

2011

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Ms Mary Porter)

## Retirement Villages Bill 2011

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FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Ms Mary Porter)

## **Retirement Villages Bill 2011**

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### **A Bill for**

An Act to regulate retirement villages, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Retirement Villages Act 2011*.

4 **2 Commencement**

5 (1) This Act commences on a day fixed by the Minister by written  
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on  
8 the notification day (see Legislation Act, s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be  
10 fixed, for the commencement of different provisions (see Legislation  
11 Act, s 77 (1)).

12 (2) If this Act (other than part 9) has not commenced within 12 months  
13 beginning on its notification day, it automatically commences on the  
14 first day after that period.

15 (3) If part 9 (Charges created over retirement village land to protect  
16 residents' rights) has not commenced within 30 months beginning  
17 on this Act's notification day, it automatically commences on the  
18 first day after that period.

19 (4) The Legislation Act, section 79 (Automatic commencement of  
20 postponed law) does not apply to this Act.

1     **3           Dictionary**

2           The dictionary at the end of this Act is part of this Act.

3           *Note 1*   The dictionary at the end of this Act defines certain terms used in this  
4                    Act, and includes references (*signpost definitions*) to other terms  
5                    defined elsewhere.

6                    For example, the signpost definition '*insolvent under administration*,  
7                    for division 7.1 (Scheme operators)—see the Corporations Act,  
8                    section 9.' means that the term 'insolvent under administration' is  
9                    defined in that section and the definition applies to this Act.

10          *Note 2*   A definition in the dictionary (including a signpost definition) applies to  
11                    the entire Act unless the definition, or another provision of the Act,  
12                    provides otherwise or the contrary intention otherwise appears (see  
13                    Legislation Act, s 155 and s 156 (1)).

14     **4           Notes**

15           A note included in this Act is explanatory and is not part of this Act.

16          *Note*     See the Legislation Act, s 127 (1), (4) and (5) for the legal status of  
17                    notes.

18     **5           Offences against Act—application of Criminal Code etc**

19           Other legislation applies in relation to offences against this Act.

20          *Note 1*   *Criminal Code*

21                    The Criminal Code, ch 2 applies to all offences against this Act (see  
22                    Code, pt 2.1).

23                    The chapter sets out the general principles of criminal responsibility  
24                    (including burdens of proof and general defences), and defines terms  
25                    used for offences to which the Code applies (eg *conduct*, *intention*,  
26                    *recklessness* and *strict liability*).

27          *Note 2*   *Penalty units*

28                    The Legislation Act, s 133 deals with the meaning of offence penalties  
29                    that are expressed in penalty units.

1 **Part 2** **Objects and important concepts**

2 **6** **Objects of Act**

3 (1) The main objects of this Act are—

4 (a) to promote consumer protection and fair trading practices in  
5 relation to operating retirement villages and supplying services  
6 to residents by—

7 (i) declaring particular rights and obligations of residents and  
8 scheme operators; and

9 (ii) facilitating the disclosure of information to prospective  
10 residents of retirement villages to ensure the rights and  
11 obligations of residents and scheme operators may be  
12 easily understood; and

13 (b) to encourage the continued growth and viability of the  
14 retirement village industry in the ACT.

15 (2) The following are also objects of this Act:

16 (a) to encourage the adoption of best practice standards by the  
17 retirement village industry;

18 (b) to provide a clear regulatory framework to ensure certainty for  
19 the retirement village industry in planning for future  
20 expansion;

21 (c) to facilitate participation by residents, who want to be  
22 involved, in the affairs of retirement villages;

23 (d) to provide for processes for resolving disputes between  
24 residents and scheme operators.



1    **7            Meaning of *retirement village***

2            In this Act:

3            *retirement village* means premises where older members of the  
4            community or retired people live, or will live, in independent living  
5            units or serviced units, under a scheme for a retirement village.

6    **8            Meaning of *retirement village land***

7            In this Act:

8            *retirement village land*, for a retirement village—

- 9            (a) means land that is, or will be, used for a retirement village; and  
10           (b) if a units plans is registered in relation to the retirement  
11           village—includes the land identified as units, unit subsidiaries  
12           and common property in the plan.

13   **9            Meaning of *scheme***

14           In this Act:

15           *scheme*, for a retirement village, means a scheme under which a  
16           person may—

- 17           (a) enter into a residence contract with the scheme operator for the  
18           retirement village; and  
19           (b) on payment of an ingoing contribution, acquire personally or  
20           for someone else a right to live in the retirement village,  
21           however the right accrues; and  
22           (c) on payment of the relevant charge, acquire personally or for  
23           someone else a right to receive 1 or more services in relation to  
24           the retirement village.

1 **10** **Meaning of *resident***

2 In this Act:

3 *resident*, of a retirement village, means a person who has a right  
4 under a residence contract to—

5 (a) live in the village; and

6 (b) receive 1 or more services in relation to the village.

7 **11** **Meaning of *scheme operator***

8 In this Act:

9 *scheme operator*, for a retirement village, means a person who,  
10 alone or with someone else, controls, or purports to control, the  
11 operation of a scheme for the retirement village.

1 **Part 3** **Registering retirement village**  
2 **schemes**

3 **Division 3.1** **Registration**

4 **12** **Application for registration**

- 5 (1) A person (the *applicant*) may apply to the commissioner for fair  
6 trading to register a scheme for a retirement village.

7 *Note 1* If a form is approved under s 217 for the application, the form must be  
8 used.

9 *Note 2* A fee may be determined under s 216 for this provision.

- 10 (2) The applicant must be—

11 (a) the person who, alone or with someone else, proposes to  
12 control the operation of the scheme for the retirement village;  
13 and

14 (b) if the applicant is an individual—at least 18 years old.

- 15 (3) The application must be accompanied by—

16 (a) details of the following:

17 (i) the land on which the retirement village buildings and  
18 facilities are, or will be, constructed;

19 (ii) the accommodation units and communal facilities that the  
20 scheme operator undertakes will be available for the  
21 retirement village when the scheme is registered;

22 (iii) the accommodation units and communal facilities that the  
23 scheme operator intends to make available for the  
24 retirement village when the scheme is registered,  
25 depending on the sales activity, finance availability, or  
26 market conditions for the village;

1 (iv) other matters in relation to the scheme prescribed by  
2 regulation; and

3 (b) a copy of the public information document in relation to the  
4 scheme.

5 *Note 1* **Public information document**, in relation to a scheme for a retirement  
6 village—see s 65.

7 *Note 2* Information provided with an application is included on the retirement  
8 villages scheme register (see s 209).

9 **13 Decision on registration application**

10 (1) If a person applies to register a scheme for a retirement village  
11 under section 12, the commissioner for fair trading must—

12 (a) register the scheme; or

13 (b) refuse to register the scheme.

14 *Note* A decision to refuse to register a scheme is a reviewable decision (see  
15 pt 13).

16 (2) The commissioner for fair trading may register the scheme only if  
17 satisfied that—

18 (a) the application complies with section 12; and

19 (b) the applicant is not prohibited from operating a scheme for a  
20 retirement village under—

21 (i) section 94 (Offence—operating retirement village  
22 schemes etc while insolvent); or

23 (ii) section 95 (Offence—operating retirement village  
24 schemes etc with relevant conviction).

25 (3) If the commissioner for fair trading registers the scheme, the  
26 commissioner must give the applicant a registration certificate  
27 stating the day the scheme was registered.

- 1    **14**        **Power to ask for information etc from applicants and**  
2                    **others**
- 3            (1) The commissioner for fair trading may, in writing, ask a person (the  
4                *applicant*) who applies to register a scheme for a retirement village  
5                to do 1 or more of the following:
- 6                (a) give the commissioner stated information relevant to the  
7                    application;
- 8                (b) produce for the commissioner’s inspection a stated document  
9                    relevant to the application;
- 10              (c) allow the commissioner to examine, copy or take extracts from  
11                  a stated document relevant to the application (including a  
12                  document produced for the commissioner’s inspection under  
13                  paragraph (b));
- 14              (d) confirm, by statutory declaration or otherwise, information  
15                  given or a document produced to the commissioner;
- 16              (e) authorise a stated person to do anything mentioned in  
17                  paragraphs (a) to (d);
- 18              (f) give the commissioner any authority or consent that the  
19                  commissioner asks for to allow the commissioner to obtain  
20                  from other people information (including financial and other  
21                  confidential information) that is—
- 22                    (i) about the applicant; and
- 23                    (ii) relevant to—
- 24                        (A) the consideration of the application; or

1 (B) a consideration of whether the applicant continues to  
2 be a suitable person to operate a scheme for a  
3 retirement village.

4 **Example—par (a)**

5 ask the applicant to give information by preparing a document in a stated way  
6 (including as a statutory declaration) or by completing a document provided by  
7 the commissioner for fair trading

8 **Example—par (b)**

9 a statement supplied by a police officer about the applicant's criminal history (if  
10 any)

11 **Example—par (f)**

12 ask the applicant to authorise the applicant's accountant, or a former close  
13 associate, to give the commissioner for fair trading stated information or  
14 documents about the applicant.

15 *Note 1* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of  
16 statutory declarations under ACT laws.

17 *Note 2* The Criminal Code includes an offence for making false statements in  
18 statutory declarations (see s 336A).

19 *Note 3* An example is part of the Act, is not exhaustive and may extend, but  
20 does not limit, the meaning of the provision in which it appears (see  
21 Legislation Act, s 126 and s 132).

22 (2) A request under subsection (1) must state a reasonable time within  
23 which the request must be complied with.

24 **Division 3.2 Transferring registration**

25 **15 Transferring registration**

26 (1) This section applies if a scheme operator for a retirement village  
27 proposes to transfer control of the operation of the scheme for the  
28 village to another person.

29 (2) The scheme operator must apply in writing to the commissioner for  
30 fair trading to transfer the registration of the scheme for the  
31 retirement village.

- 1           (3) The scheme operator must also—
- 2           (a) give each resident of the retirement village a written notice
- 3           stating—
- 4           (i) that the operator has asked the commissioner for fair
- 5           trading to transfer the registration of the scheme for the
- 6           village; and
- 7           (ii) who the operator proposes to transfer the registration to;
- 8           and
- 9           (iii) how the resident will be affected if the registration is
- 10           transferred; and
- 11           (iv) that the resident may object to the transfer within 60 days
- 12           after receiving the notice by giving written notice of the
- 13           objection to the commissioner for fair trading; and
- 14           (b) give the commissioner for fair trading—
- 15           (i) a statutory declaration made by the scheme operator
- 16           stating the facts of the operator's compliance with
- 17           paragraph (a); and
- 18           (ii) a copy of the notice given to residents under
- 19           paragraph (a).

20           *Note 1* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of

21           statutory declarations under ACT laws.

22           *Note 2* The Criminal Code includes an offence for making false statements in

23           statutory declarations (see s 336A).

- 24           (4) On application, the commissioner for fair trading may—
- 25           (a) transfer the registration of the scheme for the retirement village
- 26           to the person named in the application; or
- 27           (b) refuse to transfer the registration of the scheme.

28           *Note* A decision to refuse to transfer the registration of a scheme for a

29           retirement village is a reviewable decision (see pt 13).

- 1 (5) However, the commissioner for fair trading may transfer the  
2 registration of a scheme for a retirement village only if—
- 3 (a) the commissioner is satisfied that—
- 4 (i) the scheme operator for the village has complied with  
5 subsection (2); and
- 6 (ii) the person to whom the scheme is to be transferred is—
- 7 (A) at least 18 years old; and
- 8 (B) not prohibited from operating a scheme for a  
9 retirement village under section 94 (Offence—  
10 operating retirement village schemes etc while  
11 insolvent); or
- 12 (C) not prohibited from operating a scheme for a  
13 retirement village under section 95 (Offence—  
14 operating retirement village schemes etc with  
15 relevant conviction); and
- 16 (iii) transferring the registration of the scheme is appropriate,  
17 having regard to the objections, if any, made under  
18 subsection (3).
- 19 (6) If the commissioner for fair trading transfers the registration of a  
20 scheme for a retirement village, the commissioner must record the  
21 transfer in the retirement village scheme register.
- 22 (7) In this section:
- 23 *resident* includes a former resident who has not received an exit  
24 entitlement to which the former resident is entitled under the former  
25 resident's residence contract.



1 **Division 3.3** **Ending registration**

2 **16** **When registration ends**

3 The registration of a scheme for a retirement village ends if the  
4 registration is cancelled under section 17 or section 18.

5 **17** **Cancelling registration—scheme no longer operating**

6 (1) The commissioner for fair trading may cancel the registration of a  
7 scheme for a retirement village if the commissioner believes on  
8 reasonable grounds that the scheme is no longer operating.

9 *Note* A decision to cancel the registration of a scheme is a reviewable  
10 decision (see pt 13).

11 (2) However, the commissioner for fair trading must not cancel the  
12 registration of a scheme for a retirement village unless the  
13 commissioner—

14 (a) gives the scheme operator for the village written notice (an  
15 *intended cancellation notice*) of the commissioner's intention  
16 to cancel the registration; and

17 (b) takes into consideration any response received from the  
18 scheme operator in accordance with the notice.

19 (3) Cancellation of the registration of a scheme for a retirement village  
20 under this section takes effect—

21 (a) 21 days after the day the intended cancellation notice is given  
22 to the scheme operator for the retirement village; or

23 (b) if the written notice states a later date—on the stated date.

24 (4) An intended cancellation notice must—

25 (a) state that the commissioner for fair trading intends to cancel  
26 the registration of the scheme; and

27 (b) explain why the commissioner for fair trading intends to cancel  
28 the registration of the scheme; and

- 1 (c) state that the scheme operator may, within 18 days after the  
2 day the scheme operator is given the notice, give a written  
3 response to the commissioner for fair trading about the matters  
4 in the notice.

5 *Note* For how documents may be served, see the Legislation Act, pt 19.5.

6 **18 Cancelling registration—requested by scheme operator**

- 7 (1) This section applies if the scheme operator for a retirement village  
8 stops operating or proposes to stop operating the scheme for the  
9 village.
- 10 (2) The scheme operator must apply in writing to the commissioner for  
11 fair trading to cancel the registration of the scheme for the  
12 retirement village.
- 13 (3) The scheme operator must also—
- 14 (a) give each resident of the retirement village a written notice  
15 stating—
- 16 (i) that the operator has asked the commissioner for fair  
17 trading to cancel the registration of the scheme for the  
18 village; and
- 19 (ii) if there is a charge over the retirement village land—  
20 whether or not the operator has asked the commissioner  
21 for fair trading to release the charge over the retirement  
22 village land under section 177 (Scheme operator may ask  
23 for release of charge if land stops being retirement village  
24 land); and
- 25 (iii) how the resident will be affected if the registration is  
26 cancelled; and
- 27 (iv) that the resident may object to the cancellation within  
28 60 days after receiving the notice by giving written notice  
29 of the objection to the commissioner for fair trading; and

- 1 (b) give the commissioner for fair trading—
- 2 (i) a statutory declaration made by the scheme operator
- 3 stating the facts of the operator's compliance with
- 4 paragraph (a); and
- 5 (ii) a copy of the notice given to residents under
- 6 paragraph (a).
- 7 *Note 1* The *Statutory Declarations Act 1959* (Cwlth) applies to the making of
- 8 statutory declarations under ACT laws.
- 9 *Note 2* The Criminal Code includes an offence for making false statements in
- 10 statutory declarations (see s 336A).
- 11 (4) On application, the commissioner for fair trading may—
- 12 (a) cancel the registration of the scheme for the retirement village;
- 13 or
- 14 (b) refuse to cancel the registration of the scheme.
- 15 *Note* A decision to refuse to cancel the registration of a scheme for a
- 16 retirement village is a reviewable decision (see pt 13).
- 17 (5) However, the commissioner for fair trading may cancel the
- 18 registration of a scheme for a retirement village only if—
- 19 (a) the commissioner is satisfied that—
- 20 (i) the scheme operator for the village has complied with
- 21 subsection (2); and
- 22 (ii) cancelling the registration of the scheme is appropriate,
- 23 having regard to the objections, if any, made under
- 24 subsection (2); and
- 25 (b) if there is a charge over the retirement village land—the
- 26 commissioner has released the charge.
- 27 (6) If the commissioner for fair trading cancels the registration of a
- 28 scheme for a retirement village, the commissioner must record the
- 29 cancellation in the retirement village scheme register.

- 1           (7) In this section:
- 2                 *resident* includes a former resident who has not received an exit
- 3                 entitlement to which the former resident is entitled under the former
- 4                 resident's residence contract.

1 **Part 4** **Residence contracts**

2 **Division 4.1** **Residence contracts generally**

3 **19** **Purpose—pt 4**

- 4 (1) The purpose of this part is to state minimum requirements for  
5 residence contracts.
- 6 (2) Nothing in this part prevents a scheme operator for a retirement  
7 village and a resident of the retirement village agreeing (in a  
8 residence contract or otherwise) to conditions that are more  
9 beneficial to the resident than the provisions in this part.

10 **20** **Meaning of *residence contract***

- 11 (1) For this Act, a *residence contract*, in relation to a retirement  
12 village—
- 13 (a) means 1 or more written contracts entered into, or to be entered  
14 into, between a person and the scheme operator for the village  
15 about the matters mentioned in subsection (2); and
- 16 (b) includes—
- 17 (i) any other contract (an *ancillary contract*) between the  
18 person and the scheme operator if the ancillary contract  
19 depends on, or arises out of, the making of the residence  
20 contract or another ancillary contract; and
- 21 (ii) a public information document in relation to a scheme for  
22 a retirement village to which a residence contract relates.
- 23 (2) For subsection (1), a residence contract in relation to a retirement  
24 village must—
- 25 (a) either—
- 26 (i) give, or purport to give, a person an exclusive right to live  
27 in an accommodation unit in the village; or

- 1 (ii) place obligations on a person in relation to the person, or  
2 someone else, living in the village; and
- 3 (b) give, or purport to give, a person a right, in common with other  
4 residents in the village, to use and enjoy the village's  
5 communal facilities; and
- 6 (c) contain or incorporate—
- 7 (i) a service agreement or an agreement to enter into a  
8 service agreement that includes a copy of the service  
9 agreement; and
- 10 (ii) if the residence contract includes an ancillary contract that  
11 is not signed when the residence contract is signed—an  
12 agreement to enter into the ancillary contract that includes  
13 a copy of the ancillary contract; and
- 14 (d) restrict the way in which, or the people to whom—
- 15 (i) the right to live in the village may be disposed of during  
16 the resident's lifetime; and
- 17 (ii) if the resident owns an accommodation unit—the resident  
18 may dispose of the unit during the resident's lifetime.
- 19 (3) To remove any doubt, a residence contract does not include a  
20 contract for the sale of an accommodation unit.
- 21 *Note* The sale of residential property is dealt with under the *Civil Law (Sale*  
22 *of Residential Property) Act 2003*.
- 23 (4) Without limiting the interests that a residence contract may be based  
24 on, a residence contract may be based on a leasehold interest in an  
25 accommodation unit.

1 (5) In this section:

2 *service agreement* means an agreement made between a person and  
3 a scheme operator for a retirement village under which general  
4 services or personal services are supplied for or to the person or  
5 someone else when the person or someone else becomes a resident  
6 of the village.

7 **21 Form and content of residence contracts**

8 A scheme operator for a retirement village must ensure each  
9 residence contract in relation to the village—

10 (a) includes the following information:

11 (i) the cooling-off period for a residence contract and the  
12 right of a resident to rescind the contract under section 32  
13 (Residence contract may be rescinded during cooling-off  
14 period) before the cooling-off period ends;

15 *Note* *Cooling-off period*, for a residence contract in relation to a  
16 retirement village—see s 30.

17 (ii) the settling-in period and the right of a resident to end a  
18 residence contract under section 48 (Residence contract  
19 may be ended during settling-in period) before the  
20 settling-in period ends;

21 *Note* *Settling-in period*, for a residence contract in relation to a  
22 retirement village—see s 47.

23 (iii) the ingoing contribution payable under the residence  
24 contract, or how the contribution is worked out;

25 (iv) the exit fee payable under the residence contract, or how  
26 the fee is worked out;

27 (v) a resident's exit entitlement, or how the entitlement is  
28 worked out;

- 1 (vi) the services charges payable under the residence contract,  
2 or how the charges are worked out, and when the charges  
3 are payable;
- 4 (vii) the proportion of the ingoing contribution attributable to  
5 the capital reserve fund;
- 6 (viii) the proportion of the general services charge attributable  
7 to the maintenance reserve fund for the village;
- 8 (ix) the insurance for the village, and any insurance for which  
9 a resident is responsible;
- 10 (x) any condition that a resident must meet before the  
11 resident can live in an accommodation unit in the village;
- 12 (xi) how a resident can deal with the resident's right to live in  
13 an accommodation unit in the village;
- 14 (xii) if a resident owns an accommodation unit in the  
15 retirement village—how the resident can resell the unit;
- 16 (xiii) the resident's entitlement to audited and unaudited  
17 financial statements for the village;
- 18 (xiv) the dispute resolution process under this Act for a  
19 retirement village dispute;
- 20 (xv) any charge created over retirement village land for the  
21 village or a fund of the village under this Act;
- 22 (xvi) the right of a resident and the scheme operator to end the  
23 residence contract; and
- 24 (b) otherwise complies with any requirements prescribed by  
25 regulation.



1   **22           Offence—noncompliant residence contracts**

2           A scheme operator for a retirement village commits an offence if a  
3           residence contract in relation to the village does not comply with  
4           section 21.

5           Maximum penalty: 100 penalty units.

6   **23           Residence contracts—guidelines**

7           (1) The commissioner for fair trading may issue guidelines  
8           (*terminology guidelines*) setting out the terminology to be used in  
9           residence contracts.

10          (2) A scheme operator must take all reasonable steps to ensure that the  
11          residence contract is drafted using terminology that is—

12           (a) consistent with the guidelines; and

13           (b) otherwise simple and consistent with the public information  
14           document.

15          (3) A terminology guideline is a notifiable instrument.

16          *Note*     A notifiable instrument must be notified under the Legislation Act.

17   **24           Dealing with inconsistencies between Act, residence**  
18   **contracts and public information documents**

19          (1) A provision of a residence contract in relation to a retirement village  
20          has no effect to the extent that it is inconsistent with this Act, or  
21          purports to restrict or exclude the operation of a provision of this  
22          Act.

23          (2) Also, a provision of a residence contract in relation to a retirement  
24          village has no effect to the extent that it purports to restrict or  
25          exclude the operation of a public information document, or a  
26          provision of a public information document, in relation to a scheme  
27          for the village.

1 **Division 4.2 Entering into residence contracts**

2 **25 Offence—entering into residence contracts if scheme not**  
3 **registered**

4 A scheme operator for a retirement village commits an offence if—

- 5 (a) the operator enters into a residence contract in relation to the  
6 village with someone; and  
7 (b) no scheme for the village is registered.

8 Maximum penalty: 540 penalty units.

9 *Note* It is also an offence to operate a retirement village if no scheme for the  
10 village is registered (see s 96).

