

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Retirement Villages Bill 2010

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(Prepared by Parliamentary Counsel's Office)

Retirement Villages Bill 2010

A Bill for

An Act to regulate retirement villages, and for other purposes

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

Part 1 Preliminary

1 Name of Act

This Act is the *Retirement Villages Act 2010*.

2 Commencement

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

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

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

- (2) If this Act has not commenced within 9 months beginning on its notification day, it automatically commences on the first day after that period.
- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Dictionary

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

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

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

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

4 Notes

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

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

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

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

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

Note 2 *Penalty units*

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

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Part 2 Objects and important concepts

6 Objects of Act

- (1) The main objects of this Act are—
 - (a) to promote consumer protection and fair trading practices in relation to operating retirement villages and supplying services to residents by—
 - (i) declaring particular rights and obligations of residents and scheme operators; and
 - (ii) facilitating the disclosure of information to prospective residents of retirement villages to ensure the rights and obligations of residents and scheme operators may be easily understood; and
 - (b) to encourage the continued growth and viability of the retirement village industry in the ACT.
- (2) The following are also objects of this Act:
 - (a) to encourage the adoption of best practice standards by the retirement village industry;
 - (b) to provide a clear regulatory framework to ensure certainty for the retirement village industry in planning for future expansion;
 - (c) to facilitate participation by residents, who want to be involved, in the affairs of retirement villages;
 - (d) to provide for processes for resolving disputes between residents and scheme operators.

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7 Meaning of *retirement village*

In this Act:

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

8 Meaning of *retirement village land*

For this Act, land is *retirement village land* if—

- (a) the land is used, or to be used, for a retirement village; and
- (b) for land included in a units plan registered under the *Unit Titles Act 2001*—the land includes the parcels that are, and the parcels that are not, common property into which the land is subdivided under that Act.

9 Meaning of *retirement village scheme*

In this Act:

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

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

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10 Meaning of *resident*

In this Act:

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

- (a) live in the retirement village; and
- (b) receive 1 or more services in relation to the retirement village.

11 Meaning of *scheme operator*

In this Act:

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

Part 3 **Registering retirement village schemes**

Division 3.1 **Registration**

12 **Application for registration**

- (1) A person (the *applicant*) may apply to the chief executive to register a retirement village scheme.

Note 1 If a form is approved under s 221 for the application, the form must be used.

Note 2 A fee may be determined under s 222 for this provision.

- (2) The applicant must be the proposed scheme operator for the retirement village scheme.
- (3) The application must be accompanied by—
- (a) details of—
 - (i) the land on which the retirement village buildings and facilities are, or are to be, constructed; and
 - (ii) the accommodation units and communal facilities that the scheme operator undertakes are, or are to be, available for the retirement village when the scheme is registered; and
 - (iii) the accommodation units and communal facilities that the scheme operator intends to make available for the retirement village after the scheme is registered, depending on the sales activity, finance availability, or market conditions for the village; and

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- (iv) the terms under which people are, or are to be, invited to enter into the retirement village scheme under the residence contracts for the retirement village; and
 - (v) other matters in relation to the retirement village scheme prescribed by regulation; and
- (b) a copy of the public information document for the retirement village scheme.

Note **Public information document**—see s 55.

13 Decision on registration application

- (1) If a person applies to register a retirement village scheme under section 12, the chief executive must—
- (a) register the scheme; or
 - (b) refuse to register the scheme.

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

- (2) The chief executive may register the scheme only if satisfied that the applicant is not prohibited from operating a retirement village scheme under section 83 (Offence—operating retirement village schemes etc while insolvent) or section 84 (Offence—operating retirement village schemes etc with relevant conviction).
- (3) If the chief executive registers the scheme, the chief executive must give the applicant a registration certificate stating the day the scheme was registered.

14 Power to ask for information etc from applicants and others

- (1) The chief executive may, in writing, ask a person (the *applicant*) who applies to register a retirement village scheme to do 1 or more of the following:
- (a) give the chief executive stated information relevant to the application;
 - (b) produce for the chief executive's inspection a stated document relevant to the application;
 - (c) allow the chief executive to examine, copy or take extracts from a stated document relevant to the application (including a document produced for the chief executive's inspection under paragraph (b));
 - (d) verify, by statutory declaration or otherwise, information given or a document produced to the chief executive;
 - (e) authorise a stated person to do anything mentioned in paragraphs (a) to (d);
 - (f) give the chief executive the authorities and consents that the chief executive asks for to allow the chief executive to get from other people information (including financial and other confidential information) that is—
 - (i) about the applicant; and
 - (ii) relevant to—
 - (A) the consideration of the application; or
 - (B) a consideration of whether the applicant continues to be a suitable person for retirement village scheme registration.

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Example—par (a)

The notice may ask the applicant to give information by preparing a document in a stated way (including as a statutory declaration) or by completing a document provided by the chief executive.

Example—par (b)

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

Example—par (c)

The notice may ask the applicant to authorise the applicant's accountant, or a former close associate, to give the chief executive stated information or documents about the applicant.

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

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

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

Division 3.2 Ending registration

15 When registration ends

The registration of a retirement village scheme ends if the registration is cancelled under section 16 or section 17.

16 Cancelling registration—scheme no longer operating

- (1) This section applies if the chief executive believes on reasonable grounds that a retirement village scheme is no longer operating.
- (2) The chief executive may cancel the retirement village scheme registration.

Note A decision to cancel a retirement village scheme registration is a reviewable decision (see pt 14).

- (3) However, the chief executive must not cancel the retirement village scheme registration unless—
 - (a) the chief executive—
 - (i) gives the scheme operator for the retirement village scheme written notice under subsection (5) of the chief executive's intention to cancel the registration; and
 - (ii) takes into consideration any response received from the scheme operator in accordance with the notice; and
 - (b) at least 15 business days have passed since the day the notice was given under subsection (5).
- (4) Cancellation of a retirement village scheme registration under this section takes effect—
 - (a) 15 days after the day written notice of the cancellation is given to the scheme operator for the retirement village scheme; or
 - (b) if the written notice of the cancellation states a later date—on the stated date.
- (5) A notice under this section given to the scheme operator must—
 - (a) state that the chief executive intends to cancel the retirement village scheme registration; and

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- (b) explain why the chief executive intends to cancel the registration; and
- (c) state that the scheme operator may, within 12 business days after the day the scheme operator is given the notice, give a written response to the chief executive about the matters in the notice.

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

17 Cancelling registration—requested by scheme operator

- (1) A scheme operator for a retirement village scheme may ask the chief executive, in writing, to cancel the registration of the retirement village scheme if the scheme operator—
 - (a) stops operating the retirement village scheme; or
 - (b) proposes to stop operating the retirement village scheme.
- (2) The scheme operator must also—
 - (a) give each resident of the retirement village under the retirement village scheme a written notice stating—
 - (i) that the scheme operator has asked the chief executive to cancel the registration of the scheme; and
 - (ii) if there is a statutory charge over the retirement village land—whether or not the scheme operator has asked the chief executive to release the charge over the retirement village land under section 160 (Scheme operator may ask for release of charge if land stops being retirement village land); and
 - (iii) how the resident will be affected if the registration is cancelled; and

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- (iv) that the resident may object to the cancellation within 60 days after receiving the notice by giving written notice of the objection to the chief executive; and
 - (b) give the chief executive—
 - (i) a statutory declaration made by the scheme operator stating the facts of the scheme operator's compliance with paragraph (a); and
 - (ii) a copy of the notice given to residents under paragraph (a).
 - (3) The chief executive may—
 - (a) cancel the registration of the retirement village scheme; or
 - (b) refuse to cancel the registration of the retirement village scheme.
- Note* A decision to refuse to cancel the registration of a retirement village scheme is a reviewable decision (see pt 14).
- (4) The chief executive may cancel the registration of a retirement village scheme only if—
 - (a) if there is a statutory charge over the retirement village land—the chief executive has released the charge; and
 - (b) the chief executive is satisfied that—
 - (i) the scheme operator for the retirement village has complied with subsection (2); and
 - (ii) cancelling the registration of the scheme is appropriate, having regard to the objections, if any, made under subsection (2).

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(5) If the chief executive cancels the registration of a retirement village scheme under this section, the chief executive must record the cancellation in the retirement village scheme register.

(6) In this section:

resident includes a former resident who has not received an exit entitlement to which the former resident is entitled under the former resident's residence contract.

Part 4 Residence contracts

Division 4.1 Residence contracts generally

18 Purpose—pt 4

- (1) The purpose of this part is to state minimum requirements for residence contracts.
- (2) However, this part is not intended to prevent a scheme operator for a retirement village and a resident of the retirement village agreeing (in a residence contract or otherwise) to conditions that are more beneficial to the resident than the provisions in this part.

19 Meaning of *residence contract*—Act

- (1) For this Act, a *residence contract*, in relation to a retirement village—
 - (a) means 1 or more written contracts entered into, or to be entered into, between a person and the scheme operator for the retirement village about the matters mentioned in subsection (2); and
 - (b) includes any other contract (an *ancillary contract*) between the person and the scheme operator if the ancillary contract depends on, or arises out of, the making of the residence contract or another ancillary contract.
- (2) For subsection (1), a residence contract in relation to a retirement village must—
 - (a) either—

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- (i) purport to give a person, or give rise to a person having, an exclusive right to live in an accommodation unit in the retirement village; or
 - (ii) provide for, or give rise to, obligations on a person in relation to the person, or someone else, living in the retirement village; and
- (b) purport to give a person, or give rise to a person having, a right in common with other residents in the retirement village, to use and enjoy the retirement village's communal facilities; and
- (c) contain or incorporate—
 - (i) a service agreement or an agreement to enter into a service agreement that includes a copy of the services agreement; and
 - (ii) if the residence contract includes an ancillary contract that is not signed when the residence contract is signed—an agreement to enter into the ancillary contract that includes a copy of the ancillary contract; and
- (d) restrict the way in which, or the people to whom—
 - (i) the right to live in the retirement village may be disposed of during the resident's lifetime; or
 - (ii) if the contract is based on a leasehold interest in an accommodation unit—the resident's interest may be disposed of during the resident's lifetime.

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- (3) In this section:

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

Example

a residence contract

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

20 Form and content of residence contracts

- (1) A scheme operator for a retirement village must ensure each residence contract for the retirement village includes details about the following:
- (a) the right of a resident to rescind the residence contract under section 39 (Residence contract may be rescinded during cooling-off period) before the cooling-off period ends;
Note **Cooling-off period**, for a residence contract—see s 36.
 - (b) if the cooling-off period starts on the day the residence contract is signed—the day the cooling-off period ends;
 - (c) if the cooling-off period starts on a day a later event happens—the later event;
 - (d) the ingoing contribution payable under the residence contract;
 - (e) the exit fee payable under the residence contract;
 - (f) a resident's exit entitlement;
 - (g) the services charges payable under the residence contract;

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- (h) the amounts payable by a resident for the maintenance reserve fund for the retirement village, and when the amounts are payable;
 - (i) the insurance for the retirement village, and any insurance for which a resident is responsible;
 - (j) any condition that a resident must meet before the resident can live in an accommodation unit in the retirement village;
 - (k) how a resident can resell the right to live in an accommodation unit in the retirement village;
 - (l) the resident's entitlement to audited and unaudited financial statements for the retirement village;
 - (m) the dispute resolution process under this Act for a retirement village dispute;
 - (n) the statutory charge, if relevant to a resident's title to, or interest in, an accommodation unit;
 - (o) the right of a resident and the scheme operator to end the residence contract;
 - (p) anything else prescribed by regulation.
- (2) A public information document for a retirement village to which a residence contract relates forms part of the residence contract.

21 Offence—noncompliant residence contracts

A scheme operator for a retirement village commits an offence if a residence contract for the retirement village does not comply with section 20 (1).

Maximum penalty: 100 penalty units.

22 Residence contracts—guidelines

- (1) The chief executive may issue guidelines (*terminology guidelines*) setting out terminology to be used in residence contracts.
- (2) A scheme operator must take all reasonable steps to ensure that the residence contract is drafted using terminology that is—
 - (a) consistent with the guidelines; and
 - (b) otherwise simple and consistent with the public information document.
- (3) A terminology guideline is a notifiable instrument.

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

23 Dealing with inconsistencies between Act, residence contracts and public information documents

- (1) A provision of a residence contract has no effect to the extent that it is inconsistent with this Act, or purports to restrict or exclude the operation of a provision of this Act.
- (2) Also, a provision of a residence contract has no effect to the extent that it purports to restrict or exclude the operation of a public information document, or a provision of a public information document, taken to form part of the contract under section 20 (2) (Form and content of residence contracts).

Division 4.2 Entering into residence contracts

24 Offence—entering into residence contracts if scheme not registered

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

- (a) the scheme operator enters into a residence contract for the retirement village with someone; and
- (b) a retirement village scheme is not registered in relation to the retirement village.

Maximum penalty: 540 penalty units.

Note It is also an offence to operate a retirement village scheme that is not registered (see s 85).

25 Residence contracts not invalid etc because scheme not registered

- (1) A residence contract is not invalid or unenforceable only because a scheme operator entered into the contract with someone (the *other party*) in contravention of section 24.
- (2) However, the other party may end the residence contract under section 45 (Ending residence contracts—residents).

26 Offence—failure to give copies of residence contracts to other parties

- (1) A scheme operator for a retirement village commits an offence if the scheme operator—
 - (a) enters into a residence contract in relation to the retirement village with someone; and

- (b) does not, as soon as practicable after entering into the residence contract, give the person—
- (i) a signed copy of the residence contract; and
 - (ii) a copy of the public information document in relation to the residence contract; and
 - (iii) an unsigned copy of an ancillary contract.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) (b) (ii) does not apply if the scheme operator gave the person a copy of the public information document under section 58 (Offence—failure to give public information document to prospective resident).

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

- (3) Subsection (1) (b) (iii) does not apply if—
- (a) the parties to the residence contract do not intend to enter into an ancillary contract; or
 - (b) the terms of the ancillary contract are not known.

