

**2013**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**RETIREMENT VILLAGES REGULATION 2013**

**SUBORDINATE LAW No. SL2013-5**

**EXPLANATORY STATEMENT**

**Presented by  
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## RETIREMENT VILLAGES REGULATION 2013

### Overview of the Regulation

The *Retirement Villages Act 2012* was passed on 22 August 2012 and has a default commencement date of 4 March 2013.

The commencement of the *Retirement Villages Act 2012* will introduce legislative provisions into ACT law that regulate existing and new retirement villages in the ACT. These provisions will replace the Code of Practice which will be repealed on commencement of the Act.

The provisions in the Act are based on provisions in the NSW *Retirement Villages Act 1999*.

Similarly, this regulation is largely based on the NSW *Retirement Villages Regulation 2009* ('the NSW Regulation') and most provisions in the regulation are identical or similar to equivalent sections in the NSW Regulation.

This regulation will bring the ACT scheme into line with the requirements in NSW. It will ensure the harmonisation of both schemes so that operators and residents can move confidently into the ACT market from NSW and into NSW from the ACT and be subject to largely identical regulatory requirements in both jurisdictions.

There are minor drafting modifications to the NSW requirements in this Regulation. References to NSW laws and language used in NSW laws have been substituted with the ACT equivalents.

There are other drafting modifications that are necessary to ensure consistency with ACT drafting practice. For instance, NSW laws commonly prescribe forms within the regulation under the parent Act. In the ACT, the relevant Act may provide for forms to be approved under the Act. Where such forms are approved these are notified on the ACT legislation register.

This is the reason why section 7 of the ACT regulation lists the matters which must be included in the disclosure statement, with the Act allowing an approved form to be made. In the NSW Regulation, equivalent requirements to those in Regulation 7 are captured in the form prescribed at part 1 of schedule 1 of the NSW Regulation.

Also, NSW provisions are re-located in this regulation to ensure consistency with ACT drafting practice, where the ordering of regulations usually follows the ordering of its parent Act.

Some specific amendments have been made to the NSW requirements.

These amendments have been requested by the ACT Retirement Village Residents Association Inc, the Property Council of Australia and the Aged and Community Services Association of NSW & ACT Inc in their joint submission to the ACT Government dated 11 January 2013 ('the joint submission') which was received in the course of consultations between the ACT Government and stakeholders about the content of the proposed regulation.

Some of the recommendations made in the joint submission were not incorporated as they would have required further consideration and consultation with all stakeholders. Some might have constituted a significant departure from the NSW scheme. Some related to provisions in the Act which cannot be addressed by way of regulation.

The modifications to NSW requirements that have been incorporated in this regulation are (with reasons summarised from the joint submission):

### **Definition of operator**

The provision relating to the definition of ‘operator’ as provided for in regulation 6 of the NSW Regulation is omitted on the basis that it may capture people or classes of people who should not be caught by the definition (a modification to the wording in use in the NSW regulation was sought, however it is unlikely that this would have achieved the desired effect and in any case the regulation itself is likely to be superfluous to the provisions in the Act itself).

### **Optional services**

Regulation 7 of the NSW Regulation prescribes the provision of meals, laundry and home services as “optional services” made available, by or on behalf of the operator, to individual residents of a retirement village. The provision is omitted on the basis that the services listed in that regulation often form part of the general services provided by an operator and should not be prescribed in the regulation as being optional services.

### **Definition of resident**

Regulation 8 of the NSW Regulation prescribes a spouse or de facto (a ‘domestic partner’ in ACT law) of another resident who occupies residential premises in the retirement village with the other resident and continues to do so after the other resident dies or permanently vacates the premises as a “resident”.

Regulation 8(2) of the NSW Regulation provides that this provision does not apply where the other person dies and the terms of his or her will are such as to require the person to vacate the residential premises.

The provision relating to the definition of ‘resident’ as provided for in regulation 8(2) of the NSW Regulation is omitted as it would require an operator to delve into an outgoing resident’s will and challenge beneficiaries.

### **Condition reports**

The requirement provided for in regulation 14(8) of the NSW Regulation is omitted on the basis that the requirement to complete a condition report at least 14 days before entering into a residence contract is impractical.

## **Matters to be dealt with in the proposed annual budget and matters not to be financed by way of recurrent charges**

The requirements in regulation 17 (matters that must be dealt with in the proposed annual budget and regulation 26 (matters not to be financed by way of recurrent charges) are sequenced in such a way that they must be read together (which would have occurred in any case due to the sequencing of this regulation in accordance with ACT drafting practice).

### **Limit on contingencies**

The \$100 limit on contingencies in proposed annual budgets as provided for in regulation 20 of the NSW Regulation is substituted with:

- a) for an annual budget of \$200,000 or less - \$1000; and
- b) for an annual budget that exceeds \$200,000, 0.5% of the total of the annual budget.

The maximum amount prescribed in the NSW Regulation is viewed as being so restrictive that it does not allow for any contingencies to be provided for in the annual budget.

### **Matters to be included in village contracts – village rules**

Schedule 1, part 1.2 of this regulation (schedule 2, part 1 of the NSW Regulation) provides for matters which must be included in village contracts. One of the required inclusions is a statement about the interaction between village rules and contract terms, which is provided in this regulation in schedule 1, part 1.2, section 1.11. The provision is drafted so that the provision reads consistently with section 87 with the *Retirement Villages Act 2012*.