11 **26 Residence contracts not invalid etc because scheme not**  
12 **registered**

- 13 (1) A residence contract is not invalid or unenforceable only because a  
14 scheme operator entered into the contract with someone (the *other*  
15 *party*) in contravention of section 25.  
16 (2) However, the other party may end the residence contract under  
17 section 51 (Ending residence contracts—residents).

18 **27 Offences—failure to give copies of residence contracts to**  
19 **other parties**

- 20 (1) A scheme operator for a retirement village commits an offence if the  
21 operator—  
22 (a) enters into a residence contract in relation to the village with  
23 someone; and  
24 (b) does not, as soon as practicable after entering into the  
25 residence contract, give the person—  
26 (i) a signed copy of the residence contract; and

1                   (ii) a copy of the public information document in relation to a  
2                   scheme for the village.

3                   Maximum penalty: 100 penalty units.

4                   (2) Subsection (1) (b) (ii) does not apply if the scheme operator gave  
5                   the person a copy of the public information document under  
6                   section 70 (Offences—failure to give public information document  
7                   to prospective resident).

8                   *Note*       The scheme operator has an evidential burden in relation to the matters  
9                   mentioned in s (2) (see Criminal Code, s 58).

10                  (3) A scheme operator for a retirement village commits an offence if—

11                  (a) the operator enters into a residence contract in relation to the  
12                  village with someone; and

13                  (b) the residence contract includes an ancillary contract that is not  
14                  entered into at the time of the residence contract; and

15                  (c) the operator does not, as soon as practicable after entering into  
16                  the residence contract, give the person an unsigned copy of the  
17                  ancillary contract.

18                  Maximum penalty: 100 penalty units.

19                  (4) Subsection (3) does not apply if the terms of the ancillary contract  
20                  are not known at the time the residence contract is entered into.

21                  *Note*       The scheme operator has an evidential burden in relation to the matters  
22                  mentioned in s (4) (see Criminal Code, s 58).

23                  (5) In this section:

24                  *ancillary contract*—see section 20 (1) (b).

1 **Division 4.3 Amending residence contracts**

2 **28 Amending individual residence contracts**

- 3 (1) The parties to a residence contract may only amend the conditions  
4 of the contract by the written agreement of the parties.
- 5 (2) This section is subject to section 29.

6 **29 Amending all residence contracts for retirement village**

- 7 (1) The scheme operator for a retirement village may amend the  
8 conditions of residence contracts for all residents of a retirement  
9 village only if—
- 10 (a) the proposed amendments are no less beneficial than the  
11 existing conditions of the contracts; and
- 12 (b) the residents of the retirement village agree, by special  
13 resolution at a residents meeting, to the proposed amendments.
- 14 (2) The scheme operator for a retirement village must notify, in writing,  
15 each resident of the village of the proposed amendments to the  
16 residence contract within 7 days after the day the special resolution  
17 is made.
- 18 (3) The proposed amendments become effective within 14 days after  
19 the day the special resolution is made, or a later day proposed by the  
20 amendments.

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1 **Division 4.4**                    **Rescinding residence contracts**  
2    **during cooling-off periods for**  
3    **residence contracts**

4 **30**                    **Meaning of *cooling-off period***

5 In this Act:

6 *cooling-off period*, for a residence contract in relation to a  
7 retirement village, means the period starting on the day the contract  
8 is signed by the parties to the contract and ending 21 days after—

- 9 (a) the day the contract is signed; or  
10 (b) if the residence contract is subject to a later event happening—  
11 the day the later event happens.

12 **Example—later event happening**

13 another contract is to be entered into

14 *Note* An example is part of the Act, is not exhaustive and may extend, but  
15 does not limit, the meaning of the provision in which it appears (see  
16 Legislation Act, s 126 and s 132).

17 **31**                    **Offence—failure to notify end of cooling-off periods in**  
18 **certain circumstances**

19 A scheme operator for a retirement village commits an offence if—

- 20 (a) the cooling-off period for a residence contract for the  
21 retirement village starts on a day that a later event happens;  
22 and  
23 (b) the scheme operator fails to give the resident under the  
24 residence contract, as soon as practicable after the event  
25 happens, written notice of—  
26 (i) the date the later event happens; and  
27 (ii) the date the cooling-off period ends.

28 Maximum penalty: 100 penalty units.

1 **32 Residence contract may be rescinded during cooling-off**  
2 **period**

3 A resident of a retirement village may, by written notice to the  
4 scheme operator for the village, rescind a residence contract in  
5 relation to the village before the cooling-off period ends.

6 *Note* For how a resident's ingoing contribution is dealt with on rescission of a  
7 residence contract during the cooling-off period, see div 4.6.

8 **Division 4.5 Dealing with property assigned during**  
9 **cooling-off period**

10 **33 Meaning of *authorised person*—div 4.5**

11 In this division:

12 *authorised person* means—

- 13 (a) the public trustee; or  
14 (b) the lawyer for a scheme operator of a retirement village.

15 **34 Offences—failure to deal with instruments assigning**  
16 **property during cooling-off period**

- 17 (1) A scheme operator for a retirement village commits an offence if—  
18 (a) a person enters into a residence contract to secure the person's,  
19 or someone else's, right to live in the village; and  
20 (b) the person assigns property under the residence contract before  
21 the cooling-off period for the residence contract ends; and  
22 (c) the scheme operator fails to ensure the instrument assigning the  
23 property is held on trust by an authorised person.

24 Maximum penalty: 100 penalty units.

- 1 (2) An authorised person commits an offence if—  
2 (a) the authorised person holds an instrument assigning property  
3 under a residence contract on trust; and  
4 (b) the residence contract is rescinded during the cooling-off  
5 period; and  
6 (c) the authorised person fails to release the instrument to the  
7 person who assigned the property.

8 Maximum penalty: 100 penalty units.

- 9 (3) An authorised person commits an offence if—  
10 (a) the authorised person holds an instrument assigning property  
11 under a residence contract on trust; and  
12 (b) the residence contract is not rescinded during the cooling-off  
13 period; and  
14 (c) the authorised person fails, at the end of the cooling-off period,  
15 to release the instrument to the person to whom the property is  
16 assigned or someone else nominated by the person.

17 Maximum penalty: 100 penalty units.

18 **35 Offences—reassigning property acquired during**  
19 **cooling-off period**

- 20 (1) A person (the *assignee*) commits an offence if—  
21 (a) the assignee acquires property under an instrument assigning  
22 property under a residence contract during the cooling-off  
23 period for the residence contract; and  
24 (b) the residence contract is rescinded; and

- 1 (c) the assignee fails to reassign, as soon as possible after the  
2 assignee becomes aware the residence contract has been  
3 rescinded, the property to the person (the *assignor*) from whom  
4 the assignee acquired it or someone else, at the assignor's  
5 written direction.

6 Maximum penalty: 100 penalty units.

- 7 (2) An assignee commits an offence if—
- 8 (a) the assignee acquires property under an instrument assigning  
9 property under a residence contract during the cooling-off  
10 period of a residence contract; and
- 11 (b) the residence contract is rescinded; and
- 12 (c) the assignee fails to reassign the property free of all interests,  
13 mortgages and other charges to which it has become subject  
14 since the assignee acquired it.

15 Maximum penalty: 100 penalty units.

16 **36 Costs of reassigning property**

17 A person who is assigned property under a residence contract is  
18 responsible for the costs, expenses and duties relating to a  
19 reassignment of the property under section 35.

20 **37 Scheme operator to compensate assignor in certain  
21 circumstances**

- 22 (1) This section applies if a person who is assigned property under a  
23 residence contract (the *assignee*) is required under section 35 to  
24 reassign property to a person (the *assignor*) on rescission of a  
25 residence contract but the assignee—
- 26 (a) has disposed of the property; or



- 1 (b) is unable, when the residence contract is rescinded, to  
2 discharge the interests, mortgages and other charges (if any) to  
3 which the property has become subject since the assignee  
4 acquired it.
- 5 (2) The scheme operator for the retirement village to which the  
6 residence contract relates must pay compensation to—
- 7 (a) the assignor; or  
8 (b) someone else, at the assignor's written direction.
- 9 (3) The amount of compensation payable—
- 10 (a) is the amount equal to the value attributed to the assigned  
11 property under the residence contract (exclusive of GST); and  
12 (b) may be recovered as a debt payable by the scheme operator to  
13 the assignor or the person mentioned in subsection (2) (b).
- 14 (4) If there are 2 or more scheme operators for the retirement village,  
15 the scheme operators are jointly and severally liable to pay the  
16 compensation.

## 17 **Division 4.6 Dealing with ingoing contributions**

### 18 **38 Meaning of *ingoing contribution***

19 In this Act:

20 ***ingoing contribution*** means an amount payable by a person under a  
21 residence contract for a retirement village to secure a right for the  
22 person, or someone else, to live in the retirement village, whether or  
23 not—

- 24 (a) the right to live in the retirement village is enforceable; or  
25 (b) the payment alone secures the right, or something else is also  
26 required to secure the right.

1 **39 Meaning of *trustee*—div 4.6**

2 In this division:

3 *trustee* means—

- 4 (a) the public trustee; or  
5 (b) the lawyer for a scheme operator for a retirement village; or  
6 (c) a real estate agent; or  
7 (d) a licensed trustee company under the Corporations Act,  
8 section 601RAA.

9 **40 Offence—failure to give ingoing contributions to trustee**

- 10 (1) A person commits an offence if the person—  
11 (a) receives an amount as an ingoing contribution under a  
12 residence contract; and  
13 (b) fails to give the amount to a trustee to hold on trust.

14 Maximum penalty: 100 penalty units.

- 15 (2) A receipt issued by a trustee in relation to an amount received under  
16 subsection (1) is evidence that a person has not contravened  
17 subsection (1).

- 18 (3) Subsection (1) does not apply if a person receives an amount after  
19 the latest day that the amount would otherwise be required to be  
20 held on trust under section 41 (1) (b).

21 *Note 1* The person has an evidential burden in relation to the matters mentioned  
22 in s (3) (see Criminal Code, s 58).

23 *Note 2* For how a person may deal with an amount received in these  
24 circumstances, see s 42.

1    **41           Offences—failure to hold and repay ingoing contributions**

- 2           (1) A trustee commits an offence if the trustee—
- 3               (a) receives an amount as an ingoing contribution in relation to a
- 4                 residence contract; and
- 5               (b) fails to hold the amount on trust until the day the latest of the
- 6                 following happens:
- 7                   (i) the day a condition precedent to a residence contract is
- 8                     fulfilled;
- 9                   (ii) the day a cooling-off period in relation to the residence
- 10                  contract ends;
- 11                  (iii) if the amount relates to an accommodation unit that has
- 12                     not previously been occupied—the day the
- 13                     accommodation unit is suitable for habitation and the
- 14                     resident is entitled to vacant possession of the unit.

15                           **Examples—when a unit is not suitable for habitation**

- 16                           1    reticulated water is not connected to the accommodation unit
- 17                           2    all sanitary installations are not installed or are not operational
- 18                             in the accommodation unit

19                           *Note*    An example is part of the Act, is not exhaustive and may

20                                    extend, but does not limit, the meaning of the provision in

21                                    which it appears (see Legislation Act, s 126 and s 132).

22                           Maximum penalty: 100 penalty units.

- 23           (2) A trustee commits an offence if the trustee—
- 24               (a) receives an amount as an ingoing contribution in relation to a
- 25                 residence contract before the latest day that the amount is
- 26                 required to be held on trust under subsection (1) (b); and
- 27               (b) fails to pay the amount on the latest day to the person lawfully
- 28                 entitled to it.

29                           Maximum penalty: 100 penalty units.

- 1 (3) Subsection (2) does not apply if the trustee is given a notice that all  
2 or part of the amount is in dispute.

3 **42 Receiving ingoing contributions after events**

4 If a person receives an amount as an ingoing contribution under a  
5 residence contract after the latest day that the amount would  
6 otherwise have been required to be held on trust under  
7 section 41 (1) (b), the person—

- 8 (a) if the person is lawfully entitled to the amount—may keep the  
9 amount; or  
10 (b) in any other case—must pay the amount directly to the person  
11 lawfully entitled to it.

12 **43 Offence—failure to give notice of dispute**

13 A scheme operator for a retirement village commits an offence if—

- 14 (a) a retirement village dispute arises between the scheme operator  
15 and a resident of the village about who is lawfully entitled to  
16 an amount received as an ingoing contribution in relation to a  
17 residence contract; and  
18 (b) the scheme operator does not immediately give written notice  
19 to the trustee of the amount in dispute.

20 Maximum penalty: 100 penalty units.

21 *Note Retirement village dispute—see s 197.*

22 **44 Offence—failure to hold disputed amounts in trust**

23 A trustee commits an offence if the trustee—

- 24 (a) receives an amount to hold on trust under this division; and  
25 (b) is given written notice that all or part of the amount  
26 (the *disputed amount*) is in dispute; and

1 (c) fails to hold the disputed amount on trust until the dispute is  
2 resolved—

3 (i) as provided for under this Act; or

4 (ii) by written agreement between the parties.

5 Maximum penalty: 100 penalty units.

6 **45 Offence—failure to repay trust amounts after residence**  
7 **contracts rescinded during cooling-off period**

8 A trustee commits an offence if—

9 (a) the trustee holds an amount received as an ingoing contribution  
10 in relation to a residence contract; and

11 (b) the residence contract is rescinded during the cooling-off  
12 period for the contract; and

13 (c) the trustee fails to immediately pay the amount to the person  
14 lawfully entitled to it.

15 Maximum penalty: 100 penalty units.

16 **46 Unpaid amounts recoverable as debts**

17 If a person (the *payer*) who is required to pay an amount to someone  
18 (the *payee*) under this division does not pay the amount, the payee  
19 may recover it as a debt payable by the payer to the payee.

1 **Division 4.7 Ending residence contracts during**  
2 **settling-in period**

3 **47 Meaning of *settling-in period***

4 For this Act, a *settling-in period*, for a residence contract in relation  
5 to a retirement village, ends—

- 6 (a) 90 days after the day the resident is entitled to occupy the  
7 accommodation unit in the village; or
- 8 (b) if the resident occupies the accommodation unit before the day  
9 mentioned in paragraph (a)—90 days after the day the resident  
10 first occupies the unit; or
- 11 (c) if the scheme operator and the resident agree another day—the  
12 agreed day.

13 **48 Residence contract may be ended during settling-in**  
14 **period**

- 15 (1) A resident of a retirement village may end a residence contract with  
16 the scheme operator for the village by written notice to the operator  
17 before the settling-in period ends.
- 18 (2) To remove any doubt a resident may, but need not, have started to  
19 occupy an accommodation unit to which a residence contract relates  
20 before ending the contract under this section.

21 **49 Amounts payable by residents if residence contract**  
22 **ended during settling-in period**

- 23 (1) If a resident ends a residence contract under section 48, the resident  
24 must pay the scheme operator—
- 25 (a) fair market rent for the period (if any) that the resident  
26 occupied the accommodation unit under the contract; and
- 27 (b) the cost of any reinstatement work required to be undertaken in  
28 relation to the unit; and

- 1 (c) an administration fee under subsection (2); and  
2 (d) any other amount prescribed by regulation.
- 3 (2) An administration fee for subsection (1) (c)—  
4 (a) must be reasonable; and  
5 (b) if a maximum amount is prescribed by regulation—must not  
6 exceed the prescribed amount.
- 7 (3) An amount payable by a resident under this section may be off-set  
8 against an amount that is to be refunded to the resident under  
9 section 59 (Offence—failure to pay exit entitlements to residents  
10 who own units) and 60 (Offence—failure to pay exit entitlement to  
11 residents who do not own units).

12 **Division 4.8 Ending residence contracts in other**  
13 **circumstances**

14 **50 Meaning of *resident*—div 4.8**

15 In this division:

16 *resident* includes a person who, for someone else, enters into a  
17 residence contract to secure the other person's right to live in a  
18 retirement village.

19 **51 Ending residence contracts—div 4.8—effect**

20 To remove any doubt, ending a residence contract under this  
21 division does not extinguish any rights, including any cause of  
22 action, that have accrued to either party under the contract.

- 1     **52**           **Ending residence contracts—residents**
- 2           (1) A resident of a retirement village may end a residence contract with  
3           a scheme operator for the village by 1 month’s written notice given  
4           to the scheme operator for the village.
- 5           (2) If no scheme for the retirement village is registered, the notice  
6           must—
- 7                 (a) be given not later than 14 days after the day the resident  
8                 becomes aware no scheme is registered; and
- 9                 (b) state the day, not earlier than the day the notice is given, when  
10                the residence contract ends.
- 11     **53**           **Ending residence contracts—scheme operators**
- 12           (1) The scheme operator for a retirement village may end a residence  
13           contract in relation to the village by giving the resident under the  
14           contract 14 days written notice if the scheme operator believes on  
15           reasonable grounds that—
- 16                 (a) the resident has intentionally or recklessly—
- 17                         (i) injured a person while the person is in the retirement  
18                         village; or
- 19                         (ii) seriously damaged the resident’s accommodation unit; or
- 20                         (iii) seriously damaged property of another person in the  
21                         retirement village; or
- 22                 (b) the resident is likely to, intentionally or recklessly, do  
23                 something mentioned in paragraph (a).
- 24           (2) The scheme operator for a retirement village may end a residence  
25           contract by giving the resident 2 months written notice if—
- 26                 (a) the resident has committed a material breach of the residence  
27                 contract; or



- 1 (b) the operator believes on reasonable grounds that the resident  
2 has abandoned the resident's right to live in the village; or
- 3 (c) the operator and a person who has assessed the resident's care  
4 needs under the *Aged Care Act 1997* (Cwlth), section 22-4  
5 (Assessments of care needs) believe on reasonable grounds the  
6 resident's kind of accommodation is now unsuitable for the  
7 resident.
- 8 **Examples—par (c)**
- 9 1 the resident lives in an independent living unit and now needs help  
10 with personal care not normally provided by the scheme operator
- 11 2 the resident's increased care needs cannot be met by a relative who  
12 lives with the resident
- 13 *Note 1* A relative of a resident who is living in an accommodation unit  
14 when the resident's residence contract ends under s 55 may have  
15 a right to continue to live in the accommodation unit (see div 6.4).
- 16 *Note 2* An example is part of the Act, is not exhaustive and may extend,  
17 but does not limit, the meaning of the provision in which it  
18 appears (see Legislation Act, s 126 and s 132).
- 19 (3) However, the scheme operator must not give effect to a notice given  
20 under subsection (2) (c) unless satisfied on reasonable grounds that  
21 suitable accommodation is available for the resident.
- 22 (4) A notice given under this section must state—
- 23 (a) the grounds on which the residence contract is being ended;  
24 and
- 25 (b) the day by which the resident must vacate the accommodation  
26 unit.
- 27 (5) If the scheme operator does not know the resident's current address,  
28 the operator may give the notice by publishing it in—
- 29 (a) a daily newspaper; and  
30 (b) a newspaper circulating throughout Australia.

- 1 **54 Ending residence contracts—resident’s address**  
2 **unknown**
- 3 (1) This section applies if—
- 4 (a) a scheme operator for a retirement village wants to end a  
5 residence contract under section 53; and
- 6 (b) the scheme operator does not know the current address for the  
7 resident under the contract.
- 8 (2) The scheme operator may give the notice under section 53 by  
9 publishing it in—
- 10 (a) a daily newspaper; or  
11 (b) a newspaper circulating throughout Australia.
- 12 (3) However, a notice given under subsection (2) must not include the  
13 grounds for ending the residence contract.
- 14 Maximum penalty: 50 penalty units.
- 15 **55 Residence contracts automatically end on death**
- 16 A residence contract in a retirement village ends when—
- 17 (a) the resident under the contract dies; or  
18 (b) if there is more than 1 resident under the contract—the last  
19 resident dies.
- 20 *Note* A relative of a resident who is living in an accommodation unit when  
21 the resident’s residence contract ends may have a right to continue to  
22 live in the accommodation unit (see div 6.4).

1       **Division 4.9                      Exit entitlements**

2       **56                      Residents may request estimates of exit entitlements**

3           (1) A resident of a retirement village may ask the scheme operator for  
4           the village to give the resident a written estimate of the resident's  
5           exit entitlement.

6           (2) The request must—

7               (a) be in writing; and

8               (b) state that the resident is considering ending the resident's  
9               residence contract; and

10               (c) ask the scheme operator to give the resident a written estimate  
11               of the resident's exit entitlement as at the date of the request.

12       **57                      Offence—failure to give written estimates**

13           (1) A scheme operator for a retirement village commits an offence if—

14               (a) a resident of the village asks for a written estimate of the  
15               resident's exit entitlement under section 56 (1); and

16               (b) the operator fails to give the resident the written estimate  
17               within 14 days after the day the operator receives the request.

18           Maximum penalty: 40 penalty units.

19           (2) Subsection (1) does not apply if the scheme operator has given the  
20           resident a written estimate of the resident's exit entitlement during  
21           the 6 months immediately preceding the resident's request.

22           *Note*       The scheme operator has an evidential burden in relation to the matters  
23           mentioned in s (2) (see Criminal Code, s 58).

1 **58 Offence—failure to refund ingoing contribution if contract**  
2 **ended where scheme not registered**

- 3 (1) A scheme operator for a retirement village commits an offence if—  
4 (a) a resident of the village ends a residence contract in relation to  
5 the village under section 51 (2) (Ending residence contracts—  
6 residents); and  
7 (b) the operator fails to refund the full amount of the resident’s  
8 ingoing contribution to the resident within 30 days after the  
9 day the residence contract ends.

10 Maximum penalty: 540 penalty units.

- 11 (2) A resident of a retirement village may recover an amount owing  
12 under subsection (1) as a debt payable by the scheme operator of the  
13 village to the resident.

14 **59 Offence—failure to pay exit entitlements to residents who**  
15 **own units**

- 16 (1) This section applies if a resident of a retirement village owns an  
17 accommodation unit in the village.  
18 (2) The scheme operator for the retirement village commits an offence  
19 if the operator fails to pay an exit entitlement to the resident within  
20 14 days after the earliest of the following:  
21 (a) the day the operator receives full payment from an incoming  
22 resident for the resident’s accommodation unit;  
23 (b) the day the operator enters into a residence contract with an  
24 incoming resident of the accommodation unit;  
25 (c) the day a person starts living in the accommodation unit with  
26 the consent of the operator;  
27 (d) if the resident’s residence contract states a day for payment—  
28 the day stated in the residence contract;

1 (e) if the scheme operator buys the unit from the resident—the day  
2 the operator completes the purchase;

3 (f) 6 months after the day the resident delivers up vacant  
4 possession of the unit to the operator.

5 Maximum penalty: 50 penalty units.

6 **60 Offence—failure to pay exit entitlement to residents who**  
7 **do not own units**

8 (1) This section applies if a resident of a retirement village does not  
9 own an accommodation unit in the village.

10 (2) The scheme operator for the retirement village commits an offence  
11 if the operator fails to pay an exit entitlement to the resident by the  
12 earliest of the following:

13 (a) 14 days after the day the operator receives full payment from  
14 an incoming resident for the resident's accommodation unit;

15 (b) 14 days after the day the operator enters into a residence  
16 contract with an incoming resident of the accommodation unit;

17 (c) 14 days after the day a person starts living in the  
18 accommodation unit with the consent of the operator;

19 (d) 6 months after the day the resident delivers up vacant  
20 possession of the unit to the operator.

