

# Retirement Villages Regulation 2009

[2009-596]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**  
*Retirement Villages Amendment (Standard Contract) Regulation 2013 (158)* (LW 26.4.2013) (not commenced — to commence on 1.10.2013)

### Authorisation

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New South Wales

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# Retirement Villages Regulation 2009



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Retirement Villages Regulation 2009*.

### 2 Commencement

This Regulation commences on 1 March 2010 and is required to be published on the NSW legislation website.

### 3 Definitions

(1) In this Regulation:

**termination notice** means a notice under section 131 of the Act (that is, a notice of intention to apply to the Tribunal for an order terminating a residence contract).

**form** means a form set out in Schedule 1.

**Note—**

Section 80 of the *Interpretation Act 1987* provides that:

- (a) if an Act or a statutory rule prescribes a form, strict compliance with the form is not necessary but substantial compliance is sufficient, and
- (b) if a form prescribed by an Act or instrument requires the form to be completed in a specified manner, or requires specified information to be included in, attached to or furnished with the form, the form is not duly completed unless it is completed in that manner and unless it includes, or has attached to or furnished with it, that information.

**the Act** means the *Retirement Villages Act 1999*.

(2) Notes included in this Regulation (other than in Schedule 1) do not form part of this Regulation.

### 4 Item of capital

For the purposes of paragraph (d) of the definition of **item of capital** in section 4 (1) of the Act, the following items in a retirement village, including those in residential premises

in the village, are prescribed:

- (a) fixtures (for example, bench tops, built-in cupboards and wardrobes, floor coverings, hot water systems and stoves),
- (b) fittings (for example, light fittings, taps and sanitary fittings),
- (c) furnishings (for example, curtains and blinds),
- (d) non-fixed items (for example, whitegoods, portable air conditioners, fans, tables and chairs).

## 5 Capital maintenance

(1) For the purposes of the definition of **capital maintenance** in section 4 (1) of the Act:

- (a) (Repealed)
- (b) the following are prescribed as not being capital maintenance:
  - (i) work done to substantially improve an item of capital beyond its original condition,
  - (ii) work done to maintain or repair an item of capital in circumstances where it would have been more cost effective to replace the item of capital.

## 6 Operator

For the purposes of paragraph (b) of the definition of **operator** in section 4 (1) of the Act, a person who is engaged under an agreement with:

- (a) the relevant community association, neighbourhood association or precinct association of a retirement village that is subject to a community land scheme, or
- (b) the owners corporation of a retirement village that is subject to a strata scheme, or
- (c) the company that is the owner of a retirement village that is subject to a company title scheme,

and who enters into individual village contracts with the residents of the village (or arranges for another person to enter into those contracts) is prescribed.

## 7 Optional services

For the purposes of the definition of **optional services** in section 4 (1) of the Act, the following services are prescribed:

- (a) the provision of meals,
- (b) laundry services,

(c) home cleaning.

## 8 Resident

(1) For the purposes of paragraph (c) of the definition of **resident** in section 4 (1) of the Act, a person who is a resident of a retirement village only because he or she:

(a) is the spouse or the de facto partner of another resident, and

(b) occupies residential premises in the retirement village with that resident,

is prescribed if the person continues to occupy the residential premises concerned after the other resident dies or otherwise permanently vacates the premises.

### Note—

“De facto partner” is defined in section 21C of the [Interpretation Act 1987](#).

(2) However, if the other resident has died, subclause (1) does not apply if the terms of that other resident’s will are such as to require (whether directly or indirectly) the person to vacate the residential premises concerned.

### Note—

The will might provide, for example, for a bequest of a sum of money that the deceased resident’s estate can raise only by delivering vacant possession of the residential premises to the operator of the village so as to obtain a refund of the deceased resident’s ingoing contribution.

## 9 Retirement village

For the purposes of section 5 (3) (i) of the Act, **retirement village** does not include:

(a) a place at which a designated service (within the meaning of the [Disability Services Act 1993](#)) is provided, or

(b) a facility (within the meaning of the [Community Welfare Act 1987](#)).

## Part 2 Information about retirement villages

### 10 Representations in promotional material

For the purposes of section 17 (5A) of the Act, the following representations in relation to a retirement village are prescribed:

(a) that a person is likely to obtain a capital gain at the time of vacating the village,

(b) any estimation of possible variations to future recurrent charges, except where the village contract provides for recurrent charges to be varied in accordance with a fixed formula,

(c) any estimation of the future size of the village except in respect of development where construction is underway and a completion date is known,



- (d) any representation in respect of future ownership of the village, except if a contract to transfer ownership of the village has been entered into, in which case details about that contract may be provided,
- (e) that the village is an approved provider of residential care within the meaning of the *Aged Care Act 1997* of the Commonwealth,
- (f) that residents of the village have priority access to residential care by an approved provider under the *Aged Care Act 1997* of the Commonwealth.

**Note—**

Section 5 (3) (a) of the Act excludes from the definition of **retirement village** buildings that are commonly known as Commonwealth-subsidised hostels and nursing homes.

**11 Disclosure statement**

For the purposes of section 18 (3A) (a) and (b) of the Act, a disclosure statement must be in the form, and contain the information, set out in Part 1 of Schedule 1.

**12 Copies of certain documents to be available**

For the purposes of section 20 (1) (k) of the Act, the following documents are prescribed:

- (a) if the operator of the retirement village and a Residents Committee were parties to any proceedings before a court or a tribunal in the immediately preceding 5 years—each decision or order made in respect of the proceedings and any reasons given by the court or tribunal in respect of any such decision or order,
- (b) if the operator of the retirement village operates a waiting list for the village and charges a waiting list fee—the operator’s written policy setting out the way in which the waiting list operates,
- (c) if the retirement village is subject to a company title scheme—such of the following as governs the company concerned:
  - (i) its constitution,
  - (ii) the replaceable rules set out in the *Corporations Act 2001* of the Commonwealth,
- (d) if the retirement village is subject to a community land scheme:
  - (i) the management statement of the scheme, and
  - (ii) any management agreement relating to the village to which the relevant community association, neighbourhood association or precinct association is a party, and
  - (iii) the minutes of the most recent annual general meeting of the relevant community association, neighbourhood association or precinct association,

- (e) if the retirement village is subject to a strata scheme:
  - (i) the by-laws of the scheme, and
  - (ii) any management agreement relating to the village to which the relevant owners corporation is a party, and
  - (iii) the minutes of the most recent annual general meeting of the owners corporation,
- (f) every other document referred to in the disclosure statement for the village under the heading "Village Contracts".

### **Part 3 Village contracts and village rules**

#### **13 Amount payable for legal and other expenses**

For the purposes of section 31 (3) of the Act, the maximum amount payable by a resident for legal and other expenses incurred by the operator in connection with the preparation of a village contract is \$200.

#### **14 Condition report**

- (1) The operator, or an agent or employee of the operator, must inspect the premises and complete the condition report in accordance with this clause.  
Maximum penalty: 10 penalty units.
- (2) For the purposes of section 38 (2) of the Act, the condition report must be in the form set out in Part 2 of Schedule 1.
- (3) The report is to be completed in the presence of the prospective resident or a person nominated by the prospective resident, unless otherwise authorised in writing by the prospective resident.
- (4) The report must be completed to the best of the operator's knowledge (or, if the inspection is carried out by an agent or employee of the operator, to the best of that agent's or employee's knowledge).
- (5) If a required date is not known, an approximate date must be given and identified as such.
- (6) No less than 14 days must be allowed for the prospective resident (or the prospective resident's nominee) to examine the report and suggest changes to it.
- (7) The report must be signed by the operator (or, if the inspection is carried out by an agent or employee of the operator, by that agent or employee). The prospective resident (or the prospective resident's nominee) must also sign the report if he or she agrees with it.

- (8) For the purposes of section 38 (2A) of the Act, the condition report must be completed and provided to the prospective resident (or the prospective resident's nominee):
- (a) at least 14 days before the operator and the prospective resident enter into a village contract, or
  - (b) if the premises are still being constructed, 14 days before the prospective resident occupies the premises.

### **15 Contents of village contracts**

- (1) For the purposes of section 42 (1) of the Act:
- (a) the matter that is to be included in a village contract is the matter set out in Schedule 2, and
  - (b) the matter that is to be excluded from a village contract is the matter set out in Schedule 3.
- (2) This clause does not prevent the inclusion of any additional matter in a village contract (other than the matter set out in Schedule 3 or matter that is inconsistent with the matter set out in Schedule 2).
- (3) This clause applies to all village contracts other than residence contracts relating to premises that are subject to a community land scheme, company title scheme or strata scheme.
- (4) However, this clause applies to residence contracts referred to in subclause (3) if the operator of the village (or a close associate of the operator) is the vendor under the residence contract concerned.

### **16 Village rules**

For the purposes of section 46 (2) (i) of the Act, village rules may relate to the following matters:

- (a) security in the retirement village concerned,
- (b) the external appearance of residents' premises in the village.

## **Part 4 Financial management**

### **Division 1 Annual budget**

#### **17 Matters that must be dealt with in proposed annual budget**

- (1) For the purposes of section 112 (3) (a) of the Act, the matters that must be dealt with in a proposed annual budget are the following:
- (a) the amount of recurrent charges payable by residents of the village during the

year (including any expected increases in those charges in line with a fixed formula),

- (b) the method by which that amount has been calculated,
  - (c) the total expected income from recurrent charges for the village for the year,
  - (d) the effect of the expected surplus or deficit (as the case may be) for the current year on the finances of the village,
  - (e) all proposed categories of expenditure (without grouping together 2 or more unlike categories),
  - (f) the proposed expenditure on each of those categories, the proposed expenditure on each of them as indicated in the approved annual budget for the current year, and the likely actual expenditure on each of them for the current year,
  - (g) if any expenditure (proposed or actual) is an apportionment of a total expenditure relating to the village and one or more other villages or businesses—the method or calculation by which the expenditure is apportioned,
  - (h) if any residents of the village are paying significantly higher recurrent charges than some other residents of the village (for example, because they are receiving optional services)—the method or calculation by which expenditure is apportioned between the categories of residents concerned,
  - (i) the total proposed expenditure of the village for the year,
  - (j) the expected surplus or deficit for the year.
- (2) If the annual budget includes any costs associated with the operator's head office or any management or administration fees, these are to be broken down to show the goods and services to which they relate and the approximate cost of those goods and services.

### **18 Form of proposed annual budget**

- (1) For the purposes of section 112 (3) (c) of the Act, a model proposed annual budget is set out in Schedule 4.
- (2) An operator of a retirement village may, but is not required to, use the model form of proposed annual budget.