### **Model proposed annual budget**

The model proposed annual budget as provided for in schedule 4 of the NSW Regulation is omitted on the basis that it is too soon to prescribe such a form and there is no provision in this regulation which supports such a model annual budget form.

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

The reference to 25% as provided in section 4 of schedule 7 of the NSW Regulation (equivalent to schedule 4, section 4.10 of this regulation) for the quorum required for special resolutions is substituted with a reference to 50% (75% was sought in the joint submission) on the grounds that the matters requiring a special resolution are usually significant and may affect all residents.

A mandated quorum of 75% of residents may stifle democratic decision-making. There is already a requirement in schedule 1, part 1.3 section 1.6 of the Act that a special resolution is carried only if it is passed by at least 75% of the number of residents who participate in the ballot. A quorum of at least half of residents in the village is appropriate and will not lead to an unnecessary impediment to decision-making.

## **Human Rights implications**

No provisions in this regulation engage rights under the *Human Rights Act 2004*.

### **CLAUSE NOTES**

#### **Part 1 Preliminary**

##### **Clause 1 Name of regulation**

This clause names the regulation as the *Retirement Villages Regulation 2013*.

##### **Clause 2 Commencement**

This clause provides for the commencement of the regulation. The regulation commences on the commencement of the *Retirement Villages Act 2012*, section 3.

##### **Clause 3 Dictionary**

This clause provides that the dictionary at the end of the regulation is part of the regulation.

##### **Clause 4 Notes**

This clause provides that a note in the regulation is explanatory only and includes a cross-reference to the relevant sections in the *Legislation Act 2001*.

##### **Clause 5 Offences against regulation—application of Criminal Code etc**

This clause states that other legislation applies in relation to offences against the regulation, such as the *Criminal Code 2002*.

#### **Part 2 Important concepts**

##### **Clause 6 Places not retirement village—Act, s 10 (1), def *retirement village*, par (b) (viii)**

Section 10(1)(b) of the Act provides for arrangements that are not defined as retirement villages for the purposes of the Act. These include a building, or any part of a building, that is used or intended to be used for the provision of residential aged care.

Section 10(1)(b)(viii) provides for other places to be prescribed by regulation as not being retirement villages.

This clause provides that a place where a service is provided by a provider of services within the meaning of the *Disability Services Act 1991* and housing provided by a community

housing provider within the meaning of the *Housing Assistance Act 2007* are prescribed for the purposes of section 10(1)(b)(viii).

This clause is equivalent to a provision in the NSW Regulation.

### **Part 3                      Representations and information about retirement villages**

#### **Clause 7              Disclosure statement—Act, s 24 (3) (b)**

Section 24 of the Act provides for disclosure statements.

Section 24(3) provides that the disclosure statement must include details of particular residential premises in the village, including fees and charges payable in relation to the premises, that it must comply with any requirement prescribed by regulation and be signed and dated by the operator.

This clause provides that the disclosure statement must include prescribed information about the retirement village which is based on information contained in the current prescribed form in part 1 of schedule 1 of the NSW Regulation.

#### **Clause 8              Copies of certain documents to be available—Act, s29 (1) (k)**

Section 29(1) of the Act provides for certain documents that the operator must make available at the village or a place of business in the ACT, for inspection at all reasonable times by a prospective resident.

These include documents prescribed by regulation under section 29(1)(k).

This clause prescribes the additional documents that must be provided under section 29(1).

This clause is equivalent to a provision in the NSW Regulation.

### **Part 4                      Village contracts**

#### **Division 4.1            General**

#### **Clause 9              Prescribed rate of interest—Act, s 41 (5) (b)**

A number of provisions in the Act provide for interest to be paid at the prescribed rate of interest on unpaid amounts. These provisions are equivalent to sections in the NSW *Retirement Villages Act 1999*.

Regulation 28 of the NSW Regulation prescribes the rate of interest that is prescribed under section 101 of the NSW *Civil Procedure Act 2005* with respect to the payment of interest on a judgment debt.

Section 101 of the NSW *Civil Procedure Act 2005* provides for interest after judgment. It provides that a reference to the term “prescribed rate” of interest in that section is a reference to the rate of interest prescribed by the *Uniform Civil Procedure Rules 2005*.

The rate prescribed for the relevant provisions in the Act (sections 41(5)(b), 69(b), 213(3), 235(6)(b), 237(3) and 238(9)(b)) is the rate prescribed under the *Court Procedures Rules 2006*, schedule 2, part 2.2 (Interest after judgment) in relation to the payment of interest on a judgment debt.

The reference to the *Court Procedures Rules 2006*, schedule 2, part 2.2 is an equivalent reference to the prescribed rate of interest in section 101 of the NSW *Civil Procedure Act 2005*.

This clause provides for the interest payable on amounts owing to a former occupant where there has been a contravention of section 41 of the Act.

#### **Clause 10     Amount payable for legal and other expenses—Act, s 52 (3)**

Section 52 of the Act provides for the costs of preparation of village contracts.

Section 52(3) provides that a regulation may prescribe a maximum amount payable by a resident under the section.

This clause prescribes a maximum amount of \$200.

This clause is equivalent to a provision in the NSW Regulation.