21 **61 Offence—failure to give statement about exit entitlement**  
22 **and liabilities**

23 (1) A scheme operator for a retirement village commits an offence if the  
24 operator fails to give a resident of the village an exit entitlement and  
25 liabilities statement when the operator pays the exit entitlement.

26 Maximum penalty: 10 penalty units.

- 1 (2) In this section:
- 2 ***exit entitlement and liabilities statement*** means a statement that sets  
3 out the following information in relation to a resident of a retirement  
4 village:
- 5 (a) the exit fee, if any, payable by the resident;
- 6 (b) accrued or outstanding services charges, if any, payable by the  
7 resident;
- 8 (c) any amount payable by the resident in relation to the sale of the  
9 accommodation unit;
- 10 (d) any other amount payable by the resident under a residence  
11 contract;
- 12 (e) for a long-term resident—the sale price of the resident’s  
13 accommodation unit;
- 14 (f) the amount of the resident’s exit entitlement.
- 15 ***long-term resident*** means a resident who does not own an  
16 accommodation unit but whose residence contract—
- 17 (a) is in the form of a long-term lease; and
- 18 (b) includes a provision that entitles the resident to at least 50% of  
19 any capital gain in relation to the unit.
- 20 *Note* ***Own***—see the dictionary.

21 **62 Orders for payment of exit entitlements on sale of units**

- 22 (1) A resident of a retirement village may apply to the ACAT for an  
23 order directing a scheme operator for the village to—
- 24 (a) if the operator does not pay the exit entitlement within the time  
25 required under section 59—pay an exit entitlement; or

- 1                      (b) if the amount of the exit entitlement is not calculated in  
2                      accordance with this Act and any relevant residence contract—  
3                      recalculate an exit entitlement.
- 4                      (2) The ACAT may also make an order for the payment of interest at a  
5                      rate determined by the ACAT if the ACAT considers it appropriate  
6                      to do so.

7                      **Division 4.10                      Enforcing residence contracts**

8                      **63                      Enforcing residence contracts**

- 9                      (1) A residence contract in relation to a retirement village is enforceable  
10                      against the following people for the recovery of all or part of the exit  
11                      entitlement:
- 12                      (a) a person who is a party to the residence contract;
- 13                      (b) a person who is not a party to the residence contract but who,  
14                      when the contract was entered into—
- 15                      (i) was the scheme operator for the village to which the  
16                      residence contract relates; or
- 17                      (ii) owned the retirement village land of the village;
- 18                      (c) a person who is not a party to the residence contract but who,  
19                      when the contract is to be enforced—
- 20                      (i) is the scheme operator for the village to which the  
21                      residence contract relates; or
- 22                      (ii) owns the retirement village land of the village.
- 23                      (2) For the purpose of enforcing a residence contract against a person  
24                      mentioned in subsection (1) (b) or (c), the person is taken to be the  
25                      scheme operator under the contract.

- 1 (3) A court may make an order under this section against a person  
2 mentioned in subsection (1) (b) only if the court is satisfied that—
- 3 (a) an order against a person mentioned in subsection (1) (a) or (c)  
4 would be ineffectual; and
- 5 (b) in the particular circumstances, it is just to make the order.

6 **64 No liability for breach of residence contracts**

7 A scheme operator for a retirement village is not liable for breach of  
8 a residence contract in relation to the village if—

- 9 (a) the breach results from the operator's failure to supply a  
10 general service to a resident under the residence contract; and
- 11 (b) the cost of supplying the service is more than the general  
12 services charge for the service; and
- 13 (c) the residents of the village have not approved an increase in the  
14 general services charge to cover the cost of supplying the  
15 service under section 146 (Offence—increasing general  
16 services charge by more than CPI); and
- 17 (d) in all the circumstances, the operator acted reasonably.



1 **Part 5** **Other documents relating to**  
2 **retirement villages**

3 **Division 5.1** **General inquiry documents and public**  
4 **information documents**

5 **65** **Meaning of *public information document***

6 In this Act:

7 *public information document*, in relation to a scheme for a  
8 retirement village, means a document that complies with the  
9 requirements stated in section 67.

10 **66** **Definitions—div 5.1**

11 In this division:

12 *accommodation information*, for a scheme for a retirement village,  
13 means—

- 14 (a) the kind and number of accommodation units in the retirement  
15 village; and
- 16 (b) the number of accommodation units in the village that are  
17 available for sale and the sale price of each unit or, if only a  
18 right to live in a unit is available, the ingoing contribution for  
19 the right to live in the unit; and
- 20 (c) the kind of tenure or interest a resident obtains in an  
21 accommodation unit in the retirement village; and

22 **Examples**

- 23 1 leasehold interest  
24 2 licence to occupy  
25 3 long-term lease

26 *Note* An example is part of the Act, is not exhaustive and may extend,  
27 but does not limit, the meaning of the provision in which it  
28 appears (see Legislation Act, s 126 and s 132).

1 (d) the nature of insurance arrangements for the village, including  
2 the amount of any excess to which any insurance policy is  
3 subject.

4 ***dispute resolution information***, for a scheme for a retirement  
5 village, means—

6 (a) the kinds of disputes for which dispute resolution is available;  
7 and

8 (b) how an application for a retirement village dispute may be  
9 made to the ACAT; and

10 (c) the fee for an application to the ACAT for resolution of a  
11 retirement village dispute, or where information about the fee  
12 can be found.

13 ***facilities information***, for a scheme for a retirement village,  
14 means—

15 (a) the facilities the scheme operator for the retirement village  
16 proposes to offer a resident under a residence contract; and

17 (b) the facilities the scheme operator proposes to offer a resident  
18 under a residence contract, depending on sales activity, finance  
19 availability or market conditions for the retirement village  
20 (each a ***contingency***) and when they are proposed to be  
21 offered; and

22 (c) the particular contingency for offering particular facilities  
23 mentioned in paragraph (b); and

24 (d) information about when the scheme operator proposes to start  
25 levying a charge for the particular facilities mentioned in  
26 paragraph (b).

27 **Example—par (d)**

28 the scheme operator proposes to start levying a charge for the particular  
29 facility when the facility is in place

- 1            ***fund information***, for a scheme for a retirement village, means—
- 2            (a) the details of funds the scheme operator is required to keep;
- 3            and
- 4            (b) the balance in each fund at the end of the financial year
- 5            immediately preceding the financial year for which
- 6            information is given; and
- 7            (c) the capital replacement fund contribution; and
- 8            (d) details of the report under section 117 (Capital replacement
- 9            reserve—reports) used to decide the proportion of a resident’s
- 10            ingoing contribution to be paid to the capital replacement fund
- 11            contribution.

12            ***resale process information***, for an accommodation unit in a

13            retirement village, means—

- 14            (a) how the asking price for the accommodation unit is to be
- 15            decided; and
- 16            (b) when reinstatement work will be required and who pays for it;
- 17            and
- 18            (c) the process for, and effect of, accepting offers, including when
- 19            offers may be refused; and
- 20            (d) the provision of monthly sales information; and
- 21            (e) how the expenses of sale are to be shared; and
- 22            (f) how the capital gain for the sale is to be dealt with.

23            *Note*     ***Reinstatement work***, in relation to an accommodation unit—see s 80.

24            ***resident contribution information***, for a resident of a retirement

25            village, means—

- 26            (a) information about each charge, contribution or other amount
- 27            that the resident may or must pay in relation to the village; and

- 1 (b) how the exit fee is to be worked out, including a table showing  
2 the minimum and maximum exit fee amounts payable under a  
3 residence contract over the term of the residence contract; and
- 4 (c) how the general services charge is worked out in relation to the  
5 village's total operating costs.
- 6 **Examples—par (a)**  
7 ingoing contribution, exit fee, general services charge, personal services charge,  
8 contribution to a particular fund
- 9 ***resident rights information***, for a resident of a retirement village,  
10 means—
- 11 (a) what the resident's rights are to rescind a residence contract in  
12 the cooling-off period; and
- 13 (b) what the resident's rights are, under a residence contract and  
14 this Act, to be given financial information about the scheme for  
15 the village; and
- 16 (c) what the resident's rights are if the residence contract is ended;  
17 and
- 18 (d) anything else prescribed by regulation to be resident rights  
19 information.
- 20 ***retirement village land information***, for a retirement village,  
21 means—
- 22 (a) details of any charge created under part 9 (Charges created  
23 over retirement village land to protect residents' rights) over  
24 retirement village land; and
- 25 (b) whether or not there are any other encumbrances over  
26 retirement village land.

1            *scheme operator payment information*, for a scheme for a  
2 retirement village, means information about payments a scheme  
3 operator for the village must pay a resident of the village, including  
4 how any exit entitlement is to be worked out if a resident's right to  
5 live in an accommodation unit ends.

6            *services information*, for a scheme for a retirement village, means  
7 the general services and personal services the scheme operator  
8 undertakes to offer a resident under a residence contract in relation  
9 to the village.

## 10    **67            Form and content of general inquiry documents**

11            A general inquiry document in relation to a scheme for a retirement  
12 village must—

- 13            (a) give a brief description of the services and facilities of the  
14 retirement village; and
- 15            (b) comply with any requirement prescribed by regulation.

16            *Note 1*    Power to make a statutory instrument (including a regulation) includes  
17 power to make different provision for different categories (see  
18 Legislation Act, s 48).

19            *Note 2*    If a form is approved under s 217 for this provision, the form must be  
20 used.

## 21    **68            Offence—failure to give copy of general inquiry 22 document**

23            A scheme operator for a retirement village commits an offence if the  
24 scheme operator fails to give a general inquiry document to a  
25 prospective resident within 14 days after the day the prospective  
26 resident—

- 27            (a) requests a copy of the document; or
- 28            (b) expresses an interest in the village.

29            Maximum penalty: 10 penalty units.

- 1     **69**           **Form and content of public information documents**
- 2           (1) A public information document in relation to a scheme for a  
3           retirement village must—
- 4               (a) relate to only 1 scheme; and
- 5               (b) state any age limits for residents that apply to the scheme; and
- 6               (c) include the following information:
- 7                     (i) accommodation information;
- 8                     (ii) dispute resolution information;
- 9                     (iii) facilities information;
- 10                    (iv) fund information;
- 11                    (v) resale process information;
- 12                    (vi) resident contribution information;
- 13                    (vii) resident rights information;
- 14                    (viii) retirement village land information;
- 15                    (ix) scheme operator payment information;
- 16                    (x) services information;
- 17                    (xi) any other information prescribed by regulation.
- 18           *Note*     If a form is approved under s 217 for a public information document,  
19                     the form must be used.
- 20           (2) After a scheme for a retirement village is registered, a copy of the  
21           registration certificate for the scheme must be attached to the public  
22           information document.

- 1     **70**           **Offences—failure to give public information document to**  
2                   **prospective resident**
- 3           (1) A scheme operator for a retirement village commits an offence if—
- 4               (a) a prospective resident of the village—
- 5                   (i) requests a copy of a public information document in  
6                       relation to the scheme for the village; or
- 7                   (ii) expresses an interest in an accommodation unit in the  
8                       village; and
- 9               (b) the operator fails to give the prospective resident a copy of the  
10                   public information document within 14 days after the day the  
11                   operator receives the request or expression of interest.
- 12               Maximum penalty: 100 penalty units.
- 13           (2) A scheme operator for a retirement village commits an offence if the  
14               operator—
- 15               (a) enters into a residence contract with a person in relation to the  
16                   village; and
- 17               (b) fails to give the person a public information document in  
18                   relation to the scheme for the village at least 14 days before the  
19                   day the operator enters into the contract with the person.
- 20               Maximum penalty: 540 penalty units.
- 21           (3) Subsection (2) does not apply if—
- 22               (a) a resident who owns an accommodation unit in a retirement  
23                   village sells the unit; and
- 24               (b) the resident fails to give the scheme operator for the village  
25                   sufficient notice of the proposed sale to allow the operator to  
26                   give a person a public information document within the time  
27                   mentioned in subsection (2); and

- 1 (c) the scheme operator gives the public information document as  
2 soon as practicable after receiving the notice of sale.

3 *Note* The scheme operator has an evidential burden in relation to the matters  
4 mentioned in s (3) (see Criminal Code, s 58).

5 **71 Offences—failure to notify inaccuracies in public**  
6 **information documents**

- 7 (1) A scheme operator for a retirement village commits an offence if—  
8 (a) a detail in a public information document in relation to the  
9 scheme for the village becomes materially inaccurate (an  
10 *inaccuracy*); and  
11 (b) the inaccuracy will or is likely to materially affect a resident of  
12 the village; and  
13 (c) the operator fails to give written notice of the inaccuracy to the  
14 resident within 28 days after the day the operator becomes  
15 aware of the inaccuracy.

16 Maximum penalty: 540 penalty units.

- 17 (2) A scheme operator for a retirement village commits an offence if—  
18 (a) a detail in a public information document in relation to the  
19 village becomes materially inaccurate (an *inaccuracy*); and  
20 (b) the inaccuracy will or is likely to materially affect a resident of  
21 the village; and  
22 (c) the operator fails to give written notice of the inaccuracy to the  
23 commissioner for fair trading within 28 days after the day the  
24 operator becomes aware of the inaccuracy.

25 Maximum penalty: 540 penalty units.

- 26 (3) A scheme operator for a retirement village commits an offence if—  
27 (a) a detail in a public information document in relation to the  
28 village becomes materially inaccurate (an *inaccuracy*); and



- 1 (b) a person has signed a residence contract in relation to the  
2 village; and
- 3 (c) the settling-in period for the residence contract has not ended;  
4 and
- 5 (d) the operator fails to give written notice of the inaccuracy to the  
6 person—
- 7 (i) if the cooling-off period has not ended—before the  
8 cooling-off period ends; or
- 9 (ii) if the cooling-off period has ended—before the settling-in  
10 period ends; or
- 11 (iii) if the operator has a reasonable excuse for not giving the  
12 notice before the relevant period mentioned in  
13 subparagraph (i) or (ii)—as soon as practicable after  
14 becoming aware of the inaccuracy.
- 15 Maximum penalty: 540 penalty units.
- 16 (4) A scheme operator for a retirement village commits an offence if—
- 17 (a) a detail in a public information document in relation to the  
18 village becomes materially inaccurate (an *inaccuracy*); and
- 19 (b) a person has signed a residence contract in relation to the  
20 village; and
- 21 (c) the settling-in period for the residence contract has not ended;  
22 and
- 23 (d) the operator fails to give written notice of the inaccuracy to the  
24 person—
- 25 (i) before the settling-in period ends; or

1 (ii) if the operator has a reasonable excuse for not giving the  
2 notice before the settling-in period ends—as soon as  
3 practicable after becoming aware of the inaccuracy.

4 Maximum penalty: 540 penalty units.

- 5 (5) A scheme operator for a retirement village commits an offence if—
- 6 (a) a detail in a public information document in relation to the  
7 village becomes materially inaccurate (an *inaccuracy*); and
- 8 (b) a person has told the operator that the person intends to enter  
9 into a residence contract in relation to the village; and
- 10 (c) the operator fails to give written notice of the inaccuracy to the  
11 person before the person enters into the residence contract.

12 Maximum penalty: 540 penalty units.

- 13 (6) For this section, a public information document becomes *materially*  
14 *inaccurate* if the document becomes inaccurate in a way that may  
15 materially affect the interests of a resident of the retirement village  
16 to which the public information document relates.

17 **72 Offence—failure to correct inaccuracies in public**  
18 **information documents**

19 A scheme operator for a retirement village commits an offence if—

- 20 (a) a detail in a public information document in relation to the  
21 village becomes inaccurate (an *inaccuracy*); and
- 22 (b) the operator fails to correct the inaccuracy as soon as  
23 practicable after becoming aware of the inaccuracy.

24 Maximum penalty: 540 penalty units.

1 **Division 5.2**                      **Other matters**

2 **73**                      **Access by residents to certain documents**

3                      (1) On the request of a resident of a retirement village, the scheme  
4 operator for the village must, in relation to a relevant document in  
5 the operator's possession—

6                                      (a) allow the resident to inspect the relevant document; or

7                                      (b) on payment of reasonable copying costs, give a copy of the  
8 relevant document to the resident.

9                      *Note*                      The scheme operator must give a resident a copy of a residence contract  
10 and public information document in relation to the residence contract  
11 (see s 27 and s 70).

12                      (2) The request must—

13                                      (a) be in writing; and

14                                      (b) state a time for the resident to inspect or obtain a copy of the  
15 relevant document that is at least 7 days after the day the  
16 request is made.

17                      (3) In this section:

18                                      *relevant document* means a resident's residence contract for a  
19 retirement village or public information document in relation to the  
20 scheme for the village.

21 **74**                      **Offence—failure to comply with requests for access**

22                      A scheme operator for a retirement village commits an offence if the  
23 operator fails to comply with a request under section 73.

24                      Maximum penalty: 10 penalty units.

- 1    **75           Residential care service information**
- 2           (1) This section applies if a scheme operator for a retirement village—
- 3               (a) is approved to provide a residential care service; and
- 4               (b) promotes the residential care service to residents of the village.
- 5           *Note*     A person may be approved to provide a residential care service under
- 6                       the *Aged Care Act 1997* (Cwlth).
- 7           (2) Any promotional material in relation to the residential care services
- 8               must include a statement to the following effect:
- 9               ‘Access to a residential care service is subject to being assessed as
- 10               in need of the service under the *Aged Care Act 1997* (Cwlth). A
- 11               place in a residential care service cannot be guaranteed.’.
- 12           (3) In this section:
- 13               *residential care service*—see the *Aged Care Act 1997* (Cwlth),
- 14               dictionary.

1 **Part 6** **Dealing with accommodation**  
2 **units**

3 **Division 6.1** **Waiting list fees**

4 **76** **Meaning of *waiting list fee*—div 6.1**

5 In this division:

6 *waiting list fee*, for a retirement village, means any amount paid to  
7 the scheme operator for the village, other than—

- 8 (a) an ingoing contribution; or  
9 (b) a payment under a residence contract in relation to the village.

10 **77** **Offence—requiring or accepting waiting list fees**

11 (1) A scheme operator for a retirement village commits an offence if the  
12 operator requires or accepts payment of a waiting list fee from a  
13 person.

14 Maximum penalty: 100 penalty units.

15 (2) Subsection (1) does not apply if—

- 16 (a) the fee is not more than \$200, or another amount prescribed by  
17 regulation; and  
18 (b) the scheme operator has a written policy setting out the way  
19 the waiting list operates; and  
20 (c) the scheme operator gives the person who pays the waiting list  
21 fee, when payment is made—  
22 (i) a copy of the policy; and  
23 (ii) a receipt for the payment.

24 *Note* The scheme operator has an evidential burden in relation to the matters  
25 mentioned in s (2) (see Criminal Code, s 58).

1 **78 Offences—failure to repay waiting list fees**

- 2 (1) A scheme operator for a retirement village commits an offence if—
- 3 (a) a waiting list fee for the village is paid by or on behalf of a  
4 prospective resident; and
- 5 (b) the prospective resident later enters into a residence contract in  
6 relation to the village; and
- 7 (c) the operator fails to refund the waiting list fee to the person  
8 lawfully entitled to it when the prospective resident enters into  
9 the residence contract.

10 Maximum penalty: 100 penalty units.

- 11 (2) A scheme operator for a retirement village commits an offence if—
- 12 (a) a waiting list fee for the village is paid by or on behalf of a  
13 prospective resident; and
- 14 (b) the prospective resident does not later enter into a residence  
15 contract; and
- 16 (c) the operator fails to refund the waiting list fee to the person  
17 lawfully entitled to it within 14 days after the day the operator  
18 receives a written request from that person.

19 Maximum penalty: 100 penalty units.

- 20 (3) Subsection (1) does not apply if—
- 21 (a) an ingoing contribution is payable in relation to the retirement  
22 village; and
- 23 (b) the scheme operator deducts the waiting list fee from the  
24 ingoing contribution.

25 *Note* The scheme operator has an evidential burden in relation to the matters  
26 mentioned in s (3) (see Criminal Code, s 58).

1    **79           Orders for repayment of waiting list fees**

- 2           (1) A resident may apply to the ACAT for an order directing a scheme  
3           operator for a retirement village to repay a waiting list fee.
- 4           (2) The ACAT may also, if the ACAT considers it appropriate, make an  
5           order for the payment of interest at a rate determined by the ACAT.

6    **Division 6.2           Condition of accommodation units**

7    **80           Meaning of *reinstatement work***

8           In this Act:

9           *reinstatement work*, in relation to an accommodation unit, means  
10          any repairs to the accommodation unit needed to restore it as nearly  
11          as possible to the same condition (excluding fair wear and tear) as  
12          set out in the condition report.

13   **81           Definitions—div 6.2**

14          In this division:

15          *condition report*—see section 82 (1).

16          *resident*, of a retirement village, does not include a person who  
17          owns an accommodation unit in the village.

18          *Note    Own*—see the dictionary.

19   **82           Condition reports**

- 20          (1) A scheme operator for a retirement village must give the resident of  
21          the village 2 copies of a report (a *condition report*) about the state of  
22          repair or general condition of the resident's accommodation unit,  
23          and any goods provided with the unit, on the day the resident is  
24          given the report.
- 25          (2) The report must be—
- 26               (a) signed by the scheme operator; and

- 1 (b) given to the resident not later than the day after the day the  
2 resident takes possession of the accommodation unit.
- 3 (3) The resident must, not later than 2 weeks after the day the resident  
4 receives the copies of the report, return to the scheme operator  
5 1 copy of the report—
- 6 (a) signed by the resident; and
- 7 (b) if the resident disagrees with the whole or part of the report—  
8 stating that the resident disagrees with the report and what part  
9 the resident disagrees with.
- 10 (4) If the resident returns a signed copy of the report without any other  
11 notations, the resident is taken to have agreed with the whole of the  
12 report.

13 **83 Condition on vacating units**

- 14 (1) A resident of a retirement village must, on vacating an  
15 accommodation unit, leave the resident's accommodation unit as  
16 nearly as possible in the same condition (excluding fair wear and  
17 tear) as set out in the condition report.
- 18 (2) The scheme operator for the retirement village may require the  
19 resident to meet the cost of any reinstatement work to the resident's  
20 accommodation unit.
- 21 (3) The resident may apply to the ACAT for an order in relation to the  
22 cost of reinstatement work if the resident—
- 23 (a) disagrees that the work is needed; or  
24 (b) considers the cost is excessive.
- 25 (4) In an application to the ACAT under this section—
- 26 (a) the scheme operator bears the onus of substantiating the cost of  
27 the reinstatement work; and



- 1 (b) the ACAT may—
- 2 (i) if it considers that the scheme operator has not
- 3 substantiated the cost—order the operator to withdraw the
- 4 claim; or
- 5 (ii) if it considers that the scheme operator has substantiated
- 6 the cost, in whole or in part—order the resident to pay the
- 7 cost or an amount ordered by the ACAT to meet the cost
- 8 of the reinstatement work.
- 9 (5) This section is subject to section 84.