### **19 Notice accompanying proposed annual budget**

- (1) For the purposes of section 112 (4) (e) of the Act, the notice accompanying a proposed annual budget must contain the following statements:
  - (a) the operator must provide such information in relation to the proposed

- expenditure as the Residents Committee (or, if there is no such Committee established in the village, any resident) reasonably requests,
- (b) the operator must not expend money received by way of recurrent charges otherwise than in accordance with the approved annual budget, except for:
    - (i) a minor variation, or
    - (ii) a variation between items in the approved annual budget if the variation does not reduce the level of services provided and does not cause total expenditure to be exceeded.
- (2) If the recurrent charges within the budget have been increased since the previous annual budget and section 106 (1) of the Act applies to that increase, the notice accompanying a proposed annual budget must also contain the following statements:
- (a) it is a requirement of section 112 of the *Retirement Villages Act 1999* that the operator of the village supply each resident with a proposed annual budget for the financial year of the village at least 60 days before the commencement of the financial year concerned,
  - (b) it is a requirement of section 114 of that Act that the residents advise the operator of whether or not they consent to the proposed budget (and, if they do not consent, they must specify the item or items in the proposed budget to which they object),
  - (c) if the operator is not advised one way or the other, the residents are taken to have refused consent.
- (3) If the recurrent charges within the budget have not been increased since the previous annual budget or if those charges have been increased but section 106 (1) of the Act does not apply to that increase, the notice accompanying a proposed annual budget must also contain whichever of the following statements is applicable in the particular case:
- (a) the residents are taken to have consented to the proposed annual budget as the recurrent charges have not been increased since the previous annual budget,
  - (b) the residents are taken to have consented to the proposed annual budget because the increase in the recurrent charges is in accordance with the formula set out in the village contract,
  - (c) the residents are taken to have consented to the proposed annual budget because the increase in the recurrent charges is not more than the increase in the Consumer Price Index.

## **20 Limit on contingencies in annual budget**

For the purposes of section 115A of the Act, the maximum amount that may be allocated for contingencies in a proposed annual budget is \$100.

## **21 Transitional provision—first annual budget following commencement of Retirement Villages Amendment Act 2008**

- (1) Section 114 (8) of the Act does not apply in respect of the first proposed annual budget for a retirement village following the commencement of that subsection except if the recurrent charges payable by the residents have been varied in accordance with section 104 (1) (a) of the Act.

### **Note—**

This provision means that the consent of the residents will need to be obtained to the proposed annual budget even if the recurrent charges do not increase by more than the CPI (except where the village contract provides for recurrent charges to be varied in accordance with a fixed formula).

- (2) For the purposes of a proposed annual budget to which section 114 (8) of the Act applies, section 112 (4) and (5) of the Act do not apply in respect of that budget.

### **Note—**

If the consent of the residents does not need to be obtained to the proposed annual budget as a consequence of subclause (1), the requirements relating to the provision of a notice with the statement of proposed expenditure do not apply.

## **Division 2 Recurrent charges**

### **22 Notice of variation—fixed formula**

For the purposes of section 105 (2) (c) of the Act, a notice of variation of recurrent charges given under section 105 of the Act must include the following:

- (a) the name of the resident and the address of the residential premises concerned,
- (b) the following statement as the first line of the notice and in at least 14 point bold Arial font:

**This is a notice of a variation of recurrent charges in accordance with a fixed formula.**

- (c) the fixed formula set out in the contract and a demonstration, by an application of the formula, of the way in which the new recurrent charges have been calculated,
- (d) the signature of the operator of the retirement village (or an agent or employee of the operator) and the date of that signature.

### **23 Notice of variation—no fixed formula and not exceeding CPI**

For the purposes of section 105A (4) (c) of the Act, a notice of variation of recurrent charges given under section 105A of the Act must include the following:

- (a) the name of the resident and the address of the residential premises concerned,
- (b) the following statement as the first line of the notice and in at least 14 point bold Arial font:

**This is a notice of a variation of recurrent charges (otherwise than in accordance with a fixed formula). The increase in those charges does not exceed the increase in the Consumer Price Index (CPI) since those charges were last increased.**

- (c) the following statements:
  - (i) this variation does not require your consent as it does not exceed the increase in the CPI,
  - (ii) you are not required to pay any increase in your recurrent charges unless this notice complies with the requirements of section 105A of the *Retirement Villages Act 1999* and any regulations made under that section,
  - (iii) any increase in recurrent charges cannot commence until at least 14 days after this notice is received by you,
  - (iv) this notice may be cancelled by a later notice and the later notice may provide for a lesser increase than any increase specified in this notice.
- (d) the signature of the operator of the retirement village (or an agent or employee of the operator) and the date of that signature.

#### **24 Notice of variation—no fixed formula and greater than CPI**

For the purposes of section 106 (2) (e) of the Act, a notice of variation of recurrent charges given under section 106 of the Act must include the following:

- (a) the name of the resident and the address of the residential premises concerned,
- (b) the following statement as the first line of the notice and in at least 14 point bold Arial font:

**This is a notice of a variation of recurrent charges (otherwise than in accordance with a fixed formula). The increase in those charges exceeds the increase in the Consumer Price Index (CPI) since those charges were last increased.**

- (c) the following statements:
  - (i) you are not required to pay any increase in your recurrent charges unless this notice complies with the requirements of section 106 of the *Retirement Villages Act 1999* and any regulations made under that section,

- (ii) any increase in recurrent charges cannot commence until at least 60 days after this notice is received by you,
  - (iii) this notice may be cancelled by a later notice and the later notice may provide for a lesser increase than any increase specified in this notice,
  - (iv) the operator of the village must not increase (or attempt to increase) the recurrent charges beyond any upper level specified in the relevant village contract,
  - (v) the variation in the charges does not take effect unless the residents whose recurrent charges will be affected by the variation consent to it (or the Tribunal orders that the variation take effect),
  - (vi) the residents concerned must, within 30 days after receiving the notice, meet, consider and vote on the proposed variation and advise the operator whether or not they consent to it,
  - (vii) if the operator is not advised one way or the other within that 30 day period, the residents are taken to have refused consent,
  - (viii) the operator must provide such information in relation to the proposed variation as the Residents Committee (or, if there is no such Committee established in the village, any resident) reasonably requests for the purpose of deciding whether consent should be given to the variation,
  - (ix) if the residents do not consent to the proposed variation the operator may apply to the Tribunal for an order in respect of the proposed variation,
  - (x) you may apply to the Tribunal for an order directing the refund of overpaid recurrent charges on the grounds that an increase in the charges came into effect otherwise than in accordance with Division 4 of Part 7 of the *Retirement Villages Act 1999* (which includes section 106),
  - (xi) any application for such an order must be lodged no later than 12 months after the increase came into effect,
- (d) the signature of the operator of the retirement village (or an agent or employee of the operator) and the date of that signature.

## **25 Provision of information regarding recurrent charge**

- (1) For the purposes of section 107 (6) (a) of the Act, the information that the operator of a retirement village is required to provide under section 107 (4) of the Act must be provided within 7 days after the information was first requested.
- (2) For the purposes of section 107 (6) (b) of the Act, the operator of a retirement village is not required to provide the following information under section 107 (4) of the Act:



- (a) information about the personal affairs of the operator, an employee of the operator or a contractor engaged by the operator,
- (b) information that is unrelated to the operation of the village,
- (c) information about individual sales or contracts that are not in the public domain,
- (d) if the operator of a retirement village is an organisation that is subject to an approved privacy code or the National Privacy Principles under the *Privacy Act 1988* of the Commonwealth—information that would result in a breach of the code or those Principles if it were to be provided under that subsection.

## **26 Matters not to be financed by way of recurrent charges**

For the purposes of section 112 (3) (b) of the Act, the following must not be financed by way of recurrent charges:

- (a) fees for membership of industrial or professional associations,
- (b) overseas travel by the operator of the retirement village or the operator's agent or employees,
- (c) any costs associated with marketing vacant units within a retirement village, including such costs that may have been included in wages or salaries,
- (d) payroll tax unless:
  - (i) the wages paid by the operator in respect of operating the retirement village are more than the threshold amount within the meaning of Schedule 1 to the *Payroll Tax Act 2007*, or
  - (ii) before the commencement of this clause, the residents of the retirement village have consented to the financing of payroll tax by way of recurrent charges and the residents have continued to consent to such financing of payroll tax,
- (e) costs associated with the operator's head office or management or administration fees unless the costs or fees are associated with providing services to residents of the retirement village.

## **27 Transitional provision—variation in recurrent charges following commencement of Retirement Villages Amendment Act 2008**

- (1) This clause applies to a variation in recurrent charges for a retirement village occurring on or after the commencement of Schedule 1 [66] to the *Retirement Villages Amendment Act 2008* and before the second annual budget is approved for the village after that commencement.
- (2) For the purposes of a variation in recurrent charges to which this clause applies, a reference in section 107 of the Act to section 106 of the Act is taken to be a reference

to section 105A or 106 of the Act.

**Note—**

This provision means that the consent of residents of a retirement village will need to be obtained to a variation in recurrent charges in the first budget cycle of the village even if those charges do not increase by more than the CPI (except where the village contract provides for recurrent charges to be varied in accordance with a fixed formula).

## **Division 3 Other**

### **28 Interest**

For the purposes of sections 24 (4) (b), 43 (8) (b), 155 (3), 180 (4) (b) and (5) (b) and 181 (7) (b) of the Act, the prescribed rate of interest is the rate prescribed under section 101 of the *Civil Procedure Act 2005* with respect to the payment of interest on a judgment debt.

### **29 Matters that cannot be funded from capital works fund or recurrent charges**

For the purposes of section 97 (3) (e) of the Act, anything prescribed under clause 5 (1) (b) as not being capital maintenance is not authorised to be funded from the capital works fund or recurrent charges of a retirement village.

### **30 Capital works fund**

- (1) For the purposes of section 99 (3) of the Act, if the operator of a retirement village is a property trust or other corporation constituted by an Act, money in the capital works fund for the village may be held in any fund administered by the property trust or corporation concerned.
- (2) For the purposes of section 99 (5) (c) of the Act, the operator of a retirement village may use money from the capital works fund for any purpose (other than a purpose set out in section 99 (5) (a) or (b) of the Act) but only if:
  - (a) the residents of the village have, by special resolution, consented to the money being used for that purpose, and
  - (b) the use of the money for that purpose does not involve the funding of any matter specified in section 97 (3) of the Act.

### **31 Minimum public liability insurance**

For the purposes of section 100 (3) of the Act, the minimum amount of public liability insurance that the operator of a retirement village is required to obtain is cover of \$10,000,000.

### **32 Copies of audited accounts**

For the purposes of section 119 (7) (a) of the Act, if there is no Residents Committee

established in a retirement village a copy of the audited accounts for the village must be displayed on a notice board in a common area of the village for a period of at least 1 calendar month commencing no later than 4 calendar months after the end of the financial year to which the accounts relate.