#### **Clause 11     Condition report—Act, s 59**

Section 59 of the Act provides for condition reports, which must be given to a prospective resident at the start of the resident’s occupation of the premises.

Section 59(2) provides that regulations may prescribe how a condition report must be completed. The regulation may include providing the time within which the condition report must be completed and the time within which the condition report must be given to the prospective resident.

This clause provides how a condition report is to be completed and is equivalent to regulation 14 of the NSW Regulation. However regulation 14(8) of the NSW Regulation provides that the completed condition report must be provided to the prospective resident at least 14 days before the operator and the prospective resident enter into a village contract or, if the premises are still being constructed, 14 days before the prospective resident occupies the premises.

An equivalent provision is not inserted by this clause. This modification of the equivalent NSW provision was requested in the joint submission.

In addition, the NSW Regulation prescribes a form for condition reports. It is ACT drafting practice that an approved form be made under the Act and notified on the ACT Legislation Register. It is unlikely that a form such as that provided for in the NSW Regulation for

condition reports is necessary in any case. Operators may use forms as they deem appropriate which adequately provide for the condition of the premises, similar to condition reports used by lessors for residential tenancies agreements.

#### **Clause 12      Renovations and alteration of fixtures and fittings—Act, s 63 (5) (b)**

This clause is equivalent to a provision in the NSW Regulation. It provides that renovations or alterations of fixtures and fittings in residential premises owned by a resident under a community title scheme, company title scheme or units plan do not require the consent of the operator.

Where such a resident wishes to add or alter a structure on their unit they may need to comply with other Territory laws (eg the rules of the owners corporation may require that the resident obtains the consent of the owners corporation before adding or altering structures on the resident's unit).

#### **Clause 13      Contents of village contracts—Act, s 66 (1)**

This clause is equivalent to a provision in the NSW Regulation.

It provides prescribes matters that must be included and excluded from village contracts.

Schedule 1 of the regulation sets out the matters which must be included in village contracts. It is equivalent to schedule 2 of the NSW Regulation.

Schedule 2 of the regulation sets out the matters that are to be excluded from village contracts. It is equivalent to schedule 3 of the NSW Regulation.

#### **Clause 14      Prescribed rate of interest—Act, s 69 (b)**

This regulation sets the prescribed rate of interest as the rate under the Act, section 41 (5) (b) (which is prescribed in clause 9).

### **Division 4.2      Settling-in period for residents**

#### **Clause 15      Liability of former occupant if village contract ended during settling-in period—Act, s 73 (1) (d)**

Section 73(1) sets out the items that a former occupant is liable to pay if a village contract is ended under division 5.2 of the Act.

Section 73(1)(d) allows other amounts to be prescribed by regulation.

The clause is equivalent to a provision in the NSW regulation.

#### **Clause 16      Maximum administration fee—Act, s 73 (4)**

This clause sets out a maximum administration fee of \$200 for section 73 of the Act.

This clause is equivalent to a provision in the NSW Regulation.



## **Part 5                    General management of retirement villages**

### **Division 5.1            Village rules**

#### **Clause 17      Village rules—Act, s 78 (2) (i)**

Section 78(2) of the Act sets out what the rules may relate to (but are not limited to).

These include any other matter prescribed by regulation.

The regulation prescribes security in the retirement village and the external appearance of residents' premises in the retirement village as matters that may be included in the village rules.

This clause is equivalent to a provision in the NSW Regulation.

### **Division 5.2            Certain obligations of operators**

#### **Clause 18      Safety inspection report—Act, s 91 (2) (e)**

This clause provides that a safety inspection report mentioned in section 91(2)(d) of the Act must remain on the notice board for at least 1 month.

This clause is equivalent to a provision in the NSW Regulation.

### **Division 5.3            Certain rights of residents**

#### **Clause 19      Access to residential premises in village—Act, s 100 (3) (g)**

Section 100(3) of the Act sets out when an operator may enter residential premises in the village.

Section 100(3)(g) allows other circumstances to be prescribed by regulation.

This clause provides that the operator or authorised person may enter residential premises if the operator or authorised person has given the resident 2 days notice:

- a) to install a smoke alarm that is required by law to be installed in the premises; and
- b) to replace a battery in a smoke alarm installed in the premises.

This clause is equivalent to a provision in the NSW Regulation.

#### **Clause 20      Membership of residents committee—Act, s 104 (1)**

Section 104(1) of the Act provides that a person must not hold the same office, or hold an office exercising the same (or substantially the same) function, on the executive committee for more than 3 consecutive years, except as prescribed by regulation.

This clause provides that a person may hold the same office for more than 3 consecutive years if the village has fewer than 20 residents or the annual budget for the village is less than \$50,000.

This does not apply, however, if the director-general has written to the residents committee objecting generally to any person holding the same office on the committee for more than 3 consecutive years or to a stated 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.

This clause is equivalent to a provision in the NSW Regulation.

#### **Clause 21 Annual management meeting agenda—Act, s 108 (4).**

Section 108(4) of the Act provides that a regulation may prescribe matters that must be included in the agenda for an annual management meeting.

This clause prescribes excluded matters.

This clause is equivalent to a provision in the NSW Regulation.

#### **Clause 22 Questions at annual meeting—Act, s 110 (3) (b)**

Section 110(3)(b) of the Act provides that nothing in section 110 requires the operator or representative to answer a question relating to an excluded matter prescribed by regulation.