10 **84 Renovations and alteration of fixtures or fittings**

- 11 (1) A resident of a retirement village may carry out either of the
- 12 following only with the written consent of the scheme operator for
- 13 the village:
- 14 (a) add, remove or alter any fixtures or fittings (an *alteration*) on
- 15 or within the resident's accommodation unit;
- 16 (b) carry out renovations to the resident's accommodation unit.
- 17 *Note* Other laws may restrict what alterations or renovations a resident may
- 18 carry out. For example, a development may require approval under the
- 19 *Planning and Development Act 2007*.
- 20 (2) However, a resident may undertake any of the following without the
- 21 scheme operator's consent:
- 22 (a) remove or alter any fixtures or fittings that were added by a
- 23 resident, unless the removal or alteration of the fixtures or
- 24 fittings is likely to cause—
- 25 (i) significant damage to the residential premises; or
- 26 (ii) significant disruption to other residents.
- 27 (b) carry out alterations or renovations prescribed by regulation.

- 1 (3) The scheme operator—  
2 (a) must not unreasonably withhold consent; and  
3 (b) may give consent subject to reasonable conditions stated in the  
4 consent.  
5 **Example—par (b)**  
6 The scheme operator may require the resident when vacating the  
7 accommodation unit to return the unit to the same condition as it was  
8 immediately before the consent was given.
- 9 (4) A resident of a retirement village may apply to the ACAT for an  
10 order—  
11 (a) allowing the resident to carry out a stated alteration on or  
12 within, or renovation to, the resident's accommodation unit; or  
13 (b) amending the conditions to which the scheme operator's  
14 consent is subject.
- 15 (5) The ACAT may make an order under subsection (4) if satisfied  
16 that—  
17 (a) for an application to allow stated alterations or renovations—  
18 the scheme operator of the retirement village unreasonably  
19 withheld consent; or  
20 (b) for an application to amend the conditions to which a scheme  
21 operator's consent is given—the scheme operator's conditions  
22 are unreasonable.

## 23 **Division 6.3 Reselling accommodation units**

### 24 **85 Definitions—div 6.3**

25 In this division:

26 *resident*, of a retirement village, means a resident who owns an  
27 accommodation unit in the village.

28 *Note* **Own**—see the dictionary.

1            ***selling agent*** means a person appointed by a resident of a retirement  
2            village to sell the resident's accommodation unit in the village.

3            *Note*     See the *Agents Act 2003* for other obligations about people selling real  
4            estate.

5            **86            Appointing selling agents**

6            (1) A resident of a retirement village may appoint a selling agent of the  
7            resident's choice.

8            (2) A resident of a retirement village may, but need not, appoint the  
9            scheme operator for the village as a selling agent if the operator is  
10           licensed as a real estate agent under the *Agents Act 2003*.

11           (3) A scheme operator for a retirement village must not make it a  
12           condition of entry into the village that the operator or someone  
13           appointed by the operator—

14               (a) act as the selling agent for a resident of the village; or

15               (b) set the sale price of the resident's accommodation unit.

16           (4) If a scheme operator purports to impose a condition mentioned in  
17           subsection (3), the condition is void.

18           **87            Setting asking price of accommodation units**

19           (1) The asking price for an accommodation unit in a retirement village  
20           is the price agreed in writing between the resident who owns the  
21           unit and the scheme operator for the village.

22           (2) However, if the parties cannot agree on an asking price within  
23           14 days after the day the resident has appointed a selling agent, the  
24           asking price is an amount determined by an independent valuer  
25           agreed by the parties.

26           (3) If the parties cannot agree on a valuer within 28 days after the day  
27           the resident has appointed a selling agent, either party may apply to  
28           the registrar of the ACAT for the registrar to decide the valuer.

- 1     **88**           **Selling accommodation units**
- 2           (1) A scheme operator for a retirement village, or a person nominated
- 3           by the operator, who is appointed as a selling agent for a resident's
- 4           accommodation unit must—
- 5                 (a) notify the resident of all offers to buy the accommodation unit;
- 6                 and
- 7                 (b) if requested by the resident—give the resident, at the end of
- 8                 each month, a report stating the following details for that
- 9                 month:
- 10                         (i) the marketing program, including details of all advertising
- 11                                 of the accommodation unit or the village;
- 12                         (ii) a list of all inquiries received about the sale of the
- 13                                 accommodation unit;
- 14                         (iii) the names and telephone numbers, or other contact
- 15                                 details, of the people who made the inquiries, to the
- 16                                 extent that the details are known to the scheme operator;
- 17                         (iv) details, including the asking price, of all other
- 18                                 accommodation units for sale in the village.
- 19           (2) If a person other than a scheme operator for a retirement village is
- 20           appointed as selling agent for an accommodation unit in the village,
- 21           the resident of the unit must give the operator written notice of—
- 22                 (a) the name and contact details of the selling agent; and
- 23                 (b) any changes to the appointment or contact details of the selling
- 24                 agent.

- 1     **89**           **Buyers and scheme operators to enter into residence**  
2                   **contracts**
- 3           (1) A contract for the sale of an accommodation unit in a retirement  
4               village is taken to include a provision to the effect that the contract  
5               is conditional on the buyer of the accommodation unit entering into  
6               a residence contract with the scheme operator for the retirement  
7               village on or before completion of the sale.
- 8           (2) If the scheme operator decides not to enter into a residence contract  
9               with the buyer of the accommodation unit, the operator must, not  
10              later than 21 days after the day the operator is notified of the sale by  
11              the resident who owns the unit—
- 12                   (a) tell the resident about the scheme operator’s decision and the  
13                   reasons for it; and
- 14                   (b) apply to the ACAT for an order declaring that the operator is  
15                   not obliged to enter into the residence contract.
- 16     **90**           **Offences—failure to give notice about sale of units**
- 17           (1) A resident of a retirement village commits an offence if the  
18               resident—
- 19                   (a) sells an accommodation unit in the village; and
- 20                   (b) fails to give the scheme operator for the village sufficient  
21                   notice of the proposed sale to enable the scheme operator to  
22                   comply with section 70 (Offences—failure to give public  
23                   information document to prospective resident).
- 24               Maximum penalty: 60 penalty units.
- 25           (2) A resident of a retirement village commits an offence if the  
26               resident—
- 27                   (a) sells an accommodation unit in the village; and

1 (b) fails to notify the scheme operator of the village as soon as  
2 practicable after the contract for the sale of the accommodation  
3 unit is entered into.

4 Maximum penalty: 60 penalty units.

## 5 **Division 6.4 Relatives in accommodation units**

### 6 **91 Relatives may continue to live in units**

7 (1) This section applies if—

8 (a) a resident's right to live in an accommodation unit under a  
9 residence contract in relation to a retirement village ends  
10 because the resident dies or vacates the unit; and

11 (b) a relative of the resident, who was not a party to the residence  
12 contract, was living in the accommodation unit when the  
13 residence contract ended; and

14 (c) the relative has lived in the accommodation unit for at least  
15 6 consecutive months immediately before the residence  
16 contract ended.

17 (2) The relative has a right to live in the accommodation unit for  
18 3 months after the day the residence contract ends if the relative  
19 agrees to be bound by the terms of the resident's residence contract  
20 during the 3-month period.

21 (3) The relative's agreement must be—

22 (a) in writing; and

23 (b) given to the scheme operator for the retirement village not later  
24 than 14 days after the day the residence contract ends.

25 (4) The relative has the rights and liabilities of a resident under this Act  
26 during the 3-month period.

27 *Note* **Relative**, of a resident—see the dictionary.

1 **92** **Relatives may enter into residence contracts**

- 2 (1) This section applies if—
- 3 (a) a resident's right to live in an accommodation unit under a  
4 residence contract in relation to a retirement village ends  
5 because the resident dies or vacates the accommodation unit;  
6 and
- 7 (b) a relative of the resident, who was not a party to the residence  
8 contract, was living in the accommodation unit when the  
9 residence contract ended; and
- 10 (c) the relative has lived in the accommodation unit for at least  
11 6 consecutive months immediately before the residence  
12 contract ended; and
- 13 (d) no other person has a right under the resident's residence  
14 contract to live in the accommodation unit; and
- 15 (e) the relative meets the eligibility criteria for a resident of the  
16 retirement village.
- 17 (2) The relative may, at least 14 days before the end of the 3-month  
18 period mentioned in section 91 (2), tell the scheme operator for the  
19 retirement village, in writing, that the relative wants to enter into a  
20 residence contract for the accommodation unit.
- 21 (3) The scheme operator must enter into a residence contract for the  
22 accommodation unit with the relative before the end of the 3-month  
23 period.
- 24 (4) The residence contract must be on the same terms as would be  
25 offered to any other resident of the accommodation unit.
- 26 (5) However, the residence contract may be amended to include an  
27 agreement between the relative and the scheme operator about  
28 reinstatement work for the accommodation unit.

1                    **Part 7                    Operation and management of**  
2                    **retirement villages**

3                    **Division 7.1            Scheme operators**

4                    **93                    Definitions—div 7.1**

5                    In this division:

6                    *conviction*—see the *Spent Convictions Act 2000*, section 6.

7                    *insolvent under administration*—see the Corporations Act,  
8                    section 9.

9                    *relevant conviction*—

10                    (a) means a conviction for—

11                                    (i) an offence involving fraud or dishonesty punishable, at  
12                                    the time the conviction is recorded, by not less than  
13                                    3 months imprisonment; or

14                                    (ii) an offence involving physical violence to someone else;  
15                                    but

16                    (b) does not include a spent conviction.

17                    *spent*, for a conviction—see the *Spent Convictions Act 2000*,  
18                    section 7.

19                    **94                    Offence—operating retirement village schemes etc while**  
20                    **insolvent**

21                    (1) A person commits an offence if the person—

22                                    (a) is insolvent under administration; and

23                                    (b) does any of the following:

24    (i) operates a scheme for a retirement village;

25    (ii) promotes a scheme for a retirement village;



- 1 (iii) sells a right to live in a retirement village;  
2 (iv) is involved, directly or indirectly, in managing a  
3 retirement village.

4 Maximum penalty: 100 penalty units.

- 5 (2) Subsection (1) (b) (ii) and (iii) does not apply to the following  
6 people who do something mentioned in the subsection only to end  
7 the resident's or former resident's right to live in an accommodation  
8 unit in a retirement village:

- 9 (a) a person who is a resident or former resident of the village;  
10 (b) a person who acts for the resident or former resident of the  
11 village.

12 *Note* The person has an evidential burden in relation to the matters mentioned  
13 in s (2) (see Criminal Code, s 58).

14 **95 Offence—operating retirement village schemes etc with**  
15 **relevant conviction**

- 16 (1) A person commits an offence if the person—  
17 (a) has a relevant conviction; and  
18 (b) does any of the following:  
19 (i) operates a scheme for a retirement village;  
20 (ii) promotes a scheme for a retirement village;  
21 (iii) sells rights to live in a retirement village;  
22 (iv) is involved, directly or indirectly, in managing a  
23 retirement village.

24 Maximum penalty: 100 penalty units.

1            (2) Subsection (1) (b) (ii) and (iii) does not apply to the following  
2            people who do something mentioned in the subsection only to end  
3            the resident's or former resident's right to live in an accommodation  
4            unit in a retirement village:

5            (a) a person who is a resident or former resident of the village;

6            (b) a person who acts for the resident or former resident of the  
7            village.

8            *Note*            The person has an evidential burden in relation to the matters mentioned  
9            in s (2) (see Criminal Code, s 58).

10            **Division 7.2                    Operating etc unregistered retirement**  
11            **village schemes**

12            **96                    Offence—operating etc unregistered retirement villages**

13            (1) A person commits an offence if—

14            (a) the person does any of the following:

15                    (i) operates a scheme for a retirement village;

16                    (ii) induces or invites, including by using a document or  
17                    publishing an advertisement, another person to—

18                            (A) live in the retirement village to which the scheme  
19                            relates; or

20                            (B) pay an ingoing contribution in relation to the  
21                            retirement village; or

22                            (C) do another act in relation to the scheme for the  
23                            village;

24                    (iii) extends an existing retirement village; and

25            (b) no scheme for the retirement village is registered.

26            Maximum penalty: 540 penalty units.

1 (2) Subsection (1) (a) (ii) does not apply if the person merely invites  
2 expressions of interest in relation to the retirement village.

3 *Note* The person has an evidential burden in relation to the matters mentioned  
4 in s (2) (see Criminal Code, s 58).

5 **97 ACAT orders to stop operating etc unregistered**  
6 **retirement villages**

7 (1) This section applies if the commissioner for fair trading believes on  
8 reasonable grounds that a person is contravening section 96.

9 (2) The commissioner for fair trading may apply to the ACAT for an  
10 order to stop the person from contravening the section.

11 *Note* The *ACT Civil and Administrative Tribunal Act 2008*, s 56 sets out other  
12 orders the ACAT may make.

13 **98 Orders appointing people to control operations of**  
14 **retirement villages**

15 (1) This section applies if the commissioner for fair trading believes on  
16 reasonable grounds the interests of residents of a retirement village  
17 are compromised by the management of the village.

18 (2) The commissioner for fair trading may apply to the ACAT for—

19 (a) if the circumstances are urgent—an interim order appointing a  
20 stated person to control the operation of the retirement village;  
21 or

22 (b) in any other case—an order appointing a stated person to  
23 control the operation of the retirement village.

24 *Note* The *ACT Civil and Administrative Tribunal Act 2008*, s 56 sets out other  
25 orders the ACAT may make.



- 1 (2) Before starting the redevelopment, the scheme operator must call a  
2 residents meeting, by written notice to each resident, at which the  
3 operator must—
- 4 (a) present a plan of, and report on, the proposed redevelopment;  
5 and
- 6 (b) answer any reasonable question put by a resident in relation to  
7 the proposed redevelopment.
- 8 (3) The notice must—
- 9 (a) be given at least 14 days before the meeting; and
- 10 (b) set out—
- 11 (i) the time and place of the meeting; and
- 12 (ii) the reason for the meeting.
- 13 (4) The scheme operator must not undertake the proposed  
14 redevelopment unless the operator has—
- 15 (a) considered a resident's rights to live in the retirement village  
16 arising from the resident's residence contract; and
- 17 (b) if relevant, made reasonable arrangements for alternative  
18 accommodation for affected residents during the  
19 redevelopment.
- 20 Maximum penalty: 200 penalty units.
- 21 (5) In this section:
- 22 **redevelop**, a retirement village, means development in relation to the  
23 village that would have a significant impact on a resident's right to  
24 live in the village under the resident's residence contract.

1 **Part 8** **Financial management of**  
2 **retirement villages**

3 **Division 8.1** **Capital improvement**

4 **101** **Meaning of *capital improvement***

5 In this Act:

6 ***capital improvement***—

- 7 (a) means the initial provision of a capital item; and  
8 (b) includes, to the extent that it is not inconsistent with  
9 paragraph (a), a thing that is a capital improvement under a  
10 ruling under the *Taxation Administration Act 1953* (Cwlth)  
11 dealing with capital improvements.

12 *Note* ***Capital item***, in relation to a retirement village—see the dictionary.

13 **102** **Responsibility for capital improvement of retirement**  
14 **villages**

- 15 (1) A scheme operator for a retirement village is solely responsible for  
16 the cost of the village's capital improvements, including the capital  
17 improvement of the village's communal facilities owned by the  
18 operator.  
19 (2) This section is subject to section 103 and section 104.

20 **103** **Responsibility of residents for capital improvement—**  
21 **accommodation units**

- 22 (1) This section applies if—  
23 (a) a resident of a retirement village gives the scheme operator for  
24 the village a written request for a stated capital improvement to  
25 the resident's accommodation unit; and

1 (b) the scheme operator makes or agrees to make the capital  
2 improvement.

3 (2) The resident is solely responsible for the cost of the capital  
4 improvement.

5 **104 Responsibility of residents for capital improvement—**  
6 **retirement villages**

7 (1) This section applies if—

8 (a) residents of a retirement village, by special resolution at a  
9 residents meeting, agree to ask the scheme operator for the  
10 village, in writing, for a stated capital improvement to the  
11 retirement village; and

12 (b) the scheme operator makes or agrees to make the capital  
13 improvement.

14 (2) All residents of the retirement village when the vote was taken are  
15 jointly responsible for the cost of the capital improvement.

16 **105 Responsibility of former residents for capital**  
17 **improvement**

18 If a former resident of a retirement village stops being liable, under  
19 section 142 (2) (b) (Working out and paying general services charge  
20 for former residents), to pay a proportion of the general services  
21 charge—

22 (a) the former resident stops being liable, under section 103 or  
23 section 104, for the cost of a capital improvement; and

24 (b) the scheme operator for the village becomes liable for the  
25 resident's share of the cost of the capital improvement.

1 **106 Quotations for capital improvement**

- 2 (1) This section applies if—
- 3 (a) a resident of a retirement village asks the scheme operator for  
4 the village, in writing, to obtain quotations for a stated capital  
5 improvement to the resident's accommodation unit; or
- 6 (b) the residents of the village, at a residents meeting, agree to ask  
7 the scheme operator for the retirement village, in writing, to  
8 obtain quotations for a stated capital improvement to the  
9 retirement village.
- 10 (2) The scheme operator must obtain at least 2 quotations from people  
11 who the operator is satisfied on reasonable grounds have the  
12 experience or expertise to provide the capital improvement.
- 13 (3) However, the scheme operator need not obtain 2 quotations if  
14 satisfied on reasonable grounds that it is not practicable to obtain  
15 more than 1 quotation.
- 16 (4) The scheme operator must, as soon as practicable after obtaining a  
17 quotation, give the resident who requested the quotation under  
18 section 103 or the residents of the village who requested the  
19 quotation under section 104—
- 20 (a) a copy of the quotation; or
- 21 (b) if it is not practicable to give a copy of the quotation—a  
22 summary of the quotation and details about where the complete  
23 quotation may be inspected.
- 24 (5) Any reasonable cost associated with obtaining a quotation must be  
25 paid by—
- 26 (a) for a quotation requested by a resident under section 103—the  
27 resident; or
- 28 (b) for a quotation requested by the residents of a retirement  
29 village under section 104—all residents jointly.



1 **107 Payment of capital improvement**

2 (1) This section applies if a scheme operator for a retirement village  
3 receives a request for a capital improvement under section 103  
4 (Responsibility of residents for capital improvement—  
5 accommodation units) or section 104 (Responsibility of residents for  
6 capital improvement—retirement villages).

7 (2) The scheme operator may, as a condition of agreeing to make the  
8 capital improvement, require the resident or residents to pay the cost  
9 of the improvement before the improvement is made.

10 **108 Offences—dealing with amounts received for capital**  
11 **improvement**

12 (1) A scheme operator for a retirement village commits an offence if the  
13 operator—

14 (a) receives an amount for the cost of a capital improvement to an  
15 accommodation unit or the village; and

16 (b) fails to keep the amount in a trust account on trust for the  
17 benefit of the resident or residents of the retirement village  
18 who gave the amount.

19 Maximum penalty: 540 penalty units.

20 (2) A scheme operator for a retirement village commits an offence if the  
21 operator—

22 (a) receives an amount for the cost of a capital improvement to an  
23 accommodation unit or the village; and

24 (b) uses the amount for a purpose other than the cost of the capital  
25 improvement.

26 Maximum penalty: 540 penalty units.

- 1 (3) A scheme operator for a retirement village commits an offence if—  
2 (a) the amount received for the cost of a capital improvement to an  
3 accommodation unit or the village exceeds the cost of the  
4 capital improvement; and  
5 (b) the scheme operator fails to refund the excess to the resident or  
6 residents of the village who gave the amount.  
7 Maximum penalty: 540 penalty units.

## 8 **Division 8.2 Capital replacement fund**

### 9 **109 Meaning of *capital replacement fund contribution***

10 In this Act:

11 *capital replacement fund contribution*, for a retirement village,  
12 means the proportion of the ingoing contribution of a new resident  
13 of the village that is payable into the village's capital replacement  
14 fund.

### 15 **110 Meaning of *capital replacement fund amount*—div 8.2**

16 In this division:

17 *capital replacement fund amount*—see section 113 (1).

### 18 **111 Capital replacement funds**

- 19 (1) A scheme operator for a retirement village must establish and keep a  
20 fund (the *capital replacement fund*) for replacing the village's  
21 capital items.

22 *Note* *Capital item*, in relation to a retirement village—see the dictionary.

- 23 (2) The scheme operator is solely responsible for contributing to the  
24 capital replacement fund.

1    **112       Offence—failure to open and keep accounts**

2       A scheme operator for a retirement village commits an offence if the  
3       operator fails to open and keep an account for capital replacement  
4       fund amounts that—

5       (a) includes the operator’s name and a description of the purpose  
6       for which the account is kept; and

7       (b) requires withdrawals from the account, whether by cheque or  
8       otherwise, to be signed by the operator.

9       Maximum penalty: 540 penalty units.

10   **113       Payments into capital replacement funds**

11       (1) A scheme operator for a retirement village must pay the following  
12       amounts (each of which is a *capital replacement fund amount*) into  
13       a capital replacement fund for the village:

14       (a) an amount received under an insurance policy in relation to  
15       capital items;

16       (b) a capital replacement fund contribution;

17       (c) an amount paid by a resident under section 122 (Residents  
18       liable for replacing certain capital items);

19       (d) interest on a capital replacement fund amount.

20       *Note*    *Capital item*, in relation to a retirement village—see the dictionary.

21       (2) Subsection (1) does not limit the amounts a scheme operator may  
22       pay into a capital replacement fund.

23   **114       Offences—payments into capital replacement funds**

24       (1) A scheme operator for a retirement village commits an offence if the  
25       operator fails to pay a capital replacement fund amount into the  
26       capital replacement fund for the village.

27       Maximum penalty: 540 penalty units.

- 1 (2) A scheme operator for a retirement village commits an offence if the  
2 operator pays an amount into a capital replacement fund that the  
3 operator is required to pay into another fund.

4 Maximum penalty: 540 penalty units.

5 **115 Offences—misuse of capital replacement fund amounts**

- 6 (1) A scheme operator for a retirement village commits an offence if the  
7 operator uses a capital replacement fund amount for a purpose other  
8 than 1 or more of the following:

- 9 (a) replacing the village's capital items;  
10 (b) paying the reasonable fees for a report under section 117;  
11 (c) paying tax on amounts paid into the capital replacement fund  
12 under section 113 (1) (d).

13 Maximum penalty: 540 penalty units.

14 *Note* **Capital item**, in relation to a retirement village—see the dictionary.

- 15 (2) A scheme operator for a retirement village commits an offence if the  
16 operator uses a capital replacement fund amount for—

- 17 (a) the village's capital improvement, maintenance or repairs; or  
18 (b) capital replacement, maintenance or repairs of property owned  
19 by an owners corporation for a units plan in relation to the  
20 retirement village.

21 Maximum penalty: 540 penalty units.

- 22 (3) Subsection (2) does not limit subsection (1).

23 **116 Charge created over capital replacement funds**

- 24 (1) On the establishment of a capital replacement fund in relation to a  
25 retirement village, a charge is created over the fund for the benefit  
26 of the residents of the village to ensure that the balance of the fund  
27 is available for a purpose mentioned in section 115 (1).