### **33 Making good of deficit**

- (1) For the purposes of section 120C (3) (c) of the Act, the operator of a retirement village may carry forward a deficit to a subsequent financial year to the extent that the deficit is caused by:
  - (a) maintenance (but not replacement) of an item of capital in circumstances where the maintenance was for the purposes of rectifying any of the matters set out in section 92 (2) (a)–(k) of the Act, or
  - (b) an increase in the cost of the following:
    - (i) utilities (other than telephone),
    - (ii) statutory charges including rates and taxes,
    - (iii) wages and salaries increased under an award or an industrial agreement,
    - (iv) workers compensation and public liability insurance.
- (2) For the purposes of clause 20 (5) of Schedule 4 to the Act, an operator is prevented in all circumstances from making a proposal under clause 20 (1) (b) (i) or (ii) of that Schedule that residents make good the whole or any part of any outstanding deficit except in circumstances where the deficit or relevant part of the deficit resulted from a request by the residents for an additional item of capital or service.

#### **Note—**

This clause applies to a deficit that accrued on or before the end of a financial year of the village occurring most recently before 23 November 2006.

### **34 Transitional provision—capital replacement where no ongoing contribution payable**

Section 94 (1) as in force immediately before its substitution by the [Retirement Villages Amendment Act 2008](#) continues to apply in respect of a village contract that was entered into before that substitution.

#### **Note—**

That provision provided that the operator of a retirement village could fund capital replacement and depreciation in the village from the recurrent charges payable by a resident of the village, but only if no ongoing contribution was payable by the resident.

## Part 5 Meetings

### 35 Agenda at annual meeting

For the purposes of section 72A (6) of the Act, the agenda for an annual management meeting must include the following:

- (a) a report on any expenditure in the previous financial year that was a variation between items in the approved annual budget (other than a minor variation),
- (b) the future plans for the village, including any proposed improvements,
- (c) the management of the village, including any change or proposed change to the management arrangements,
- (d) safety issues,
- (e) any proposed maintenance plans,
- (f) any changes to the proposed annual budget that do not require the residents' consent,
- (g) any proposals to undertake capital works that have not been notified in the annual budget,
- (h) any proposed changes to the level of service provided to residents of the village,
- (i) time for questions, including questions raised from the floor.

### 36 Questions at annual meeting

- (1) For the purposes of section 72B (3) (b) of the Act, the operator of a retirement village or a representative of the operator is not required to answer a question about the following:
  - (a) the personal affairs of the operator, an employee of the operator or a contractor engaged by the operator,
  - (b) any matter that is unrelated to the operation of the village,
  - (c) any matter in relation to individual sales or contracts that are not in the public domain.
- (2) Subclause (1) (a) does not apply so as to prevent an operator or a representative of the operator from answering a question as to the operator's solvency or financial viability.
- (3) If the operator of a retirement village is an organisation that is subject to an approved privacy code or the National Privacy Principles under the *Privacy Act 1988* of the Commonwealth, a representative of the operator is not required to answer a question

to the extent that the answer would disclose personal information in breach of the code or those Principles.

### **37 Proxies**

- (1) For the purposes of section 77 (2) of the Act, the appointment of a person as the proxy of a resident of a retirement village is to be made in the form set out in Part 3 of Schedule 1.
- (2) The appointment is effective in relation to a meeting of the residents of the village only if the duly completed form is given to the chairperson of the meeting before any vote is taken at the meeting.

## **Part 6 Applications to Tribunal and orders**

### **38 Time for making application to Tribunal**

- (1) An application to the Tribunal under a section of the Act specified in Column 1 of Schedule 5 may be made only within the time specified in Column 2 of that Schedule in relation to the section.

**Note—**

The Tribunal may, of its own motion or on application by any person, extend the period of time for making such an application, even though the relevant period has expired. See section 81 of the [Consumer, Trader and Tenancy Tribunal Act 2001](#).

- (2) An application to the Tribunal under any other section of the Act may be made at any time.

### **39 Applications to Tribunal by Residents Committee**

- (1) The Residents Committee of a retirement village may, at the request of one or more residents of the village, apply to the Tribunal on behalf of the resident or residents concerned for any order for which a resident may apply.
- (2) The Residents Committee may apply to the Tribunal on behalf of all residents for an order for which a resident may apply if the residents consent to the application.
- (3) The consent of the residents under subclause (2) is to be obtained by the proposal being put to a meeting of the residents and the vote for the proposal being determined by a show of hands.
- (4) Any resident who does not wish to be a party to the proceedings may notify the Residents Committee in writing of that fact before the application to the Tribunal is made, and the Residents Committee must exclude that resident from the application.

### **40 Tribunal may determine other party to application made by operator**

The Tribunal may, if it considers it appropriate to do so, order that:

- (a) one or more specified residents of a retirement village, or
- (b) all the residents of the retirement village,

is the other party, or are the other parties, to an application made to the Tribunal by the operator of the village concerned.

#### **41 Additional orders of Tribunal**

For the purposes of section 128 (1) (l) of the Act, the Tribunal may make an order that varies, sets aside or stays a previous order of the Tribunal that is in force under the Act.

#### **42 Differential orders**

The Tribunal may make different orders in relation to different residents (or groups of residents) of a retirement village in determining:

- (a) an application to which 2 or more residents of the village are parties (whether the application was made jointly by the residents or by the Residents Committee on behalf of the residents), or
- (b) an application made by the operator of the village, being an application to which 2 or more residents are the other parties.

### **Part 7 Uncollected goods**

#### **43 Alterations, additions and fixtures**

For the purposes of this Part:

- (a) any additions made to residential premises in a retirement village, and
- (b) any fixtures installed in the premises,

by the former resident of the premises (and not demolished or removed by the resident) are taken to form part of the premises concerned and are not to be regarded as uncollected goods.

#### **44 Disposal of perishable and certain other uncollected goods**

- (1) For the purposes of section 147 (1) (b) of the Act, the operator of a retirement village may remove and dispose of goods left in residential premises in the village by a former resident of the village if the goods are:
  - (a) perishable foodstuffs, or
  - (b) goods that it would be unsafe or unhealthy to store.
- (2) The operator may remove and dispose of the goods:
  - (a) if the residence contract concerned was terminated on an order of the

Tribunal—immediately after the date on which the former resident vacated the residential premises concerned, and

- (b) if the residence contract concerned was terminated otherwise than on an order of the Tribunal—at any time that is immediately after the termination.

#### **45 Storage of other uncollected goods**

- (1) The operator must deal with any uncollected goods that are not goods of the kind referred to in clause 44 (1) in accordance with this clause.

Maximum penalty: 20 penalty units.

- (2) The operator must leave the goods in the residential premises, or store them in a secure place, for at least 30 days after the operator has issued the notice required by section 147 (2) of the Act or, if the operator does not have a forwarding address for the former resident (or the address of the executor or administrator of the estate of a deceased former resident), at least 30 days after:
  - (a) the date on which the former resident vacated the residential premises concerned (if the residence contract concerned was terminated on an order of the Tribunal),  
or
  - (b) the date on which the residence contract was terminated (in any other case).

#### **46 Claiming of uncollected goods**

- (1) A person who is entitled to possession of uncollected goods may claim the goods at any time before they are destroyed, sold or otherwise dealt with in accordance with this Part.
- (2) The operator of the retirement village concerned must deliver up the goods, free of any charge (other than a removal or storage charge), to a person who claims them if the operator is satisfied that the person is entitled to claim them.
- (3) The operator is entitled to require payment of any reasonable costs and expenses actually incurred in removing or storing (or both removing and storing) the goods before delivering the goods to a person under this clause.
- (4) However, if the claim is for some but not all of the goods and the remaining goods are of sufficient value to cover the reasonable costs and expenses of removing or storing (or both removing and storing) all of the goods, the operator must deliver the claimed goods to the claimant without requiring payment for removal or storage.

#### **47 Disposal of uncollected goods after storage**

- (1) On the expiry of the 30 day period referred to in clause 45 (2), the operator of the retirement village concerned must deal with the uncollected goods in accordance with

this clause.

Maximum penalty: 20 penalty units.

- (2) The operator must send any uncollected personal documents of the former resident to the former resident's forwarding address (or, if the former resident has died, to the executor or administrator of the former resident's estate).
- (3) If the operator does not have a forwarding address for the former resident (or the address of the executor or administrator of the estate of a deceased former resident), the operator must:
  - (a) return the personal documents to their place of origin, if possible (for example, bank statements to the issuing bank, licences to the issuing authority and passports to the Commonwealth Government), and
  - (b) retain the other personal documents in a secure place for at least 6 months, and then dispose of them as the operator sees fit taking such steps as are reasonable to ensure the privacy of the former resident or any other person.
- (4) If the operator is reasonably of the opinion that any individual item of uncollected goods (other than a personal document) is worth less than \$100, the operator may give the item to a charitable organisation or otherwise dispose of it.
- (5) The operator must cause any item of uncollected goods (other than a personal document) that is, in the reasonable opinion of the operator, worth \$100 or more to be sold by public auction.
- (6) In this clause, **personal documents** means certificates, financial records and statements, licences, medical records, passports, personal correspondence, photographs and any other document it would be reasonable to expect the former resident (or his or her family) to want to keep.

#### 48 Records and accounting

- (1) The operator must make (and retain for a period of at least 2 years) a record of all uncollected goods that he or she disposes of under clause 47.
- (2) The operator must account to the former resident (or to the executor or administrator of the estate of a deceased former resident) for the balance of the proceeds of the sale of the goods after the deduction of the reasonable costs of removal, storage and sale of the goods.
- (3) However, if the operator has no forwarding address for the former resident (or no address for the executor or administrator of the estate of a deceased former resident), the balance of the proceeds are to be dealt with as unclaimed money within the meaning of the [Unclaimed Money Act 1995](#).



## **Part 8 Miscellaneous**

### **49 Renovations and alteration of fixtures and fittings**

For the purposes of section 41A (7) (b) of the Act, the consent of the operator of a retirement village is not required in order for a resident to make renovations to, or to add, remove or alter any fixtures or fittings in, residential premises that are owned by the resident under a community land scheme, company title scheme or strata scheme.

### **50 Liability of former occupant if village contract terminated during settling-in period**

- (1) For the purposes of section 44B (1) (d) of the Act, if a village contract is terminated in accordance with Division 2 of Part 5 of the Act, the former occupant is liable to pay the reasonable costs incurred in adding, removing or altering any fixtures or fittings, or making any renovations, to the unit at the resident's specific request.
- (2) For the purposes of section 44B (4) of the Act, \$200 is the maximum administration fee that may be charged under section 44B (1) (c) of the Act.

### **51 Display of safety inspection report**

For the purposes of section 58A (2) (e) of the Act, the safety inspection report must be placed on the notice board under section 58A (2) (d) of the Act for at least 1 calendar month.

### **52 Access to residential premises in village**

For the purposes of section 67 (2) (g) of the Act, the operator of a retirement village and any person authorised by the operator may enter residential premises in the village to install a smoke alarm that is legally required to be installed in the residential premises and to replace a battery in any smoke alarm installed in the residential premises, but only if 2 days' notice has been given to the resident.