This clause prescribes these matters.

This clause is equivalent to a provision in the NSW Regulation.

#### **Clause 23 Appointment of proxies—Act, s 116 (2)**

Section 116(2) of the Act provides the appointment of a proxy must be made in the way prescribed by regulation.

This clause prescribes the way in which a proxy must be appointed.

This clause is equivalent to a provision in the NSW regulation.

## **Part 6 Financial management**

### **Division 6.1 Capital maintenance and replacement**

#### **Clause 24 Capital item—Act, s 135 (1), def *capital item*, par (a) (iv)**

This clause prescribes items which are “capital items”. These are fixtures, fittings, furnishings and non-fixed items. Examples are included for these items, and a note is also included which refers to the relevant provisions of the *Legislation Act 2001* about examples.

This clause is equivalent to a provision in the NSW Regulation.

**Clause 25 Works not capital maintenance—Act, s 135 (1), def *capital maintenance*, par (c)**

Section 135(1) provides for the meaning of capital maintenance and capital replacement.

Section 135(1) defines capital maintenance to mean works that are carried out for repairing or maintaining a capital item and works prescribed by regulation as being capital maintenance.

Section 135(1) (c) provides that capital maintenance does not include works prescribed by regulation as not being capital maintenance.

This clause prescribes works that are not capital maintenance. These are works done to substantially improve a capital item beyond its original condition and works done to maintain or repair a capital item when it would have been more cost effective to replace the capital item.

This clause is equivalent to a provision in the NSW Regulation.

**Clause 26 Matters not to be funded from capital works fund or recurrent charges – Act, s 141 (3) (e)**

Section 141(1) provides that the operator may fund the cost of capital maintenance for which the operator is responsible from the capital works fund for the village (if any) and from recurrent charges.

Section 141(2) provides that the operator must bear the cost of capital replacement of a capital item for which the operator is responsible.

Section 141(3) provides that section 141 does not authorise the funding of matters listed in subsection (3) or anything prescribed from the capital works fund or recurrent charges.

This clause provides that work mentioned in section 25 of the regulation (works not capital maintenance) are not authorised to be funded from the capital works fund or recurrent charges.

This clause is equivalent to a provision in the NSW Regulation.

**Clause 27 Capital works fund—Act, s 143 (4)**

Section 143 of the Act requires capital works fund to be established and maintained.

Section 143(4) provides that a capital works fund must be held in an account with an Approved Deposit-taking Institution or as otherwise provided by regulation.

This clause provides that if the operator is a property trust or other corporation constituted by an Act, money in the capital works fund may be held in a fund administered by the property trust or corporation.

This clause is equivalent to a provision in the NSW Regulation.

**Clause 28 Use of capital works fund amounts—Act, s 144 (1) (c)**

Section 144(1)(c) provides that a regulation may prescribe a purpose for which the capital works fund amount may lawfully be used by an operator.

This clause provides that an amount may be used for a purpose other than a purpose mentioned in section 144(1)(a) or (b) of the Act if the residents have, by special resolution, consented to the money being used for the purpose and the use of the money for the purpose does not involve the funding of a matter mentioned in the Act, section 141(3).

This clause is equivalent to a provision in the NSW Regulation.

**Clause 29 Minimum public liability insurance—Act, s 145 (4)**

Section 145(4) provides that a regulation may prescribe a minimum amount of public liability insurance required under section 145.

This clause prescribes a minimum amount of \$10,000,000.

This clause is equivalent to a provision in the NSW Regulation.

**Division 6.2 Recurrent charges**

**Clause 30 Notice of fixed formula amendment—Act, s 149 (2) (c)**

Section 149 of the Act provides for amendments of recurrent charges where the village contract provides that they are to be amended according to a fixed formula.

Section 149(1) provides that the operator must give a resident who is a party to the contract written notice of the amendment at least 14 days before it takes effect.

Section 149(2) sets out what must be stated in the notice. Section 149(2)(c) requires anything else prescribed by regulation to be stated in the notice.

This clause prescribes matters which must be included in the notice.

This clause is equivalent to a provision in the NSW Regulation.

**Clause 31 Notice of amendment – no fixed formula and not exceeding CPI—Act, s 150 (4) (c)**

This clause prescribes matters which must be included in a notice of amendment of recurrent charges, where the village contract does not provide for a fixed formula and the amendment does not exceed the CPI.

This clause is equivalent to a provision in the NSW Regulation.

**Clause 32 Notice of amendment—no fixed formula and greater than CPI—Act, s 151 (4) (f)**

This clause prescribes matters which must be included in a notice of amendment of recurrent charges, where the village contract does not provide for a fixed formula and the amendment exceeds the CPI.

This clause is equivalent to a provision in the NSW Regulation.

**Clause 33 Information about recurrent charges not needed to be given—Act, s 153 (5)**

Section 153 of the Act provides for resident consent to amendment of recurrent charges where the amendment is otherwise than by fixed formula and exceeds the CPI.

Section 153(4) provides that if the residents committee (or, if there is no residents committee, a resident) requests information about the proposed amendment for the purpose of deciding whether to consent to it, the operator must give the information requested.

Section 153(5) provides that the operator does not have to give information prescribed by regulation.

This clause prescribes the matters which the operator is not required to give.

This clause is equivalent to a provision in the NSW Regulation.