- 1 (2) The charge has priority over any other charge over the capital  
2 replacement fund given by the scheme operator for the retirement  
3 village, other than a charge created and given priority over other  
4 charges under a Commonwealth law or another territory law.
- 5 (3) The charge is irrevocable, regardless of whether the scheme  
6 operator for the retirement village changes, and continues until the  
7 later of—
- 8 (a) the day the scheme for the village stops operating; and
- 9 (b) the day the last former resident to whom an exit entitlement is  
10 payable has been paid the exit entitlement.

11 **117 Capital replacement reserve—reports**

- 12 (1) Before a scheme operator for a retirement village decides a budget  
13 for the village, the operator must obtain a written report that  
14 complies with this section.
- 15 (2) The report must—
- 16 (a) be from an independent quantity surveyor; and
- 17 (b) be about the expected costs for replacing the retirement  
18 village's capital items for the period of 10 years following the  
19 date of the report.
- 20 *Note* **Capital item**, in relation to a retirement village—see the dictionary.
- 21 (3) The scheme operator must obtain a full report in—
- 22 (a) the first financial year when the scheme operator is required to  
23 obtain a report; and
- 24 (b) each 3rd financial year after the first report is obtained; and
- 25 (c) each financial year when a substantial change has been made to  
26 the retirement village.
- 27 (4) The scheme operator must obtain an updated report in each financial  
28 year when a full report is not required.

1 (5) This section is subject to section 118.

2 **118 Capital replacement reserve reports—~~independent~~**  
3 **quantity surveyor report not needed in certain**  
4 **circumstances**

5 (1) This section applies if the total of the services charges collected in  
6 relation to a retirement village in the immediately preceding  
7 financial year is less than—

8 (a) the amount prescribed by regulation; or

9 (b) if no amount is prescribed—\$50 000.

10 (2) The scheme operator for the retirement village need not obtain a  
11 report under section 117 from a independent quantity surveyor if the  
12 residents, by special resolution at a residents meeting, consent, but  
13 must, instead, prepare a report that otherwise complies with the  
14 section.

15 (3) The consent of the residents of a retirement village under  
16 subsection (2) remains in force until the earlier of—

17 (a) the day the total of the services charges collected in relation to  
18 the village is—

19 (i) the amount prescribed by the regulation or more; or

20 (ii) if no amount is prescribed by regulation—\$50 000 or  
21 more; and

22 (b) the residents, by special resolution at a residents meeting,  
23 revoke the consent.

24 **119 Offence—failure to obtain reports**

25 (1) A scheme operator for a retirement village commits an offence if the  
26 operator fails to obtain a report under section 117 before the  
27 operator decides a budget for the village.

28 Maximum penalty: 540 penalty units.

1 (2) Subsection (1) does not apply if section 118 applies to a scheme  
2 operator.

3 *Note* The scheme operator has an evidential burden in relation to the matters  
4 mentioned in s (2) (see Criminal Code, s 58).

5 **120 Capital replacement reserve—amounts in reserve**

6 (1) A scheme operator for a retirement village must decide the amount  
7 (the *capital replacement reserve*) to be held in a capital replacement  
8 fund for the village.

9 (2) In deciding the capital replacement reserve, the scheme operator  
10 must consider—

11 (a) the capital replacement fund's purpose; and

12 (b) unless section 118 applies—a report (the *quantity surveyor's*  
13 *report*) under section 117.

14 (3) In considering the quantity surveyor's report, the scheme operator  
15 must use the operator's best endeavours to carry out the  
16 recommendations in the report in the context of—

17 (a) the objects of this Act; and

18 (b) any circumstances relevant to the retirement village that appear  
19 to the operator not to have been considered in the quantity  
20 surveyor's report.

21 (4) If, at any time, the amount a scheme operator must spend on  
22 replacing a capital item is more than the amount held in the capital  
23 replacement fund, the operator must pay the difference between the  
24 actual amount to be spent and the amount held in the capital  
25 replacement fund.

26 *Note* *Capital item*, in relation to a retirement village—see the dictionary.

1 **121 Capital replacement fund budgets**

- 2 (1) A scheme operator for a retirement village must adopt a budget (a  
3 *capital replacement fund budget*) for the capital replacement fund  
4 for the village for each financial year.
- 5 (2) The capital replacement fund budget must—
- 6 (a) allow the scheme operator to raise a sufficient amount to—
- 7 (i) meet the necessary and reasonable costs to be paid from  
8 the capital replacement fund for a financial year; and
- 9 (ii) reserve an appropriate amount necessary to be  
10 accumulated to meet anticipated major expenditure over  
11 at least the 9 years following the financial year; and
- 12 (b) fix an amount to be raised by way of a capital replacement  
13 fund contribution to cover the amounts mentioned in  
14 paragraph (a).

15 **Example**

16 Replacing a village stand-by electricity generator is anticipated to be necessary in  
17 3 years time at a cost currently estimated at \$60 000. The contribution amount for  
18 the capital replacement fund in the budget for the financial year must therefore  
19 include the annual proportional share for its replacement of \$20 000. The  
20 following year, the estimated cost increases to \$68 000 and so the second year  
21 amount will be \$24 000. The estimated cost in the third year is \$70 000, so with  
22 the \$44 000 accumulated, a further \$26 000 is necessary to meet the cost.

23 *Note* An example is part of the Act, is not exhaustive and may extend, but  
24 does not limit, the meaning of the provision in which it appears (see  
25 Legislation Act, s 126 and s 132).

- 26 (3) The residents of a retirement village may, by agreement at a  
27 residents meeting, ask the scheme operator for the village for a copy  
28 of the draft capital replacement fund budget.
- 29 (4) The request under subsection (3) must be made in writing at least  
30 30 days before the start of the financial year to which the draft  
31 capital replacement fund budget relates.



- 1 (5) If the residents make a request under subsection (3), the scheme  
2 operator for the retirement village must give a copy of the draft  
3 capital replacement budget, at least 14 days before the start of the  
4 financial year to which the budget relates, to—
- 5 (a) the residents committee for the village; or  
6 (b) if there is no residents committee—each resident of the village.

7 **122 Residents liable for replacing certain capital items**

8 If a resident of a retirement village does any of the following in  
9 relation to a capital item of the retirement village, the resident is  
10 responsible for replacing the item:

- 11 (a) deliberately damages the item;  
12 (b) subjects the item to wear that happens more quickly than  
13 would reasonably be expected.

14 *Note* **Capital item**, in relation to a retirement village—see the dictionary.

15 **123 Residents may carry out urgent work**

- 16 (1) A resident of a retirement village may repair or replace (the **work**) a  
17 capital item in relation to the retirement village only—
- 18 (a) if the work is urgent; and  
19 (b) after the resident gives the scheme operator for the village a  
20 reasonable opportunity to carry out the work.
- 21 (2) A resident who carries out work under subsection (1) is entitled to  
22 be reimbursed by the scheme operator for the reasonable costs  
23 incurred by the resident in carrying out the work.
- 24 (3) If the scheme operator does not reimburse the resident within a  
25 reasonable time of the resident seeking reimbursement, the resident  
26 may apply to the ACAT for an order requiring the operator to  
27 reimburse the resident.

- 1 (4) The ACAT may also, if the ACAT considers it appropriate, make an  
2 order for the payment of interest at a rate determined by the ACAT.
- 3 (5) In this section:
- 4 **urgent**—work is **urgent** if it is to rectify any of the following:
- 5 (a) a burst water service;
- 6 (b) a blocked or broken lavatory service;
- 7 (c) a serious roof leak;
- 8 (d) a gas leak;
- 9 (e) a dangerous electrical fault;
- 10 (f) flooding or serious flood damage;
- 11 (g) serious storm or fire damage;
- 12 (h) a failure or breakdown of the gas, electricity or water supply to  
13 an accommodation unit;
- 14 (i) a failure or breakdown of any essential service in relation to an  
15 accommodation unit for hot water, heating or laundering;
- 16 (j) any fault or damage that causes the retirement village or an  
17 accommodation unit to be unsafe or insecure;
- 18 (k) anything else prescribed by regulation.

19 **Division 8.3 Maintenance reserve fund**

20 **124 Meaning of *maintenance reserve fund contribution***

21 In this Act:

22 ***maintenance reserve fund contribution*** means the proportion of the  
23 general services charge of a new resident of a retirement village that  
24 is payable into the village's maintenance reserve fund.

1   **125**       **Meaning of *maintenance reserve fund amount*—div 8.3**

2               In this division:

3               *maintenance reserve fund amount*—see section 128 (1).

4   **126**       **Maintenance reserve funds**

5               (1) A scheme operator for a retirement village must establish and keep a  
6               fund (the *maintenance reserve fund*) for maintaining and repairing  
7               the village's capital items.

8               *Note*     *Capital item*, in relation to a retirement village—see the dictionary.

9               (2) The residents of the retirement village are solely responsible for  
10              contributing to the maintenance reserve fund.

11   **127**       **Offence—failure to open and keep accounts**

12              A scheme operator for a retirement village commits an offence if the  
13              operator fails to open and keep an account for maintenance reserve  
14              fund amounts that—

15              (a) includes the operator's name and a description of the purpose  
16              for which the account is kept; and

17              (b) requires withdrawals from the account, whether by cheque or  
18              otherwise, to be signed by the scheme operator.

19              Maximum penalty: 540 penalty units.

20   **128**       **Payments into maintenance reserve funds**

21              (1) A scheme operator for a retirement village must pay the following  
22              amounts (each of which is a *maintenance reserve fund amount*)  
23              into a maintenance reserve fund for the village:

24              (a) a maintenance reserve fund contribution;

25              (b) interest on a maintenance reserve fund amount.

- 1 (2) Subsection (1) does not limit the amounts a scheme operator may  
2 pay into a maintenance reserve fund.

3 **129 Offences—payments into maintenance reserve funds**

- 4 (1) A scheme operator for a retirement village commits an offence if the  
5 operator fails to pay a maintenance reserve fund amount into the  
6 maintenance reserve fund for the village.

7 Maximum penalty: 540 penalty units.

- 8 (2) A scheme operator for a retirement village commits an offence if the  
9 operator pays an amount into a maintenance reserve fund that the  
10 operator is required to pay into another fund.

11 Maximum penalty: 540 penalty units.

12 **130 Offences—misuse of maintenance reserve fund amounts**

- 13 (1) A scheme operator for a retirement village commits an offence if the  
14 operator uses a maintenance reserve fund amount for a purpose  
15 other than 1 or more of the following:

- 16 (a) maintaining and repairing the village's capital items;  
17 (b) paying the reasonable fees for a report under section 132  
18 (Maintenance reserve—reports);  
19 (c) paying tax on amounts paid into the maintenance reserve fund  
20 under section 128 (1) (b).

21 Maximum penalty: 540 penalty units.

22 *Note* **Capital item**, in relation to a retirement village—see the dictionary.

- 23 (2) A scheme operator for a retirement village commits an offence if the  
24 operator uses a maintenance reserve fund amount for—

- 25 (a) the day-to-day maintenance of the village; or  
26 (b) the improvement or replacement of capital items of the village;  
27 or

1 (c) capital replacement, maintenance or repairs of property owned  
2 by an owners corporation for a units plan in relation to the  
3 village.

4 Maximum penalty: 540 penalty units.

5 (3) Subsection (2) does not limit subsection (1).

6 **131 Charge created over maintenance reserve funds**

7 (1) On the establishment of a maintenance reserve fund in relation to a  
8 retirement village, a charge is created over the fund for the benefit  
9 of the residents of the village to ensure that the balance of the fund  
10 is available for a purpose mentioned in section 130 (1).

11 (2) The charge has priority over any other charge over the maintenance  
12 reserve fund given by the scheme operator for the retirement village,  
13 other than a charge created and given priority over other charges  
14 under a Commonwealth law or another territory law.

15 (3) The charge is irrevocable, regardless of whether the scheme  
16 operator for the retirement village changes, and continues until the  
17 later of—

18 (a) the day the scheme for the retirement village stops operating;  
19 and

20 (b) the day the last former resident to whom an exit entitlement is  
21 payable has been paid the exit entitlement.

22 **132 Maintenance reserve—reports**

23 (1) Before a scheme operator for a retirement village decides a budget  
24 for the village, the scheme operator must obtain a written report that  
25 complies with this section.

26 (2) The report must—

27 (a) be from an independent quantity surveyor; and

1 (b) be about the expected costs for maintaining and repairing the  
2 capital items of the retirement village for the next 10 years.

3 *Note* **Capital item**, in relation to a retirement village—see the dictionary.

4 (3) The scheme operator must obtain a full report in—

5 (a) the first financial year when the operator is required to obtain a  
6 report; and

7 (b) each 3rd financial year after the first report is obtained; and

8 (c) each financial year when a substantial change has been made to  
9 the retirement village.

10 (4) The scheme operator must obtain an updated report in each financial  
11 year when a full report is not required.

12 **133 Maintenance reserve reports—-independent quantity**  
13 **surveyor report not needed in certain circumstances**

14 (1) This section applies if the total of the services charges collected in  
15 relation to a retirement village in the immediately preceding  
16 financial year is less than—

17 (a) the amount prescribed by regulation; or

18 (b) if no amount is prescribed—\$50 000.

19 (2) The scheme operator for the retirement village need not obtain a  
20 report under section 132 from a independent quantity surveyor if the  
21 residents, by special resolution at a residents meeting, consent, but  
22 must, instead, prepare a report that otherwise complies with the  
23 section.

- 1 (3) The consent of the residents of a retirement village under  
2 subsection (2) remains in force until the earlier of—
- 3 (a) the day the total of the services charges collected in relation to  
4 the village is—
- 5 (i) the amount prescribed by the regulation or more; or  
6 (ii) if no amount is prescribed by regulation—\$50 000 or  
7 more; and
- 8 (b) the residents, by special resolution at a residents meeting,  
9 revoke the consent.

10 **134 Offence—failure to obtain reports**

- 11 (1) A scheme operator for a retirement village commits an offence if the  
12 operator fails to obtain a report under section 132 before the  
13 operator decides a budget for the village.

14 Maximum penalty: 540 penalty units.

- 15 (2) Subsection (1) does not apply if section 133 applies to a scheme  
16 operator.

17 *Note* The scheme operator has an evidential burden in relation to the matters  
18 mentioned in s (2) (see Criminal Code, s 58).

19 **135 Maintenance reserve—amounts in reserve**

- 20 (1) A scheme operator for a retirement village must decide the amount  
21 (the *maintenance reserve*) to be held in a maintenance reserve fund  
22 for the village.

- 1 (2) In deciding the maintenance reserve, the scheme operator for the  
2 retirement village must consider—
- 3 (a) the maintenance reserve fund’s purpose; and
- 4 (b) unless section 133 applies—a report (the *quantity surveyor’s*  
5 *report*) obtained under section 132.
- 6 (3) In considering the quantity surveyor’s report, the scheme operator  
7 must use the operator’s best endeavours to carry out the  
8 recommendations in the report in the context of—
- 9 (a) the objects of this Act; and
- 10 (b) any circumstances relevant to the retirement village that appear  
11 to the operator not to have been considered in the report.
- 12 (4) If, at any time, the amount a scheme operator must spend on  
13 maintaining and repairing capital items of the retirement village is  
14 more than the amount held in the maintenance reserve fund, the  
15 operator must pay the difference between the actual amount to be  
16 spent and the amount held in the maintenance reserve fund.
- 17 *Note* *Capital item*, in relation to a retirement village—see the dictionary.
- 18 (5) An amount paid under subsection (4) is to be treated as an  
19 interest-free loan from the scheme operator to the maintenance  
20 reserve fund.

21 **136 Maintenance reserve fund budgets**

- 22 (1) A scheme operator for a retirement village must adopt a budget (a  
23 *maintenance reserve fund budget*) for the maintenance reserve fund  
24 for the village for each financial year.
- 25 (2) The maintenance reserve fund budget must—
- 26 (a) allow the scheme operator to raise a sufficient amount to—
- 27 (i) meet the necessary and reasonable costs to be paid from  
28 the maintenance reserve fund for a financial year; and



1 (ii) reserve an appropriate amount necessary to be  
2 accumulated to meet anticipated major expenditure over  
3 at least the 9 years following the financial year; and

4 (b) fix an amount to be raised by way of a maintenance reserve  
5 fund contribution to cover the amounts mentioned in  
6 paragraph (a).

7 **Example**

8 Painting village property is anticipated to be necessary in 3 years time at a cost  
9 currently estimated at \$3 000. The contribution amount for the maintenance  
10 reserve fund in the budget for the financial year must therefore include the annual  
11 proportional share for painting of \$1 000. The following year, the estimated cost  
12 increases to \$3 400 and so the second year levy will be \$1 200. The estimated cost  
13 in the third year is \$3 500, so with the \$2 200 accumulated, a levy of \$1 300 is  
14 necessary to meet the cost.

15 *Note* An example is part of the Act, is not exhaustive and may extend, but  
16 does not limit, the meaning of the provision in which it appears (see  
17 Legislation Act, s 126 and s 132).

18 (3) The residents of a retirement village may, by agreement at a  
19 residents meeting, ask the scheme operator for the village for a copy  
20 of the draft maintenance reserve fund budget.

21 (4) The request under subsection (3) must be made in writing at least  
22 30 days before the start of the financial year to which the draft  
23 maintenance reserve fund budget relates.

24 (5) If the residents make a request under subsection (3), the scheme  
25 operator for the retirement village must give a copy of the draft  
26 maintenance reserve fund budget, at least 14 days before the start of  
27 the financial year to which the budget relates, to—

28 (a) the residents committee for the village; or

29 (b) if there is no residents committee—each resident of the village.

1 **Division 8.4 Services charges**

2 **137 Meaning of *general services charge budget***

3 In this Act:

4 *general services charge budget*—see section 139 (1).

5 **138 Meaning of *general services charge*—div 8.4**

6 In this division:

7 *general services charge*, for a retirement village, means a charge  
8 payable by a resident of the retirement village for general services  
9 under a residence contract.

10 **139 General services charge budget**

11 (1) A scheme operator for a retirement village must adopt a budget (the  
12 *general services charge budget*) for the general services charge for  
13 each financial year.

14 (2) The general services charge budget must—

15 (a) allow for a reasonable amount of money to be raised to provide  
16 the general services for a financial year; and

17 (b) fix an amount to be raised by way of contribution by residents  
18 of the village to cover the amount.

19 (3) The residents of a retirement village may, by agreement at a  
20 residents meeting, ask the scheme operator for the village for a copy  
21 of the draft general services charge budget.

22 (4) The request under subsection (3) must be made in writing at least  
23 30 days before the start of the financial year to which the draft  
24 general services charge budget relates.

- 1 (5) If the residents make a request under subsection (3), the scheme  
2 operator for the village must give a copy of the draft general  
3 services charge budget, at least 14 days before the start of the  
4 financial year to which the budget relates, to—
- 5 (a) the residents committee for the village; or  
6 (b) if there is no residents committee—each resident of the village.
- 7 (6) If, at the end of a financial year for which a general services charge  
8 budget is adopted, there is a surplus or deficit for the general  
9 services charge, the surplus or deficit must be carried forward and  
10 taken into account in adopting the general services charge budget  
11 for the next financial year.

12 **140 Offences—working out and paying general services**  
13 **charge**

- 14 (1) A scheme operator for a retirement village commits an offence if the  
15 operator charges a resident of the village an amount for a general  
16 services charge worked out other than in the way stated in the public  
17 information document in relation to the scheme for the village.

18 Maximum penalty: 200 penalty units.

- 19 (2) A scheme operator for a retirement village commits an offence if the  
20 operator, in a general services charge in a residence contract,  
21 includes, or provides for, an amount (however described) that is  
22 payable in relation to replacing the retirement village's capital  
23 items.

24 Maximum penalty: 200 penalty units.

- 25 (3) A scheme operator for a retirement village commits an offence if the  
26 operator, in a general services charge in a residence contract,  
27 includes, or provides, for an amount (however described) that is  
28 payable in relation to costs awarded by the ACAT against the  
29 operator.

30 Maximum penalty: 200 penalty units.

1 (4) Subsections (1) and (2) do not apply to an amount that a scheme  
2 operator includes, or provides for in a general services charge that is  
3 indirectly or directly attributable to GST payable for the supply of a  
4 service.

5 (5) In this section:

6 *supply* has the meaning given by the *A New Tax System (Goods and*  
7 *Services Tax) Act 1999* (Cwlth).

8 **141 Responsibility of residents for general services charge**

9 (1) A resident of a retirement village is responsible for only the  
10 resident's proportion of the general services charge for the period  
11 that the resident lives in the resident's accommodation unit.

12 (2) This section is subject to section 142.

13 **142 Working out and paying general services charge for**  
14 **former residents**

15 (1) A former resident of a retirement village is liable for the resident's  
16 proportion of the general services charge after the resident vacates  
17 the resident's accommodation unit until the first of the following  
18 happens:

19 (a) the right to live in the accommodation unit is sold;

20 (b) a period of 90 days elapses (the *90-day period*);

21 (c) the ACAT orders the scheme operator for the village to pay the  
22 former resident's exit entitlement under section 208 (ACAT  
23 orders—payment of exit entitlement).

- 1 (2) If the former resident's right to live in the accommodation unit has  
2 not been sold during the 90-day period—
- 3 (a) the resident and the scheme operator are each liable, after the  
4 90-day period ends, to pay the general services charge in the  
5 same proportion as they are to share the gross ingoing  
6 contribution on the sale of the right to live in the  
7 accommodation unit, as provided for in the residence contract;  
8 and
- 9 (b) the former resident stops being liable to continue to pay a  
10 proportion of the general services charge when the first of the  
11 following happens:
- 12 (i) the right to live in the accommodation unit is sold;
- 13 (ii) a period of 6 months after the resident vacates the  
14 accommodation unit ends.
- 15 (3) If a former resident's right to live in an accommodation unit has not  
16 been sold during the 90-day period, the scheme operator may—
- 17 (a) accrue, as a book debt, the resident's proportion of the general  
18 services charge; and
- 19 (b) set off the accrued amount against the resident's exit  
20 entitlement.

21 **143 Offence—no interest on accrued amounts**

22 A scheme operator for a retirement village commits an offence if the  
23 operator charges interest on an amount accrued under  
24 section 142 (3).

25 Maximum penalty: 100 penalty units.

- 1 **144** **Offence—failure to pay general services charge for**  
2 **unsold right to live in accommodation units**
- 3 A scheme operator for a retirement village commits an offence if—
- 4 (a) the operator does not pay the proportion of the general services  
5 charge relating to the right to live in an accommodation unit in  
6 the village; and
- 7 (b) 1 of the following applies:
- 8 (i) an accommodation unit has not been occupied under a  
9 residence contract;
- 10 (ii) the liability of the former resident of the accommodation  
11 unit to pay a proportion of the general services charge has  
12 ended under—
- 13 (A) section 142 (3); or
- 14 (B) the terms of the residence contract for the  
15 accommodation unit;
- 16 (iii) no residence contract is in force for the accommodation  
17 unit.
- 18 Maximum penalty: 200 penalty units.
- 19 **145** **Scheme operators paying general services charge**
- 20 The scheme operator for a retirement village must pay an amount  
21 payable under section 144 into the maintenance reserve fund for the  
22 village.