### **53 Membership of Residents Committee**

- (1) For the purposes of section 70A (1) of the Act, a person may hold the same office on the Residents Committee of a retirement village for more than 3 consecutive years if the retirement village has less than 20 residents or the annual budget of the retirement village is less than \$50,000 (or both).
- (2) Subclause (1) does not permit a person to hold the same office on a Residents Committee for more than 3 consecutive years if the Director-General has written to the Residents Committee:
  - (a) objecting generally to any person holding the same office on the Committee for more than 3 consecutive years, or
  - (b) objecting to the particular person holding the same office for more than 3

consecutive years,

and the Director-General has not written to the Residents Committee to withdraw the objection.

(3) In this clause:

**hold the same office** on a Residents Committee of a retirement village includes holding an office performing the same (or substantially the same) functions on the Committee.

#### **54 Disputes between operator and resident**

For the purposes of section 122 (2) of the Act, a resident of a retirement village is nominated as the representative of 2 or more residents in the village who claim that a dispute has arisen between those residents and the operator of the village (whether or not the nominated resident is a party to the dispute) if:

- (a) each resident who is a party to the dispute signs a statement to the effect that the resident named in the statement is nominated as the signatory's representative, and
- (b) the nominated resident consents in writing to the nomination.

#### **55 Termination notice**

(1) For the purposes of section 131 (2) of the Act, a termination notice is to be in the relevant form set out in Part 4 of Schedule 1.

**Note—**

A termination notice does not have to be given if the application to terminate a residence contract is made on the grounds of the resident's causing serious damage to the village or serious injury to the operator, an employee of the operator or another resident. See section 135 of the Act.

- (2) Except in the case of an application referred to in section 136 of the Act, the notice is to be given no later than at the time at which the applicant makes the application to the Tribunal, but no earlier than 14 days before that time.
- (3) If the person who gave the notice does not apply to the Tribunal for the relevant order within 14 days after giving the notice, a fresh termination notice must be given (in accordance with subclause (2)) before the application may be made.

#### **56 Protection of ingoing contributions**

For the purposes of section 182A (1) (b) of the Act, the amount of \$10,000 is prescribed.

#### **57 Penalty notice offences**

For the purposes of section 184 (6) of the Act:

- (a) each offence arising under a provision specified in Column 1 of Schedule 6 is

prescribed as a penalty notice offence, and

- (b) the prescribed penalty for such an offence is the amount specified in relation to the offence in Column 2 of Schedule 6.

### **58 Service of documents generally**

- (1) For the purposes of section 201 (1) (c) and (2) (c) of the Act, a notice (other than a termination notice) or other document may be given to the operator or a resident of a retirement village by either of the following methods:
- (a) by delivering it by hand (rather than sending it by post) to the letterbox of the operator or resident concerned,
  - (b) by facsimile or other electronic means.
- (2) However, a notice (including a termination notice) or other document required to be given under the Act or this Regulation:
- (a) to a resident of a retirement village who is a protected person (within the meaning of the *NSW Trustee and Guardian Act 2009*) or who has a guardian—is to be given to the NSW Trustee and Guardian or the guardian as appropriate (and, if the resident is both a protected person and a person who has a guardian, is to be given to both the NSW Trustee and Guardian and the guardian), or
  - (b) to an operator of a retirement village in respect of whom a receiver, or a receiver and manager, or an administrator, has been appointed—is to be given to the receiver, receiver and manager or administrator concerned.
- (3) Subclause (1) extends to apply (with the necessary modifications) to a notice or other document that is required to be given to the NSW Trustee and Guardian, a guardian, a receiver, a receiver and manager or an administrator under subclause (2).

### **59 Conduct of written ballot**

For the purposes of clauses 3 (1) (b) and 5 of Schedule 1 to the Act, a ballot is to be conducted in accordance with Schedule 7.

### **60 Savings**

Any act, matter or thing that, immediately before the repeal of a regulation by this Regulation, had effect under that repealed regulation, continues to have effect under this Regulation.

### **61 Repeals**

The following regulations are repealed:

- (a) The *Retirement Villages Regulation 2000*,

(b) The *Retirement Villages Transitional Regulation 2000*.

## Schedule 1 Forms

(Clause 3 (1))

### Part 1 Disclosure statement

(Clause 11)

#### DISCLOSURE STATEMENT

*Retirement Villages Act 1999*, section 18 (3A)

This statement is required to be given to all prospective residents under the *Retirement Villages Act 1999*. It is designed to give you a general understanding of the features and financial arrangements of this retirement village, should you choose to become a resident.

The retirement village industry offers a wide range of features and financial arrangements. Comparing the disclosure statements from a number of retirement villages will assist you in identifying the most suitable and affordable village for your needs.

You are unable to enter into a village contract with us for at least 14 days after receiving a copy of this statement. You should use this time to read all documents you have obtained and carefully consider your options. If, after reading this statement, you are uncertain as to any aspects of the village or its suitability for you, feel free to ask us any further questions. You are encouraged to get independent legal advice before signing any contracts.

#### 1 LOCATION

1 Common name of village:

2 Full address of village:

3 Proximity to services:

Nearest public hospital: Distance in kilometres from village:

Nearest shopping centre: Distance in kilometres from village:

Nearest railway station: Distance in kilometres from village:

4 Is there a bus stop within 200 metres of the village? Yes/No

If Yes, details are as follows:

bus no/s	destination/s	frequency/limitations of service

#### 2 SIZE

1 The residential premises in the village are made up of:

× bedsitters

× 1br premises

× 2br premises

× 3br premises

× other (*specify*):

2 The total number of premises currently in the village is , of which:

are self-contained premises

are serviced premises

are other (*specify*):

3 Has development consent for the construction of more residential premises in the village been granted? Yes/No

If Yes, details are as follows:

1 Stage No:

Number of premises to be built:

Estimated completion date:

2 Stage No:

Number of premises to be built:

Estimated completion date:

### 3 RESIDENTIAL CARE FACILITIES

Does the operator operate a facility through which residential care within the meaning of the [Aged Care Act 1997](#) of the Commonwealth is provided (that is, a nursing home or hostel) adjoining the retirement village or elsewhere? Yes/No

If Yes, note that:

(a) the facility is not covered by the [Retirement Villages Act 1999](#), and

(b) current Commonwealth Government policy guidelines on admission to such a facility requires that places are to be allocated on a “needs” basis. Access will be subject to a person’s being assessed as eligible for admission in accordance with Commonwealth Government laws and cannot be guaranteed. No priority can be given to residents of our retirement village.

### 4 VILLAGE OWNERSHIP

1 The land on which the village is located is owned by:

Year village was original constructed:

Name of original developer:

2 (*Delete if not applicable*) Residents own the premises they occupy in the village.

This ownership is of the following kind: (*tick whichever is applicable*)

strata title

company title

community title

other (*specify*):

### 5 VILLAGE MANAGEMENT

1 Name, address and telephone number of each current operator of the village:

ABN (*delete if not applicable*):

2 Date current operator became operator of the village:

3 The operator has been involved in operating retirement villages in New South Wales since:

- 4 Is the operator, or an employee or agent of the operator, available at the village to deal with residents? Yes/No  
If Yes, the person is available: [*insert the times and the days that the person is available*]
- 5 Name and the contact details of the person to whom inquiries should be directed if further information about becoming a resident is required:
- 6 For villages subject to a community land scheme or strata scheme (*delete if not applicable*):
- Name, address and telephone number of managing agent (if any):
  - Does the operator or a close associate of the operator have voting rights on the relevant association or owners corporation? Yes/No  
If Yes, the percentage of votes held by the operator or close associate at the last Annual General Meeting was:

## 6 RESIDENT INPUT

Does the village have a Residents Committee established by the residents under the [Retirement Villages Act 1999](#)? Yes/No

If Yes, its contact details are:

Name of Secretary or Chairperson:

Address:

Phone Number:

## 7 FINANCIAL MANAGEMENT

- 1 The financial year of the village is from      to
- 2 Does the village have a capital works fund for long-term capital maintenance? Yes/No  
If Yes, the balance in the fund at the end of the last financial year was: \$
- 3 Is a specific proportion of ingoing contributions or departure fees (or both) paid by residents set aside for the purpose of financing depreciation and capital replacement in the village? Yes/No  
If Yes, the proportion is calculated as follows:  
and the surplus/deficit (*delete whichever is not applicable*) at the end of the last financial year was: \$

### Note—

In a community land scheme, company title scheme or strata scheme, maintenance of community or common property is the responsibility of the relevant association, company or owners corporation.

- 4 Are any ingoing contributions paid by residents held by a trustee? Yes/No  
If Yes, is it permissible under the trust deed for those contributions to be lent or otherwise made available to the operator of the village? Yes/No
- 5 Is there any personal or legal connection between any of the trustees and the operator? Yes/No  
If Yes, details are:
- 6 In the last financial year was money payable by the operator to former residents paid in full and on time? Yes/No  
If No, specify the amount concerned and the reasons for the delay:
- 7 Did the audited accounts for the previous financial year contain a statement from the auditor expressing considerable uncertainty regarding the ability of the operator to meet the liabilities of the village as and when they fall due during the financial year immediately following? Yes/No
- 8 Has the operator ever applied to the Residential Tribunal or the Consumer, Trader and Tenancy Tribunal to

extend the period of time to pay refunds to former occupants? Yes/No

- 9 According to the audited accounts of the income and expenditure of the village, the surplus/deficit (*delete whichever is not applicable*) at the end of the 3 previous financial years/the financial years during which the village has been in operation (*if fewer than 3*) was as follows:

<b>Financial year ending</b>	<b>Amount surplus/deficit (<i>delete whichever is not applicable</i>)</b>
	\$
	\$

## **8 SECURITY AND SAFETY**

- 1 Do all residential premises within the village have security screen doors? Yes/No
- 2 Are all windows of residential premises fitted with key operated locks? Yes/No
- 3 Do all residential premises within the village have smoke alarms? Yes/No
- 4 Has the operator been notified of any residential premises within the village being broken into in the last 2 years? Yes/No  
If Yes, how many?
- 5 Are residential premises and common areas in the village accessible to persons with impaired mobility, including those in wheelchairs? Yes/No/Partially  
(*specify*):
- 6 Does the village have a village emergency system that enables residents to summon assistance in an emergency? Yes/No  
If Yes, the system involves: (*tick whichever is applicable*)
- distress buttons in residential premises and common areas
  - emergency bracelets worn by residents
  - other (*specify*):
- 7 The village emergency system is monitored: (*tick whichever is applicable*)
- on site by the operator or an employee of the operator
  - off site by (*specify*):  
The system is monitored between    am and    pm,    days per week.
- 8 Does the operator have a master key or copies of keys to residential premises in the village for use in an emergency? Yes/No

## **9 COMPLIANCE WITH LEGISLATION**

- 1 Has the operator ever been convicted of an offence under the [Retirement Villages Act 1999](#) or the [Retirement Villages Regulation 2009](#)? Yes/No  
If Yes, give details of the offence and amount of penalty:
- 2 Has the operator ever been ordered by the Residential Tribunal or the Consumer, Trader and Tenancy Tribunal to comply with a requirement of the [Retirement Villages Act 1999](#) or the [Retirement Villages Regulation 2009](#)? Yes/No

If Yes, give details of the order/s made:

3 Has the operator complied with all requirements of any development consent relating to the village? Yes/No

If No, details of the non-compliance are:

4 Have final occupation certificates been issued in relation to all the buildings in the village? Yes/No

## 10 VILLAGE CONTRACTS

1 Before becoming a resident of the village you will be required to enter into: (*tick those applicable*)

a residence contract

a service contract

other (*specify*):

2 If your residence contract does not give you the right to use the following, you may enter into a separate (optional) contract in respect of them: (*tick those applicable*)

a garage

a parking space

a storage room

other (*specify*):

3 If you become a resident, documents setting out the following will also be relevant: (*tick those applicable*)

the village rules

the by-laws of the community land scheme/strata scheme

the company's constitution/the replaceable rules set out in the [Corporations Act 2001](#) of the Commonwealth

other (*specify*):

### Note—

Copies of the documents referred to in any of the ticked boxes may be inspected during business hours or you can request copies to be sent to you free of charge.