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

- (4) In this section:

ancillary contract—see section 19 (1) (b).

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Division 4.3 Dealing with ingoing contributions

27 Meaning of *ingoing contribution*—Act

In this Act:

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

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

28 Meaning of *trustee*—div 4.3

In this division:

trustee means—

- (a) the public trustee; or
- (b) the lawyer for a scheme operator for a retirement village; or
- (c) a real estate agent; or
- (d) an authorised trustee corporation under the Corporations Act, section 9.

29 Offence—failure to give ingoing contributions to trustee

- (1) A person commits an offence if the person—
 - (a) receives an amount as an ingoing contribution under a residence contract; and

(b) fails to give the amount to a trustee to hold on trust.

Maximum penalty: 100 penalty units.

- (2) A receipt issued by a trustee in relation to an amount received under subsection (1) is evidence that a person has complied with subsection (1).

30 Offences—failure to hold and repay ingoing contributions

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

Examples—when a unit is not suitable for habitation

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

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

Maximum penalty: 100 penalty units.

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- (2) A trustee commits an offence if the trustee—
- (a) receives an amount as an ingoing contribution in relation to a residence contract before the earliest day mentioned in subsection (1) (b); and
 - (b) fails to pay the amount on the latest day mentioned in subsection (1) (b) to the person lawfully entitled to it.

Maximum penalty: 100 penalty units.

31 Receiving ingoing contributions after events

Despite section 29, if a person receives an amount as an ingoing contribution under a residence contract after the end of the latest occurring event mentioned in section 30 (1) (b), the person may—

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

32 Offence—failure to give notice of dispute

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

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

Maximum penalty: 100 penalty units.

Note **Retirement village dispute**—see s 179.

33 Offence—failure to hold disputed amounts in trust

A trustee commits an offence if the trustee—

- (a) is trustee of an amount given to the trustee under this division; and
- (b) is given written notice that all or part of the amount (the *disputed amount*) is in dispute; and
- (c) fails to hold the disputed amount in trust until the dispute is resolved—
 - (i) as provided for under this Act; or
 - (ii) by written agreement between the parties.

Maximum penalty: 100 penalty units.

34 Offence—failure to repay amounts after residence contracts rescinded

A trustee commits an offence if—

- (a) the trustee holds an amount received as an ingoing contribution in relation to a residence contract; and
- (b) the residence contract is rescinded during the cooling-off period for the contract; and
- (c) the trustee fails to immediately pay the amount to the person lawfully entitled to it.

Maximum penalty: 100 penalty units.

35 Unpaid amounts recoverable as debts

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

Division 4.4 Cooling-off periods

36 Meaning of *cooling-off period*—Act

In this Act:

cooling-off period, for a residence contract, means a 21-day period starting on—

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

Example—later event happening

another contract is to be entered into

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

37 Definitions—div 4.4

In this division:

assignee means the person in whose favour property is assigned under an assignment instrument.

assignment instrument means an instrument that assigns property.

authorised person means—

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

38 Offence—failure to notify end of cooling-off periods in certain circumstances

- (1) A scheme operator for a retirement village commits an offence if—
- (a) the cooling-off period for a residence contract for the retirement village starts on a day that a later event happens; and
 - (b) the scheme operator fails to give the resident under the residence contract, as soon as practicable after the event happens, written notice of—
 - (i) the date the later event happens; and
 - (ii) the date the cooling-off period ends.

Maximum penalty: 100 penalty units.

39 Residence contract may be rescinded during cooling-off period

- (1) This section applies to a person who enters into a residence contract to secure a right to live in a retirement village personally or for someone else.
- (2) The person may, by written notice given to the scheme operator, rescind the residence contract before the cooling-off period ends.

40 Offences—failure to deal with instruments assigning property under residence contracts

- (1) A scheme operator for a retirement village commits an offence if—
- (a) a person (the *assignor*) enters into a residence contract to secure the person's, or someone else's, right to live in the retirement village; and

- (b) the assignor assigns property under the residence contract before the cooling-off period for the residence contract ends; and
- (c) the scheme operator fails to ensure the assignment instrument is held on trust by an authorised person.

Maximum penalty: 100 penalty units.

- (2) An authorised person commits an offence if—
 - (a) the authorised person holds an assignment instrument in relation to property under a residence contract on trust; and
 - (b) the residence contract is rescinded during the cooling-off period; and
 - (c) the authorised person fails to release the assignment instrument to the assignor.

Maximum penalty: 100 penalty units.

- (3) An authorised person commits an offence if—
 - (a) the authorised person holds an assignment instrument in relation to property under a residence contract on trust; and
 - (b) the residence contract is not rescinded during the cooling-off period; and
 - (c) the authorised person fails to release the assignment instrument to the assignee or someone else nominated by the assignee at the end of the cooling-off period.

Maximum penalty: 100 penalty units.

41 Offences—reassigning property acquired in cooling-off period

- (1) An assignee commits an offence if—
- (a) the assignee acquires property under an assignment instrument during the cooling-off period of a residence contract; and
 - (b) the residence contract is rescinded; and
 - (c) the assignee fails to reassign, as soon as possible after the assignee becomes aware the residence contract has been rescinded, the property to—
 - (i) the person from whom the assignee acquired it (the *assignor*); or
 - (ii) someone else, at the assignor’s written direction.

Maximum penalty: 100 penalty units.

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

Maximum penalty: 100 penalty units.

42 Costs of reassigning property

An assignee is responsible for the costs, expenses and duties relating to a reassignment under section 41.

43 Scheme operator to compensate assignor in certain circumstances

- (1) This section applies if an assignee is required under section 41 to reassign property to a person (the *assignor*) on rescission of a residence contract but the assignee—
 - (a) has disposed of the property; or
 - (b) is unable, when the residence contract is rescinded, to discharge the interests, mortgages and other charges (if any) to which the property has become subject since the assignee acquired it.
- (2) The scheme operator for the retirement village to which the residence contract relates must pay compensation to—
 - (a) the assignor; or
 - (b) someone else, at the assignor's written direction.
- (3) The amount of compensation payable—
 - (a) is the amount equal to the value attributed to the assigned property under the residence contract (exclusive of GST); and
 - (b) may be recovered as a debt payable by the scheme operator to the assignor or the person mentioned in subsection (2) (b).
- (4) If there are 2 or more scheme operators for the retirement village, the scheme operators are jointly and severally liable to pay the compensation.

Division 4.5 Ending residence contracts

44 Meaning of *resident*—div 4.5

In this division:

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

45 Ending residence contracts—residents

- (1) A resident of a retirement village may end a residence contract for the retirement village by 1 month's written notice given to the scheme operator for the retirement village.
- (2) If the retirement village scheme for the retirement village is not registered, the notice must—
 - (a) be given not later than 14 days after the day the resident becomes aware the retirement village scheme is not registered; and
 - (b) state the day, not earlier than the day that notice is given, when the residence contract ends.

46 Offence—failure to refund ingoing contribution

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

- (a) a resident ends a residence contract for the retirement village under section 45; and
- (b) the scheme operator fails to refund the full amount of the resident's ingoing contribution to the resident within 30 days after the day the residence contract ends.

Maximum penalty: 540 penalty units.

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47 Recovery of ingoing contribution as debt

A resident of a retirement village may recover an amount owing under section 46 as a debt owed by the scheme operator of the retirement village.

48 Ending residence contracts—scheme operators

- (1) A scheme operator for a retirement village may end a residence contract for the retirement village by giving written notice to the resident under the residence contract in accordance with subsection (2) or (3).
- (2) The scheme operator must give the resident 14 days written notice if the residence contract is to be ended because the scheme operator believes on reasonable grounds that—
 - (a) the resident has intentionally or recklessly—
 - (i) injured a person while the person is in the retirement village; or
 - (ii) seriously damaged the resident’s accommodation unit; or
 - (iii) seriously damaged property of another person in the retirement village; or
 - (b) the resident is likely, intentionally or recklessly, to do something mentioned in paragraph (a).
- (3) The scheme operator must give the resident 2 months written notice if the residence contract is to be ended on 1 of the following grounds:
 - (a) the resident has committed a material breach of the residence contract;

- (b) the scheme operator believes on reasonable grounds that the resident has abandoned the resident's right to live in the retirement village;
- (c) the scheme operator and a person who has assessed the resident's care needs under the *Aged Care Act 1997* (Cwlth), section 22-4 (Assessments of care needs) believes on reasonable grounds the resident's type of accommodation is now unsuitable for the resident.

Examples—par (c)

- 1 the resident lives in an independent living unit and now needs help with personal care not normally provided by the scheme operator
- 2 the resident's increased care needs cannot be met by a relative who lives with the resident

Note 1 A relative of a resident who is living in an accommodation unit when the resident's residence contract ends under s 52 may have a right to continue to live in the accommodation unit (see div 6.4).

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) However, the scheme operator must not give effect to a notice given under subsection (3) (c) unless satisfied on reasonable grounds that suitable accommodation is available for the resident.
- (5) The notice must state—
 - (a) the grounds on which the residence contract is being ended; and
 - (b) the day by which the resident must vacate the retirement village.

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- (6) If the scheme operator does not know the resident's current address, the scheme operator may give the notice by publishing it in—
- (a) a daily newspaper; and
 - (b) a newspaper circulating throughout Australia.

49 Offence—including grounds in newspaper notice

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

- (a) gives notice ending a residence contract in accordance with section 48 (6); and
- (b) includes the grounds for ending the residence contract.

Maximum penalty: 50 penalty units.

50 Residents may request estimates of exit entitlements

- (1) A resident of a retirement village may, in writing, request the scheme operator for the retirement village to give the resident a written estimate of the resident's exit entitlement.
- (2) The request must—
 - (a) state that the resident is considering ending the resident's residence contract for the retirement village; and
 - (b) ask the scheme operator to give the resident a written estimate of the resident's exit entitlement as at the date of the request.

51 Offence—failure to give written estimates

- (1) A scheme operator for a retirement village commits an offence if—
- (a) a resident of the retirement village gives the scheme operator a written request under section 50 (1); and
 - (b) the scheme operator fails to give a written estimate of a resident’s exit entitlement within 14 days after receiving the written request.

Maximum penalty: 40 penalty units.

- (2) Subsection (1) does not apply if the scheme operator has given the resident an estimate under that subsection during the 6 months immediately preceding the resident’s written request.

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

52 Residence contracts automatically end on death

A residence contract giving a resident a right to live in an accommodation unit in a retirement village ends when the resident dies.

Note A relative of a resident who is living in an accommodation unit when the resident’s residence contract ends under s 52 may have a right to continue to live in the accommodation unit (see div 6.4).

Division 4.6 Enforcing residence contracts

53 Enforcing residence contracts

- (1) A residence contract for a retirement village is enforceable against the following people for the recovery of all or part of the exit entitlement:
 - (a) a person who is a party to the residence contract;
 - (b) a person who is not a party to the residence contract but who, when the contract was entered into—
 - (i) was the scheme operator for the retirement village to which the residence contract relates; or
 - (ii) owned the retirement village land;
 - (c) a person who is not a party to the residence contract but who, when the contract is to be enforced—
 - (i) is the scheme operator of the retirement village to which the residence contract relates; or
 - (ii) owns the retirement village land.
- (2) For the purpose of enforcing a residence contract against a person mentioned in subsection (1) (b) or (c), the person is taken to be the scheme operator under the contract.
- (3) A court may make an order under this section against a person mentioned in subsection (1) (b) only if the court is satisfied that—
 - (a) an order against a person mentioned in subsection (1) (a) or (c) would be ineffectual; and
 - (b) in the particular circumstances, it is just to make the order.

54 No liability for breach of residence contracts

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

- (a) the breach results from the scheme operator's failure to supply a general service to a resident under the residence contract; and
- (b) the cost of supplying the service is more than the general services charge for the general service; and
- (c) the residents have not approved an increase in the general services charge to cover the cost of supplying the service under section 131 (Offence—increasing general services charge by more than CPI); and
- (d) in all the circumstances, the scheme operator acted reasonably.

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Part 5 Other documents relating to retirement villages

Division 5.1 Public information documents

55 Meaning of *public information document*—Act

In this Act:

public information document, for a retirement village scheme, means a document that complies with the requirements stated in section 57.

56 Definitions—div 5.1

In this division:

accommodation information, for a retirement village scheme for a retirement village, means—

- (a) the type and number of accommodation units in the retirement village; and
- (b) the number of accommodation units in the retirement village that are available for sale and the sale price of each unit or, if only a right to live in a unit is available, the ingoing contribution for the right to live in the unit; and
- (c) the type of tenure or interest a resident of an accommodation unit gets in the retirement village; and
- (d) the nature of insurance arrangements for the retirement village, including the amount of any excess to which any insurance policy is subject.

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dispute resolution information, for a retirement village scheme for a retirement village, means—

- (a) the types of disputes for which dispute resolution is available; and
- (b) how an application for a retirement village dispute may be made to the ACAT; and
- (c) the fee for an application to the ACAT for resolution of a retirement village dispute, or where information about the fee can be found.

facilities information, for a retirement village scheme for a retirement village, means—

- (a) the facilities that the scheme operator for the retirement village undertakes to offer a resident under a residence contract; and
- (b) the facilities that the scheme operator proposes to offer a resident under a residence contract, depending on sales activity, finance availability or market conditions for the retirement village (each a *contingency*) and when they are proposed to be offered; and
- (c) the particular contingency for offering particular facilities mentioned in paragraph (b); and
- (d) information about when the scheme operator proposes to start levying a charge for the particular facilities mentioned in paragraph (b).

Example—par (d)

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

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

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fund information, for a retirement village scheme for a retirement village, means—

- (a) the details of funds that the scheme operator is required to keep; and
- (b) the balance in each fund at the end of the financial year immediately preceding the financial year that information is given; and
- (c) the capital replacement fund contribution; and
- (d) details of the report under section 105 (Capital replacement reserve—reports) used to decide the proportion of a resident's ingoing contribution to be paid to the capital replacement fund contribution.

resale process information, for an accommodation unit in a retirement village, means—

- (a) how the resale value of the accommodation unit is to be decided; and
- (b) when reinstatement work will be required and who pays for it; and
- (c) the process for, and effect of, accepting offers, including when offers may be refused; and
- (d) the provision of monthly sales information; and
- (e) how the expenses of sale are to be shared.