- 1     **146     Offence—increasing general services charge by more**  
2     **than CPI**
- 3           (1) A scheme operator for a retirement village commits an offence if the  
4           operator increases the total of the general services charge for the  
5           village for a financial year by more than the CPI percentage increase  
6           for the financial year.
- 7           Maximum penalty: 200 penalty units.
- 8           (2) Subsection (1) does not apply if—
- 9               (a) the residents of the retirement village, by special resolution at a  
10              residents meeting, approve an increase of more than the CPI  
11              percentage increase for the financial year; or
- 12              (b) the increase is attributable to an increase in—
- 13                   (i) rates, taxes or charges levied under a Commonwealth law  
14                   or another territory law in relation to the retirement  
15                   village land or its use; or
- 16                   (ii) the salary or wages of a person engaged in the village's  
17                   operation and payable under an award, industrial  
18                   agreement or workplace determination under the *Fair*  
19                   *Work Act 2009* (Cwlth) made, approved, certified, or  
20                   continued in force under a Commonwealth law or another  
21                   territory law; or
- 22                   (iii) insurance premiums, or insurance excesses paid, in  
23                   relation to the retirement village or its use; or

1 (iv) maintenance reserve fund contributions.

2 **Examples—industrial agreement**

3 enterprise agreement, fair work instrument

4 *Note 1* A reference to an Act includes a reference to the statutory instruments  
5 made or in force under the Act, including regulations (see Legislation  
6 Act, s 104).

7 *Note 2* The scheme operator has an evidential burden in relation to the matters  
8 mentioned in s (2) (see Criminal Code, s 58).

9 *Note 3* An example is part of the Act, is not exhaustive and may extend, but  
10 does not limit, the meaning of the provision in which it appears (see  
11 Legislation Act, s 126 and s 132).

12 (3) In this section:

13 ***CPI*** means the all groups consumer price index for Canberra  
14 published by the Australian statistician.

15 ***CPI percentage increase***, for a financial year, means the percentage  
16 increase between—

17 (a) the CPI published for the quarter ending immediately before  
18 the start of the financial year; and

19 (b) the CPI published for the quarter ending immediately before  
20 the end of the financial year.

21 ***total of general services charge***, for a financial year, means the sum  
22 of all charges for general services for the financial year, other than  
23 the following charges:

24 (a) a charge for a general service that has been increased by more  
25 than the CPI percentage increase for the financial year and that  
26 the residents of a retirement village, by special resolution at a  
27 residents meeting, have approved;

28 (b) a charge for a general service that has been increased by more  
29 than the CPI percentage increase for the financial year and that  
30 is allowed under subsection (2).



1 **147 Cost-effective alternatives for services**

2 Before increasing the charge for a particular general service for a  
3 retirement village, the scheme operator for the village must consider  
4 whether there is a more cost-effective alternative to the general  
5 service.

6 **148 No liability for failing to supply goods or services**

7 A scheme operator for a retirement village is not civilly liable for  
8 failing to supply goods or services to residents of the village if—

- 9 (a) the cost of the supply of the goods and services would require  
10 an increase in the general services charge that is more than the  
11 increase allowed under section 146; and
- 12 (b) the operator considered whether there was a more  
13 cost-effective alternative to the general service.

14 *Note* A scheme operator for a retirement village is also not liable for breach  
15 of a residence contract for failure to supply a general service if the  
16 residents of the village did not agree to an increase in the general  
17 service charge to cover the cost of the service (see s 64).

18 **149 Supplying new general services**

19 (1) A scheme operator for a retirement village may offer residents of the  
20 village a service not already supplied under the scheme for the  
21 village for which a general services charge is payable only if—

- 22 (a) the residents agree, by special resolution at a residents meeting,  
23 to the service being supplied; and
- 24 (b) the service is not 1 of the following:
- 25 (i) a personal service;
- 26 (ii) a service that is the same as a service already supplied  
27 under the scheme and introduced as a cost-effective  
28 alternative under section 147;

- 1 (iii) if the public information document for the village states  
2 that another service is proposed to be supplied—that  
3 service.
- 4 (2) Before supplying a new service, the scheme operator must obtain  
5 quotations for the supply of the service in accordance with  
6 section 150.
- 7 (3) If any capital improvements to the retirement village are required  
8 for the scheme operator to supply the service, the operator may  
9 supply the service only if the capital improvements are requested by  
10 the residents of the village under section 104 (Responsibility of  
11 residents for capital improvement—retirement villages).
- 12 (4) The scheme operator must not charge a resident for a new service  
13 before the service is supplied to the resident.

14 **150 Quotations for new services**

- 15 (1) This section applies if a scheme operator for a retirement village  
16 offers to supply a new service to residents of the village.
- 17 (2) The scheme operator must, at the operator's expense, obtain at least  
18 2 quotations from people who the operator is satisfied have the  
19 experience or expertise to qualify the people to provide the services.
- 20 (3) However, the scheme operator need not obtain 2 quotations if  
21 satisfied on reasonable grounds that it is not practicable to obtain  
22 more than 1 quotation.
- 23 (4) The scheme operator must, as soon as practicable after obtaining a  
24 quotation, give a copy of the quotation to—
- 25 (a) the residents committee for the village; or  
26 (b) if there is no residents committee—each resident of the village.

- 1 (5) If it is not practicable for the scheme operator to give a copy of the  
2 quotation under subsection (4), the scheme operator must give a  
3 summary of the quotation and details about where the complete  
4 quotation may be inspected.

5 **151 Charging residents for personal services during**  
6 **temporary absences**

- 7 (1) This section applies to a resident of a retirement village who—  
8 (a) receives personal services under a residence contract; and  
9 (b) is temporarily absent from the village for more than  
10 28 consecutive days (the *28-day period*).
- 11 (2) The resident is not liable to pay for personal services for a period of  
12 absence following the 28-day period.

13 **152 Offences—charging former residents for personal**  
14 **services**

- 15 (1) A scheme operator for a retirement village commits an offence if—  
16 (a) a resident of the village receives personal services under a  
17 residence contract; and  
18 (b) the resident's residence contract is ended under 1 of the  
19 following sections (the *ending provision*):  
20 (i) section 51 (Ending residence contracts—residents);  
21 (ii) section 53 (Ending residence contracts—scheme  
22 operators); and  
23 (c) the operator charges the resident for personal services after—  
24 (i) if the period of the notice given under the ending  
25 provision is extended—the end of the extended period of  
26 notice; or

- 1 (ii) in any other case—the end of the period of notice given  
2 under the ending provision.
- 3 Maximum penalty: 540 penalty units.
- 4 (2) A scheme operator for a retirement village commits an offence if—
- 5 (a) a resident of the village receives personal services under a  
6 residence contract; and
- 7 (b) the resident’s residence contract ends because the resident dies;  
8 and
- 9 (c) the operator charges the resident for personal services for more  
10 than 28 days after the residence contract ends.
- 11 Maximum penalty: 540 penalty units.

12 **Division 8.5 Insurance**

13 **153 Meaning of *building*—div 8.5**

14 In this division:

15 ***building***, on retirement village land—

- 16 (a) includes—
- 17 (i) any improvements and fixtures forming part of the  
18 building; and
- 19 (ii) any improvements and fixtures, including site  
20 improvements, consisting entirely of common property;  
21 and

1 (iii) anything prescribed by regulation as forming part of a  
2 building; but

3 **Examples—site improvements**

4 landscaping, paved areas

5 *Note* An example is part of the Act, is not exhaustive and may extend,  
6 but does not limit, the meaning of the provision in which it  
7 appears (see Legislation Act, s 126 and s 132).

8 (b) does not include—

9 (i) paint, wallpaper and temporary wall, floor and ceiling  
10 coverings; or

11 (ii) fixtures removable by a resident of an accommodation  
12 unit at the end of a residence contract; or

13 (iii) anything prescribed by regulation as not forming part of a  
14 building.

15 **154 Building insurance by scheme operators**

16 (1) A scheme operator for a retirement village must insure and keep  
17 insured all buildings on the retirement village land for their  
18 replacement value from time to time against all of the following  
19 risks:

20 (a) fire, lightning, tempest, earthquake and explosion;

21 (b) riot, civil commotion, strikes and labour disturbances;

22 (c) malicious damage;

23 (d) bursting, leaking and overflowing of boilers, water tanks, water  
24 pipes and associated apparatus;

25 (e) impact of aircraft (including parts of, and objects falling from,  
26 aircraft) and of road vehicles, horses and cattle;

27 (f) anything prescribed by regulation.

1 (2) However, the scheme operator need not insure and keep insured all  
2 buildings on retirement village land in a units plan.

3 *Note* An owners corporation must insure and keep insured all buildings on  
4 land in a units plan under the *Unit Titles (Management) Act 2011*.

5 (3) The scheme operator commits an offence if the operator fails to take  
6 out an insurance policy that covers, to the greatest practicable  
7 extent—

8 (a) the risks mentioned in subsection (1); and

9 (b) costs incidental to the reinstatement or replacement of the  
10 insured building, including the cost of removing debris and the  
11 fees of architects and other professional advisers.

12 Maximum penalty: 540 penalty units.

13 (4) Subsection (2) does not apply to buildings on retirement village land  
14 in a units plan in relation to the village if the owners corporation for  
15 the units plan has insured, and is keeping insured, the buildings in  
16 accordance with the requirements for insurance under the *Unit Titles*  
17 *(Management) Act 2011*, section 100 (Building insurance by owners  
18 corporation).

19 *Note* The defendant has an evidential burden in relation to the matters  
20 mentioned in s (3) (see Criminal Code, s 58).

21 (5) A regulation may make provision in relation to an insurance policy  
22 required to be taken out by the scheme operator under this section  
23 including for the following:

24 (a) payment by residents of any excess payable under the policy;

25 (b) combining the policy with other insurance policies;

26 (c) notification requirements by residents in relation to  
27 improvements made to units;

28 (d) valuation of the insured buildings.

- 1 (6) For all purposes related to any insurance taken out by it under this  
2 section, a scheme operator for a retirement village is taken to have  
3 an insurable interest in the buildings on the retirement village land  
4 to the extent of their replacement value.

5 **155 Public liability insurance by scheme operators**

- 6 (1) A scheme operator for a retirement village commits an offence if the  
7 operator fails to take out and maintain public liability insurance in  
8 relation to all of the following events happening in relation to the  
9 retirement village or the retirement village land:

- 10 (a) death, bodily injury or illness of anyone;  
11 (b) loss of, or damage to, the property of anyone.

12 Maximum penalty: 540 penalty units.

- 13 (2) Subsection (1) does not apply in relation to land that is common  
14 property in a units plan in relation to the retirement village if the  
15 owners corporation for the units plan has taken out and is  
16 maintaining insurance required under the *Unit Titles (Management)*  
17 *Act 2011*, section 102 (Public liability insurance by owners  
18 corporation) in relation to the common property.

19 *Note* The scheme operator has an evidential burden in relation to the matters  
20 mentioned in s (2) (see Criminal Code, s 58).

- 21 (3) Public liability insurance under subsection (1) must be for a total  
22 amount of liability of not less than an amount prescribed by  
23 regulation.

24 **156 Application of insurance money by owners corporation**

- 25 (1) If a scheme operator for a retirement village receives insurance  
26 money for damage to, or destruction of, any building on the  
27 retirement village land, the operator must, without delay, apply the  
28 insurance money to rebuilding and reinstating the building.

- 1 (2) Subsection (1) applies subject to this Act, other territory laws and  
2 any order of a court.

3 **157 Insurance information**

- 4 (1) On request by a resident of a retirement village, the scheme operator  
5 for the village must, within 14 days after the request is received,  
6 allow the resident to inspect, and take a copy of—  
7 (a) any current insurance policy or policies taken out by the  
8 operator for the village; or  
9 (b) the receipts for all premiums paid under current policies taken  
10 out by the operator for the village.  
11 (2) The scheme operator must not charge the resident a fee in relation to  
12 inspecting or copying documents under subsection (1).

13 **158 Additional insurance—scheme operator**

14 This division does not limit the right of a scheme operator to take  
15 out additional insurance.

16 **159 Additional insurance—residents**

17 This division does not limit the right of a resident who owns an  
18 accommodation unit to insure against damage to, or destruction of,  
19 the unit to the extent of its replacement value.



1 **Division 8.6** **Financial accounts and statements**

2 **160** **Offence—scheme operator must keep separate accounts**  
3 **for capital replacement fund and maintenance reserve**  
4 **fund**

5 A scheme operator for a retirement village must keep separate  
6 accounts for the village's capital replacement fund and maintenance  
7 reserve fund.

8 Maximum penalty: 540 penalty units.

9 **161** **Offences—failure to give quarterly financial statements**  
10 **etc**

11 (1) A scheme operator for a retirement village commits an offence if the  
12 operator fails to give, not later than 28 days after the end of each  
13 quarter, a quarterly financial statement in a form that can be audited  
14 to—

15 (a) the residents committee for the village; or

16 (b) if there is no residents committee—each resident of the village.

17 Maximum penalty: 540 penalty units.

18 (2) Subsection (1) does not apply if section 159 applies to the scheme  
19 operator for a retirement village.

20 *Note* The scheme operator has an evidential burden in relation to the matters  
21 mentioned in s (2) (see Criminal Code, s 58).

22 (3) A scheme operator for a retirement village commits an offence if—

23 (a) the residents of the village give the operator a written request  
24 for an explanatory document; and

25 (b) the operator fails to give, not later than 28 days after the day  
26 the operator receives the request, an explanatory document  
27 to—

28 (i) the residents committee for the village; or

1 (ii) if there is no residents committee—each resident of the  
2 village.

3 Maximum penalty: 100 penalty units.

4 (4) In this section:

5 *explanatory document* means a document that explains—

6 (a) the expenditure involved in supplying each general service;  
7 and

8 (b) any increase in the expenditure involved in supplying a general  
9 service that differs from the expected expenditure for the  
10 general service in the general services charge budget.

11 *quarterly annual statement* means a statement that lists, for the  
12 quarter—

13 (a) the income of, and expenditure from—

14 (i) the capital replacement fund; and

15 (ii) the maintenance reserve fund; and

16 (b) the expenditure involved in supplying each general service.

17 **162 Quarterly financial statements need not be given to**  
18 **residents in certain circumstances**

19 (1) This section applies if the total of the services charges collected in  
20 relation to a retirement village in the preceding 4 quarters is less  
21 than—

22 (a) the amount prescribed by regulation; or

23 (b) if no amount is prescribed—\$50 000; and

24 (2) A scheme operator for a retirement village need not give the  
25 residents of the village a copy of quarterly financial statements for  
26 the village under section 161 if the residents, by special resolution at  
27 a residents meeting, consent.

- 1 (3) The consent of the residents of a retirement village under  
2 subsection (2) remains in force until the earlier of—
- 3 (a) the total of the services charges collected in relation to the  
4 village is—
- 5 (i) the amount prescribed by the regulation or more; or  
6 (ii) if no amount is prescribed by regulation—\$50 000 or  
7 more; and
- 8 (b) the residents, by special resolution at a residents meeting,  
9 revoke the consent.

10 **163 Preparing annual financial statements**

- 11 (1) A scheme operator for a retirement village must prepare, for each  
12 financial year, a financial statement in relation to the village that—
- 13 (a) shows the following details about the village's operation:
- 14 (i) income and expenditure of the capital replacement fund  
15 for the financial year;
- 16 (ii) income and expenditure of the maintenance reserve fund  
17 for the financial year;
- 18 (iii) expenditure involved in supplying each general service  
19 for the financial year;
- 20 (iv) amounts received for insurance claims relating to the  
21 village during the financial year;
- 22 (v) assets and liabilities relating to the village as at the end of  
23 the financial year;
- 24 (vi) interests, mortgages and other charges affecting the  
25 village's property as at the end of the financial year; and
- 26 (b) is audited and prepared in accordance with generally accepted  
27 accounting principles.

1 (2) This section is subject to section 164.

2 **164 Annual financial statements need not be audited in**  
3 **certain circumstances**

4 (1) This section applies to a financial statement prepared in relation to a  
5 retirement village under section 163 for a financial year if the total  
6 of the services charges collected in relation to the village for the  
7 financial year are less than—

8 (a) the amount prescribed by regulation; or

9 (b) if no amount is prescribed—\$50 000.

10 (2) The scheme operator for the retirement village—

11 (a) need not have the financial statement audited if the residents,  
12 by special resolution at a residents meeting, consent; but

13 (b) must instead include a statement about whether the operator  
14 will be able to meet the liabilities relating to the village when  
15 they become due during the financial year immediately  
16 following.

17 *Note* Giving false or misleading information and producing false or  
18 misleading documents are offences against the Criminal Code, s 338  
19 and s 339.

20 (3) The residents' consent under subsection (2) remains in force until  
21 the earlier of—

22 (a) the day the total of the services charges collected in relation to  
23 the village is—

24 (i) the amount prescribed by regulation or more; or

25 (ii) if no amount is prescribed by regulation—\$50 000 or  
26 more; and

27 (b) the residents, by special resolution at a residents meeting,  
28 revoke the consent.

1   **165       Offences—failure to give annual financial statements**

2       (1) A scheme operator for a retirement village commits an offence if the  
3       operator fails to give the commissioner for fair trading, not later  
4       than 5 months after the end of each financial year, a financial  
5       statement for the village.

6       Maximum penalty: 200 penalty units.

7       (2) A scheme operator for a retirement village commits an offence if the  
8       operator fails to give the residents committee for the village, within  
9       5 months after the end of the financial year, a copy of a financial  
10      statement for the village.

11      Maximum penalty: 200 penalty units.

12      (3) Subsection (2) does not apply if there is no residents committee for  
13      a retirement village.

14      (4) In this section:

15      *financial statement* means a statement prepared in accordance with  
16      section 163.

17   **166       Classification of expenditure**

18      (1) A regulation may prescribe model rules (the *model classification*  
19      *rules*) about the classification of items of expenditure.

20      (2) Without limiting subsection (1), the model classification rules  
21      may—

22          (a) classify how a particular item of expenditure must be dealt  
23          with; and

24          (b) provide that scheme operators must classify how other items of  
25          expenditure must be dealt with.

26      (3) A scheme operator for a retirement village must comply with the  
27      model classification rules in dealing with items of expenditure in  
28      relation to the village.

- 1 (4) If the model classification rules provide that a scheme operator for a  
2 retirement village must classify how other items of expenditure must  
3 be dealt with, the operator must give the residents of the village  
4 written notice of the operator's classification of the items of  
5 expenditure by—
- 6 (a) giving the notice to the residents committee; or
- 7 (b) if there is no residents committee—putting the notice in a place  
8 in the village where it is likely to be seen by most of the  
9 village's residents.
- 10 (5) For this section, an item of expenditure is *dealt with* if it is—
- 11 (a) debited to the capital replacement fund; or
- 12 (b) debited to the maintenance reserve fund; or
- 13 (c) levied as a general service charge.

1 **Part 9** **Charges created over retirement**  
2 **village land to protect residents'**  
3 **rights**

4 **Division 9.1** **Preliminary**

5 **167** **Meaning of *resident*—pt 9**

6 In this part:

7 *resident*, of a retirement village, does not include a person who  
8 owns an accommodation unit in the village.

9 *Note* *Own*—see the dictionary.

10 **Division 9.2** **Creating charges over retirement**  
11 **village land**

12 **168** **Creating charges over retirement village land**

13 (1) On the commissioner for fair trading registering a scheme for a  
14 retirement village, a charge is created over the retirement village  
15 land to which the scheme relates.

16 (2) As soon as practicable after the scheme for the retirement village is  
17 registered, the commissioner for fair trading must lodge a  
18 memorandum of the charge over the land with the registrar-general  
19 for registration under the *Land Titles Act 1925*.

20 (3) The memorandum must—

21 (a) identify the retirement village land; and

22 (b) state the day when the scheme for the retirement village was  
23 registered.

24 *Note* The registrar-general must register an instrument lodged in registrable  
25 form (see *Land Titles Act 1925*, s 48 (1)).

- 1 (4) However, the commissioner for fair trading may exempt a scheme  
2 from subsection (1) if—
- 3 (a) if the scheme operator is an organisation established for a  
4 religious, charitable or community purpose—the commissioner  
5 is satisfied that the scheme operator is of good standing in  
6 operating schemes for retirement villages; or
- 7 (b) in any other case—
- 8 (i) the commissioner is satisfied that other exceptional  
9 circumstances exist; and
- 10 (ii) the scheme operator provides another form of security to  
11 secure the rights under a residence contract of a resident  
12 in the village.
- 13 (5) An exemption is a notifiable decision.

14 *Note* A notifiable instrument must be notified under the Legislation Act.

15 **169 Charges extend to new land**

- 16 (1) This section applies if land (the *new land*) becomes retirement  
17 village land of a retirement village after a charge on the original  
18 retirement village land (the *original land*) for the retirement village  
19 is created under section 168.
- 20 (2) On the new land becoming retirement village land—
- 21 (a) the charge over the original land is released; and
- 22 (b) a charge is created over the original land and the new land.
- 23 (3) The scheme operator for a retirement village must give the  
24 commissioner for fair trading written notice that new land has  
25 become retirement village land not later than 1 month after the day  
26 the new land becomes retirement village land.



- 1 (4) As soon as practicable after receiving the notice under  
2 subsection (3), the commissioner for fair trading must lodge a  
3 memorandum of the change to the retirement village land with the  
4 registrar-general for registration under the *Land Titles Act 1925*.

5 *Note* The registrar-general must register an instrument lodged in registrable  
6 form (see *Land Titles Act 1925*, s 48 (1)).

- 7 (5) The memorandum must—  
8 (a) identify the retirement village land; and  
9 (b) state the day when the new land became retirement village  
10 land.

11 **170 Offence—failure to give notice of new land**

12 A scheme operator for a retirement village commits an offence if the  
13 scheme operator fails to give the commissioner for fair trading  
14 written notice under section 169 (3).

15 Maximum penalty: 540 penalty units.

16 **171 Effect of charges**

17 A charge over retirement village land under this part secures the  
18 right of each resident of the retirement village on the land—

- 19 (a) to occupy the resident's accommodation unit; and  
20 (b) to use the village's communal and recreational facilities; and  
21 (c) to be paid the exit entitlement the resident is entitled to under  
22 the resident's residence contract when the contract ends.

1 **172 Priority of charges**

- 2 (1) A charge lodged with the registrar-general under this division has  
3 priority over all other registered securities in or over the retirement  
4 village land to which the charge relates, whether or not the security  
5 was registered before the statutory charge was notified to the  
6 registrar-general.
- 7 (2) However, a charge does not have priority over a charge created, and  
8 given priority over other charges, under a Commonwealth law or  
9 another territory law.
- 10 (3) In this section:
- 11 *registered*, for a security, means registered under the *Land Titles*  
12 *Act 1925*.

13 **Division 9.3 Enforcing charges over land**

14 **173 Enforcing charges**

- 15 (1) This section applies if—
- 16 (a) retirement village land is subject to a charge under section 168  
17 (Creating charges over retirement village land) or section 169  
18 (Charges extend to new land); and
- 19 (b) a court or tribunal orders an amount be paid by the scheme  
20 operator for the retirement village on the retirement village  
21 land to a resident of the village in relation to a right of the  
22 resident mentioned in section 171 (the *original order*); and
- 23 (c) the amount is not paid within 6 months after the end of the day  
24 by which it was required to be paid under the original order.
- 25 (2) The person in whose favour the original order was made may apply  
26 to a court of competent jurisdiction for an order that the retirement  
27 village land be sold.