**Clause 34 Time to give information about recurrent charges—Act, s 153 (6)**

Section 153 of the Act provides that if the operator fails to give the information requested by the residents committee or resident within the time frame prescribed by regulation, the residents committee or resident may apply to the ACAT for an order requiring the operator to give the information stated in the order.

This clause prescribes a time frame of 7 days after the information is first requested.

This clause is equivalent to a provision in the NSW Regulation.

**Division 6.3 Proposed and approved annual budgets**

**Clause 35 Matters to be dealt with in proposed annual budget—Act, s 159 (4) (a)**

Section 159(4)(a) of the Act provides that a regulation may make provision for the matters that are to be dealt with in the proposed annual budget.

This clause prescribes these matters.

This clause is equivalent to a provision in the NSW Regulation.

### **Clause 36 Matters not to be financed by way of recurrent charges—Act, s 159 (4) (b)**

Section 159(4)(b) of the Act provides that a regulation may make provision for the matters that must not be financed by way of using amounts received as recurrent charges.

This clause prescribes these matters.

This clause is equivalent to a provision in the NSW Regulation.

### **Clause 37 Notice accompanying proposed annual budget—Act, s 159 (5) (d)**

Section 159(5) of the Act provides that the proposed annual budget must be accompanied by a notice that includes the information contained in section 159(5).

Section 159(5)(d) allows other information to be included in the notice to be prescribed by regulation.

This clause prescribes these matters.

This clause is equivalent to a provision in the NSW Regulation.

### **Clause 38 Limit on contingencies in annual budget—Act, s 164**

This clause prescribes the maximum amount that may be allocated in the proposed annual budget for contingencies. The amount is:

- (a) for an annual budget of \$200,000 or less – \$1000; and
- (b) for an annual budget that exceeds \$200,000 – 0.5% of the total amount of the annual budget.

The equivalent NSW Regulation provides for an amount of \$100. This modification from the NSW requirement was requested in the joint submission.

## **Division 6.4 Annual accounts**

### **Clause 39 Copies of audited accounts—Act, s 169 (8) (a) (ii)**

This clause provides that a copy of the audited accounts for the village must be displayed on a notice board in a common area of the village for at least 1 month starting not later than 4 months after the end of the financial year to which the accounts relate.

This clause is equivalent to a provision in the NSW Regulation.

## **Division 6.5 Surplus or deficit of accounts**

### **Clause 40 Making good of deficit—Act, s 174 (3) (c)**

Section 174(1) of the Act provides that an operator must make good a deficit in the annual accounts of the village.

Section 174(2)(a) provides that the operator must not carry forward a deficit to a later financial year.

Section 174(3)(c) provides that a regulation may prescribe circumstances in which the operator may carry forward a deficit to later financial year.

This clause prescribes when the operator may carry forward a deficit to a later financial year.

This clause is equivalent to a provision in the NSW Regulation.

## **Part 7                    Disputes**

### **Division 7.1            Dispute resolution**

#### **Clause 41      Representative for residents in dispute—Act, s 176 (2)**

Section 176(2) of the Act provides that two or more residents who claim that a dispute mentioned in section 176(1) has arisen may nominate, in accordance with a regulation, any resident as their representative in the dispute.

This clause provides that two or more residents who claim that a dispute mentioned in the Act, section 176(1) has arisen may nominate a resident as their representative in the dispute if each resident who is a party to the dispute signs a statement to the effect that the person named in the statement is nominated as the signatory's representative and the nominated resident gives written consent to the nomination.

This clause is equivalent to a provision in the NSW Regulation.

### **Division 7.2            ACAT—applications and orders**

#### **Clause 42      Time for making ACAT applications**

This clause provides that an application to the ACAT under a section of the Act mentioned in an item in schedule 3 must be made within the time mentioned in column 3 of the item.

This clause is equivalent to a provision in the NSW Regulation.

#### **Clause 43      ACAT applications by residents committee**

This clause provides for applications to be made by the residents committee on behalf of one or more residents on their request or on behalf of all residents with the consent of the residents.

In order for the residents committee to apply to the ACAT on behalf of all residents, residents' consent must be obtained by the proposal being put to a meeting of the residents and the vote for the proposed being decided by a show of hands.

Any resident who does not wish to be a party must give written notice to the residents committee of that fact before the application is made to the ACAT. On receiving written notice from a resident, the committee must exclude the resident from the application.

This clause is equivalent to a provision in the NSW Regulation.

#### **Clause 44 ACAT may decide other party to application by operator**

This clause provides that the ACAT may, if it considers appropriate to do so, order that 1 or more stated residents, or all the residents, are the other parties to an application to the ACAT by the operator.

This clause is equivalent to a provision in the NSW Regulation.

#### **Clause 45 ACAT additional orders—Act, s 181 (1) (k)**

Section 181 of the Act sets out the orders that the ACAT may make on application by a resident or operator of a retirement village.

Section 181(1)(k) allows other orders to be prescribed by regulation.

This clause prescribes that the ACAT may amend, set aside or stay an order of the ACAT in force under the Act.

This clause is equivalent to a provision in the NSW Regulation.

#### **Clause 46 Differential orders**

This clause provides that the ACAT may make different orders in relation to different residents of a village in deciding an application to which two or more residents are parties.

This clause is equivalent to a provision in the NSW Regulation.