## 11 FACILITIES

1 At the village the following facilities are currently available for the use of residents: (*tick those applicable*)



- |                                                                               |                                                                             |
|-------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| <input type="checkbox"/> activities room                                      | <input type="checkbox"/> outdoor barbecue area                              |
| <input type="checkbox"/> arts and crafts room                                 | <input type="checkbox"/> putting green                                      |
| <input type="checkbox"/> auditorium                                           | <input type="checkbox"/> restaurant                                         |
| <input type="checkbox"/> billiards room                                       | <input type="checkbox"/> separate games room                                |
| <input type="checkbox"/> bowling green                                        | <input type="checkbox"/> separate lounge                                    |
| <input type="checkbox"/> chapel                                               | <input type="checkbox"/> shop                                               |
| <input type="checkbox"/> common laundries                                     | <input type="checkbox"/> spa (indoor/outdoor) (heated/not heated)           |
| <input type="checkbox"/> community room/centre                                | <input type="checkbox"/> swimming pool (indoor/outdoor) (heated/not heated) |
| <input type="checkbox"/> consultation room for visiting medical practitioners | <input type="checkbox"/> tennis court                                       |
| <input type="checkbox"/> croquet lawn                                         | <input type="checkbox"/> village bus                                        |
| <input type="checkbox"/> dining room                                          | <input type="checkbox"/> visitor parking                                    |
| <input type="checkbox"/> gym                                                  | <input type="checkbox"/> workshop                                           |
| <input type="checkbox"/> hairdressing room for visiting hairdresser           | <input type="checkbox"/> other ( <i>specify</i> ):                          |
| <input type="checkbox"/> library                                              |                                                                             |

**Note—**

Indicate if more than one of the same facility is available.

2 Does any development consent in relation to the village require that any of the above facilities be provided for the life of the village? Yes/No

If Yes, those facilities are:

**Note—**

Any of the facilities (other than those referred to in the above question) may be withdrawn or varied if the residents consent, by special resolution, to the withdrawal or variation.

3 Are any of the facilities identified above available only on a “user pays” basis (or available on that basis to some residents only—such as meals available in the dining room to residents in self-contained premises)? Yes/No

If Yes, those facilities and current amounts charged are:

<b>Facility</b>	<b>Charge</b>
-----------------	---------------

4 Does the operator intend to provide or make available additional facilities in the future? Yes/No

If Yes, the details are as follows:

<b>Proposed facility</b>	<b>Date by which it is to be provided or made available</b>
--------------------------	-------------------------------------------------------------

## 12 SERVICES

- 1 The operator provides, or makes available, the following general services to all residents of the village: (*tick those applicable*)
- annual auditing of the accounts of the village
  - cleaning and maintenance of common areas and facilities
  - insurance of the village to full replacement value
  - maintenance and care of common area lawns and gardens
  - management and administration services
  - payment of all rates, taxes and charges including charges for gas, water and electricity relating to common areas and facilities
  - public liability cover to the value of: \$
  - other (*specify*):

**Note—**

In a community land scheme, company title scheme or strata scheme, these services may be provided by the relevant association, company or owners corporation rather than the operator.

- 2 Does any development consent in relation to the village require that any of the above services be provided for the life of the village? Yes/No
- If Yes, those services are:

**Note—**

Any of the services (other than those referred to in the above question) may be withdrawn or varied if the residents consent, by special resolution, to the withdrawal or variation.

- 3 If a village bus is provided or made available to residents the service operates: (*tick those applicable*)
- for arranged outings
  - on demand (ie if or more residents request to use the bus)
  - per day/week to the following destinations:
  - other (*specify*):

- 4 Are optional services provided, or made available, by or on behalf of the operator to individual residents of the village? Yes/No

If Yes, the following is a complete and accurate list of those optional services:

**Service**

**Charge (if any)**

\$

- 5 Does the operator intend to provide or make available additional services in the future? Yes/No

If Yes, the details are as follows:

**Proposed service**

**Date by which it is to be provided or made available**

### 13 ENTRY COSTS

- 1 To become a resident you will be required to pay the following: *(tick those applicable)*
- an ingoing contribution of \$ , irrespective of which premises you choose
  - an ingoing contribution of between \$ and \$ , depending on which premises you choose
  - lease registration fee of: \$
  - the purchase price of your premises. The price of premises sold in the village in the last financial year ranged from \$ to \$
  - stamp duty
  - half of the cost of preparing your residence contract, the total cost of that preparation being: \$
  - half of the cost of preparing your service contract, the total cost of that preparation being: \$
  - weeks' advance payment of recurrent charges
  - other *(specify)*:
- 2 Is a deposit payable to the operator on entering into a village contract? Yes/No  
If Yes, it is: *(tick whichever is applicable)*
- \$
  - % of the ingoing contribution
- 3 Is a separate payment required to secure the use of a garage or carport under a separate village contract? Yes/No  
No  
If Yes, the payment is:
- garage \$
  - carport \$

### 14 RECURRENT CHARGES

- 1 The current rate/s of recurrent charges are as follows:

Type of premises	Singles	Couples
self contained dwellings <i>(specify if amount differs depending on size)</i>	\$	\$
serviced premises	\$	\$
other <i>(specify)</i> :	\$	\$

**Note—**

In a community land scheme, company title scheme or strata scheme, residents may be liable to pay levies in addition to recurrent charges.

- 2 Recurrent charges are payable by residents: *(tick all options available to residents)*
- weekly
  - fortnightly
  - monthly

- quarterly
- other (*specify*):

3 Payment of recurrent charges may be made: (*tick all those applicable*)

- in cash at the office
- by cheque or money order
- by direct debit
- other (*specify*):

4 Are future variations in the rate/s of recurrent charges limited according to a fixed formula? Yes/No

If Yes, the formula is as follows: (*tick whichever is applicable*)

- recurrent charges will remain % of the standard maximum single/couple (*delete whichever is not applicable*) aged pension (excluding/including (*delete whichever is not applicable*) rental assistance subsidy)
- recurrent charges will vary in proportion to variations in the Consumer Price Index
- recurrent charges will increase by % every months/years
- other (*specify*):

### 15 STRATA CONTRIBUTIONS PAYABLE (Where applicable)

The amount of contributions levied under the [Strata Schemes Management Act 1996](#) for the current year in respect of the lot (within the meaning of the [Strata Schemes Management Act 1996](#)) are:

**Note—**

The amount of contributions to be levied is reviewed at least once each year.

### 16 FINANCIAL ISSUES AFTER PERMANENT VACATION OF THE VILLAGE

1 Is a departure fee payable to the operator? Yes/No

If Yes, the departure fee is % per annum (calculated on a daily basis) for a maximum of years of occupancy of: (*tick whichever is applicable*)

- the ingoing contribution of the outgoing resident
- the ingoing contribution of the incoming resident
- the purchase price of the outgoing resident
- the purchase price of the incoming resident
- other (*specify*):

If the departure fee is calculated on a different basis, specify:

2 If an ingoing contribution is payable, is any of that contribution non-refundable? Yes/No

If Yes: (*complete whichever is applicable*)

- the amount that is non-refundable is: \$
- the percentage that is non-refundable is:

3 Do former residents and the operator share any capital gains (that is, if the incoming resident pays a higher

ingoing contribution/purchase price than the former resident)? Yes/No

If Yes, the respective proportions are:

- 4 Do former residents and the operator share any capital loss (that is, if the incoming resident pays a lower ingoing contribution/purchase price than the former resident)? Yes/No

If Yes, the respective proportions are:

## **17 VACANCIES**

- 1 Does the village operate a waiting list? Yes/No

If Yes, is a waiting list fee charged? Yes/No

If Yes, the fee is: \$

- 2 Annexed to this statement is a list, accurate as at the date of this statement, of all residential premises in the village that are available for occupation in the next 3 months. The list specifies the following in respect of each of the premises:

(a) the address of the premises,

(b) the number of bedrooms in the premises,

(c) whether the premises are self-contained premises, serviced premises or another (specified) type of premises,

(d) whether or not the premises have ever been previously occupied,

(e) the amount of ingoing contribution required for, or the asking price of, the premises,

(f) whether the premises are for sale,

(g) if the premises are for sale, whether the operator of the village is the selling agent,

(h) if the operator is not the selling agent, the name and contact details of the selling agent.

*(Annex the list referred to)*

This statement was provided to, or a person acting on behalf of (if known):

This statement was given personally/sent by post.

The operator warrants that, to the best of the operator's knowledge, the information contained in this statement is true.

Signature of operator or operator's nominee:

Printed name of operator or nominee:

Date of signature:

### **Notes—**

**1** If a question in this statement provides for a "Yes/No" answer and the operator of the village:

(a) answers "No" to the question—the operator may delete from the statement any immediately following matter that begins "If Yes", or

(b) answers "Yes" to the question—the operator may delete from the statement any immediately following matter that begins "If No".

**2** If the village is not subject to a community land scheme, company title scheme or strata scheme, the operator may delete the notes in this statement referring to those schemes.

## Part 2 Condition report

(Clause 14 (2))

### RESIDENTIAL PREMISES CONDITION REPORT

*Retirement Villages Act 1999*, section 38

Address of residential premises:

Date of inspection:

#### How to complete this report:

- 1 The operator, or an agent or employee of the operator, must inspect the premises and complete this report in accordance with these directions.
- 2 The report is to be completed in the presence of the prospective resident (or a person nominated by the prospective resident).
- 3 The report must be completed to the best of the operator's knowledge (or, if the inspection is carried out by an agent or employee of the operator, to the best of that agent's or employee's knowledge).
- 4 If a required date is not known, an approximate date must be given and identified as such.
- 5 No less than 14 days must be allowed for the prospective resident (or the prospective resident's nominee) to examine the report and suggest changes to it.
- 6 The report must be signed by the operator (or, if the inspection is carried out by an agent or employee of the operator, by that agent or employee). The prospective resident (or the prospective resident's nominee) must also sign the report if he or she agrees with it.
- 7 The condition report must be completed and provided to the prospective resident:
  - (a) at least 14 days before the operator and the prospective resident enter into a village contract, or
  - (b) if the premises are still being constructed, at least 14 days before the prospective resident occupies the premises.
- 8 A copy of the condition report must be annexed to the first village contract that the prospective resident enters into with the operator.