- 1 (3) However, a person may make an application under subsection (2)  
2 only if—
- 3 (a) the person has given the commissioner for fair trading written  
4 notice of the person's intention to make the application; and
- 5 (b) for an amount payable under the original order by way of an  
6 exit entitlement, the amount is at least \$10 000 or another  
7 higher amount prescribed by regulation.
- 8 (4) Each resident of the retirement village, and anyone else who appears  
9 to the court to have a sufficient interest in the application, is  
10 entitled—
- 11 (a) to be joined as a party to the proceeding; and  
12 (b) to be heard on the application.
- 13 (5) Unless the court orders otherwise, the applicant must give each  
14 resident notice of the resident's right to be heard on the application.

15 **174 Orders court may make**

- 16 (1) On hearing an application under section 173 (2), the court may order  
17 the retirement village land be sold only if the court is satisfied  
18 that—
- 19 (a) the original order is unsatisfied and is not likely to be satisfied  
20 in any other way open to the applicant; and
- 21 (b) it is not contrary to the interests of any resident of the  
22 retirement village that the land be sold.
- 23 (2) Without limiting the orders it may make, the court may appoint a  
24 person to act as the seller's agent for the sale.

- 1     **175     Effect of court orders**
- 2             (1) An order for the sale of retirement village land under section 174—
- 3                     (a) authorises the sale of the land free of all existing securities,
- 4                             other than the securities the court preserves in its order; and
- 5                     (b) has effect despite—
- 6                             (i) an existing caveat or lien affecting the land; or
- 7                             (ii) any Act, other than this Act.
- 8             (2) A person appointed as the seller's agent under section 174 (2) has
- 9                     the power to convey the land to a purchaser and do all things
- 10                     necessary to effect the conveyance.
- 11             (3) On settlement, the seller is to apply the sale proceeds in the
- 12                     following order:
- 13                     (a) paying the sale costs and the applicant's costs in seeking the
- 14                             order for sale;
- 15                     (b) paying amounts payable under securities ranking in priority to
- 16                             the charge;
- 17                     (c) satisfying the original order;
- 18                     (d) paying exit entitlements payable to residents if, because of the
- 19                             court order, the retirement village scheme stops operating or
- 20                             the residence contracts under the scheme end;
- 21                     (e) paying amounts payable under securities ranking in priority
- 22                             after the charge;
- 23                     (f) paying the balance to the person who owned the retirement
- 24                             village land immediately before the sale, or to someone else at
- 25                             the person's direction.
- 26             (4) For ensuring compliance with subsection (3) (d), the seller must take
- 27                     reasonable steps to locate any former resident to whom an exit
- 28                     entitlement is payable.

1 **Division 9.4** **Extinguishing and releasing charges**  
2 **over land**

3 **176 Extinguishing charges**

4 (1) A charge created over retirement village land under this part is  
5 extinguished on the earlier of—

6 (a) its release by the commissioner for fair trading under  
7 section 178 (Commissioner for fair trading to release charge);  
8 and

9 (b) the sale of the land under a court order under section 174  
10 (Orders court may make).

11 (2) However, subsection (1) (b) does not apply if—

12 (a) the land continues, or is to continue, to be used under a  
13 registered scheme for a retirement village; and

14 (b) under the residence contracts in relation to the village, a person  
15 does not obtain a leasehold interest in the retirement village  
16 land.

17 **177 Scheme operator may ask for release of charge if land**  
18 **stops being retirement village land**

19 (1) A scheme operator for a retirement village may ask the  
20 commissioner for fair trading to release the charge over the  
21 retirement village land on which the retirement village is located  
22 if—

23 (a) the land stops being retirement village land; or

24 (b) the scheme operator proposes to stop using the land for a  
25 retirement village.

26 (2) A request under subsection (1) must be in writing.

- 1           (3) The scheme operator must also—
- 2               (a) give each resident of the retirement village a written notice
- 3                 stating—
- 4                   (i) that the scheme operator has asked the commissioner for
- 5                     fair trading to release the charge over the retirement
- 6                     village land; and
- 7                   (ii) how the resident will be affected if the charge is released;
- 8                     and
- 9                   (iii) that, not later than 60 days after the day the resident
- 10                    receives the notice, the resident may, by written notice
- 11                    given to the commissioner for fair trading, object to the
- 12                    release; and
- 13               (b) give the commissioner for fair trading—
- 14                   (i) a statutory declaration made by the scheme operator
- 15                     stating—
- 16                     (A) the fact of the scheme operator's compliance with
- 17                     paragraph (a); and
- 18                     (B) whether the scheme operator knows or suspects on
- 19                     reasonable grounds that a person has started, or is
- 20                     likely to start, proceedings to enforce the charge
- 21                     under section 173 (Enforcing charges); and
- 22                   (ii) a copy of the notice given to residents under
- 23                     paragraph (a).
- 24               *Note 1*   The *Statutory Declarations Act 1959* (Cwlth) applies to the making of
- 25                 statutory declarations under ACT laws.
- 26               *Note 2*   The Criminal Code includes an offence for making false statements in
- 27                 statutory declarations (see s 336A).

- 1           (4) In this section:
- 2                 *resident* includes a former resident who has not received an exit
- 3                 entitlement to which the former resident is entitled under the former
- 4                 resident's residence contract.
- 5       **178       Commissioner for fair trading to release charge**
- 6           (1) The commissioner for fair trading must release the charge over
- 7           retirement village land of a retirement village if the commissioner is
- 8           satisfied—
- 9                 (a) the scheme operator for the retirement village has complied
- 10                 with section 177; and
- 11                 (b) having regard to any objections made under section 177, it is
- 12                 appropriate to release the charge over the land.
- 13           (2) If the commissioner for fair trading releases a charge under
- 14           subsection (1), the commissioner must give the registrar-general
- 15           written notice of the release.
- 16           (3) On receiving the notice, the registrar-general must register the
- 17           release of the charge over the retirement village land.

1 **Part 10** Residents participation

2 **Division 10.1** Residents committees

3 **179** Establishing residents committees

- 4 (1) The residents of a retirement village may establish, by election  
5 conducted among themselves, a residents committee for the village.
- 6 (2) Only a resident of the retirement village may be a member of a  
7 residents committee.
- 8 (3) Only 1 residents committee may be established for a retirement  
9 village.
- 10 (4) If more than 1 body or committee (however described) purports to  
11 be the residents committee for a retirement village, the scheme  
12 operator for the village or a resident of the village may apply to the  
13 ACAT for an order determining which body or committee is the  
14 residents committee.
- 15 (5) Nothing in this section prevents the residents of a retirement village  
16 establishing other committees or organisations of residents for other  
17 purposes.
- 18 (6) A regulation may make provision in relation to the following:
- 19 (a) the election, functions and procedure of residents committees  
20 and sub-committees;
- 21 (b) model rules that may be adopted by a residents committee.

22 **180** Operating residents committees

- 23 (1) A residents committee for a retirement village may—
- 24 (a) decide its own procedure; and
- 25 (b) form 1 or more subcommittees and decide the procedure for  
26 those subcommittees; and



- 1 (c) call meetings of all the residents of the village to vote on—  
2 (i) any matter on which a resolution of the residents is  
3 required under this Act; and  
4 (ii) any other matter affecting the management or operation  
5 of the village; and  
6 (iii) any other matter prescribed by regulation.  
7 (2) The matters mentioned in subsection (1) are subject to the  
8 conditions (if any) prescribed by regulation.

9 **181 Offence—preventing etc residents committees**

10 A scheme operator for a retirement village commits an offence if the  
11 operator does any of the following in relation to a residents  
12 committee for the village:

- 13 (a) discourages or prevents the establishment of a residents  
14 committee;  
15 (b) obstructs a residents committee from exercising the  
16 committee's functions;  
17 (c) prevents a resident of the village from joining a committee or  
18 organisation for residents of the village.

19 Maximum penalty: 50 penalty units.

20 **182 Scheme operator to provide administrative assistance**

- 21 (1) This section applies if—  
22 (a) a scheme operator for a retirement village receives a written  
23 request from a residents committee for the village for  
24 administrative assistance; and  
25 (b) an estimate of the cost of providing the assistance has been  
26 included in the general services charge budget.

- 1 (2) The scheme operator must give reasonable administrative assistance  
2 to the residents committee.

3 **Examples—administrative assistance**

4 photocopying, distributing notices

5 *Note* An example is part of the Act, is not exhaustive and may extend, but  
6 does not limit, the meaning of the provision in which it appears (see  
7 Legislation Act, s 126 and s 132).

8 **183 Meetings between residents committees and scheme**  
9 **operators**

- 10 (1) A scheme operator for a retirement village must, on the reasonable  
11 request of a residents committee for the village, meet with the  
12 committee or a representative of the committee.
- 13 (2) A residents committee for a retirement village or a representative of  
14 the committee must, on the reasonable request of the scheme  
15 operator for the village, meet the operator.
- 16 (3) If a reasonable request under this section is not complied with, the  
17 person who made the request may apply to the ACAT for an order  
18 directing compliance with the request.

19 **184 Retirement villages without residents committees**

- 20 (1) If there is no residents committee for a retirement village, the  
21 scheme operator for the village must call a residents meeting for  
22 considering and voting on the matters mentioned in  
23 section 180 (1) (c) (Operating residents committees)—
- 24 (a) at least once every 12 months; and
- 25 (b) if the scheme operator receives a written request for a meeting  
26 from—
- 27 (i) 5 residents or 10% of the residents (whichever is the  
28 greater) of the retirement village; or

1 (ii) if the retirement village has fewer than 10 occupied  
2 accommodation units—a majority of the occupied units.

3 (2) The meeting must be held in or near the retirement village.

## 4 **Division 10.2 Meetings of residents committees**

### 5 **185 Meaning of *decision*—div 10.2**

6 In this division:

7 *decision* does not include a decision to be made by the owners  
8 corporation of a units plan under the *Unit Titles (Management)*  
9 *Act 2011*.

### 10 **186 Decision-making at meetings**

11 (1) A decision by residents of a retirement village at a residents meeting  
12 must be made by ordinary resolution, unless this Act requires the  
13 decision to be made by special resolution.

14 (2) If, at a residents meeting, the residents make a resolution of a  
15 particular kind (that is, an ordinary or special resolution), a  
16 resolution of the same kind at a meeting is required to amend or  
17 revoke the earlier resolution, unless this Act requires otherwise.

### 18 **187 Ordinary resolutions**

19 The requirement for passing an ordinary resolution at a residents  
20 meeting is that the number of votes cast in favour of the resolution  
21 exceeds the number of votes cast against it.

### 22 **188 Special resolutions**

23 The requirements for passing a special resolution at a residents  
24 meeting are that—

25 (a) the number of votes cast in favour of the resolution exceed the  
26 number of votes cast against it; and

- 1 (b) the votes cast against the resolution number less than  $\frac{1}{3}$  of the  
2 total number of votes that can be cast on the resolution by  
3 people present at the meeting (including proxy votes).

4 **189 Who may vote**

- 5 (1) The following people are entitled to vote at a residents meeting:
- 6 (a) if the residents of the retirement village have, by special  
7 resolution, agreed that each resident of the village should be  
8 entitled to vote—each resident of the village;
- 9 (b) if a former resident of an accommodation unit in the village is  
10 required under section 142 (Working out and paying general  
11 services charge for former residents) to pay the whole or a  
12 portion of the general services charge for the unit—1 former  
13 resident of the accommodation unit;
- 14 (c) in any other case—1 resident of each accommodation unit in  
15 the village.
- 16 (2) A resident's vote at a residents meeting may be cast by—
- 17 (a) the resident; or
- 18 (b) a person who the resident has appointed by power of attorney;  
19 or
- 20 (c) any other person who the resident has appointed by signed  
21 notice to vote by way of a proxy vote at a particular meeting  
22 stated in the notice.

23 **190 Secret ballot**

24 If a person entitled to vote at a residents meeting asks for a vote to  
25 be undertaken by secret ballot, the vote must be undertaken by  
26 secret ballot.

1 **191 Proxy votes**

- 2 (1) Votes at a residents meeting may be cast by proxy.
- 3 (2) A person entitled to vote at a residents meeting must not—
- 4 (a) appoint a proxy for more than 1 meeting at a time; or
- 5 (b) appoint the scheme operator for the village as a proxy.
- 6 (3) A person may not hold more than 2 proxy votes for a meeting.

7 **192 Postal votes**

8 Votes at a residents meeting may be cast in writing by placing the  
9 vote in a container supplied for that purpose before the time when  
10 the meeting is to be held.

11 **193 Offences—postal votes**

- 12 (1) A scheme operator for a retirement village commits an offence if the  
13 operator fails to provide a secured container in a common area of  
14 the village for the purpose of a resident casting a vote under  
15 section 192 at least 24 hours before the time of a residents meeting.

16 Maximum penalty: 10 penalty units.

- 17 (2) A scheme operator for a retirement village commits an offence if the  
18 operator fails to deliver the secured container to the chairperson of a  
19 residents meeting immediately before the chairperson opens the  
20 meeting.

21 Maximum penalty: 10 penalty units.

- 22 (3) A scheme operator commits an offence if the operator opens, or  
23 allows to be opened, the secured container before it is delivered to  
24 the chairperson of a residents meeting.

25 Maximum penalty: 10 penalty units.

- 1     **194     Quorum at meetings**
- 2           (1) A motion may be considered at a residents meeting only if there is
- 3           present—
- 4           (a) a quorum (a *standard quorum*) made up by people entitled to
- 5           vote on the motion in relation to not less than  $\frac{1}{2}$  the total
- 6           number of accommodation units in a retirement village; or
- 7           (b) a quorum (a *reduced quorum*) made up under subsection (2).
- 8           (2) If a standard quorum is not present within  $\frac{1}{2}$  an hour after the
- 9           motion arises for consideration, a reduced quorum for the motion
- 10          and any subsequent motion considered at the meeting is made up by
- 11          2 or more people present at the meeting who are entitled to vote on
- 12          the motion.
- 13          (3) If a reduced quorum is not present  $\frac{1}{2}$  an hour after the motion arises
- 14          for consideration, the meeting is adjourned to the same day in the
- 15          next week at the same place and time.
- 16          (4) If a reduced quorum is present for the consideration of any motion
- 17          and the motion is voted on, section 195 applies to the decision on
- 18          the motion.
- 19          (5) If a reduced quorum is present for the consideration of any motion
- 20          and the motion is not voted on, the meeting may decide to adjourn
- 21          to the same day in the next week at the same place and time to
- 22          consider the motion (and any others remaining to be considered).
- 23          (6) If a meeting is adjourned under this section (including
- 24          paragraph (c)) and a standard quorum is not present within  $\frac{1}{2}$  an
- 25          hour after a motion arises for consideration at the adjourned
- 26          meeting—
- 27           (a) a reduced quorum is made up by the people who are then
- 28           present and entitled to vote on the motion and any subsequent
- 29           motion considered at the adjourned meeting; and

- 1 (b) if a reduced quorum is present for the consideration of any  
2 motion at the adjourned meeting, and the motion is voted on—  
3 the decision on the motion must be notified under section 195;  
4 and
- 5 (c) if the motion (or any other motion) is not voted on at the  
6 adjourned meeting—the adjourned meeting may resolve to  
7 adjourn again to the same day in the next week at the same  
8 place and time to consider the resolution (and any others  
9 remaining to be considered at the meeting).

10 **195 Notice of reduced quorum decisions and adjournments**

- 11 (1) If a decision (a *reduced quorum decision*) is made on a motion  
12 while a reduced quorum was present for the consideration of the  
13 motion, within 7 days after the meeting a scheme operator for a  
14 retirement village must give each resident of the retirement village  
15 written notice of the reduced quorum decision.

16 *Note* If a form is approved under s 217 for a notice, the form must be used.

- 17 (2) Within 4 days after a meeting is adjourned under section 176, the  
18 scheme operator must give each resident a written notice of the date,  
19 place and time to which the meeting is adjourned.

20 **196 Reduced quorum decisions—effect**

- 21 (1) A reduced quorum decision takes effect 21 days after the decision  
22 was made, subject to this section.
- 23 (2) Subsection (1) does not apply if a scheme operator for a retirement  
24 village fails to give notice of the reduced quorum decision under  
25 section 195 (1).

- 1 (3) A reduced quorum decision is disallowed if, within 21 days after the  
2 decision was made, the scheme operator is given a petition requiring  
3 that the decision be disallowed signed by a majority of people  
4 entitled to vote on the relevant motion at the time of signing  
5 (whether or not they were present or entitled to vote on the motion  
6 at the general meeting at which the decision was made).
- 7 (4) If, within 21 days after a reduced quorum decision is made, a  
8 motion is passed confirming the reduced quorum decision while a  
9 standard quorum is present at a meeting for consideration of the  
10 confirmation motion, the reduced quorum decision takes effect on  
11 confirmation, whether or not a petition under subsection (3) is at any  
12 time given to the scheme operator.
- 13 (5) This section does not prevent a reduced quorum decision from being  
14 revoked at a meeting, whether a standard quorum or reduced  
15 quorum is present while the revocation motion is being considered.



1 **Part 11** **Retirement village disputes**

2 **Division 11.1** **General**

3 **197** **Meaning of *retirement village dispute***

- 4 (1) For this Act, a dispute is a *retirement village dispute* if—
- 5 (a) it is between—
- 6 (i) the parties to a residence contract; or
- 7 (ii) if a resident is not a party to the residence contract—the
- 8 resident and the scheme operator; and
- 9 (b) it is about, arises from, or relates to, the residence contract.

10 **Example**

11 a dispute between a resident and a scheme operator about who is lawfully entitled

12 to an amount received as an ingoing contribution in relation to a residence

13 contract

14 *Note* An example is part of the Act, is not exhaustive and may extend, but

15 does not limit, the meaning of the provision in which it appears (see

16 Legislation Act, s 126 and s 132).

- 17 (2) In this section:
- 18 *resident* includes a former resident.

19 **198** **Applications to ACAT**

- 20 (1) A person may make an application to the ACAT in relation to a
- 21 retirement village dispute.

22 *Note* If a form is approved under the *ACT Civil and Administrative Tribunal*

23 *Act 2008* for the application, the form must be used.

- 24 (2) This section is subject to section 199.

- 1     **199 Preliminary negotiations**
- 2           (1) A person may make an application to the ACAT in relation to a  
3           retirement village dispute only if the parties to the dispute have  
4           attempted to resolve the dispute under this section.
- 5           (2) A party to the retirement village dispute (the *1st party*) must give  
6           the other party to the dispute (the *2nd party*) written notice—
- 7                 (a) stating the matters in dispute; and
- 8                 (b) nominating a day (the *nominated day*), not earlier than 14 days  
9                 after the day the notice is given, for the parties to meet in the  
10                retirement village to attempt to resolve the dispute.
- 11          (3) The 2nd party must give the 1st party a written response to the  
12          notice not later than 7 days after the day the 2nd party received the  
13          notice.
- 14          (4) On the nominated day, or another day that is not later than 7 days  
15          after the nominated day and agreed by the parties, the parties must  
16          meet in the retirement village and attempt to resolve the dispute.
- 17          (5) If the parties reach agreement during a preliminary negotiation, the  
18          scheme operator must, within 7 days after the day agreement is  
19          reached—
- 20                 (a) record the agreement in writing; and
- 21                 (b) sign the agreement; and
- 22                 (c) organise for the agreement to be signed by or on behalf of the  
23                 resident; and
- 24                 (d) give a copy of the signed agreement to the resident.

1     **Division 11.2            Mediation**

2     **200           Referral to mediation**

3           (1) This section applies if a person makes an application to the ACAT  
4           in relation to a retirement village dispute.

5           (2) Not later than 14 days after the day the application is made, the  
6           registrar must—

7                   (a) refer the subject matter of the application to a registered  
8                   mediator for mediation; and

9                   (b) give the parties to the dispute written notice of—

10                           (i) the mediator who is to mediate the dispute; and

11                           (ii) the time, date and place of the conference (the *mediation*  
12                           *conference*) to be conducted by the mediator.

13           (3) The notice under subsection (2) (b) must be given not later than  
14           7 days before the mediation conference.

15           (4) In this section:

16                   *registered mediator*—see the *Mediation Act 1997*, dictionary.

17     **201           Parties attendance at mediation conferences**

18           A party to a retirement village dispute cannot be compelled to attend  
19           a mediation conference.

20     **202           Representation at mediation conferences**

21           A party to a retirement village dispute may be represented at a  
22           mediation conference by a lawyer or an agent, unless the mediator is  
23           satisfied on reasonable grounds that the party should not be  
24           represented.

1 **203 People who may attend mediation conferences**

- 2 (1) A mediator may allow a person to take part in a mediation  
3 conference in relation to a retirement village dispute if the mediator  
4 is satisfied that the person has a sufficient interest in the resolution  
5 of the dispute.
- 6 (2) However, the person does not become a party to the retirement  
7 village dispute.

8 **204 Mediation agreements**

- 9 (1) This section applies if the parties to a retirement village dispute  
10 reach a mediated agreement (the *mediation agreement*) on the  
11 dispute.
- 12 (2) The mediator must record the mediation agreement in writing and  
13 have it signed by or for the parties.
- 14 (3) The mediator must give a copy of the signed mediation agreement to  
15 the registrar as soon as practicable after it is signed.

16 **Division 11.3 ACAT orders**

17 **205 ACAT orders generally**

- 18 (1) The ACAT may make the following orders in relation to a  
19 retirement village dispute:
- 20 (a) an order requiring a party to the dispute to do, or not do,  
21 something;
- 22 (b) an order requiring a party to the dispute to pay an amount  
23 (including an amount of compensation) to a stated person;
- 24 (c) an order that a party to the dispute need not pay an amount to a  
25 stated person;
- 26 (d) an order setting aside a residence contract between the parties  
27 to the dispute;

- 1 (e) an order setting aside a mediation agreement between the  
2 parties to the dispute;
- 3 (f) an order giving effect to a settlement agreed to by the parties to  
4 the dispute.
- 5 (2) An order may state a time for compliance with it.
- 6 (3) This section does not limit the orders the ACAT may make in  
7 relation to a retirement village dispute.
- 8 *Note* The *ACT Civil and Administrative Tribunal Act 2008*, s 56 sets out other  
9 orders the ACAT may make.

10 **206 ACAT orders—removal from retirement village etc**

- 11 (1) This section applies if a retirement village dispute arises because a  
12 resident of a retirement village—
- 13 (a) is threatened with removal, or is removed, from the village by  
14 the scheme operator for the village; or
- 15 (b) is threatened with deprivation, or is deprived, of the resident's  
16 right to live in the village under a residence contract by the  
17 scheme operator; or
- 18 (c) is threatened with restriction of, or is restricted in, the  
19 resident's use of the village land under the residence contract  
20 by the scheme operator.
- 21 (2) The ACAT may make an order that the scheme operator do, or not  
22 do, a stated thing.
- 23 (3) In making an order, the ACAT must be satisfied that the actual or  
24 threatened removal, deprivation or restriction mentioned in the  
25 application—
- 26 (a) is, or would be, a breach of the resident's residence contract; or  
27 (b) is not, or would not be, justified.