Note **Reinstatement work**—see s 67.

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resident contribution information, for a resident of a retirement village, means—

- (a) the nature of the amounts the resident may be required to pay; and
- (b) how the exit fee is to be worked out, including a table showing the minimum and maximum exit fee amounts payable under a residence contract over the term of the residence contract; and
- (c) how the general services charge is worked out in relation to the retirement village's total operating costs.

Examples—par (a)

ingoing contribution, exit fee, general services charge, personal services charge, contribution to a particular fund

resident rights information, for a resident of a retirement village, means—

- (a) what the resident's rights are to rescind a residence contract in the cooling-off period; and
- (b) what the resident's rights are, under a residence contract and this Act, to be given financial information about the retirement village scheme; and
- (c) what the resident's rights are if the residence contract is ended; and
- (d) anything else prescribed by regulation to be resident rights information.

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retirement village land information, for a retirement village, means—

- (a) whether or not there is a statutory charge created under this Act over retirement village land; and
- (b) whether or not there are any other encumbrances over retirement village land.

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

services information, for a retirement village scheme, means the general services and personal services the scheme operator undertakes to offer a resident under a residence contract for the retirement village scheme.

57 Form and content of public information documents

- (1) A public information document for a retirement village scheme must—
 - (a) relate to only 1 retirement village scheme; and
 - (b) state any age limits for residents that apply to the retirement village scheme; and
 - (c) include the following information:
 - (i) accommodation information;
 - (ii) resident contribution information;
 - (iii) scheme operator payment information;
 - (iv) fund information;

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- (v) facilities information;
- (vi) retirement village land information;
- (vii) services information;
- (viii) resident rights information;
- (ix) resale process information;
- (x) dispute resolution information;
- (xi) any other information prescribed by regulation.

Note If a form is approved under s 221 for a public information document, the form must be used.

- (2) After a retirement village scheme is registered, a copy of the registration certificate for the scheme must be attached to the public information document.

58 Offence—failure to give public information document to prospective resident

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

- (a) a prospective resident of the retirement village enters into a residence contract for the retirement village; and
- (b) the scheme operator fails to give the prospective resident a copy of a public information document for the retirement village before the prospective resident enters into—
 - (i) the residence contract; or
 - (ii) if the residence contract consists of more than 1 written contract—any of the contracts.

Maximum penalty: 540 penalty units.

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59 Offences—failure to notify inaccuracies in public information documents

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

Maximum penalty: 540 penalty units.

- (2) A scheme operator for a retirement village commits an offence if—
- (a) a detail in a public information document becomes materially inaccurate (an *inaccuracy*); and
 - (b) the inaccuracy will or is likely to materially affect a resident of the retirement village; and
 - (c) the scheme operator fails to give written notice of the inaccuracy to the chief executive within 28 days after the scheme operator becomes aware of the inaccuracy.

Maximum penalty: 540 penalty units.

- (3) A scheme operator for a retirement village commits an offence if—
- (a) a detail in a public information document becomes materially inaccurate (an *inaccuracy*); and
 - (b) a person has signed a residence contract in relation to the retirement village; and

- (c) the cooling-off period for the residence contract has not ended;
and
- (d) the scheme operator fails to give written notice of the inaccuracy to the person—
 - (i) before the cooling-off period ends; or
 - (ii) if the scheme operator has a reasonable excuse for not giving the notice before the cooling-off period ends—as soon as practicable after becoming aware of the inaccuracy.

Maximum penalty: 540 penalty units.

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

Maximum penalty: 540 penalty units.

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

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60 Offence—failure to correct inaccuracies in public information documents

- (1) A scheme operator for a retirement village commits an offence if—
- (a) a detail in a public information document in relation to the retirement village becomes inaccurate (an *inaccuracy*); and
 - (b) the scheme operator fails to correct the inaccuracy as soon as practicable after becoming aware of the inaccuracy.

Maximum penalty: 540 penalty units.

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

Division 5.2 Other matters

61 Access by residents to certain documents

- (1) On the request of a resident of a retirement village the scheme operator for the retirement village must, in relation to a relevant document in the scheme operator's possession—
- (a) allow the resident to inspect the relevant document; or
 - (b) on payment of reasonable copying costs, give a copy of the relevant document to the resident.

Note The scheme operator must give a resident a copy of a residence contract and public information document in relation to the residence contract (see s 26 and s 58).

- (2) The request must—
- (a) be in writing; and
 - (b) state a time for the resident to inspect or get a copy of the relevant document that is at least 7 days after the day the request is made.
- (3) In this section:

relevant document means the resident's residence contract or public information document for the retirement village scheme.

62 Offence—failure to comply with requests for access

A scheme operator commits an offence if the scheme operator fails to comply with a request under section 61.

Maximum penalty: 10 penalty units.

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Part 6 Dealing with accommodation units

Division 6.1 Waiting list fees

63 Meaning of *waiting list fee*—div 6.1

In this division:

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

- (a) an ingoing contribution; or
- (b) a payment under a residence contract for the retirement village.

64 Offence—requiring or accepting waiting list fees

A scheme operator for a retirement village must not require or accept a payment of a waiting list fee from a person unless—

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

Maximum penalty: 100 penalty units.

65 Offences—failure to repay waiting list fees

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

Maximum penalty: 100 penalty units.

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

Maximum penalty: 100 penalty units.

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

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

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66 Orders for repayment of waiting list fees

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

Division 6.2 Condition of accommodation units

67 Meaning of *reinstatement work*—Act

In this Act:

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

68 Definitions—div 6.2

In this division:

condition report—see section 69 (1).

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

Note Own—see the dictionary.

69 Condition reports

- (1) A scheme operator for a retirement village must give the resident of the retirement village 2 copies of a report (a *condition report*) about the state of repair or general condition of the resident's accommodation unit and any goods provided with the unit, on the day the resident is given the report.

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

70 Condition on vacating units

- (1) A resident of a retirement village must, on vacating an accommodation unit, leave the resident's accommodation unit as nearly as possible in the same condition (excluding fair wear and tear) as set out in the condition report.
- (2) The scheme operator for the retirement village may require the resident to meet the cost of any reinstatement work to the resident's accommodation unit.
- (3) The resident may apply to the ACAT for an order in relation to the cost of reinstatement work if the resident—
 - (a) disagrees that the work is needed; or
 - (b) considers the cost is excessive.

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- (4) In an application to the ACAT under this section—
- (a) the scheme operator bears the onus of substantiating the cost of the reinstatement work; and
 - (b) the ACAT may—
 - (i) if it considers that the scheme operator has not substantiated the cost—order the scheme operator to withdraw the claim; or
 - (ii) if it considers that the scheme operator has substantiated the cost, in whole or in part—order the resident to pay the cost or an amount ordered by the ACAT to meet the cost of the reinstatement work.

Division 6.3 Reselling accommodation units

71 Definitions—div 6.3

In this division:

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

Note *Own*—see the dictionary.

selling agent means a person appointed by a resident of a retirement village to sell an accommodation unit in the retirement village for the resident.

72 Rights of residents to sell units

A resident of a retirement village may—

- (a) set the sale price of the resident's accommodation unit; and
- (b) appoint a selling agent of the resident's choice.

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73 Appointing scheme operators as selling agents

- (1) A resident of a retirement village may, but need not, appoint the scheme operator for the retirement village as a selling agent if the scheme operator is licensed as a real estate agent under the *Agents Act 2003*.
- (2) A scheme operator for a retirement village must not make it a condition of entry into the retirement village that the scheme operator or someone appointed by the scheme operator—
 - (a) act as the selling agent for a resident of the retirement village;
or
 - (b) set the sale price of the resident's accommodation unit.
- (3) If a scheme operator purports to impose a condition mentioned in subsection (2) the condition is void.

74 Selling accommodation units

- (1) If a resident of a retirement village appoints the scheme operator for the retirement village as a selling agent, the resident may, but need not, allow the scheme operator to set the sale price of the unit.
- (2) A scheme operator for a retirement village, or a person nominated by the scheme operator, who is appointed as a selling agent for a resident's accommodation unit must—
 - (a) notify the resident of all offers to buy the accommodation unit;
and
 - (b) if requested by the resident—give the resident, at the end of each month, a report stating the following details for that month:
 - (i) the marketing program, including details of all advertising of the accommodation unit or the retirement village;

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- (ii) a list of all inquiries received about the sale of the accommodation unit;
 - (iii) the names and telephone numbers, or other contact details, of the people who made the inquiries, to the extent that the details are known to the scheme operator;
 - (iv) details, including the asking price, of all other accommodation units for sale in the retirement village.
- (3) If a person other than a scheme operator for a retirement village is appointed as selling agent for an accommodation unit in the retirement village, the resident of the accommodation unit must give the scheme operator written notice of—
- (a) the name and contact details of the selling agent; and
 - (b) the asking price for the accommodation unit; and
 - (c) any changes to—
 - (i) the appointment or contact details of the selling agent; and
 - (ii) the asking price for the accommodation unit.

75 Buyers and scheme operators to enter into residence contracts

- (1) A contract for the sale of an accommodation unit in a retirement village is taken to include a provision to the effect that the contract is conditional on the buyer of the accommodation unit entering into a residence contract with the scheme operator for the retirement village on or before completion of the sale.

- (2) If the scheme operator decides not to enter into a residence contract with the buyer of the accommodation unit, the scheme operator must, not later than 21 days after being notified of the sale by the resident—
- (a) tell the resident about the scheme operator’s decision and the reasons for it; and
 - (b) apply to the ACAT for an order declaring that the scheme operator is not obliged to enter into the residence contract.

76 Offences—failure to give notice about sale of units

- (1) A resident of a retirement village commits an offence if the resident—
- (a) sells an accommodation unit in the retirement village; and
 - (b) fails to give the scheme operator for the retirement village sufficient notice of the proposed sale to enable the scheme operator to comply with section 58 (Offence—failure to give public information document to prospective resident).

Maximum penalty: 60 penalty units.

- (2) A resident of a retirement village commits an offence if the resident—
- (a) sells an accommodation unit in the retirement village; and
 - (b) fails to notify the scheme operator of the retirement village as soon as practicable after the contract for the sale of the accommodation unit is entered into.

Maximum penalty: 60 penalty units.

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77 Offence—failure to pay exit entitlements on sale of units

A scheme operator for a retirement village commits an offence if the scheme operator fails to pay an exit entitlement to a resident of the retirement village within 14 days after the earliest of the following:

- (a) the day that the scheme operator receives full payment from an incoming resident for the resident's accommodation unit;
- (b) the day that the scheme operator enters into a residence contract with an incoming resident of the accommodation unit;
- (c) the day that a person starts living in the accommodation unit with the consent of the scheme operator;
- (d) if the scheme operator buys the accommodation unit from the resident—the day that the scheme operator completes the purchase;
- (e) if the resident's residence contract states a day for payment—the day stated in the residence contract.

Maximum penalty: 50 penalty units.

78 Offence—failure to give statement about exit entitlement and liabilities

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

Maximum penalty: 10 penalty units.

(2) In this section:

exit entitlement and liabilities statement means a statement that sets out the following information in relation to a resident of a retirement village:

- (a) the exit fee, if any, payable by the resident;
- (b) accrued or outstanding services charges, if any, payable by the resident;
- (c) any amount payable by the resident in relation to the sale of the accommodation unit;
- (d) any other amount payable by the resident under a residence contract;
- (e) for a long-term resident—the sale price of the resident's accommodation unit;
- (f) the amount of the resident's exit entitlement.

long term resident means a resident who does not own an accommodation unit but whose residence contract—

- (a) is in the form of a long-term lease; and
- (b) includes a provision that entitles the resident to at least 50% of any capital gain in relation to the unit.

Note ***Own***—see the dictionary.

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79 Orders for payment of exit entitlements on sale of units

- (1) A resident may apply to the ACAT for an order directing a scheme operator for a retirement village to—
 - (a) if the scheme operator does not pay the exit entitlement within the time required under section 77—make an exit entitlement; or
 - (b) if the amount of the exit entitlement is not calculated in accordance with this Act and any relevant residence contract—recalculate an exit entitlement.
- (2) The ACAT may also make an order for the payment of interest at a rate determined by the ACAT if the ACAT considers it appropriate to do so.

Division 6.4 Relatives in accommodation units

80 Relatives may continue to live in units

- (1) This section applies if—
 - (a) a resident's right to live in an accommodation unit under a residence contract for a retirement village ends because the resident dies or vacates the accommodation unit; and
 - (b) a relative of the resident, who was not a party to the residence contract, was living in the accommodation unit when the residence contract ended; and
 - (c) the relative has lived in the accommodation unit for at least the 6 months immediately before the residence contract ended.
- (2) The relative has a right to live in the accommodation unit for 3 months after the day the residence contract ends if the relative agrees to be bound by the terms of the resident's residence contract during the 3-month period.

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- (3) The relative's agreement must be—
 - (a) in writing; and
 - (b) given to the scheme operator for the retirement village not later than 14 days after the day the residence contract ends.
- (4) The relative has the rights and liabilities of a resident under this Act during the 3-month period.

81 Relatives may enter into residence contracts

- (1) This section applies if—
 - (a) a resident's right to live in an accommodation unit under a residence contract for a retirement village ends because the resident dies or vacates the accommodation unit; and
 - (b) a relative of the resident, who was not a party to the residence contract, was living in the accommodation unit when the residence contract ended; and
 - (c) the relative has lived in the accommodation unit for at least the 6 months immediately before the residence contract ended; and
 - (d) no other person has a right under the resident's residence contract to live in the accommodation unit; and
 - (e) the relative meets the eligibility criteria for a resident of the retirement village; and
 - (f) the relative, at least 14 days before the end of the 3-month period mentioned in section 80 (2), advises the scheme operator for the retirement village, in writing, that the relative wants to enter into a residence contract for the accommodation unit.