## **Part 8 Ending residence contracts**

### **Division 8.1 General principles about ending residence contracts**

#### **Clause 47 Time for giving notice to end contract—Act, s 184 (2)**

Section 184(1) of the Act provides that if the operator or resident intends to apply to the ACAT to end a residence contract, the intending applicant must give the other party written notice of the intention except as otherwise provided by the Act.

Section 184(2) provides that the notice must be given within the time prescribed by regulation.

This clause provides that the notice must be served by the intending applicant within 14 days of the making of the application to the ACAT and not later than the time the intending



applicant makes the application to the ACAT. If the notice is not served within 14 days the intending applicant must give a new notice.

This clause is consistent with a requirement in the NSW Regulation. A form is prescribed in NSW for this purpose by regulation. It is not ACT drafting practice to prescribe a form by regulation.

## **Division 8.2           Uncollected Goods**

### **Clause 48       Meaning of *uncollected goods*—div 8.2**

This clause defines uncollected goods for division 8.2 of the Act by describing what is not included in the definition.

This clause is equivalent to a provision in the NSW Regulation.

### **Clause 49       Disposal of perishable and certain other uncollected goods—Act, s 203 (1) (b)**

Section 203(1) of the Act provides that if a residence contract is ended and goods are left on the residential premises by the former resident, the operator may apply to the ACAT for an order under section 203 or sell or dispose of the goods in accordance with a regulation.

This clause prescribes the goods which may be removed and disposed of and when they may be removed and disposed of.

This clause is equivalent to a provision in the NSW Regulation.

### **Clause 50       Storage of other uncollected goods**

This clause provides for goods other than those referred to in clause 49.

This clause provides for the storage of the uncollected goods for 30 days after the operator issued a notice under section 203(2) of the Act. If the operator does not have a forwarding address for the former occupant (or the executor or administrator of the estate of the former occupant), the 30 days starts from the day the former occupant vacated the residential premises if the residence contract was ended by an ACAT order, or in any other case, from the day the former occupant's residence contract was ended.

This clause provides that an operator commits an offence (a strict liability offence) if the operator does not comply with these requirements.

This clause is equivalent to a provision in the NSW Regulation.

### **Clause 51       Claiming uncollected goods**

This clause allows a person who is entitled to possession of uncollected goods to claim them before they are destroyed, sold or otherwise dealt with under this division.

This clause is equivalent to a provision in the NSW Regulation.

## **Clause 52 Disposal of uncollected goods after storage**

This clause prescribes requirements in relation to uncollected goods, in particular uncollected personal documents and how these are to be dealt with after the 30 day period mentioned in clause 50.

This clause provides that an operator commits an offence (a strict liability offence) if the operator does not comply with these requirements.

This clause is equivalent to a provision in the NSW Regulation.

## **Clause 53 Records and accounting**

This clause provides for the keeping of records of all uncollected goods disposed of under section 52 and how the balance of proceeds of the sale of the goods must be dealt with.

This clause is equivalent to a provision in the NSW Regulation.

## **Part 9 – Prescribed rates of interest**

### **Clause 54 Prescribed rate of interest—Act, s 213 (3)**

This clause sets the maximum rate of interest that can be charged on unpaid recurrent charges as the rate prescribed for the Act, section 41 (5) (b) at clause 9.

### **Clause 55 Prescribed rate of interest—Act, s 235 (6) (b)**

This clause sets the rate of interest that can be charged when an operator has not paid an amount requires to be paid to a former occupant as required under s235(2). It is the amount prescribed for the Act, section 41 (5) (b) at clause 9.

### **Clause 56 Prescribed rate of interest—Act, s 237 (3)**

This clause sets the rate of interest on amounts owed to former occupants by operators where the operator has not acted properly or fairly in certain circumstances. It is the rate prescribed for the Act, section 41 (5) (b) at clause 9.

### **Clause 57 Prescribed rate of interest—Act, s 238 (9) (b)**

This clause sets the rate of interest on amounts owed for former occupants that are not paid as required by the Act, s238. It is the rate prescribed for the Act, section 41 (5) (b) at clause 9.

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

### **Clause 58 Refund of ingoing contribution—Act, s 241 (1) (b)**

Section 241 of the Act sets out when part 11 of the Act applies. Section 241 provides that the part applies to a village contract if a resident has paid an ingoing contribution under the

contract that includes a provision that entitles the resident to a refund of the whole, or any part, of the ingoing contribution and the refund is more than the prescribed amount.

This clause prescribes an amount of \$10,000.

This clause is equivalent to a provision in the NSW Regulation.

## **Part 11**                      **Consent of residents**

### **Clause 59**      **Conduct of written ballots—Act, sch 1, s 1.3 (1) (b) and s 1.5**

This clause provides that a written ballot must be conducted in accordance with schedule 4, part 4.2 and that a vote in relation to a measure or action requiring a special resolution must be conducted in accordance with schedule 4, part 4.3.

## **Part 12**                      **Miscellaneous**

### **Clause 60**      **Modification of Act—Act, s 504(2)**

This clause provides that the Act, part 20 is modified by schedule 5 and that this provision and schedule 5 expire 5 years after the commencement day.

### **Clause 61**      **Resident—Act, dict, def *resident*, par (b) (ii)**

This clause provides that a domestic partner who occupies residential premises in the retirement village with the other resident and continues to reside there after the other resident dies or permanently vacates the premises is defined as a “resident” for the Act.