- 1 (4) Without limiting subsection (3), the ACAT may have regard to the  
2 rights and interests of all people who may be affected if the order is  
3 made.
- 4 (5) The ACAT may make the order on the conditions and for the period  
5 it decides is appropriate.

6 **207 ACAT orders—false or misleading documents**

- 7 (1) This section applies if a retirement village dispute arises because—
- 8 (a) a scheme operator for a retirement village contravenes the  
9 Criminal Code, section 338 (Giving false or misleading  
10 information); and
- 11 (b) a resident of the village is significantly prejudiced by the  
12 contravention.
- 13 (2) The ACAT may make an order setting aside the resident’s residence  
14 contract.
- 15 (3) In setting aside a residence contract, the ACAT may make the  
16 orders it considers appropriate, including—
- 17 (a) an order that the scheme operator refund to the resident the  
18 ingoing contribution or another amount paid under the  
19 residence contract; and
- 20 (b) an order that the scheme operator compensate the resident for  
21 damages or loss caused by the contravention.

22 **208 ACAT orders—payment of exit entitlement**

- 23 (1) This section applies if a retirement village dispute arises because—
- 24 (a) a scheme operator for a retirement village fails to comply with  
25 a requirement under division 6.3 (Reselling accommodation  
26 units); and
- 27 (b) a former resident of the village is significantly prejudiced by  
28 the failure.

- 1           (2) The ACAT may make an order requiring the scheme operator to pay  
2           the former resident the former resident's exit entitlement.
- 3           (3) In ordering the scheme operator to pay the exit entitlement to the  
4           former resident, the ACAT must base the exit entitlement on the  
5           following in relation to the accommodation unit that the resident  
6           lived in:
- 7               (a) if the resale value of the right to live in the accommodation  
8               unit has been agreed between the resident and scheme  
9               operator—the agreed value; and
- 10               (b) if the resale value of the right to live in the unit has not been  
11               agreed—the resale value of the right to live in the unit decided  
12               by the ACAT under subsection (4).
- 13           (4) For subsection (3) (b), the ACAT must obtain an independent  
14           valuation of the right to live in the accommodation unit from a  
15           valuer.

1 **Part 12 Retirement village scheme**  
2 **register**

3 **209 Retirement village scheme register**

- 4 (1) The commissioner for fair trading must keep a register of schemes  
5 for retirement villages registered under this Act (the *retirement*  
6 *village scheme register*).
- 7 (2) The retirement village scheme register must include the following  
8 items (each of which is a *record*) for each scheme for a retirement  
9 village:
- 10 (a) a copy of the registration certificate;
- 11 (b) details of the following:
- 12 (i) the land on which the retirement village buildings and  
13 facilities are, or will be, constructed;
- 14 (ii) the accommodation units and communal facilities that are  
15 available for the retirement village under the scheme;
- 16 (iii) the accommodation units and communal facilities that are  
17 available for the retirement village under the scheme,  
18 depending on the sales activity, finance availability, or  
19 market conditions for the village;
- 20 (iv) other matters in relation to the scheme prescribed by  
21 regulation;
- 22 (c) a copy of the public information document in relation to the  
23 scheme, and notice of any inaccuracy in the document given  
24 under section 71 (2) (Offences—failure to notify inaccuracies  
25 in public information documents);



1 (d) the annual financial statements given under section 163  
2 (Preparing annual financial statements).

3 *Note* If the commissioner for fair trading transfers or cancels the registration  
4 of a scheme for a retirement village, the commissioner must record the  
5 transfer or cancellation in the retirement village scheme register (see  
6 s 15 (5) and s 18 (5)).

7 (3) The retirement village scheme register may be kept in any form,  
8 including electronically, that the commissioner for fair trading  
9 decides.

10 (4) A record must be kept on the retirement village scheme register for  
11 at least 10 years.

## 12 **210 Correcting retirement village scheme register**

13 The commissioner for fair trading may correct a mistake or  
14 omission in the retirement village scheme register subject to the  
15 requirements (if any) prescribed by regulation.

## 16 **211 Public access to retirement village scheme register**

17 (1) The retirement village scheme register must be available for  
18 inspection at reasonable times.

19 (2) A person may make a copy of all or part of the retirement village  
20 scheme register.

21 *Note* A fee may be determined under s 216 for s (2).

1 **Part 13** **Notification and review of**  
2 **decisions**

3 **212** **Meaning of *reviewable decision*—pt 13**

4 In this part:

5 *reviewable decision* means a decision mentioned in schedule 1,  
6 column 3 under a provision of this Act mentioned in column 2 in  
7 relation to the decision.

8 **213** **Reviewable decision notices**

9 If a person makes a reviewable decision, the person must give a  
10 reviewable decision notice to each entity mentioned in schedule 1,  
11 column 4 in relation to the decision.

12 *Note 1* The person must also take reasonable steps to give a reviewable  
13 decision notice to any other person whose interests are affected by the  
14 decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

15 *Note 2* The requirements for reviewable decision notices are prescribed under  
16 the *ACT Civil and Administrative Tribunal Act 2008*.

17 **214** **Applications for review**

18 The following may apply to the ACAT for a review of a reviewable  
19 decision:

20 (a) an entity mentioned in schedule 1, column 4 in relation to the  
21 decision;

22 (b) any other person whose interests are affected by the decision.

23 *Note* If a form is approved under the *ACT Civil and Administrative Tribunal*  
24 *Act 2008* for the application, the form must be used.

## 1      **Part 14**                                      **Miscellaneous**

### 2      **215**              **Review of Act**

3              (1) The Minister must, as soon as practicable after the end of this Act's  
4              2nd year of operation (but before the commencement of part 9  
5              (Charges created over retirement village land to protect residents'  
6              rights))—

7                      (a) review the operation of the Act; and

8                      (b) present a report of the review to the Legislative Assembly.

9              (2) The review must include—

10                      (a) a consideration of the effectiveness of the operation of part 9  
11                      to secure the rights mentioned in section 171 (Effect of  
12                      charges) of residents of retirement villages; and

13                      (b) a consideration of the effectiveness of the operation of this Act  
14                      in achieving its objects.

### 15      **216**              **Determination of fees**

16              (1) The Minister may determine fees for this Act.

17              *Note*      The Legislation Act contains provisions about the making of  
18              determinations and regulations relating to fees (see pt 6.3).

19              (2) A determination is a disallowable instrument.

20              *Note*      A disallowable instrument must be notified, and presented to the  
21              Legislative Assembly, under the Legislation Act.

### 22      **217**              **Approved forms**

23              (1) The commissioner for fair trading may approve forms for this Act.

24              (2) If the commissioner for fair trading approves a form for a particular  
25              purpose, the approved form must be used for that purpose.

26              *Note*      For other provisions about forms, see the Legislation Act, s 255.

1 (3) An approved form is a notifiable instrument.

2 *Note* A notifiable instrument must be notified under the Legislation Act.

3 **218 Regulation-making power**

4 The Executive may make regulations for this Act.

5 *Note* A regulation must be notified, and presented to the Legislative  
6 Assembly, under the Legislation Act.

7 **219 Legislation amended—sch 2**

8 This Act amends the legislation mentioned in schedule 2.

9 **220 Legislation repealed**

10 The *Fair Trading (Retirement Villages Industry) Code of*  
11 *Practice 1999* (NI1999-277) is repealed.

1       **Part 15**                               **Transitional**

2       **500**       **Definitions—pt 15**

3               In this part:

4               *commencement day* means the day this Act, section 6 (Objects of  
5               Act) commences.

6               *existing contract* means any of the following that was in force  
7               immediately before the commencement day:

8               (a) a residence contract under the repealed code;

9               (b) any other contract, agreement, scheme or arrangement under  
10              which a person obtained the right to occupy residential  
11              premises in a complex that was, at the time the right was  
12              obtained, a retirement village within the meaning of this Act  
13              (even if it stopped being a retirement village before the  
14              commencement of this Act).

15              *repealed code* means the *Fair Trading (Retirement Villages*  
16              *Industry) Code of Practice 1999* (NI1999-277).

17       **501**       **Status of existing contracts**

18              (1) An existing contract is taken to be a residence contract under this  
19              Act.

20              (2) This section is subject to section 502 and section 503.

21       **502**       **Noncompliant residence contracts**

22              Section 21 (Form and content of residence contracts) and section 22  
23              (Offence—noncompliant residence contracts) do not apply to an  
24              existing contract.

- 1     **503           Inconsistencies between Act and existing contracts**
- 2           (1) This section applies if an existing contract contains a provision (the
- 3                 *contract provision*) dealing with the same subject matter as a
- 4                 provision of this Act (the *Act provision*) that would, apart from this
- 5                 section, apply to the contract.
- 6           (2) The Act provision applies to the existing contract to the extent that it
- 7                 is possible for it to apply without being inconsistent with the
- 8                 contract provision.
- 9           (3) However, if the Act provision is inconsistent with the contract
- 10                provision, the contract provision prevails to the extent of the
- 11                inconsistency.
- 12     **504           Parties may agree to apply Act to existing contract**
- 13           Despite section 502 and section 503—
- 14               (a) the parties to an existing contract may agree in writing that this
- 15                    Act applies to the existing contract or part of the contract; and
- 16               (b) if the parties agree, this Act applies to the existing contract or
- 17                    part of the contract.
- 18     **505           Offence—failure to give public information documents to**
- 19                **existing residents**
- 20           A scheme operator for a retirement village commits an offence if the
- 21                scheme operator fails to give a copy of the public information
- 22                document for the retirement village to each resident of the village
- 23                under an existing contract within 28 days after the commencement
- 24                day.
- 25           Maximum penalty: 540 penalty units.

1    **506       Cooling-off periods**

2            Division 4.4 (Rescinding residence contracts during cooling-off  
3            periods for residence contracts) does not apply to an existing  
4            contract.

5    **507       Settling-in periods**

6            Division 4.7 (Ending residence contracts during settling-in period)  
7            does not apply to an existing contract.

8    **508       Waiting list fees**

9            (1) This section applies to a fee that is a waiting list fee within the  
10            meaning of this Act if the fee was paid before the commencement  
11            day.

12           (2) Division 6.1 (Waiting list fees) does not apply to the fee.

13   **509       Existing disputes**

14           (1) This section applies if—

15            (a) before the commencement day, a dispute resolution process  
16            (the *existing dispute resolution process*) was started in relation  
17            to a dispute under an existing contract; and

18            (b) immediately before the commencement day, the existing  
19            dispute resolution process had not finished.

20           (2) The existing dispute resolution process continues to apply to the  
21            dispute.

1 **510 Transitional regulations**

- 2 (1) A regulation may prescribe transitional matters necessary or  
3 convenient to be prescribed because of the enactment of this Act.
- 4 (2) A regulation may modify this part (including in relation to another  
5 territory law) to make provision in relation to anything that, in the  
6 Executive's opinion, is not, or is not adequately or appropriately,  
7 dealt with in this part.
- 8 (3) A regulation under subsection (2) has effect despite anything else in  
9 this Act or another territory law.

10 **511 Expiry—pt 15**

11 This part expires 1 year after the commencement day.

12 *Note* Transitional provisions are kept in the Act for a limited time. A  
13 transitional provision is repealed on its expiry but continues to have  
14 effect after its repeal (see Legislation Act, s 88).



1 **Schedule 1      Reviewable decisions**  
2 (see pt 13)

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>
1	13 (1) (b)	refuse to register scheme for retirement village	applicant for registration
2	15 (4) (b)	refuse to transfer registration of scheme for retirement village	scheme operator
2	17 (2)	cancel registration of scheme for retirement village	scheme operator
3	18 (3)	refuse to cancel registration of scheme for retirement village	scheme operator

1 **Schedule 2 Consequential amendments**

2 (see s 219)

3 **Part 2.1 Agents Act 2003**

4 **[2.1] New section 77 (1A)**

5 *insert*

6 (1A) Subsection (1) does not apply if—

7 (a) the agent is a scheme operator for a retirement village under  
8 the *Retirement Villages Act 2011*; and

9 (b) the agent sells an accommodation unit in the retirement village  
10 for a resident under that Act.

11 *Note* The agent has an evidential burden in relation to the matters mentioned  
12 in s (1A) (see Criminal Code, s 58).

13 **Part 2.2 Civil Law (Sale of Residential  
14 Property) Act 2003**

15 **[2.2] Section 8 (2) (c)**

16 *omit*

17 **[2.3] Section 20, definition of *premises*, paragraph (e)**

18 *substitute*

19 (e) a retirement village under the *Retirement Villages Act 2011*;

20 **[2.4] Section 20, definition of *retirement village***

21 *omit*

22 **[2.5] Dictionary, definition of *retirement village***

23 *omit*

1 **Part 2.3** **Discrimination Act 1991**

2 **[2.6] New section 57KA**

3 *insert*

4 **57KA Accommodation and goods and services for retirement**  
5 **villages**

6 (1) Section 20 or section 21 does not make it unlawful to discriminate  
7 against a person on the ground of age in relation to the provision of  
8 goods and services or accommodation in a retirement village.

9 (2) In this section:

10 *retirement village*—see the *Retirement Villages Act 2011*, section 7.

11 **Part 2.4** **Fair Trading (Australian**  
12 **Consumer Law) Act 1992**

13 **[2.7] Dictionary, definition of *fair trading legislation*, new**  
14 **paragraph (fa)**

15 *insert*

16 (fa) the *Retirement Villages Act 2011*; or

17 **Part 2.5** **Residential Tenancies Act 1997**

18 **[2.8] Section 4 (a)**

19 *substitute*

20 (a) a retirement village under the *Retirement Villages Act 2011*; or

1 **Dictionary**

2 (see s 3)

3 *Note 1* The Legislation Act contains definitions and other provisions relevant to  
4 this Act.

5 *Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- 6 • ACAT
- 7 • ACT
- 8 • Australian statistician
- 9 • commissioner for fair trading
- 10 • Commonwealth
- 11 • contravene
- 12 • Corporations Act
- 13 • Criminal Code
- 14 • daily newspaper
- 15 • document
- 16 • domestic partner
- 17 • entity
- 18 • financial year
- 19 • function
- 20 • GST
- 21 • land
- 22 • lawyer
- 23 • Minister (see s 162)
- 24 • month
- 25 • must (see s 146)
- 26 • proceeding
- 27 • public trustee
- 28 • quarter
- 29 • registrar-general
- 30 • reviewable decision notice
- 31 • State
- 32 • territory law.

1 **accommodation information**, for a scheme for a retirement village,  
2 for division 5.1 (General inquiry documents and public information  
3 documents)—see section 66.

4 **accommodation unit** means the part of a retirement village where a  
5 resident of the village has an exclusive right to live.

6 **authorised person**, for division 4.5 (Dealing with property assigned  
7 during cooling-off period)—see section 33.

8 **capital improvement**—see section 101.

9 **capital item**, in relation to a retirement village, includes—

10 (a) a building or structure in the village owned by the scheme  
11 operator for the village, other than an item that, under a  
12 residence contract, is to be maintained, replaced or repaired by  
13 a resident of the village; and

14 (b) plant, machinery or equipment used in the operation of the  
15 village, other than an item that is property of an owners  
16 corporation for a units plan in relation to the village; and

17 (c) infrastructure of the village owned by the scheme operator for  
18 the village.

19 **Examples—par (a)**

20 communal facilities, amenities, accommodation units

21 **Examples—par (b)**

22 communal hot water and air conditioning, communal kitchen and dining room  
23 equipment, community facility furnishings, gardening equipment, retirement  
24 village bus or transportation services

25 **Examples—par (c)**

26 roadways, pathways, drainage, sewerage mains, landscaping, electrical  
27 distribution systems, water services and connections, distribution services

28 *Note* An example is part of the Act, is not exhaustive and may extend, but  
29 does not limit, the meaning of the provision in which it appears (see  
30 Legislation Act, s 126 and s 132).

31 **capital replacement fund** means a fund established under  
32 section 111.

- 1            **capital replacement fund amount**, for division 8.2 (Capital  
2 replacement fund)—see section 113 (1).
- 3            **capital replacement fund contribution**, for a retirement village—  
4 see section 109.
- 5            **condition report**, for division 6.2 (Condition of accommodation  
6 units)—see section 81.
- 7            **conviction**, for division 7.1 (Scheme operators)—see the *Spent  
8 Convictions Act 2000*, section 6.
- 9            **cooling-off period**, for a residence contract, in relation to a  
10 retirement village—see section 30.
- 11           **decision**, for division 10.2 (Meetings of residents committees)—see  
12 section 185.
- 13           **dispute resolution information**, for a scheme for a retirement  
14 village, for division 5.1 (General inquiry documents and public  
15 information documents)—see section 66.
- 16           **exit entitlement** means an amount that a scheme operator for a  
17 retirement village may be liable to pay, or to credit to the account of,  
18 a resident or former resident of the village under a residence  
19 contract arising from—
- 20           (a) the resident or former resident ceasing to live in the  
21 accommodation unit to which the contract relates; or
- 22           (b) the settlement of the sale of the right to live in the  
23 accommodation unit.
- 24           **exit fee** means the amount that a resident or former resident of a  
25 retirement village may be liable to pay to a scheme operator for the  
26 village under a residence contract arising from—
- 27           (c) the resident or former resident ceasing to live in the  
28 accommodation unit to which the contract relates; or
- 29           (d) the settlement of the sale of a right to live in the  
30 accommodation unit.

1 **facilities information**, for a scheme for a retirement village, for  
2 division 5.1 (General inquiry documents and public information  
3 documents)—see section 66.

4 **former resident** includes—

- 5 (a) a person who, personally or for someone else, entered into a  
6 residence contract to secure the person's, or other person's,  
7 right to live in a retirement village; or  
8 (b) the former resident's personal representative.

9 **fund information**, for a scheme for a retirement village, for  
10 division 5.1 (General inquiry documents and public information  
11 documents)—see section 66.

12 **general services** means services supplied, or made available, to all  
13 residents of a retirement village.

14 **Examples**

- 15 • management and administration  
16 • gardening and general maintenance  
17 • a shop or other facility for supplying goods to residents  
18 • a service or facility for the recreation or entertainment of residents

19 *Note* An example is part of the Act, is not exhaustive and may extend, but  
20 does not limit, the meaning of the provision in which it appears (see  
21 Legislation Act, s 126 and s 132).

22 **general services charge**, for a retirement village, for division 8.4  
23 (Services charges)—see section 138.

24 **general services charge budget**—see section 139 (1).

25 **incoming contribution**—see section 38.

26 **insolvent under administration**, for division 7.1 (Scheme  
27 operators)—see the Corporations Act, section 9.

28 **maintenance reserve fund** means a fund established under  
29 section 126.

- 1                    ***maintenance reserve fund amount***, for division 8.3 (Maintenance  
2                    reserve fund)—see section 128 (1).
- 3                    ***maintenance reserve fund contribution***—see section 124.
- 4                    ***own***—a person *owns* an accommodation unit if the person has a  
5                    leasehold interest in the parcel on which the accommodation unit is  
6                    located.
- 7                    ***owners corporation***, for a units plan—see the *Unit Titles*  
8                    (*Management*) *Act 2011*, dictionary.
- 9                    ***personal services*** means optional services supplied or made  
10                    available for the benefit, care or enjoyment of a resident of a  
11                    retirement village.
- 12                    **Examples**
- 13                    laundry, meals, cleaning a resident’s accommodation unit
- 14                    *Note*        An example is part of the Act, is not exhaustive and may extend, but  
15                    does not limit, the meaning of the provision in which it appears (see  
16                    Legislation Act, s 126 and s 132).
- 17                    ***public information document***, in relation to a scheme for a  
18                    retirement village—see section 65.
- 19                    ***reinstatement work***, in relation to an accommodation unit—see  
20                    section 80.
- 21                    ***relative***, of a resident, means the resident’s domestic partner,  
22                    mother, stepmother, father, stepfather, sister, stepsister, half-sister,  
23                    brother, stepbrother, half-brother, child or stepchild.
- 24                    ***relevant conviction***, for division 7.1 (Scheme operators)—see  
25                    section 93.
- 26                    ***resale process information***, for an accommodation unit in a  
27                    retirement village, for division 5.1 (General inquiry documents and  
28                    public information documents)—see section 66.
- 29                    ***residence contract***, in relation to a retirement village—see  
30                    section 20.



- 1                    **resident**—
- 2                    (a) for this Act generally—see section 10; and
- 3                    (b) for division 4.8 (Ending residence contracts in other  
4                    circumstances)—see section 50; and
- 5                    (c) for division 6.2 (Condition of accommodation units)—see  
6                    section 81; and
- 7                    (d) for division 6.3 (Reselling accommodation units)—see  
8                    section 85; and
- 9                    (e) for part 9 (Charges created over retirement village land to  
10                    protect residents’ rights)—see section 167.
- 11                   **resident contribution information**, for a resident of a retirement  
12                   village, for division 5.1 (General inquiry documents and public  
13                   information documents)—see section 66.
- 14                   **resident rights information**, for a resident of a retirement village,  
15                   for division 5.1 (General inquiry documents and public information  
16                   documents)—see section 66.
- 17                   **residents committee**, for a retirement village, means a committee  
18                   established under section 179.
- 19                   **residents meeting** means a meeting of the residents of a retirement  
20                   village.
- 21                   **retirement village**—see section 7.
- 22                   **retirement village dispute**—see section 197.
- 23                   **retirement village land**, for a retirement village—see section 8.
- 24                   **retirement village land information**, for a retirement village, for  
25                   division 5.1 (General inquiry documents and public information  
26                   documents)—see section 66.
- 27                   **retirement village scheme register** means the register kept by the  
28                   commissioner for fair trading under section 209.

- 1            **reviewable decision**, for part 13 (Notification and review of  
2            decisions)—see section 212.
- 3            **scheme**, for a retirement village—see section 9.
- 4            **scheme operator**, for a retirement village—see section 11.
- 5            **scheme operator payment information**, for a scheme for a  
6            retirement village, for division 5.1 (General inquiry documents and  
7            public information documents)—see section 66.
- 8            **selling agent**, for division 6.3 (Reselling accommodation units)—  
9            see section 85.
- 10           **services charge** means a charge payable by a resident for general or  
11           personal services under a residence contract.
- 12           **services information**, for a scheme for a retirement village, for  
13           division 5.1 (General inquiry documents and public information  
14           documents)—see section 66.
- 15           **settling-in period**, for a residence contract in relation to a retirement  
16           village, for division 4.7 (Ending residence contracts during  
17           settling-in period)—see section 47.
- 18           **spent**, for a conviction, for division 7.1 (Scheme operators)—see the  
19           *Spent Convictions Act 2000*, section 7.
- 20           **trustee**, for division 4.6 (Dealing with ingoing contributions)—see  
21           section 39.
- 22           **units plan**—see the *Unit Titles Act 2001*, dictionary.
- 23           **waiting list fee**, for a retirement village, for division 6.1 (Waiting  
24           list fees)—see section 76.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 2011.

**2 Notification**

Notified under the Legislation Act on 2011.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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