#### General condition:

Are the premises generally clean and free of rubbish? Yes/No

*If No, specify:*

Are there any signs of fleas, cockroaches, ants or other pests in the premises? Yes/No

*If Yes, specify:*

#### Floor coverings:

Are the premises carpeted? Yes/No

*If Yes, has the carpet in the premises been newly laid? Yes/No*

*If No, the carpet was originally laid in:*

Is the carpet generally clean? Yes/No

Are there any stains, burns or other marks on the carpet? Yes/No

*If Yes, specify:*

Are any other floor coverings (eg tiles, vinyl) damaged in any way? Yes/No

*If Yes, specify:*

**Walls:**

Have the internal walls of the premises been freshly painted? Yes/No

*If No, the walls were last painted in:*

Are there any picture hooks on the walls? Yes/No

*If Yes, how many?*

Are there any cracks, holes, scratches, signs of mould, rising damp or other marks on the walls? Yes/No

*If Yes, specify:*

**Windows:**

Are the windows of the premises clean? Yes/No

Are blinds/curtains provided with the premises? Yes/No

*If Yes, how many?*

Are blinds/curtains new? Yes/No

*If No, the blinds/curtains were installed in:*

Are the blinds/curtains clean, free of dust and undamaged? Yes/No

*If No, specify:*

Are fly screens provided with the premises? Yes/No

*If Yes, how many?*

Are the fly screens damaged in any way? Yes/No

*If Yes, specify:*

**Ceilings:**

Are light fittings provided with the premises? Yes/No

*If Yes, how many?*

Are the light fittings clean, free of dust and undamaged? Yes/No

*If No, specify:*

**Kitchen:**

*(delete if the premises does not have a kitchen)*

Has the kitchen in the premises been newly installed or renovated? Yes/No

*If No, the kitchen was originally installed in:*

The kitchen contains the following appliances: *(delete those not applicable)* stove; wall oven; hot plates; refrigerator; dishwasher; range hood; microwave; other

*If other, specify:*

Are all the appliances listed above in working order? Yes/No

*If No, specify:*

Is the kitchen generally clean? Yes/No

*If No, specify:*

Are there any scratches, burns or other marks on the bench tops, sink or appliances listed above? Yes/No

*If Yes, specify:*

**Bathroom:**

Has the bathroom in the premises been newly installed or renovated? Yes/No

*If No, the bathroom was originally installed in:*

The bathroom contains the following fixtures: *(delete those not applicable)* bath; shower; shower screen; toilet; wash basin; vanity; cupboard; cabinet; mirror; grab rails; shower seat; hand held shower hose; other

*If other, specify:*

Is the bathroom generally clean? Yes/No

*If No, specify:*

Are there any chips, scratches or other marks on any of the bathroom fixtures? Yes/No

*If Yes, specify:*

**Security:**

Are all the locks on the premises in working order? Yes/No

*If No, specify:*

Keys for the following locks will be provided by the operator: *(delete those not applicable)* front door; security door; back door; letterbox; window locks; garage; storeroom; other

*If other, specify:*

**Fire safety:**

Are smoke alarms installed on the premises? Yes/No

Are all smoke alarms on the premises in working order? Yes/No

*If No, specify:*

**Utilities:**

Is electricity available to be connected by the resident? Yes/No

Will the resident be separately billed by the supply authority for electricity charges relating to the premises? Yes/No

*If Yes, the electricity meter reading is:*

Is gas available to be connected by the resident? Yes/No

Will the resident be separately billed by the supply authority for gas charges relating to the premises? Yes/No

*If Yes, the gas meter reading is:*

Will the resident be separately billed by the supply authority for water usage charges relating to the premises? Yes/No

*If Yes, the water meter reading is:*

Is there a telephone line installed in the premises available to be connected by the resident? Yes/No

**Garage/Carport:**

*(delete if no garage/carport is provided with the premises)*

Is the garage/carport generally clean and free of rubbish? Yes/No

*If No, specify:*

Are there any grease stains on the floor of the garage/carport or driveway? Yes/No

*If Yes, specify:*

**Storeroom:**

*(delete if no storeroom is provided with the premises)*

Is the storeroom empty, generally clean and free of rubbish? Yes/No

*If No, specify:*

**Garden:**

*(delete if no garden is provided with the premises)*

Is the garden generally clean and free of rubbish? Yes/No

*If No, specify:*

Has the lawn area been recently mown? Yes/No

**Other fixtures, fittings, furniture or household items:**

List all other fixtures, fittings, furniture or household items supplied with the premises not mentioned elsewhere in this report:



**item**

**age of item**

**condition of item**

**Promised improvements/repairs:**

Has the operator undertaken to do any improvements/repairs to the premises? Yes/No

**work to be undertaken**

**estimated completion date**

Signature of operator or operator's nominee:

Printed name of operator or nominee:

Date of signature:

**Note—**

The prospective resident, or the prospective resident's nominee, should not sign this report if they do not agree with it.

Signature of prospective resident or prospective resident's nominee:

Printed name of prospective resident or nominee:

Date of signature:

**Part 3 Form of appointment of proxy**

(Clause 37 (2))

*Retirement Villages Act 1999*

I, *[insert name of resident]* being a resident of *[insert address of resident]* appoint *[insert name of proxy holder]* of *[insert address of proxy holder]* as my proxy to vote for me on my behalf at a meeting of residents, held for the purpose of considering and voting on:

(a) any matter in respect of which the consent of residents is required under the *Retirement Villages Act 1999*, and

(b) any other matter affecting the management and operation of the village.

I authorise my proxy to vote on my behalf in respect of *[tick whichever applicable]*:

all matters raised at the meeting at their discretion, or

the following matters only: *[Specify the matters and any limitation on the manner in which you want your proxy to vote]*.

Signature of resident:

Date of signature:

**Notes—**

**1** A person who may be appointed as a proxy includes a friend or relative of the resident, the resident's guardian, a member of the Residents Committee or another resident of the retirement village, but no person may hold more than 2 proxies at the same time.

**2** The Act does not allow an operator, or a close associate of the operator to hold or exercise a proxy on behalf of a resident.

**3** This appointment is effective only if this duly-completed form is given, before any vote is taken, to the chairperson of the meeting at which the proxy is to vote.

**4** However, this form does not authorise voting on a matter if the person appointing the proxy is present at the relevant meeting and personally votes on the matter.

**5** This appointment terminates after the first meeting at which it is exercised, or 6 months from the date the appointment is made, whichever occurs first.

**6** This form may be revoked at any time by the resident giving notice in writing to the person appointed as the resident's proxy.

## Part 4 Form of notice of intention to seek termination of residence contract

(Clause 55 (1))

### Notice of intention to seek termination (from an operator to a resident)

*Retirement Villages Act 1999*, section 131

To *[insert name of resident]*  
of *[insert address of resident]*

This notice is to advise you that it is our intention to apply to the Consumer, Trader and Tenancy Tribunal for an order terminating your residence contract.

This notice does not require you to vacate the premises. The decision as to whether your contract is terminated rests solely with the Tribunal. You will have an opportunity to argue your case at a hearing of the Tribunal. The Registry of the Tribunal will notify you regarding the date and venue of the hearing.

If, however, you choose to move out after receiving this notice your contract will terminate on the date on which you deliver up vacant possession of the premises. You will not be liable to pay any recurrent charges that arise in respect of the premises after that date, and any refund of your ingoing contribution must be made no later than one month after that date.

The reason or reasons for seeking an order to terminate your residence contract are as follows *[tick whichever applicable]*:

- in our opinion the premises you currently occupy are no longer suitable for your continued occupation on the grounds of your physical or mental incapacity
- you have breached term *[insert term number]* of your village contract by *[insert details of alleged breach]*
- you have breached village rule number *[insert rule number]* by *[insert details of alleged breach]*

#### Note—

If notice is given on the grounds of a breach of a village contract or the village rules, the Tribunal may refuse to make an order terminating the residence contract if the breach is remedied. The Tribunal may also refuse to make an order if it does not agree that the breach was serious or persistent enough to justify terminating the contract.

- you have intentionally or recklessly caused or permitted, or are likely to intentionally or recklessly cause or permit *[delete whichever not applicable]*:
  - (a) serious damage to any part of the village
  - (b) injury to the operator
  - (c) injury to an employee of the operator
  - (d) injury to any other resident
- it is our intention to carry out such substantial works in the village that we require vacant possession of your residential premises
- it is our intention to use the land on which the village is situated for a purpose other than a retirement village

Signature of operator or operator's nominee:

Printed name of operator or nominee:

Date of signature:

This notice was given personally/sent by post *[delete whichever is not applicable]*

#### Note—

This notice lapses if the operator does not apply to the Tribunal for an order terminating your residence contract within 14 days after service of the notice.

### **Notice of intention to seek termination (from a resident to an operator)**

*Retirement Villages Act 1999*, section 131

To *[insert name of operator]*  
of *[insert address of operator]*

This notice is to advise you that I/we *[insert name of each resident]* of *[insert address of resident/s]* intend to apply to the Tribunal for an order terminating the residence contract between us.

The reason or reasons for seeking an order to terminate the residence contract are as follows *[tick whichever applicable]*:

- in my/our opinion the premises I/we currently occupy are no longer suitable for my/our continued occupation on the grounds of my/our physical or mental incapacity
- you have breached term *[insert term number]* of my/our village contract by *[insert details of breach]*
- you have breached village rule number *[insert rule number]* by *[insert details of breach]*

#### **Note—**

If notice is given on the grounds of a breach of a village contract or the village rules, the Tribunal may refuse to make an order terminating the residence contract if the breach is remedied. The Tribunal may also refuse to make an order if it does not agree that the breach was serious or persistent enough to justify terminating the contract.

Signature of each resident or resident's nominee:

Printed name of each resident or nominee:

Date of signature:

This notice was given personally/sent by post *[delete whichever is not applicable]*

#### **Note—**

This notice lapses if the residents/s does/do not apply to the Tribunal for an order terminating the residence contract to which you and the resident/s are parties within 14 days after service of the notice.