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- (2) The scheme operator must enter into a residence contract for the accommodation unit with the relative before the end of the 3-month period.
- (3) The residence contract must be on the same terms as would be offered to any other resident of the accommodation unit.
- (4) However, the residence contract may be amended to include an agreement between the relative and the scheme operator about reinstatement work for the accommodation unit.

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

Division 7.1 **Scheme operators**

82 **Definitions—div 7.1**

In this division:

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

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

relevant conviction—

- (a) means a conviction for—
 - (i) an offence involving fraud or dishonesty punishable, at the time the conviction is recorded, by not less than 3 months imprisonment; or
 - (ii) an offence involving physical violence to someone else; but
- (b) does not include a spent conviction.

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

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83 Offence—operating retirement village schemes etc while insolvent

- (1) A person commits an offence if the person—
- (a) is insolvent under administration; and
 - (b) does any of the following:
 - (i) operates a retirement village scheme;
 - (ii) promotes a retirement village scheme;
 - (iii) sells a right to live in a retirement village;
 - (iv) is involved, directly or indirectly, in managing a retirement village.

Maximum penalty: 100 penalty units.

- (2) Subsection (1) (b) (ii) and (iii) does not apply to the following people who do something mentioned in the subsection only to end the resident's or former resident's right to live in an accommodation unit in the retirement village:
- (a) a person who is a resident or a former resident of the retirement village;
 - (b) a person who acts for the resident or former resident of the retirement village.

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

84 Offence—operating retirement village schemes etc with relevant conviction

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

Maximum penalty: 100 penalty units.

- (2) Subsection (1) (b) (ii) and (iii) does not apply to the following people who do something mentioned in the subsection only to end the resident's or former resident's right to live in an accommodation unit in the retirement village:
- (a) a person who is a resident or a former resident of the retirement village;
 - (b) a person who acts for the resident or former resident of the retirement village.

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

Division 7.2 Operating etc unregistered retirement village schemes

85 Offence—operating etc unregistered retirement villages

- (1) A person commits an offence if—
- (a) a retirement village scheme in relation to a retirement village is not registered; and
 - (b) the person does any of the following:
 - (i) operates the retirement village scheme;
 - (ii) induces or invites, including by using a document or publishing an advertisement, another person to—
 - (A) live in a retirement village to which the retirement village scheme relates; or
 - (B) pay an ingoing contribution for the retirement village; or
 - (C) do another act in relation to the retirement village scheme;
 - (iii) extends an existing retirement village.

Maximum penalty: 540 penalty units.

- (2) Subsection (1) (b) (ii) does not apply if the person merely invites expressions of interest in the retirement village scheme.

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

86 ACAT orders to stop operating etc unregistered retirement villages

- (1) This section applies if the chief executive believes on reasonable grounds that a person is contravening section 85.
- (2) The chief executive may apply to the ACAT for an order to stop the person from contravening the section.

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

87 Orders appointing people to control operations of retirement villages

- (1) This section applies if the chief executive believes on reasonable grounds the interests of residents of a particular retirement village are compromised by the management of the retirement village.
- (2) The chief executive may apply to the ACAT for—
 - (a) if the circumstances are urgent—an interim order appointing a stated person to control the operation of the retirement village;
or
 - (b) in any other case—an order appointing someone to control the operation of the retirement village.

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

Division 7.3 Exercise of powers of attorney by scheme operators

88 Offence—exercising powers of attorney

- (1) A scheme operator for a retirement village commits an offence if the scheme operator exercises, or purports to exercise, a power conferred on, or exercisable by, the scheme operator under a power of attorney given by a resident of the retirement village in favour of the scheme operator.

Maximum penalty: 540 penalty units.

- (2) Subsection (1) does not apply if—
- (a) the resident is a spouse or other relative of the scheme operator; or
 - (b) the scheme operator exercises, or purports to exercise, a power of attorney given to the scheme operator by the resident to execute a surrender of a registered lease in favour of the resident over an accommodation unit after the resident's residence contract has ended lawfully under this Act.

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

- (3) In this section:

power of attorney—see the *Powers of Attorney Act 2006*, dictionary.

Part 8 **Financial management of retirement villages**

Division 8.1 **Capital improvement**

89 **Meaning of *capital improvement***

In this Act:

capital improvement—

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

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

90 **Responsibility for capital improvement of retirement villages**

- (1) A scheme operator for a retirement village is solely responsible for the cost of the retirement village's capital improvements, including the capital improvement of the retirement village's communal facilities owned by the scheme operator.
- (2) This section is subject to section 91 and section 92.

**91 Responsibility of residents for capital improvement—
accommodation units**

- (1) This section applies if—
 - (a) a resident for a retirement village gives the scheme operator for the retirement village a written request for a stated capital improvement to the resident’s accommodation unit; and
 - (b) the scheme operator makes or agrees to make the capital improvement.
- (2) The resident is solely responsible for the cost of the capital improvement.

**92 Responsibility of residents for capital improvement—
retirement villages**

- (1) This section applies if—
 - (a) residents of a retirement village, by special resolution at a residents meeting, vote to give the scheme operator for the retirement village a written request for a stated capital improvement to the retirement village; and
 - (b) the scheme operator makes or agrees to make the capital improvement.
- (2) All residents of the retirement village when the vote was taken are jointly responsible for the cost of the capital improvement.

93 Responsibility of former residents for capital improvement

If a former resident stops being liable, under section 127 (2) (b) (Working out and paying general services charge for former residents), to pay a proportion of the general services charge—

- (a) the former resident stops being liable, under section 91 or section 92, for the cost of a capital improvement; and
- (b) the scheme operator becomes liable for the resident's share of the cost of the capital improvement.

94 Quotations for capital improvement

- (1) This section applies if—
 - (a) a resident of a retirement village gives the scheme operator for the retirement village a written request to get quotations for a stated capital improvement to the resident's accommodation unit; or
 - (b) a residents committee for a retirement village gives the scheme operator for the retirement village a written request to get quotations for a stated capital improvement to the retirement village.
- (2) The scheme operator must get at least 2 quotations from people who the scheme operator is satisfied on reasonable grounds have the experience or expertise to provide the capital improvement.
- (3) However, the scheme operator need not get 2 quotations if satisfied on reasonable grounds that it is not practicable to get more than 1 quotation.

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- (4) The scheme operator must, as soon as practicable after getting a quotation, give the resident who requested the quotation or the residents committee—
 - (a) a copy of the quotation; or
 - (b) if it is not practicable to give a copy of the quotation—a summary of the quotation and details about where the complete quotation may be inspected.
- (5) Any reasonable cost associated with getting a quotation must be paid by—
 - (a) for a quotation requested by a resident in relation to a capital improvement to the resident’s accommodation unit—the resident; or
 - (b) for a quotation requested by a residents committee for a capital improvement to the retirement village—all residents jointly.

95 Payment of capital improvement

- (1) This section applies if a scheme operator for a retirement village receives a request for a capital improvement under section 91 (1) (Responsibility of residents for capital improvement—accommodation units) or section 92 (1) (Responsibility of residents for capital improvement—retirement villages).
- (2) The scheme operator may, as a condition of agreeing to make the capital improvement, require the resident or residents to pay the cost of the improvement before the improvement is made.

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96 Offences—dealing with amounts received for capital improvement

- (1) A scheme operator for a retirement village commits an offence if the scheme operator—
- (a) receives an amount for the cost of a capital improvement to an accommodation unit or the retirement village; and
 - (b) fails to keep the amount in a trust account on trust for the benefit of the resident or residents of the retirement village who gave the amount.

Maximum penalty: 540 penalty units.

- (2) A scheme operator for a retirement village commits an offence if the scheme operator—
- (a) receives an amount for the cost of a capital improvement to an accommodation unit or the retirement village; and
 - (b) uses the amount for a purpose other than the cost of the capital improvement.

Maximum penalty: 540 penalty units.

- (3) A scheme operator for a retirement village commits an offence if—
- (a) the amount received for the cost of a capital improvement to an accommodation unit or the retirement village exceeds the cost of the capital improvement; and
 - (b) the scheme operator fails to refund the excess to the resident or residents of the retirement village who gave the amount.

Maximum penalty: 540 penalty units.

Division 8.2 Capital replacement fund

97 Meaning of *capital replacement fund contribution*—Act

In this Act:

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

98 Meaning of *capital replacement fund amount*—div 8.2

In this division:

capital replacement fund amount—see section 101 (1).

99 Capital replacement funds

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

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

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

100 Offence—failure to open and keep accounts

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

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

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

Maximum penalty: 540 penalty units.

101 Payments into capital replacement funds

- (1) A scheme operator for a retirement village must pay the following amounts (each of which is a *capital replacement fund amount*) into a capital replacement fund for the retirement village:
- (a) an amount received under an insurance policy in relation to capital items;
 - (b) a capital replacement fund contribution;
 - (c) an amount paid by a resident under section 109 (Residents liable for replacing certain capital items);
 - (d) interest on a capital replacement fund amount.

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

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

102 Offences—payments into capital replacement funds

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

Maximum penalty: 540 penalty units.

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

Maximum penalty: 540 penalty units.

103 Offences—misuse of capital replacement fund amounts

- (1) A scheme operator for a retirement village commits an offence if the scheme operator uses a capital replacement fund amount for a purpose other than 1 or more of the following purposes:
- (a) replacing the retirement village’s capital items;
 - (b) paying the reasonable fees for a report under section 105;
 - (c) paying tax on amounts paid into the capital replacement fund under section 101 (1) (c).

Maximum penalty: 540 penalty units.

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

- (2) A scheme operator for a retirement village commits an offence if the scheme operator uses a capital replacement fund amount for—
- (a) the retirement village’s capital improvement, maintenance or repairs; or
 - (b) capital replacement, maintenance or repairs of property owned by an owners corporation for the retirement village.

Maximum penalty: 540 penalty units.

Note **Owners corporation**, for retirement village land registered as a units plan under the *Unit Titles Act 2001*—see the dictionary.

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

104 Statutory charges over capital replacement funds

- (1) On the establishment of a capital replacement fund in relation to a retirement village, a statutory charge is created over the fund for the benefit of the residents of the village to ensure that the balance of the fund is available for a purpose mentioned in section 103 (1).
- (2) The charge has priority over any other charge over the capital replacement fund given by the scheme operator for the retirement village, other than a charge created and given priority over other charges under a Commonwealth law or another territory law.
- (3) The charge is irrevocable, regardless of whether the scheme operator for the retirement village changes, and continues until the later of—
 - (a) the day the retirement village stops operating as a retirement village scheme; and
 - (b) the day the last former resident to whom an exit entitlement is payable has been paid the exit entitlement.

105 Capital replacement reserve—reports

- (1) Before a scheme operator for a retirement village decides a budget for the retirement village, the scheme operator must get a written report that complies with this section.
- (2) The report must—
 - (a) be from an independent quantity surveyor; and
 - (b) be about the expected costs for replacing the retirement village's capital items for the period of 10 years following the date of the report.

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

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- (3) The scheme operator must get a full report in—
 - (a) the first financial year when the scheme operator is required to get a report; and
 - (b) each 3rd financial year after the first report is obtained; and
 - (c) each financial year when a substantial change has been made to the retirement village.
- (4) The scheme operator must get an updated report in each financial year when a full report is not required.

106 Offence—failure to get reports

A scheme operator for a retirement village commits an offence if the scheme operator fails to get a report under section 105 before the scheme operator decides a budget for the retirement village.

Maximum penalty: 540 penalty units.

107 Capital replacement reserve—amounts in reserve

- (1) A scheme operator for a retirement village must decide the amount (the *capital replacement reserve*) to be held in a capital replacement fund for the retirement village.
- (2) In deciding the capital replacement reserve, the scheme operator must consider—
 - (a) the capital replacement fund’s purpose; and
 - (b) a report (the *quantity surveyor’s report*) obtained under section 105.

- (3) In considering the quantity surveyor's report, the scheme operator must use the scheme operator's best endeavours to carry out the recommendations in the report in the context of—
- (a) the objects of this Act; and
 - (b) any circumstances relevant to the retirement village that appear to the scheme operator not to have been considered in the quantity surveyor's report.
- (4) If, at any time, the amount a scheme operator must spend on replacing a capital item is more than the amount held in the capital replacement fund, the operator must pay the difference between the actual amount to be spent and the amount held in the capital replacement fund.

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

108 Capital replacement fund budgets

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

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Example

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

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

- (3) The residents committee for a retirement village may give the scheme operator for the retirement village a written request to get a copy of the draft capital replacement fund budget for the financial year at least 14 days before the beginning of the financial year to which the draft capital replacement fund budget relates.
- (4) The notice must be given at least 30 days before the beginning of the financial year to which the draft capital replacement fund budget relates.
- (5) The scheme operator must comply with the notice.

109 Residents liable for replacing certain capital items

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

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

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

Division 8.3 Maintenance reserve fund

110 Meaning of *maintenance reserve fund contribution*—Act

In this Act:

maintenance reserve fund contribution means the proportion of the ingoing contribution of a new resident of a retirement village that is payable into the retirement village's maintenance reserve fund.

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

111 Meaning of *maintenance reserve fund amount*—div 8.3

In this division:

maintenance reserve fund amount—see section 114 (1).

112 Maintenance reserve funds

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

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

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

113 Offence—failure to open and keep accounts

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

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

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

Maximum penalty: 540 penalty units.

114 Payments into maintenance reserve funds

- (1) A scheme operator for a retirement village must pay the following amounts (each of which is a *maintenance reserve fund amount*) into a maintenance reserve fund for the retirement village:
- (a) a maintenance reserve fund contribution;
 - (b) interest on a maintenance reserve fund amount.
- (2) Subsection (1) does not limit the amounts a scheme operator may pay into a maintenance reserve fund.

115 Offences—payments into maintenance reserve funds

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

Maximum penalty: 540 penalty units.

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

Maximum penalty: 540 penalty units.

