the Tribunal for an order under this clause within 30 days after 14 August 2011, or such later date as may be prescribed by the regulations, the operator must make good the whole of the outstanding deficit. 26
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Amendments

Schedule 1

Division 3	Capital replacement and maintenance	1
24	Definitions	2
	In this Division:	3
	<i>capital replacement fund</i> means a capital replacement fund established under section 95 as in force immediately before the commencement of Schedule 1 [59] to the 2006 amending Act.	4 5 6
	<i>capital works fund</i> means a capital works fund established under section 99 as substituted by Schedule 1 [59] to the 2006 amending Act.	7 8 9
	<i>maintenance fund</i> means a maintenance fund established under section 100 as in force immediately before the commencement of Schedule 1 [59] to the 2006 amending Act.	10 11 12
25	Application of capital replacement and maintenance provisions	13
	For the purposes of section 94 (as substituted by Schedule 1 [59] to the 2006 amending Act), the cost to a resident of a retirement village (who was a resident of the village immediately before that substitution) for capital maintenance or replacement must not, in any financial year, exceed \$1,000 or such other amount as may be prescribed by the regulations.	14 15 16 17 18 19
26	Reimbursement for urgent capital replacement or maintenance carried out by resident	20 21
	Section 96 (as substituted by Schedule 1 [59] to the 2006 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 substitution of that section.	22 23 24 25 26
27	Existing capital replacement funds and maintenance funds	27
(1)	On the commencement of Schedule 1 [59] to the 2006 amending Act, any capital replacement fund or maintenance fund existing immediately before that commencement is dissolved.	28 29 30
(2)	Any funds held in a capital replacement fund or maintenance fund that is dissolved by subclause (1) are to be paid into the capital works fund for the retirement village.	31 32 33

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Schedule 1 Amendments

Division 4 Annual budgets 1

28 Amendments relating to annual budgets 2

A statement of proposed expenditure or a statement of approved expenditure under this Act (as in force immediately before the commencement of this clause) is taken, on that commencement, to be a proposed annual budget or an approved annual budget, respectively. 3
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