## **Schedule 2 Matter to be included in village contracts**

(Clause 15 (1) (a))

### **Part 1 Matter required to be included in village contracts**

A village contract must specify the following:

- (a) the name of the retirement village concerned,
- (b) the address in the village of the resident's residential premises,
- (c) the full names of the parties to the contract,
- (d) the signatures of the parties to the contract,
- (e) the name and address of any operator of the village who is not a party to the contract,
- (f) the name and address of the resident's agent (if any) appointed under section 68 of the Act,

- (g) the date or dates on which the disclosure statement provided under section 18 of the Act and the information under section 19 of the Act was provided to the resident (or a person acting on the resident's behalf),
- (h) the date on which the contract is made,
- (i) if the operator is the other party to the contract:
  - (i) the name and address of the operator's agent (if any),
  - (ii) the date on which the copy of the contract was provided to the resident (or a person acting on the resident's behalf),
  - (iii) the amount of any ingoing contribution payable by the resident and the date by which it must be paid,
  - (iv) the amount of recurrent charges payable by the resident as at the date the contract is drafted,
  - (v) the date from which those charges become payable,
  - (vi) the date agreed as the date on which the resident is entitled to occupy the premises (subject to completion of construction, and not precluding an earlier date if an earlier date is subsequently agreed between the operator and the resident),
- (j) a provision reflecting section 56 of the Act,
- (k) in the case of a residence contract that also entitles the resident to the use of a garage, parking space or storeroom—details of the garage, parking space or storeroom concerned.

## **Part 2 Headings and additional matter required to be included in village contracts**

A village contract must also include the following headings (printed in bold) and comply with the following requirements in relation to the matter appearing below each heading:

### **Cooling-off period**

The contract must explain the resident's rights to rescind the contract free of any loss or penalty during the statutory cooling-off period. The contract must set out the length of the cooling-off period, the method by which the resident can rescind the contract and the time in which any money paid under the contract by the rescinding party is to be repaid. A residence contract must draw the resident's attention to the fact that the cooling-off period is waived if the resident begins to live in the premises.

### **Retirement village legislation**

The contract must draw the resident's attention to the existence of the [Retirement Villages Act 1999](#) and the [Retirement Villages Regulation 2009](#). The contract must contain a statement to the effect that the contract is subject to the provisions of the Act and Regulation.

### **Ingoing contribution**

If an ingoing contribution is to be paid by instalments the contract must set out the terms and conditions under which it is to be paid.

The contract must specify whether interest is payable to the resident while the operator has use of the ingoing contribution.

If part or all of the ingoing contribution is to be non-refundable, the contract must clearly specify that fact.

The contract must specify how much of the ingoing contribution the resident will get back if, after the cooling-off period, the resident:

- (a) dies before taking up residence in the residential premises concerned, or
- (b) after taking up residence, permanently vacates the premises within a period specified in the contract.

### **Recurrent charges**

A village contract must set out the following:

- (a) the intervals or dates on which any recurrent charges are payable under the contract,
- (b) how the recurrent charges may be paid.

If recurrent charges payable by the resident are to be varied in accordance with a fixed formula, the contract must include the following:

- (a) the intervals or dates on which recurrent charges are to be varied,
- (b) the fixed formula used to determine variations in the amount of recurrent charges,
- (c) the amount of written notice that will be given to the resident to vary the amount of recurrent charges (such notice being not less than 14 days).

If recurrent charges payable by the resident may be varied other than in accordance with a fixed formula, the contract must include the following:

- (a) the intervals or dates on which the operator may propose a variation in the amount of recurrent charges,
- (b) any upper limit by which the operator agrees not to propose an increase,
- (c) the amount of written notice that will be given to the resident if a variation is proposed (such notice being not less than 60 days),
- (d) a statement to the effect that the amount of recurrent charges cannot be varied unless affected residents consent to the variation or the Tribunal orders the variation to take effect.

The contract must include a statement to the effect that if the resident is absent from the village for any reason for at least the period specified in the contract (not being a period of more than 28 consecutive days), the resident is not liable for recurrent charges for optional services in respect of the remainder (if any) of that period of absence.

The contract must specify whether the resident is liable to continue to pay recurrent charges after permanently vacating the premises, and, if so, for what period of time and under what conditions.

### **Services and facilities**

The contract must list and describe all services provided or made available to the resident by, or on behalf of, the operator. The contract must list any additional or optional services available to the resident on a “user pays” basis, and the cost of such services as at the date of preparation of the contract. The contract must list all facilities within the village available for the use of the resident.

The contract must identify any services or facilities that the development consent for the village requires to be provided for the life of the village.

Any representations about proposed services or facilities made before the contract is entered into:

- (a) must be specified in the contract, and
- (b) must identify the service or facility concerned, and
- (c) must specify the date by which that service or facility is to be provided or made available.

The contract may distinguish between general services and optional services, but, if it does, must include a statement to the effect that the Tribunal has the power to override this determination in the event of a dispute.

The contract must draw the resident’s attention to the fact that services and facilities may be reduced or (except for those required by the development consent to be provided for the life of the village) withdrawn or otherwise varied, but only if the residents of the village pass a special resolution to the relevant effect in accordance with the provisions of the [Retirement Villages Act 1999](#).

The contract must make it clear that the resident has no right to compensation if services or facilities are reduced or withdrawn or otherwise varied in accordance with a special resolution of the residents.

### **Fixtures, fittings and furnishings**

A residence contract must list the fixtures, fittings and furnishings that are to be provided in the residential premises.

### **Repairs and maintenance**

A residence contract must set out the process by which the resident can request the operator to carry out necessary repairs and maintenance.

### **Alterations and additions**

A residence contract must specify the conditions under which a resident may alter or add to the residential premises. The contract must include a provision to the effect that the resident may, at any time before permanently vacating the premises, remove any fixture that the resident has added to the premises.

### **Operator’s access to premises**

The contract must set out the circumstances under which the operator, or a person authorised by the

operator, may enter the residential premises.

### **Village rules**

The contract must include a statement to the effect that if any term of the contract conflicts with a village rule, as amended from time to time, the village rule prevails over the conflicting term of the contract.

### **Dispute resolution**

The contract must set out the resident's right to apply to the Consumer, Trader and Tenancy Tribunal if the resident considers a term of the contract to be harsh, oppressive, unconscionable or unjust. The contract must draw the resident's attention to the existence of the Tribunal, and her or his ability to apply for a range of orders from that Tribunal, including the following:

- (a) an order that varies or sets aside a provision of the contract or a village rule that conflicts with the retirement village legislation,
- (b) an order that the operator comply with the retirement village legislation,
- (c) an order to enforce a provision of the contract or a village rule.

### **Changes in operator**

The contract must include a statement to the effect that the terms of the contract are enforceable against any operator for the time being of the village. If a trustee is involved the contract must set out the terms or conditions on which the trustee is appointed and any rights the resident may have by virtue of that appointment.

### **Termination of contract**

The residence contract must set out the methods by which the contract may be terminated, including a list of the grounds under which the resident or operator may apply to the Tribunal to terminate the contract. The contract must contain a statement to the effect that the contract cannot be terminated by the operator unless the operator obtains an order from the Tribunal.

### **Transfers**

The contract must set out the conditions, if any, under which the resident may request a transfer to other residential premises within the retirement village, or to other accommodation for older people run by the same operator. The contract must disclose the general financial basis on which such a transfer may be effected.

If the operator of the retirement village has an associated facility in which residential care under the [Aged Care Act 1997](#) of the Commonwealth is provided, the contract must also include a statement to the effect that places in such facilities are allocated on a "needs" basis and entry is subject to an assessment for admission and a transfer to the associated facility cannot be guaranteed.

### **Departure fees**

The contract must state whether a departure fee is payable by the resident on termination of the contract. If a departure fee is payable the contract must set out the method of calculating that departure fee. The contract must include a statement to the effect that no departure fee is payable in

respect of any period after the resident permanently vacates the premises.

### **Capital gain or loss**

The contract must state whether any capital gain or loss, or increase in ingoing contribution paid by the incoming resident, is to be shared between the resident and the operator, and, if so, the percentages concerned.

### **Refund of payment to resident**

The contract must set out in full the method of calculating any refund or payment due to the resident on terminating the contract, the time for its payment and any relevant conditions on its payment. In the event that two or more residents are a party to the contract, the contract must specify whether a partial refund is payable should one of the residents vacate and, if so, under what circumstances.

### **Changes to this contract**

The contract must include a statement to the effect that the resident is not obliged to agree to amend the contract, or to terminate the contract and enter into a new one, because of changes in legislation (unless the legislation requires the amendment or termination) or for any other reason.

### **Annexures**

The following must be annexed to the contract:

- (a) a copy of the disclosure statement provided to the resident,
- (b) a copy of the current village rules, if any,
- (c) a copy of the condition report, if applicable.

## **Schedule 3 Matter to be excluded from village contracts**

(Clause 15 (1) (b))

### **1 Dispute resolution**

A village contract must not require the parties to attempt to resolve disputes between them by any process other than the process provided under the [Retirement Villages Act 1999](#).

### **2 Wills**

A village contract must not require a resident to have a Will or to advise the operator of the location of any Will.

### **3 Insurance**

A village contract must not contain a provision under which the resident is required, or agrees, to take out an insurance policy, including contents insurance, ambulance fund or other form of health insurance. The only exception to this is that the contract may require a resident who uses a motorised wheelchair to take out appropriate insurance in relation



to the wheelchair.

#### **4 Legal, accounting and other expenses**

A village contract must not contain a provision enabling the resident to be charged individually for legal, accounting or other services incurred by the operator in corresponding with the resident or a person acting on the resident's behalf or in enforcing the contract.

#### **5 Absences**

A village contract must not restrict the period of time the resident may be absent from the village.

#### **6 Penalty terms**

A village contract must not provide that, if the resident breaches the contract or the village rules, the resident is liable to pay an increased amount of recurrent charges, any amount as a penalty or any amount as liquidated damages.

#### **7 Exclusions**

A village contract must not contain a provision to the effect that the resident will not have the benefit or advantage of any statute that may come into force and has the effect of relieving the resident of any obligation or liability under the contract.

#### **8 Recurrent charges**

A village contract that makes provision for the recurrent charges payable by a resident to be varied according to a fixed formula must not include a component relating to the actual or proposed expenditure of the village.

#### **9 Disclaimers**

A village contract must not contain a provision removing liability from the operator for any negligent act or omission by the operator, its employees or agents.

#### **10 Entire agreement**

A village contract must not contain a provision to the effect that the written contract represents the entire agreement between the parties.