116 Offences—misuse of maintenance reserve fund amounts

- (1) A scheme operator for a retirement village commits an offence if the scheme operator uses a maintenance reserve fund amount for a purpose other than 1 or more of the following purposes:
- (a) maintaining and repairing the retirement village's capital items;
 - (b) paying the reasonable fees for a report under section 118 (Maintenance reserve—reports);
 - (c) paying tax on amounts paid into the maintenance reserve fund under section 114 (1) (b).

Maximum penalty: 540 penalty units.

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

- (2) A scheme operator for a retirement village commits an offence if the scheme operator uses a maintenance reserve fund amount for—
- (a) the day-to-day maintenance of the retirement village; or
 - (b) the improvement or replacement of capital items of the retirement village; or
 - (c) capital replacement, maintenance or repairs of property owned by an owners corporation for the retirement village.

Maximum penalty: 540 penalty units.

Note **Owners corporation**, for retirement village land registered as a units plan under the *Unit Titles Act 2001*—see the dictionary.

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

117 Statutory charges over maintenance reserve funds

- (1) On the establishment of a maintenance reserve fund in relation to a retirement village, a statutory charge is created over the fund for the benefit of the residents of the retirement village to ensure that the balance of the fund is available for a purpose mentioned in section 116 (1).
- (2) The charge has priority over any other charge over the maintenance reserve fund given by the scheme operator for the retirement village, other than a charge created and given priority over other charges under a Commonwealth law or another territory law.
- (3) The charge is irrevocable, regardless of whether the scheme operator for the retirement village changes, and continues until the later of—
 - (a) the day the retirement village stops operating as a retirement village scheme; and
 - (b) the day the last former resident to whom an exit entitlement is payable has been paid the exit entitlement.

118 Maintenance reserve—reports

- (1) Before a scheme operator for a retirement village decides a budget for the retirement village, the scheme operator must get a written report that complies with this section.
- (2) The report must—
 - (a) be from an independent quantity surveyor; and
 - (b) be about the expected costs for maintaining and repairing the capital items of the retirement village for the next 10 years.

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

- (3) The scheme operator must get a full report in—
 - (a) the first financial year when the scheme operator is required to get a report; and
 - (b) each 3rd financial year after the first report is obtained; and
 - (c) each financial year when a substantial change has been made to the retirement village.
- (4) The scheme operator must get an updated report in each financial year when a full report is not required.

119 Offence—failure to get reports

A scheme operator for a retirement village commits an offence if the scheme operator fails to get a report under section 118 before the scheme operator decides a budget for the retirement village.

Maximum penalty: 540 penalty units.

120 Maintenance reserve—amounts in reserve

- (1) A scheme operator for a retirement village must decide the amount (the *maintenance reserve*) to be held in a maintenance reserve fund for the retirement village.
- (2) In deciding the maintenance reserve, the scheme operator for the retirement village must consider—
 - (a) the maintenance reserve fund's purpose; and
 - (b) a report (the *quantity surveyor's report*) obtained under section 118.

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- (3) In considering the quantity surveyor's report, the scheme operator must use the scheme operator's best endeavours to carry out the recommendations in the report in the context of—
- (a) the objects of this Act; and
 - (b) any circumstances relevant to the retirement village that appear to the scheme operator not to have been considered in the report.
- (4) If, at any time, the amount a scheme operator must spend on maintaining and repairing capital items of the retirement village is more than the amount held in the maintenance reserve fund, the operator must pay the difference between the actual amount to be spent and the amount held in the maintenance reserve fund.

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

- (5) An amount paid under subsection (4) is to be treated as an interest free loan from the scheme operator to the maintenance reserve fund.

121 Maintenance reserve fund budgets

- (1) A scheme operator for a retirement village must adopt a budget (a ***maintenance reserve fund budget***) for the maintenance reserve fund for the village for each financial year.
- (2) The maintenance reserve fund budget must—
- (a) allow the scheme operator to raise a sufficient amount to—
 - (i) meet the necessary and reasonable costs to be paid from the maintenance reserve fund for a financial year; and
 - (ii) reserve an appropriate amount necessary to be accumulated to meet anticipated major expenditure over at least the 9 years following the financial year; and

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

Example

Painting village property is anticipated to be necessary in 3 years time at a cost currently estimated at \$3000. The contribution amount for the maintenance reserve fund in the budget for the financial year must therefore include the annual proportional share for painting of \$1000. The following year, the estimated cost increases to \$3400 and so the second year levy will be \$1200. The estimated cost in the third year is \$3500, so with the \$2200 accumulated, a levy of \$1300 is necessary to meet the cost.

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

- (3) A residents committee for a retirement village may give the scheme operator for the retirement village a written request to get a copy of the draft maintenance reserve fund budget for the financial year at least 14 days before the beginning of the financial year to which the draft maintenance reserve fund budget relates.
- (4) The notice must be given at least 30 days before the beginning of the financial year to which the draft maintenance reserve fund budget relates.
- (5) The scheme operator must comply with the notice.

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Division 8.4 Services charges

122 Meaning of *general services charge budget*—Act

In this Act:

general services charge budget—see section 124 (1).

123 Meaning of *general services charge*—div 8.4

In this division:

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

124 General services charge budget

- (1) A scheme operator for a retirement village must adopt a budget (the *general services charge budget*) for the general services charge for each financial year.
- (2) The general services charge budget must—
 - (a) allow for a reasonable amount of money to be raised to provide the general services for a financial year; and
 - (b) fix an amount to be raised by way of contribution by residents of the retirement village to cover the amount.
- (3) A residents committee for a retirement village may give the scheme operator for the retirement village a written request to get a copy of the draft general services charge budget for the financial year at least 14 days before the beginning of the financial year to which the draft general services charge budget relates.

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- (4) The notice must be given at least 30 days before the beginning of the financial year to which the draft general services charge budget relates.
- (5) The scheme operator must comply with the notice.
- (6) If, at the end of a financial year for which a general services charge budget is adopted, there is a surplus or deficit for the general services charge, the surplus or deficit must be carried forward and taken into account in adopting the general services charge budget for the next financial year.

125 Offences—working out and paying general services charge

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

Maximum penalty: 200 penalty units.

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

Maximum penalty: 200 penalty units.

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

Maximum penalty: 200 penalty units.

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

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

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

126 Responsibility of residents for general services charge

- (1) A resident of a retirement village is responsible for only the resident's proportion of the general services charge for the period that the resident lives in the resident's accommodation unit.
- (2) This section is subject to section 127.

127 Working out and paying general services charge for former residents

- (1) A former resident of a retirement village is liable for the resident's proportion of the general services charge after the resident vacates the resident's accommodation unit until the first of the following happens:
- (a) the right to live in the accommodation unit is sold;

- (b) a period of 90 days elapses (the *90-day period*);
 - (c) the ACAT orders the scheme operator for the retirement village to pay the former resident's exit entitlement under section 190 (ACAT orders—payment of exit entitlement).
- (2) If the former resident's right to live in the accommodation unit has not been sold during the 90-day period—
- (a) the resident and the scheme operator are each liable, after the 90-day period ends, to pay the general services charge in the same proportion as they are to share the gross ingoing contribution on the sale of the right to live in the accommodation unit, as provided for in the residence contract; and
 - (b) the former resident stops being liable to continue to pay a proportion of the general services charge when the first of the following happens:
 - (i) the right to live in the accommodation unit is sold;
 - (ii) a period of 9 months after the resident vacates the accommodation unit ends.
- (3) If a former resident's right to live in an accommodation unit has not been sold during the 90-day period, the scheme operator may—
- (a) accrue, as a book debt, the resident's proportion of the general services charge; and
 - (b) set off the accrued amount against the resident's exit entitlement.

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128 Offence—no interest on accrued amounts

A scheme operator for a retirement village commits an offence if the scheme operator charges interest on an amount accrued under section 127 (3).

Maximum penalty: 100 penalty units.

129 Offence—failure to pay general services charge for unsold right to live in accommodation units

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

- (a) the scheme operator does not pay the proportion of the general services charge relating to the right to live in an accommodation unit in the retirement village; and
- (b) 1 of the following applies:
 - (i) an accommodation unit has not been occupied under a residence contract;
 - (ii) the liability of the former resident of the accommodation unit to pay a proportion of the general services charge has ended under—
 - (A) section 127 (3); or
 - (B) the terms of the residence contract for the accommodation unit;
 - (iii) no residence contract is in force for the accommodation unit.

Maximum penalty: 200 penalty units.

130 Scheme operators paying general services charge

The scheme operator for a retirement village must pay an amount payable under section 129 into the maintenance reserve fund for the retirement village.

131 Offence—increasing general services charge by more than CPI

- (1) A scheme operator for a retirement village commits an offence if the scheme operator increases the total of the general services charge for the retirement village for a financial year by more than the CPI percentage increase for the financial year.

Maximum penalty: 200 penalty units.

- (2) Subsection (1) does not apply if—
- (a) the residents of the retirement village, by special resolution at a residents meeting, approve an increase of more than the CPI percentage increase for the financial year; or
 - (b) the increase is attributable to an increase in—
 - (i) rates, taxes or charges levied under a Commonwealth law or another territory law in relation to the retirement village land or its use; or
 - (ii) the salary or wages of a person engaged in the retirement village's operation and payable under an award or industrial agreement made, approved, certified, or continued in force under a Commonwealth law or another territory law; or
 - (iii) insurance premiums, or insurance excesses paid, in relation to the retirement village or its use; or
 - (iv) maintenance reserve fund contributions.

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Examples—industrial agreement

certified agreement, enterprise flexibility agreement, industrial agreement, workplace agreement

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

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

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

(3) In this section:

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

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

- (a) the CPI published for the quarter ending immediately before the start of the financial year; and
- (b) the CPI published for the quarter ending immediately before the end of the financial year.

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

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

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

132 Cost-effective alternatives for services

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

133 No liability for failing to supply goods or services

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

- (a) the cost of the supply of the goods and services would require an increase in the general services charge that is more than the increase allowed under section 131; and
- (b) the scheme operator considered whether there was a more cost-effective alternative to the general service.

Note A scheme operator is also not liable for breach of a residence contract for failure to supply a general service if the residents of the retirement village did not agree to an increase in the general service charge to cover the cost of the service (see s 54).

134 Supplying new general services

- (1) A scheme operator for a retirement village may only offer residents of the retirement village a service not already supplied under a retirement village scheme for which a general services charge is payable if—
- (a) the residents agree to the service being supplied by special resolution at a residents meeting; and

- (b) the service is not 1 of the following:
 - (i) a personal service;
 - (ii) a service that is the same as a service already supplied under the retirement village scheme and introduced as a cost-effective alternative under section 132;
 - (iii) another service if the public information document for the retirement village states that the service is proposed to be supplied.
- (2) Before supplying a new service, the scheme operator must get quotations for the supply of the service in accordance with section 135.
- (3) If any capital improvements to the retirement village are required for the scheme operator to supply the service, the scheme operator may supply the service only if the capital improvements are requested by the residents of the retirement village under section 92 (Responsibility of residents for capital improvement—retirement villages).
- (4) The scheme operator must not charge a resident for a new service before the service is supplied to the resident.

135 Quotations for new services

- (1) This section applies if a scheme operator for a retirement village offers to supply a new service to residents of the retirement village.
- (2) The scheme operator must, at the scheme operator's expense, get at least 2 quotations from people who the scheme operator is satisfied have the experience or expertise to qualify the people to provide the services.

- (3) However, the scheme operator need not get 2 quotations if satisfied on reasonable grounds that it is not practicable to get more than 1 quotation.
- (4) The scheme operator must, as soon as practicable after getting a quotation, give the residents of the retirement village—
 - (a) a copy of the quotation; or
 - (b) if it is not practicable to give a copy of the quotation—a summary of the quotation and details about where the complete quotation may be inspected.

136 Charging residents for personal services during temporary absences

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

137 Offences—charging former residents for personal services

- (1) A scheme operator for a retirement village commits an offence if—
 - (a) a resident of the retirement village receives personal services under a residence contract; and
 - (b) the resident's residence contract is ended under 1 of the following sections (the *ending provision*):
 - (i) section 45 (Ending residence contracts—residents);

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- (ii) section 48 (Ending residence contracts—scheme operators); and
- (c) the scheme operator charges the resident for personal services after—
 - (i) if the period of the notice given under the ending provision is extended—the end of the extended period of notice; or
 - (ii) in any other case—the end of the period of notice given under the ending provision.

Maximum penalty: 540 penalty units.

- (2) The scheme operator commits an offence if—
 - (a) a resident of the retirement village receives personal services under a residence contract; and
 - (b) the resident’s residence contract ends because the resident dies; and
 - (c) the scheme operator charges the resident for personal services for more than 28 days after the residence contract ends.

Maximum penalty: 540 penalty units.

Division 8.5 Insurance

138 Offence—failure to take out etc public liability insurance

- (1) A scheme operator for a retirement village commits an offence if the scheme operator fails to take out and maintain public liability insurance in relation to all of the following events happening in relation to the retirement village as a result of an accident:
 - (a) death, bodily injury or illness of anyone;

(b) loss of, or damage to, the property of anyone.

Maximum penalty: 540 penalty units.

- (2) Public liability insurance under subsection (1) must be for a total amount of liability of not less than \$10 000 000 or another amount prescribed by regulation.
- (3) Subsection (1) does not apply to—

(a) an accommodation unit that is owned by a resident; or

Note **Own**—see the dictionary.

(b) common property in a units plan registered under the *Unit Titles Act 2001* if the owners corporation for the units plan has taken out and is maintaining insurance required under that Act, section 131 (Public liability insurance by owners corporation) in relation to the common property.

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

139 Offence—failure to take out etc building insurance

- (1) A scheme operator for a retirement village commits an offence if the scheme operator fails to insure and keep insured all buildings on the retirement village land for their replacement value from time to time against all of the following risks:
- (a) fire, lightning, tempest, earthquake and explosion;
 - (b) riot, civil commotion, strikes and labour disturbances;
 - (c) malicious damage;
 - (d) bursting, leaking and overflowing of boilers, water tanks, water pipes and associated apparatus;

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- (e) impact of aircraft (including parts of, and objects falling from, aircraft) and of road vehicles, horses and cattle.