This is equivalent to regulation 8 of the NSW Regulation, however the NSW equivalent provision also provides that the provision does not apply where the other resident dies and the terms of that other resident’s will are such as to require (whether directly or indirectly) the person to vacate the residential premises.

This modification of the equivalent NSW provision was requested in the joint submission.

## **Part 20**                      **Transitional**

### **Clause 100**      **Matters not to be financed by way of recurrent charges – Act, s 159 (4) (b)—s 36**

Clause 36 provides for the matters that are not to be financed by way of recurrent charges.

Clause 36(1)(d) provides that payroll tax must not be funded by way of recurrent charges unless the wages paid by the operator in relation to operating the retirement village are more than the threshold amount.

In addition, this clause provides that payroll tax must not be financed by way of recurrent charges unless before the commencement day the residents of the retirement village

consented to the financing of payroll tax by way of recurrent charges and have continued to consent to the financing of payroll tax by way of recurrent charges.

## **Schedule 1                      Contents of village contracts**

This schedule provides for the contents of village contracts.

Part 1.1 of schedule 1 provides for the information which must be included in village contracts.

This clause is equivalent to schedule 2 part 1 in the NSW Regulation.

Part 1.2 provides for headings and additional matters to be included in village contracts.

This clause is equivalent to schedule 2 part 2 in the NSW Regulation. Clause 1.11, which deals with village rules, has been modified from the NSW equivalent paragraph to read consistently with section 87 of the Act.

## **Schedule 2                      Matter to be excluded from village contracts**

This schedule provides for matter to be excluded from village contracts.

This schedule is equivalent to schedule 3 of the NSW Regulation.

## **Schedule 3                      Time for making ACAT applications**

This schedule provides for the time that applications to the ACAT are to be made.

This schedule is equivalent to schedule 5 of the NSW Regulation.

## **Schedule 4                      Conduct of written ballots**

This schedule provides for the conduct of written ballots and ballots for special resolutions.

This schedule is equivalent to schedule 7 of the NSW Regulation.

## **Schedule 5                      Modification of Act**

Part 20 of the Act provides for transitional matters, including providing that a residence or service contract entered into before commencement of the Act (for example, a residence contract entered into under the Code of Practice) is a residence or service contract under the Act.

Section 504(2) of the Act provides that a regulation may modify part 20 (including in relation to any other territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in part 20.

Section 504(3) provides that a regulation made under section 504(2) has effect despite anything else in another territory law.

The provisions in this schedule modify part 20 of the Act under section 504(2) of the Act.

These provisions relate to the effect of the provisions in the Act on arrangements entered into before commencement of the Act.

Many of these provisions are equivalent to sections in schedule 4 of the NSW Act which provide for matters of a savings or transitional nature consequent on the enactment of the NSW Act and subsequent Amending Acts.

Some of the provisions are equivalent to subsections in the NSW Act which provide for the effect of a section on a contract or arrangement entered into before commencement of the provision. It is ACT drafting practice to place such provisions in the transitional part of the Act rather than within the relevant sections in the Act as in NSW.

Remaining provisions are equivalent to provisions in the NSW Regulation.

An additional provision to that in the NSW Act and Regulation is section 503ZB.

Section 503ZB relates to a termination provision that applies to an existing contract or a termination clause that is included in an existing contract immediately before commencement.

Section 503ZB(2) provides that the termination provision ceases to apply to the existing contract and instead, part 9 of the Act applies to the contract.

**Clause 503A            Meaning of *permanently vacated* residential premises—s 14 (1)**

This clause is equivalent to schedule 4, s 13 of the NSW Act.

**Clause 503B            Former retirement villages that stopped being retirement villages before the commencement day—s 15A (3)**

This clause is equivalent to section 11 (6) of the NSW Act.

**Clause 503C            General inquiry document—s 23**

This clause is equivalent to schedule 4, s 28 of the NSW Act.

**Clause 503D            Disclosure statement—s 24**

This clause is equivalent to schedule 4, section 28 of the NSW Act.

**Clause 503E            Copies of certain documents to be made available—s 29 (1) (c)**

This is equivalent to schedule 4, section 5 of the NSW Act.

**Clause 503F Resident to enter village contract—Act, s 41(1)**

This clause is equivalent to schedule 4, section 29 of the NSW Act.

**Clause 503G Retirement village land to be registered—s 42 (3)**

This clause is equivalent to section 24A(2)(a) of the NSW Act.

**Clause 503H Inconsistency between village contract and disclosure statement – s 45**

This clause is equivalent to schedule 4, section 6 of the NSW Act.

**Clause 503I Village contracts must be in writing—s 46**

This clause is equivalent to section 26 of the NSW Act.

**Clause 503J Amendment or replacement of village contract—s 49**

This clause is equivalent to section 29(5) of the NSW Act.

**Clause 503K Rescission of village contract on grounds relating to disclosure statement—s 54**

This clause is equivalent to schedule 4, section 6 of the NSW Act.

**Clause 503L Condition report for certain residential premises—s 59 (4)**

This clause is equivalent to section 38(4) of the NSW Act.

**Clause 503M Renovations and alteration of fixtures or fittings—s 63 (5) (a)**

This clause is equivalent to schedule 4, section 30 of the NSW Act.