### **Schedule 4 Model proposed annual budget**

(Clause 18 (1))

NAME OF VILLAGE:

PROPOSED ANNUAL BUDGET FOR FINANCIAL YEAR ENDING:

**ESTIMATED INCOME FROM RECURRENT CHARGES FOR THE YEAR**

Recurrent charges payable by residents based on the following calculation:

no. of residents	type of premises	rate of recurrent charges	total
		×	= \$
		×	= \$
Interest on recurrent charges			\$
Plus/minus projected surplus/ deficit from current year			\$
<b>ESTIMATED TOTAL INCOME</b>			<b>\$</b>

**PROPOSED EXPENDITURE FOR THE YEAR**

Expenditure item	Proposed amount for coming year	Likely actuals for current year	Amounts proposed for current year in previous Statement
<b>Occupancy</b>			
Council rates	\$	\$	\$
Insurance premiums			
Property	\$	\$	\$
Public liability	\$	\$	\$
Pest control	\$	\$	\$
Garbage disposal	\$	\$	\$
Village security	\$	\$	\$
<b>Utilities</b>			
Water rates/charges	\$	\$	\$
Electricity	\$	\$	\$
Gas	\$	\$	\$
<b>Repairs &amp; Maintenance</b>			
Wages and contractors	\$	\$	\$
Maintenance materials	\$	\$	\$
Plumbing repairs	\$	\$	\$
Electrical repairs	\$	\$	\$
Guttering repairs	\$	\$	\$
Air conditioning repairs	\$	\$	\$

Village emergency system	\$	\$	\$
<b>Ground Care</b>			
Wages and contractors	\$	\$	\$
Gardening materials	\$	\$	\$
<b>Management &amp; Administration</b>			
Salaries	\$	\$	\$
Bank fees and charges	\$	\$	\$
Accounting fees	\$	\$	\$
Audit fees	\$	\$	\$
Name of auditor:			
Workers compensation	\$	\$	\$
Staff training	\$	\$	\$
Superannuation	\$	\$	\$
Provision for annual leave	\$	\$	\$
Provision for long service leave	\$	\$	\$
Advertising	\$	\$	\$
Stationery	\$	\$	\$
Telephone	\$	\$	\$
<b>Resident Transport</b>			
Registration	\$	\$	\$
Comprehensive insurance	\$	\$	\$
Fuel	\$	\$	\$
Vehicle servicing	\$	\$	\$
Bus hire	\$	\$	\$
<b>Miscellaneous</b>			
Contingencies	\$	\$	\$

ESTIMATED TOTAL EXPENDITURE			
ESTIMATED SURPLUS OR DEFICIT			

**Long-term capital works fund**

*(delete if residents don't consent to establishing a fund)*

It is further proposed to set aside \$ of the coming financial year's income for the purpose of financing repairs and maintenance of items of capital beyond this year.

It is proposed to spend \$ of the village's existing long-term capital works fund during the financial year. This money is planned to be spent on the following projects:

work	estimated completion date	cost
		\$

**Expenditure that is an apportionment of total expenditure relating to the village and another village or business**

*(delete if not applicable)*

The amount of *(specify)* \$ in respect of *(specify the nature of the expenditure)* is an apportionment of the total expenditure relating to *(specify the other village or business concerned)* and was apportioned according to the following method/calculation *(delete whichever is not applicable)*

**Expenditure that is an apportionment between categories of residents paying significantly higher recurrent charges than other residents in the village**

*(delete if not applicable)*

category of resident	recurrent charges paid	apportionment of expenditure
		\$

The expenditure was apportioned according to the following method/calculation *(delete whichever is not applicable)*:

Signature of operator or operator's nominee:

Printed name of operator or nominee:

Date of signature:

**Schedule 5 Time for making of applications to Tribunal**

(Clause 38 (1))

**Column 1    Column 2**

**Section    Time during which application may be made**

- 18 (6)    no earlier than 14 days after date of request for disclosure statement
- 36 (3)    no earlier than 1 month after service of rescission notice
- 36 (8) (a)    up to 3 months after date of rescission
- 36 (8) (b)    up to 3 months after date of rescission

- 37 (3) up to 3 months after date of rescission
- 53 (3) up to 30 days after date of notification of refusal to consent
- 107 (5) no earlier than 14 days after date of request by Residents Committee under section 107 (4)
- 108 (1) up to 30 days after date of notification of refusal to consent or, if residents do not notify, up to 14 days after expiry of period under section 107 (2)
- 113 no earlier than 59 days immediately prior to commencement of the financial year and any time until the end of the financial year
- 132 (3) up to 7 days after date of notification of differing opinion as to condition of premises
- 134 (1) no later than 14 days after service of termination notice
- 134 (2) no later than 14 days after service of termination notice
- 135 (1) up to 30 days after alleged incident became known to operator
- 140 (1) up to 30 days after date fixed for vacation by earlier Tribunal order
- 146 (1) any time before goods are disposed of under section 147  
no earlier than 30 days after date of notice required under section 147 (2).  
If that notice cannot be given, application cannot be made earlier than 30 days after date on which:
- 147 (1) (a) the former resident vacated premises concerned (if the residence contract was terminated by order of the Tribunal), or  
(b) the residence contract was terminated (in any other case)
- 148 (2) up to 12 months after date operator deals with the goods
- 163 (6) (a) up to 3 months after date of receipt of claim
- 163 (6) (b) up to 3 months after date of receipt of claim
- 181 (5) (a) no earlier than 1 month before expiry of period in section 181 (2) (f) and no later than 14 days after expiry of this period
- 181 (5) (b) no earlier than 1 month before expiry of period in section 181 (2) (f) and no later than 14 days after expiry of this period
- 182 (1) (a) up to 14 days after due date for payment

## Schedule 6 Penalty notice offences

(Clause 57)

<b>Column 1</b>	<b>Column 2</b>
<b>Provision of Act</b>	<b>Amount \$</b>
Section 17 (5A)	1,100
Section 18 (3)	440

Section 18 (4)	220
Section 18 (5)	2,200
Section 19 (2)	220
Section 20 (1)	550
Section 20 (3)	550
Section 21 (1) (a)	1,100
Section 21 (1) (b)	1,100
Section 21 (1) (c)	1,100
Section 24A (1)	2,200
Section 27	2,200
Section 29 (1A)	2,200
Section 39 (1)	1,100
Section 39 (2)	1,100
Section 39 (3) (a)	550
Section 39 (3) (b)	550
Section 59A	440
Section 72A (1)	440
Section 72A (4)	440
Section 99 (5)	2,200
Section 101 (1)	440
Section 106A	1,100
Section 110 (1)	110
Section 110 (2)	110
Section 112 (1)	2,200
Section 118 (1)	1,100
Section 118 (3)	440
Section 119 (1)	1,100
Section 147 (5)	440
Section 165 (1) (a)	220
Section 165 (1) (c)	220
Section 165 (1) (d)	220

Section 165 (1) (e)	220
Section 180 (2)	1,100
Section 180 (3)	220
Section 181 (2)	1,100
Section 181 (4)	220
Section 182C (1)	2,200
Section 197	1,100

<b>Column 1</b>	<b>Column 2</b>
<b>Provision of this Regulation</b>	<b>Amount \$</b>
Clause 45 (1)	440
Clause 47 (1)	440

## **Schedule 7 Provisions relating to consent of residents**

(Clause 59)

### **1 Definitions**

In this Schedule:

**ballot** means a ballot conducted at a meeting of residents.

**qualified voter** means a resident of the retirement village.

**returning officer** means a resident (who is not a member of the Residents Committee and is not standing for election to the Residents Committee) selected by a show of hands at a meeting of the residents.

### **2 Notice of special resolution**

If a measure or action requires a special resolution:

- (a) a resolution concerning the action or measure must be put to a meeting of residents of the retirement village, and
- (b) at least 21 days' written notice of the meeting must be given to all residents of the village, and
- (c) the notice must:
  - (i) set out the resolution, and
  - (ii) specify that the resolution is to be put as a special resolution, and

(iii) specify that residents of the village may submit their vote prior to the meeting in writing (and give directions as to the manner in which such a vote is to be recorded and submitted), and

(iv) be accompanied by a ballot paper initialled by the returning officer.

### **3 Postal votes**

(1) A qualified voter may, prior to a meeting in respect of a special resolution, submit his or her vote in writing (**postal vote**) to:

(a) the Residents Committee, or

(b) if there is no such Committee established in the retirement village, to the operator of the village.

(2) The Residents Committee (or, if there is no such Committee established in the retirement village, the operator of the village) must keep all postal votes received prior to the meeting in a safe and secure location.

(3) At the meeting in respect of a special resolution, each postal vote must be accounted for against a current list of residents and be handed to the returning officer.

(4) If a qualified voter has submitted a postal vote in accordance with this clause, that voter may not change or withdraw his or her postal vote or vote in person or by proxy at the meeting in respect of the special resolution.

### **4 Quorum required for special resolution**

(1) A special resolution submitted at a meeting of the residents of a retirement village must not be considered unless there is a quorum present to consider and vote on the resolution.

(2) There is a quorum for considering and voting on such a resolution only if:

(a) a minimum of 5 qualified voters, or 25% of qualified voters (whichever is the greater), or

(b) where the village has fewer than 10 occupied residential premises—the qualified voters from a majority of the occupied residential premises,

is able to vote on the resolution at the meeting, either personally, by postal vote or by proxy.

(3) If a quorum, as provided by subclause (2), is not present within the next half hour after the relevant resolution arises for consideration at the meeting, the meeting stands adjourned for at least 7 days.

(4) If a quorum, as provided by subclause (2), is not present within the next half hour



after the time fixed for the adjourned meeting, the qualified voters present personally or by proxy or postal vote constitute a quorum for considering that resolution.

## **5 When written ballot required**

- (1) The residents of a retirement village may decide, by a show of hands at any meeting at which a particular measure or action is discussed, whether or not the vote on the measure or action concerned is to be taken by means of a written ballot.
- (2) If 50% or more of the residents present at the meeting decide that the vote is to be taken by means of a written ballot, the vote must be taken by those means.

## **6 Conduct of written ballot**

- (1) If a vote is to be taken by means of a written ballot (including a vote on a special resolution), the returning officer must cause sufficient ballot papers to be prepared so that a ballot paper can be given to each qualified voter.
- (2) The ballot paper must contain details of the measure or action requiring a vote and directions as to the manner in which a vote is to be recorded and returned to the returning officer.

### **Note—**

For example, the ballot paper may have the question to be answered followed by a yes box and a no box and instructions that the voter clearly mark one of the boxes with a tick or a cross.

- (3) The returning officer must provide to each qualified voter (or if the qualified voter has a proxy, to the voter's proxy) at the meeting a ballot paper initialled by the returning officer.
- (4) In order to vote on the resolution at the meeting, a qualified voter (or if the qualified voter has a proxy, the voter's proxy):
  - (a) must record a vote on the ballot paper in accordance with the directions shown on it, and
  - (b) must fold the completed ballot paper so that the vote cannot be seen, and
  - (c) must place the ballot paper in the ballot box.

## **7 Count of votes**

- (1) The result of a vote is to be ascertained by the returning officer as soon as is practicable.
- (2) The returning officer is to count the votes (whether by written ballot or show of hands) and any postal votes received (in respect of a special resolution) to ascertain the result of the vote.

**8 Returning officer's decision final**

If the returning officer is permitted or required to make a decision on any matter under this Schedule, the decision of the returning officer on that matter is final.

**9 Report of result**

- (1) When he or she first ascertains the result of the vote, the returning officer is to announce the result and is then to prepare a written report of the result.
- (2) Copies of the report are to be given to the Residents Committee (if there is one) and placed on a notice board in a common area of the retirement village.