Maximum penalty: 540 penalty units.

- (2) For all purposes related to any insurance taken out by it under subsection (1), a scheme operator is taken to have an insurable interest in the buildings on the retirement village land to the extent of their replacement value.
- (3) Subsection (1) does not apply to buildings on retirement village land in a units plan registered under the *Unit Titles Act 2001* if the owners corporation for the units plan has insured, and is keeping insured, the buildings in accordance with the requirements for insurance under that Act, section 132 (Building insurance by owners corporation).

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

140 Insurance excess

- (1) A scheme operator for a retirement village may take out insurance that is subject to an excess.
- (2) For insurance other than public liability insurance, the excess must not be more than—
 - (a) the maximum excess prescribed by regulation; or
 - (b) if the residents agree to a higher excess by special resolution at a residents meeting—the higher excess.
- (3) For subsection (2) (b), the residents may not agree to an excess that is more than 1% of the insured value of the retirement village.

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141 Application of insurance money by scheme operators

If a scheme operator for a retirement village on retirement village land receives insurance money for damage to, or destruction of, any building on the retirement village land, the scheme operator must, without delay, apply the insurance money to rebuilding and reinstating the building.

142 Additional insurance—scheme operators

This part does not limit the right of a scheme operator for a retirement village to take out additional insurance.

143 Additional insurance—residents

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

Division 8.6 Financial accounts and statements

144 Scheme operator must keep separate accounts for capital replacement fund and maintenance reserve fund

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

Maximum penalty: 540 penalty units.

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145 Offences—failure to give quarterly financial statements etc

- (1) A scheme operator for a retirement village commits an offence if—
- (a) a resident of the retirement village gives the scheme operator a written request for a quarterly financial statement for the retirement village; and
 - (b) the scheme operator fails to give the resident, not later than 28 days after receiving the request, a quarterly financial statement in a form that can be audited.

Maximum penalty: 540 penalty units.

- (2) A scheme operator for a retirement village commits an offence if—
- (a) the residents committee for the retirement village gives the scheme operator a written request for an explanatory document; and
 - (b) the scheme operator fails to give the residents committee, not later than 28 days after receiving the request, an explanatory document.

Maximum penalty: 100 penalty units.

- (3) In this section:

explanatory document means a document that explains—

- (a) the expenditure involved in supplying each general service; and
- (b) any increase in the expenditure involved in supplying a general service that differs from the expected expenditure for the general service in the general services charge budget.

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

- (a) the income of, and expenditure from—
 - (i) the capital replacement fund; and
 - (ii) the maintenance reserve fund; and
- (b) the expenditure involved in supplying each general service.

146 Preparing annual financial statements

A scheme operator for a retirement village must prepare, for each financial year, a financial statement in relation to the retirement village that—

- (a) shows the following details about the retirement village's operation:
 - (i) income and expenditure of the capital replacement fund for the financial year;
 - (ii) income and expenditure of the maintenance reserve fund for the financial year;
 - (iii) expenditure involved in supplying each general service for the financial year;
 - (iv) amounts received for insurance claims relating to the retirement village during the financial year;
 - (v) assets and liabilities relating to the retirement village as at the end of the financial year;
 - (vi) interests, mortgages and other charges affecting the retirement village's property as at the end of the financial year; and

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- (b) is audited and prepared in accordance with generally accepted accounting principles.

147 Offences—failure to give annual financial statements

- (1) A scheme operator for a retirement village commits an offence if the scheme operator fails to give the chief executive, not later than 5 months after the end of each financial year, a financial statement for the retirement village.

Maximum penalty: 200 penalty units.

- (2) A scheme operator for a retirement village commits an offence if—
 - (a) a resident requests a copy of a financial statement; and
 - (b) the scheme operator fails to give the resident a copy of a financial statement within the later of—
 - (i) 5 months after the end of the financial year; and
 - (ii) 28 days after receiving the request from the resident.

Maximum penalty: 200 penalty units.

- (3) In this section:

financial statement means a statement prepared in accordance with section 146.

148 Classification of expenditure

- (1) A regulation may prescribe model rules (the *model classification rules*) about the classification of items of expenditure.
- (2) Without limiting subsection (1), the model classification rules may—
 - (a) classify how a particular item of expenditure must be dealt with; and

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

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Part 9 Statutory charges over retirement village land

Division 9.1 Preliminary

149 Meaning of *resident*—pt 9

In this part:

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

Note *Own*—see the dictionary.

Division 9.2 Creating statutory charges etc

150 Meaning of *registered*—div 9.2

In this division:

registered, for a security, means registered under the *Land Titles Act 1925* or the *Land Titles (Unit Titles) Act 1970*.

151 Creating charges

- (1) On the chief executive registering a retirement village scheme, a statutory charge is created over the retirement village land to which the scheme relates.
- (2) As soon as practicable after the retirement village scheme is registered, the chief executive must give written notice of the registration to the registrar-general.

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- (3) The notice must—
 - (a) identify the retirement village land; and
 - (b) state the day on which the scheme was registered.
- (4) The registrar-general must record the charge in the register under the *Land Titles Act 1925*.
- (5) However, subsection (1) does not apply if, before registering a retirement village scheme, the chief executive decides it should not apply—
 - (a) because the scheme operator is—
 - (i) an organisation established for a religious, charitable or community purpose; and
 - (ii) of good standing in operating retirement village schemes;
or
 - (b) because—
 - (i) of other exceptional circumstances; and
 - (ii) the chief executive is satisfied that the proposed scheme operator provides another security to secure the rights under a residence contract of a resident in the retirement village.

152 Charges extend to new land

- (1) This section applies if land (the *new land*) becomes retirement village land of a retirement village after a charge (the *original charge*) on the original retirement village land (the *original land*) for the retirement village is created under section 151.

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- (2) On the new land becoming retirement village land—
 - (a) the charge over the original land is released; and
 - (b) a charge is created over the original land and the new land.
- (3) A scheme operator for a retirement village must give the chief executive written notice that new land has become retirement village land not later than 1 month after the new land becomes retirement village land.
- (4) As soon as practicable after receiving the notice under subsection (3), the chief executive must give written notice of the change to the retirement village land to the registrar-general.
- (5) The notice under subsection (4) must—
 - (a) identify the retirement village land; and
 - (b) state the day when the new land became retirement village land.
- (6) The registrar-general must record the release of the original charge and the creation of the charge under subsection (2) in the register under the *Land Titles Act 1925*.

153 Offence—failure to give notice of new land

A scheme operator for a retirement village commits an offence if the scheme operator fails to give the chief executive written notice under section 152 (3).

Maximum penalty: 540 penalty units.

154 Effect of charges

A statutory charge under this part secures the right of each resident of the retirement village to which it relates—

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

155 Priority of charges

- (1) A statutory charge notified to the registrar-general under this division has priority over all registered securities in or over the retirement village land to which the notice relates, whether or not the security was registered before the statutory charge was notified to the registrar-general.
- (2) However, a statutory charge does not have priority over a charge created, and given priority over other charges, under a Commonwealth law or another territory law.

Division 9.3 Enforcing statutory charges

156 Enforcing charges

- (1) This section applies if—
 - (a) retirement village land is subject to a statutory charge under section 151 (Creating charges) or section 152 (Charges extend to new land); and

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- (b) a court or tribunal orders an amount be paid by the scheme operator for the retirement village on the retirement village land to a resident of the retirement village in relation to a right of the resident mentioned in section 154 (the *original order*); and
 - (c) the amount is not paid by 6 months after the end of the day by which it was required to be paid under the original order.
- (2) The person in whose favour the original order was made may apply to a court of competent jurisdiction for an order that the retirement village land be sold.
- (3) However, a person may make an application under subsection (2) only if—
- (a) the person has given the chief executive written notice of the person's intention to make the application; and
 - (b) for an amount payable under the original order by way of an exit entitlement, the amount is at least \$10 000 or another higher amount prescribed by regulation.
- (4) Each resident of the retirement village, and anyone else who appears to the court to have a sufficient interest in the application, is entitled—
- (a) to be joined as a party to the proceeding; and
 - (b) to be heard on the application.
- (5) Unless the court orders otherwise, the applicant must give the residents notice of their right to be heard on the application.

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157 Orders court may make

- (1) On hearing an application under section 156 (2), the court may order that the retirement village land be sold only if the court is satisfied that—
 - (a) the original order is unsatisfied and is not likely to be satisfied in any other way open to the applicant; and
 - (b) it is not contrary to the interests of any resident of the retirement village that the land be sold.
- (2) Without limiting the orders it may make, the court may appoint a person to act as the seller's agent for the sale.

158 Effect of court orders

- (1) An order for the sale of retirement village land under section 157—
 - (a) authorises the sale of the land free of all existing securities, other than the securities the court preserves in its order; and
 - (b) has effect despite—
 - (i) an existing caveat or lien affecting the land; or
 - (ii) any Act, other than this Act.
- (2) A person appointed as the seller's agent under section 157 (2) has the power to convey the land to a purchaser and to do all things necessary to effect the conveyance.
- (3) On settlement, the seller is to apply the sale proceeds in the following order:
 - (a) paying the sale costs and the applicant's costs in seeking the order for sale;
 - (b) paying amounts payable under securities ranking in priority to the statutory charge;

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- (c) satisfying the original order;
 - (d) paying exit entitlements payable to residents if, because of the court order, the retirement village scheme stops operating or the residence contracts under the scheme end;
 - (e) paying amounts payable under securities ranking in priority after the statutory charge;
 - (f) paying the balance to the person who owned the retirement village land immediately before the sale, or to someone else at the person's direction.
- (4) For ensuring compliance with subsection (3) (d), the seller must take reasonable steps to locate any former resident to whom an exit entitlement is payable.

Division 9.4 Extinguishing and releasing statutory charges

159 Extinguishing charges

- (1) A statutory charge created over retirement village land under this part is extinguished on—
- (a) its release by the chief executive under section 161 (Chief executive to release charge); or
 - (b) the sale of the land under a court order under section 157 (Orders court may make).
- (2) However, subsection (1) (b) does not apply if—
- (a) the land continues, or is to continue, to be used under a registered retirement village scheme; and

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- (b) under the retirement village scheme's residence contracts, a person does not obtain a leasehold interest in the retirement village land.

160 Scheme operator may ask for release of charge if land stops being retirement village land

- (1) A scheme operator for a retirement village may ask the chief executive to release the statutory charge created over the retirement village land on which the retirement village is located if—
 - (a) the land stops being retirement village land; or
 - (b) the scheme operator proposes to stop using the land for the retirement village.
- (2) A request under subsection (1) must be in writing.
- (3) The scheme operator must also—
 - (a) give each resident of the retirement village a written notice stating—
 - (i) that the scheme operator has asked the chief executive to release the statutory charge over the retirement village land; and
 - (ii) how the resident will be affected if the statutory charge is released; and
 - (iii) that, not later than 60 days after the resident receives the notice, the resident may, by written notice given to the chief executive, object to the release; and
 - (b) give the chief executive—
 - (i) a statutory declaration made by the scheme operator stating—

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- (A) the fact of the scheme operator's compliance with paragraph (a); and
 - (B) whether the scheme operator knows or suspects on reasonable grounds that a person has started, or is likely to start, proceedings to enforce the charge under section 156 (Enforcing charges); and
- (ii) a copy of the notice given to residents under paragraph (a).
- (4) In this section:
- resident* includes a former resident who has not received an exit entitlement to which the former resident is entitled under the former resident's residence contract.

161 Chief executive to release charge

- (1) The chief executive must release the statutory charge over retirement village land of a retirement village if the chief executive is satisfied—
 - (a) the scheme operator for the retirement village has complied with section 160; and
 - (b) having regard to any objections made under section 160, it is appropriate to release the charge over the land.
- (2) If the chief executive releases a statutory charge under subsection (1), the chief executive must give the registrar-general written notice of the release of the charge.
- (3) On receiving the notice, the registrar-general must register the release of the charge over the retirement village land.

Division 9.5 Exemption from statutory charges

162 Exemption from charges

The following are exempt from the payment of registration or other fees under the *Land Titles Act 1925* or the *Land Titles (Unit Titles) Act 1970*:

- (a) a notice by the chief executive under section 151 (2) (Creating charges), section 152 (4) (Charges extend to new land) or section 161 (2);
- (b) any other instrument given to the registrar-general to give effect to the recording of a charge or release of a charge mentioned in section 151 (2), section 152 (4) or section 161 (2) by the registrar-general.

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Part 10 Residents participation

Division 10.1 Residents committees

163 Establishing residents committees

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

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164 Operating residents committees

- (1) A residents committee for a retirement village may—
 - (a) decide its own procedure; and
 - (b) form 1 or more subcommittees and decide the procedure for those subcommittees; and
 - (c) call meetings of all the residents of the retirement village to vote on—
 - (i) any matter on which a resolution of the residents is required under this Act; and
 - (ii) any other matter affecting the management or operation of the retirement village; and
 - (iii) any other matter prescribed by regulation.
- (2) The matters mentioned in subsection (1) are subject to the conditions (if any) prescribed by regulation.

165 Offence—preventing etc residents committees

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

- (a) discourages or prevents the establishment of a residents committee;
- (b) obstructs a residents committee from exercising the committee's functions;
- (c) prevents a resident of the retirement village from joining an organisation for residents of the retirement village.

Maximum penalty: 50 penalty units.

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166 Scheme operator to provide administrative assistance

- (1) This section applies if—
 - (a) a scheme operator for a retirement village receives a written request from a residents committee for administrative assistance; and
 - (b) an estimate of the cost of providing the assistance has been included in the general services charge budget.
- (2) The scheme operator must give reasonable administrative assistance to the residents committee.

Examples—administrative assistance

photocopying, distributing notices

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

167 Meetings between residents committees and scheme operators

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

168 Retirement villages without residents committees

- (1) If there is no residents committee for a retirement village, the scheme operator for the retirement village must call a meeting of the residents for considering and voting on the matters mentioned in section 164 (1) (c) (Operating residents committees)—
 - (a) at least once every 12 months; and
 - (b) if the scheme operator receives a written request for a meeting from—
 - (i) 5 residents or 10% of the residents (which ever is the greater) of the retirement village; or
 - (ii) if the retirement village has fewer than 10 occupied accommodation units—a majority of the occupied units.
- (2) A meeting must be held in or near the retirement village.