**Clause 503N Settling-in period for residents—div 5.2 and s 71**

This clause is equivalent to schedule 4, section 31 of the NSW Act.

**Clause 503O Village rules—div 6.1**

This clause is equivalent to schedule 4, section 4 of the NSW Act.

**Clause 503P Operator not to demand power of attorney—s 98**

This clause is equivalent to section 64(2)(a) of the NSW Act.

**Clause 503Q            Membership of Residents Committee—s 104**

This clause is equivalent to schedule 4, section 32 of the NSW Act.

**Clause 503R            Operator must hold annual general meeting—s 107**

This clause is equivalent to schedule 4, section 33 of the NSW Act.

**Clause 503S            Proxies—s 116**

This clause is equivalent to schedule 4, section 34 of the NSW Act.

**Clause 503T            Relative may ask to enter into residence contract—s 120 (1) (c)**

This clause is equivalent to section 81(1)(c) of the NSW Act.

**Clause 503U            Resident may carry out urgent work—s 139**

This clause is equivalent to schedule 4, section 23 of the NSW Act.

**Clause 503V            Sale of items of capital items to residents—s 146**

This clause is equivalent to schedule 4, section 25 of the NSW Act.

**Clause 503W            Amendment of recurrent charges—s 148(2)**

This clause is equivalent to schedule 4, section 35 of the NSW Act.

**Clause 503X            Residents' consent to spending—s 162(9)**

This clause is equivalent to regulation 21 of the NSW Regulation.

**Clause 503Y            Auditing of accounts—s 168 (3) and (6)**

This clause is equivalent to schedule 4, section 36 of the NSW Act.

**Clause 503Z            Existing disputes—pt 8**

This clause is equivalent to schedule 4, section 8 of the NSW Act.

**Clause 503ZA          Information resolution of disputes—s 178**

This clause is equivalent to schedule 4, section 7 of the NSW Act.

**Clause 503ZB          Ending residence contracts – pt 9**

This clause relates to a termination provision that applies to an existing contract or a termination clause that is included in an existing contract immediately before commencement.

The clause provides that the termination provision ceases to apply to the existing contract and instead, part 9 of the Act applies to the contract.

The clause also provides that a reference to a contract referee is, on commencement, taken to be a reference to the ACAT and any procedure involving the ending of a residence contract, or the residence right under the contract, by a contract referee is, on commencement, taken to be a reference to the procedures mentioned in part 9.

This clause is not included in the NSW Act or Regulation but is necessary as it clarifies the termination process that is to be followed after commencement for existing contracts, in particular where an existing contract refers to the ending of a residence contract or a residence right by the contract referee referred to in the Code of Practice.

**Clause 503ZC            Existing uncollected goods—div 9.8**

This clause is equivalent to schedule 4, section 10 of the NSW Act.

**Clause 503ZD            Meaning of *permanently vacated residence*—s 207**

This clause is equivalent to schedule 4, section 13 of the NSW Act.

**Clause 503ZE            Recurrent charges for general services—registered interest holders—  
s 210 (3) (a)**

This clause is equivalent to schedule 4, section 17 of the NSW Act.

**Clause 503ZF            Recurrent charges for general services—generally—s 211 (2) (e)**

This clause is equivalent to schedule 4, section 18 of the NSW Act.

**Clause 503ZG            Meaning of *departure fee*—s 214 (1)**

This clause is equivalent to schedule 4, section 11 of the NSW Act.

**Clause 503ZH            Meaning of *departure fee*—s 214 (1) (a)**

This clause is equivalent to section 156(1)(a)(ii) of the NSW Act.

**Clause 503ZI            Departure fees payable—s 217**

This clause is equivalent to section 158 of the NSW Act.

**Clause 503ZJ            Departure fees payable—registered interest holders**

This clause is equivalent to section 159 of the NSW Act.

**Clause 503ZK            Departure fees payable—not registered interest holders**

This clause is equivalent to section 160 of the NSW Act.



**Clause 503ZL            Reduction or waiver of departure fee**

This clause is equivalent to section 161 of the NSW Act.

**Clause 503ZM            Condition of premises on ending of residence contract—s 219 (2)**

This clause is equivalent to section 163(4) of the NSW Act.

**Clause 503ZN            No refurbishment required—s 220**

This clause is equivalent to section 164 of the NSW Act.

**Clause 503ZO            Refurbishment under existing contract**

This clause is equivalent to section 165 of the NSW Act.

**Clause 503ZP            Sale of premises—s 223 (4)**

This clause is equivalent to section 168(3) of the NSW Act.

**Clause 503ZQ            Statements to former occupants who were registered interest holders—s 236 (2)**

This clause is equivalent to section 180(3)(g) of the NSW Act.

**Clause 503ZR            Statements to former occupants who were not registered interest holders—s 238A (2)**

This clause is equivalent to section 181(4)(d) of the NSW Act.

**Clause 503ZS            Application of pt 11—s 241 (1)**

This clause is equivalent to section 182A(2) and (3) of the NSW Act.

**Clause 503ZT            Creation of charge—s 242 (1)**

This clause is equivalent to section 182B(2) of the NSW Act.

**Clause 503ZU            Costs of operator’s legal advice or proceeding—s 260**

This clause is equivalent to schedule 4, section 14 of the NSW Act.

## **Dictionary**

The dictionary provides for the definition of terms used in the Regulation.