Division 10.2 Meetings of residents committees

169 Decision-making at meetings

- (1) Decisions by residents of a retirement village at meetings must be made by ordinary resolution, unless this Act requires the decision to be made by special resolution.
- (2) If, at a meeting, the residents make a resolution of a particular kind (that is, an ordinary or special resolution), a resolution of the same kind at a meeting is required to amend or revoke the earlier resolution, unless this Act requires otherwise.

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170 Ordinary resolutions

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

171 Special resolutions

- (1) The requirements for passing a special resolution at a meeting of the residents of a retirement village are that—
 - (a) the number of votes cast in favour of the resolution exceed the number of votes cast against it; and
 - (b) the votes cast against the resolution number less than $\frac{1}{3}$ of the total number of votes that can be cast on the resolution by people present at the meeting (including proxy votes).

172 Who may vote

- (1) The following people are entitled to vote at a meeting of the residents of a retirement village:
 - (a) if the residents have, by special resolution, agreed that each resident of the retirement village should be entitled to vote—each resident of the village;
 - (b) if a former resident of an accommodation unit is required under section 127 (Working out and paying general services charge for former residents) to pay the whole or a portion of the general services charge for the unit—1 former resident of the accommodation unit;
 - (c) in any other case—1 resident of each accommodation unit in the retirement village.

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- (2) A resident's vote at a meeting of residents of a retirement village may be cast by—
- (a) the resident; or
 - (b) a person who the resident has appointed by power of attorney; or
 - (c) any other person who the resident has appointed by signed notice to vote by way of a proxy vote at a particular meeting stated in the notice.

173 Proxy votes

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

174 Postal votes

A resident of a retirement village may cast a written vote for a meeting of residents of the retirement village by placing the vote in a container supplied by the scheme operator for the retirement village for the purpose in the common area of the village at least 24 hours before the time when the meeting is to be held.

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175 Offences—postal votes

- (1) A scheme operator for a retirement village commits an offence if the scheme operator fails to provide a secured container in a common area of the village for the purpose of a resident casting a vote under section 174 at least 24 hours before the time of a meeting of residents of the village.

Maximum penalty: 10 penalty units.

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

Maximum penalty: 10 penalty units.

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

Maximum penalty: 10 penalty units.

176 Quorum at meetings

- (1) A motion may be considered at a meeting of a residents committee only if there is present—
- (a) a quorum (a *standard quorum*) made up by people entitled to vote on the motion in relation to not less than $\frac{1}{2}$ the total number of accommodation units in a retirement village; or
 - (b) a quorum (a *reduced quorum*) made up under subsection (2).

- (2) If a standard quorum is not present within $\frac{1}{2}$ an hour after the motion arises for consideration, a reduced quorum for the motion and any subsequent motion considered at the meeting is made up by 2 or more people present at the meeting who are entitled to vote on the motion.
- (3) If a reduced quorum is not present $\frac{1}{2}$ an hour after the motion arises for consideration, the meeting is adjourned to the same day in the next week at the same place and time.
- (4) If a reduced quorum is present for the consideration of any motion and the motion is voted on, section 177 applies to the decision on the motion.
- (5) If a reduced quorum is present for the consideration of any motion and the motion is not voted on, the meeting may decide to adjourn to the same day in the next week at the same place and time to consider the motion (and any others remaining to be considered).
- (6) If a meeting is adjourned under this section (including paragraph (c)) and a standard quorum is not present within $\frac{1}{2}$ an hour after a motion arises for consideration at the adjourned meeting—
 - (a) a reduced quorum is made up by the people who are then present and entitled to vote on the motion and any subsequent motion considered at the adjourned meeting; and
 - (b) if a reduced quorum is present for the consideration of any motion at the adjourned meeting, and the motion is voted on—the decision on the motion must be notified under section 177; and

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- (c) if the motion (or any other motion) is not voted on at the adjourned meeting—the adjourned meeting may resolve to adjourn again to the same day in the next week at the same place and time to consider the resolution (and any others remaining to be considered at the meeting).

177 Notice of reduced quorum decisions and adjournments

- (1) If a decision (a *reduced quorum decision*) is made on a motion while a reduced quorum was present for the consideration of the motion, within 7 days after the meeting a scheme operator for a retirement village must give each resident of the retirement village written notice of the reduced quorum decision.

Note If a form is approved under s 221 for a notice, the form must be used.

- (2) Within 4 days after a meeting is adjourned under section 176, the scheme operator must give each resident a written notice of the date, place and time to which the meeting is adjourned.

178 Reduced quorum decisions—effect

- (1) A reduced quorum decision takes effect 21 days after the decision was made, subject to this section.
- (2) Subsection (1) does not apply if a scheme operator for a retirement village fails to give notice of the reduced quorum decision under section 177 (1).
- (3) A reduced quorum decision is disallowed if, within 21 days after the decision was made, the scheme operator is given a petition requiring that the decision be disallowed signed by a majority of people entitled to vote on the relevant motion at the time of signing (whether or not they were present or entitled to vote on the motion at the general meeting at which the decision was made).

- (4) If, within 21 days after a reduced quorum decision is made, a motion is passed confirming the reduced quorum decision while a standard quorum is present at a meeting for consideration of the confirmation motion, the reduced quorum decision takes effect on confirmation, whether or not a petition under subsection (3) is at any time given to the scheme operator.
- (5) This section does not prevent a reduced quorum decision from being revoked at a meeting, whether a standard quorum or reduced quorum is present while the revocation motion is being considered.

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Part 11 Retirement village disputes

Division 11.1 General

179 Meaning of *retirement village dispute*—Act

- (1) For this Act, a dispute is a *retirement village dispute* if—
- (a) it is between—
 - (i) the parties to a residence contract; or
 - (ii) if the resident is not a party to the residence contract—the resident and the scheme operator; and
 - (b) it is about, arises from, or relates to, the residence contract.

Example

a dispute between a resident and a scheme operator about who is lawfully entitled to an amount received as an ingoing contribution in relation to a residence contract

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

- (2) In this section:
resident includes a former resident.

180 Applications to ACAT

- (1) A person may make an application to the ACAT in relation to a retirement village dispute.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

- (2) This section is subject to section 181.

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181 Preliminary negotiations

- (1) A person may make an application to the ACAT in relation to a retirement village dispute only if the parties have attempted to resolve the dispute under this section.
- (2) A party to the retirement village dispute (the *1st party*) must give the other party to the dispute (the *2nd party*) written notice—
 - (a) stating the matters in dispute; and
 - (b) nominating a day (the *nominated day*), not earlier than 14 days after the day the notice is given, for the parties to meet in the retirement village to attempt to resolve the dispute.
- (3) The 2nd party must give the 1st party a written response to the notice not later than 7 days after the day the 2nd party received the notice.
- (4) On the nominated day, or another day that is not later than 7 days after the nominated day and agreed by the parties, the parties must meet in the retirement village and attempt to resolve the dispute.
- (5) If the parties reach agreement during a preliminary negotiation, the scheme operator must, within 7 days of reaching the agreement—
 - (a) record the agreement in writing; and
 - (b) sign the agreement; and
 - (c) organise for the agreement to be signed for or on behalf of the resident; and
 - (d) give a copy of the signed agreement to the resident.

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Division 11.2 Mediation

182 Referral to mediation

- (1) This section applies if a person makes an application to the ACAT in relation to a retirement village dispute.
- (2) Not later than 14 days after the day the application is made, the registrar must—
 - (a) refer the subject matter of the application to a registered mediator for mediation; and
 - (b) give the parties to the dispute written notice of—
 - (i) the mediator who is to mediate the dispute; and
 - (ii) the time, date and place of the conference (the *mediation conference*) to be conducted by the mediator.
- (3) The notice under subsection (2) (b) must be given not later than 7 days before the mediation conference.
- (4) In this section:
registered mediator—see the *Mediation Act 1997*, dictionary.

183 Parties attendance at mediation conferences

A party to a retirement village dispute cannot be compelled to attend a mediation conference.

184 Representation at mediation conferences

A party to a retirement village dispute may be represented at a mediation conference by a lawyer or an agent, unless the mediator is satisfied on reasonable grounds that the party should not be represented.

185 People who may attend mediation conferences

- (1) A mediator may allow a person to take part in a mediation conference in relation to a retirement village dispute if the mediator is satisfied that the person has a sufficient interest in the resolution of the dispute.
- (2) However, the person does not become a party to the retirement village dispute.

186 Mediation agreements

- (1) This section applies if the parties to a retirement village dispute reach a mediated agreement (the *mediation agreement*) on the dispute.
- (2) The mediator must record the mediation agreement in writing and have it signed by or for the parties.
- (3) The mediator must give a copy of the signed mediation agreement to the registrar as soon as practicable after it is signed.

Division 11.3 ACAT orders

187 ACAT orders generally

- (1) The ACAT may make the following orders in relation to a party to a retirement village dispute:
 - (a) an order requiring the party to do, or not to do, something;
 - (b) an order requiring the party to pay an amount (including an amount of compensation) to a stated person;
 - (c) an order that the party is not required to pay an amount to a stated person;

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- (d) an order setting aside a residence contract between the parties to the dispute;
 - (e) an order setting aside a mediation agreement between the parties to the dispute;
 - (f) an order giving effect to a settlement agreed on by the parties to the dispute.
- (2) An order may state a time for compliance with it.
 - (3) This section does not limit the orders the ACAT may make in relation to an ACAT dispute.

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

188 ACAT orders—removal from retirement village etc

- (1) This section applies if a retirement village dispute arises because a resident of a retirement village—
 - (a) is threatened with removal, or is removed, from the retirement village by the scheme operator for the retirement village; or
 - (b) is threatened with deprivation, or is deprived, of the resident's right to live in the retirement village under a residence contract by the scheme operator; or
 - (c) is threatened with restriction of, or is restricted in, the resident's use of the retirement village land under the residence contract by the scheme operator.
- (2) The ACAT may make an order that the scheme operator do, or not do, a stated thing.

- (3) In making an order, the ACAT must be satisfied that the actual or threatened removal, deprivation or restriction mentioned in the application—
 - (a) is, or would be, a breach of the resident's residence contract; or
 - (b) is not, or would not be, justified.
- (4) Without limiting subsection (3), the ACAT may have regard to the rights and interests of all people who may be affected if the order is made.
- (5) The ACAT may make the order on the conditions and for the period it decides is appropriate.

189 ACAT orders—false or misleading documents

- (1) This section applies if a retirement village dispute arises because—
 - (a) a scheme operator for a retirement village contravenes the Criminal Code, section 338 (Giving false or misleading information); and
 - (b) a resident of the retirement village is significantly prejudiced by the contravention.
- (2) The ACAT may make an order setting aside the resident's residence contract.
- (3) In setting aside a residence contract, the ACAT may make the orders it considers appropriate, including—
 - (a) an order that the scheme operator refund to the resident the ingoing contribution or another amount paid under the residence contract; and
 - (b) an order that the scheme operator compensate the resident for damages or loss caused by the contravention.

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190 ACAT orders—payment of exit entitlement

- (1) This section applies if a retirement village dispute arises because—
 - (a) a scheme operator for a retirement village fails to comply with a requirement under division 6.3 (Reselling accommodation units); and
 - (b) a former resident of the retirement village is significantly prejudiced by the failure.
- (2) The ACAT may make an order requiring the scheme operator to pay to the former resident the former resident's exit entitlement.
- (3) In ordering the scheme operator to pay the exit entitlement to the former resident, the ACAT must base the exit entitlement on the following in relation to the accommodation unit that the resident lived in:
 - (a) if the resale value of the right to live in the accommodation unit has been agreed between the resident and scheme operator—the agreed value; and
 - (b) if the resale value of the right to live in the unit has not been agreed—the resale value of the right to live in the unit decided by the ACAT under subsection (4).
- (4) For subsection (3) (b), the ACAT must get an independent valuation of the right to live in the accommodation unit from a valuer.

Part 12 Enforcement

Division 12.1 Definitions—pt 12

191 Definitions—pt 12

In this part:

at premises includes in or on the premises.

connected—a thing is *connected* with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, is being used, or is intended to be used, to commit the offence.

occupier, of premises, includes—

- (a) a person believed on reasonable grounds to be an occupier of the premises; and
- (b) a person apparently in charge of the premises.

offence includes an offence that there are reasonable grounds for suspecting has been, is being, or will be, committed.

warrant means a warrant issued under division 12.4 (Search warrants).

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Division 12.2 Authorised officers

192 Appointment of authorised officers

The chief executive may appoint a public servant as an authorised officer for this Act.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

193 Identity cards

- (1) The chief executive must give an authorised officer an identity card stating the officer's name and that the officer is an authorised officer.
- (2) The identity card must show—
 - (a) a recent photograph of the authorised officer; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
 - (a) the person stops being an authorised officer; and
 - (b) the person does not return the person's identity card to the chief executive as soon as practicable (but not later than 7 days) after the day the person stops being an authorised officer.

Maximum penalty: 1 penalty unit.

- (4) Subsection (3) does not apply to a person if the person's identity card has been—
- (a) lost or stolen; or
 - (b) destroyed by someone other than the person.

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

- (5) An offence against this section is a strict liability offence.

Division 12.3 Powers of authorised officers

194 Power to enter premises

- (1) For this Act, an authorised officer may—
- (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment); or
 - (b) at any time, enter premises with the occupier's consent; or
 - (c) enter premises in accordance with a warrant.
- (2) However, subsection (1) (a) does not authorise entry into a part of premises that is being used for residential purposes.
- (3) An authorised officer may, without the consent of the occupier of premises, enter land that is around, or part of, the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an authorised officer may enter premises under subsection (1) without payment of an entry fee or other charge.

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195 Production of identity card

An authorised officer must not remain at premises entered under this part if the officer does not produce the officer's identity card when asked by the occupier.

196 Consent to entry

- (1) When seeking the consent of an occupier of premises to enter the premises under section 194 (1) (b), an authorised officer must—
 - (a) produce the officer's identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) that anything found and seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused.
- (2) If the occupier consents, the authorised officer must ask the occupier to sign a written acknowledgment (an *acknowledgement of consent*)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) that anything seized under this part may be used in evidence in court; and
 - (iii) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date consent was given.
- (3) If the occupier signs an acknowledgment of consent, the authorised officer must immediately give a copy to the occupier.

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- (4) A court must find that an occupier did not consent to entry to premises by the authorised officer under this part if—
- (a) the question arises in a proceeding in the court whether the occupier consented to the entry; and
 - (b) an acknowledgment of consent is not produced in evidence; and
 - (c) it is not proved that the occupier consented to the entry.

197 General powers on entry to premises

- (1) An authorised officer who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
- (a) inspect or examine;
 - (b) take measurements or conduct tests;
 - (c) take samples;
 - (d) take photographs, films, or audio, video or other recordings;
 - (e) require the occupier, or anyone at the premises, to give information, answer questions or produce documents or anything else reasonably needed to exercise a power under this Act;
 - (f) require the occupier, or anyone at the premises, to give the officer reasonable assistance to exercise a power under this part.

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against self incrimination and client legal privilege.

- (2) Also, an authorised officer who enters premises under a warrant may search the premises or anything at the premises.

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- (3) A person must take reasonable steps to comply with a requirement made of the person under subsection (1) (e) or (f).

Maximum penalty: 50 penalty units.

198 Power to seize things

- (1) An authorised officer who enters premises under this part with the occupier's consent may seize anything at the premises if—
- (a) the officer believes on reasonable grounds that the thing is connected with an offence against this Act; and
 - (b) seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An authorised officer who enters premises under a warrant under this part may seize anything at the premises that the officer is authorised to seize under the warrant.
- (3) An authorised officer who enters premises under this part (whether with the occupier's consent, under a warrant or otherwise) may seize anything at the premises if the officer believes on reasonable grounds that—
- (a) the thing is connected with an offence against this Act; and
 - (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to commit, continue or repeat the offence.
- (4) The power of an authorised officer under subsection (3) is additional to the powers of the officer under subsections (1) and (2) and any other territory law.

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199 Action in relation to seized thing

- (1) An authorised officer who seizes a thing under this part may—
 - (a) remove the thing from the premises where it was seized to another place; or
 - (b) leave the thing at the premises but restrict access to it.
- (2) A person commits an offence if—
 - (a) the person interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (1) (b); and
 - (b) the person does not have an authorised officer’s approval to interfere with the thing.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

200 Receipt for seized thing

- (1) As soon as practicable after an authorised officer seizes a thing under this part, the officer must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised officer must leave the receipt, secured conspicuously, at the premises where the thing was seized.
- (3) The receipt must include the following:
 - (a) a description of the thing seized;
 - (b) why the thing was seized;
 - (c) the authorised officer’s name, and information about how to contact the officer;

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- (d) if the thing is removed from the premises—the address where the thing is to be taken;
- (e) if an authorised officer has restricted access to the thing under section 199 (1) (b)—that it is an offence under section 199 (2) to interfere with the thing without an authorised officer’s approval.

201 Power to require name and address

- (1) An authorised officer may require a person to state the person’s name and home address if the officer suspects on reasonable grounds that the person is committing or has just committed an offence against this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (2) The authorised officer must tell the person the reason for the requirement and, as soon as practicable, record the reason.
- (3) The person may ask the authorised officer to produce the officer’s identity card for inspection by the person.
- (4) A person must comply with a requirement made of the person under subsection (1) if the authorised officer—
 - (a) tells the person the reason for the requirement; and
 - (b) complies with any request made by the person under subsection (3).

Maximum penalty: 10 penalty units.

- (5) An offence against this section is a strict liability offence.

Division 12.4 Search warrants

202 Warrants generally

- (1) An authorised officer may apply to a magistrate for a warrant to enter and search premises.
- (2) The application must be sworn and state the grounds on which the warrant is sought.

Note **Swear** an oath includes make an affirmation (see Legislation Act, dict, pt 1, def *swear*).

- (3) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity connected with an offence against this Act; and
 - (b) the thing or activity—
 - (i) is, or is being engaged in, at the premises; or
 - (ii) may be, or may be engaged in, at the premises within the next 7 days.
- (5) The warrant must state—

- (a) that an authorised officer may, with any reasonable and necessary force and assistance, enter the premises and exercise the officer's powers under this part; and

Note An authorised officer's powers include the power to search the premises (see s 197 (2)).

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- (b) the offence for which the warrant is issued; and
 - (c) the things that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and
 - (e) the date (within 7 days after the day the warrant is issued) that the warrant ends.
- (6) In this section:
- connected*—an activity is *connected* with an offence if—
- (a) the offence has been committed by engaging or not engaging in it; or
 - (b) it will provide evidence of the commission of the offence.

203 Warrants—application made other than in person

- (1) An authorised officer may apply for a warrant by phone, fax, email, radio or other form of communication if the officer considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the authorised officer must prepare an application stating the grounds on which the warrant is sought.
- (3) The authorised officer may apply for the warrant before the application is sworn.

204 Warrants—issue on application made other than in person

- (1) If the magistrate issues the warrant, the magistrate must immediately do either of the following if it is practicable to do so:
 - (a) fax a copy to the authorised officer;
 - (b) email a scanned copy to the authorised officer.
- (2) If it is not practicable to fax or email a copy to the authorised officer—
 - (a) the magistrate must tell the officer—
 - (i) the date and time the warrant was issued; and
 - (ii) the warrant’s terms; and
 - (b) the authorised officer must complete a form of warrant (the *warrant form*) and write on it—
 - (i) the magistrate’s name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant’s terms.
- (3) The faxed or emailed copy of the warrant, or the warrant form properly completed by the authorised officer, authorises the entry and exercise of the officer’s powers under the warrant.

Note Authorised officers have additional powers under this part (see eg, s 197 and s 198 (3)).
- (4) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and

- (b) if the officer completed a warrant form—the completed warrant form.
- (5) On receiving the documents, the magistrate must attach them to the warrant.
- (6) A court must find that a power exercised by an authorised officer was not authorised by a warrant under this section if—
 - (a) the question arises in a proceeding in the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

205 Warrants—announcement before entry

- (1) An authorised officer must, before anyone enters premises under a warrant—
 - (a) announce that the officer is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and
 - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.
- (2) The authorised officer is not required to comply with subsection (1) if the officer believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of anyone in relation to the subject-matter of the warrant; or

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- (b) the safety of the authorised officer or anyone assisting the officer; or
- (c) that the effective execution of the warrant is not frustrated.

206 Details of warrant to be given to occupier etc

- (1) If an occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a warrant is being executed, the authorised officer or anyone assisting must make available to the person—
 - (a) a copy of the warrant or warrant form; and
 - (b) a document setting out the rights and obligations of the person.
- (2) In this section:
warrant form—see section 204 (2) (b) (Warrants—issue on application made other than in person).

207 Occupier entitled to observe during search etc

- (1) If an occupier of premises, or someone else who apparently represents the occupier, is present at the premises while a warrant is being executed, the person is entitled to observe the search being conducted.
- (2) However, the person is not entitled to observe the search if—
 - (a) to do so would impede the search; or
 - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the purpose of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

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208 Moving thing to another place for examination or processing under warrant

- (1) A thing found at premises entered under a warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
 - (a) both of the following apply:
 - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
 - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
 - (b) the occupier of the premises agrees in writing.
- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An authorised officer may apply to a magistrate for an extension of time if the officer believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The authorised officer must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the authorised officer must, if practicable—
 - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and

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- (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of warrants apply, with any necessary changes, to the giving of an extension under this section.

Division 12.5 Dealing with seized things

209 Access to seized thing

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may, at any reasonable time—

- (a) inspect it; and
- (b) if it is a document—take extracts from it or make copies of it.

210 Return of seized thing

- (1) If a thing was seized under this part and 1 of the circumstances set out in subsection (2) applies—
 - (a) the thing must be returned to its owner; or
 - (b) if the thing cannot be returned to its owner because it is lost—reasonable compensation must be paid by the Territory to the owner.

Note 1 **Lost** includes destroyed and spoiled (see s (5)).

Note 2 The thing must be returned, or compensation paid, as soon as possible (see Legislation Act, s 151B).

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- (2) The circumstances for subsection (1) are as follows:
- (a) a prosecution for an offence relating to the thing is not started within 1 year after the day the thing was seized;
 - (b) a prosecution for an offence relating to the thing is started within 1 year after the day the thing was seized but the offence is finally dealt with in the owner's favour;

Examples—offence finally dealt with in owner's favour

- 1 a court finds the owner not guilty of the offence
- 2 a court finds the owner guilty of the offence, the owner appeals against the conviction and the appeal court sets the conviction aside
- 3 a court permanently stays the criminal proceeding against the owner

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

- (c) the chief executive becomes satisfied that there is no offence against this Act with which the thing is connected;
 - (d) the chief executive or DPP decides not to prosecute.
- (3) However, a thing is not required to be returned, or reasonable compensation is not required to be paid, if—
- (a) the thing is the subject of an application to a court, or a court order, in relation to the seizure or forfeiture of the thing; and
 - (b) the application or order is made in relation to the thing under another law in force in the ACT.

Example

An application for the forfeiture of the seized thing is made to a court under the *Confiscation of Criminal Assets Act 2003*.

- (4) Also, a thing is not required to be returned, or reasonable compensation is not required to be paid, if—
- (a) the authorised officer believes on reasonable grounds that the only practical use of the thing in relation to the premises where the thing was seized would be an offence against this Act or another territory law; or
 - (b) possession of it by its owner would be an offence.
- (5) In this section:
lost includes destroyed and spoiled.

211 Return of seized thing—extension of time

- (1) A magistrate may, on application by the DPP, extend the relevant period in relation to a seized thing by not longer than 30 days if the magistrate is satisfied there are special reasons for doing so.
- (2) A magistrate to whom an application is made may extend the relevant period only if—
- (a) the person from whom the thing was seized is told about the application by the DPP; and
 - (b) the person is given an opportunity to be heard about the extension.
- (3) An extension in relation to a seized thing may be given more than once.
- (4) In this section:
relevant period, in relation to a seized thing, means the 1-year period under section 210 (2).

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212 Forfeiture of seized thing

- (1) This section applies if anything seized under this part is not required to, or cannot, be returned under section 210 (Return of seized thing).
- (2) If this section applies to the seized thing, the thing—
 - (a) is forfeited to the Territory; and
 - (b) may be sold, destroyed or otherwise disposed of as the chief executive directs.

Division 12.6 Enforcement—miscellaneous

213 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an authorised officer must take reasonable steps to ensure that the authorised officer, and anyone assisting the authorised officer, causes as little inconvenience, detriment and damage as practicable.
- (2) If an authorised officer, or anyone assisting an authorised officer, damages anything in the exercise or purported exercise of a function under this part, the authorised officer must give written notice of the particulars of the damage to the person the authorised officer believes on reasonable grounds is the owner of the thing.
- (3) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it, secured conspicuously, at the premises.

214 Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by an authorised officer or anyone assisting an authorised officer.
- (2) Compensation may be claimed and ordered in a proceeding for—
 - (a) compensation brought in a court of competent jurisdiction; or
 - (b) an offence against this Act brought against the person making the claim for compensation.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

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Part 13 Retirement village scheme register

215 Retirement village scheme register

- (1) The chief executive must keep a register of retirement village schemes (the *retirement village scheme register*).
- (2) The retirement village scheme register must include the following items (each of which is a *record*) for each retirement village scheme:
 - (a) a copy of the registration certificate;
 - (b) the particulars of the land on which the retirement village's buildings and facilities are, or are to be, constructed, provided by the scheme operator with an application for registration under section 12 (Application for registration);
 - (c) a copy of the most recent public information document given by the scheme operator for the retirement village scheme to the chief executive under section 59 (2) (Offences—failure to notify inaccuracies in public information documents);
 - (d) the annual financial statements given to the chief executive under section 146 (Preparing annual financial statements).
- (3) The retirement village scheme register may be kept in any form, including electronically, that the chief executive decides.
- (4) A record must be kept on the retirement village scheme register for at least 10 years.

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216 Correcting retirement village scheme register

The chief executive may correct a mistake or omission in the retirement village scheme register subject to the requirements (if any) prescribed by regulation.

217 Public access to retirement village scheme register

- (1) The retirement village scheme register must be available for inspection at reasonable times.
- (2) A person may make a copy of all or part of the retirement village scheme register.

Note A fee may be determined under s 222 for s (2).

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Part 14 Notification and review of decisions

218 Meaning of *reviewable decision*—pt 14

In this part:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

219 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

220 Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

Part 15 Miscellaneous

221 **Approved forms**

- (1) The chief executive may approve forms for this Act.
- (2) If the chief executive approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

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

222 **Determination of fees**

- (1) The Minister may determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

223 **Regulation-making power**

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

224 **Legislation amended—sch 2**

This Act amends the legislation mentioned in schedule 2.

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225 Legislation repealed

The *Fair Trading (Retirement Villages Industry) Code of Practice 1999* (NI1999-277) is repealed.

Part 16 Transitional

500 Definitions—pt 16

In this part:

commencement day means the day this Act, section 6 (Objects of Act) commences.

repealed code means the *Fair Trading (Retirement Villages Industry) Code of Practice 1999* (NI1999-277).

501 Transitional—status of existing residence contracts

- (1) This section applies to a residence contract (an *existing residence contract*) for a retirement village under the repealed code that—
 - (a) was entered into before the commencement day; and
 - (b) continues after the commencement day.
- (2) The existing contract is taken to be a residence contract under this Act.
- (3) However, section 21 (Offence—noncompliant residence contracts) does not apply to a scheme operator in relation to an existing residence contract.

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502 Transitional—offence—failure to give public information documents to existing residents

A scheme operator for a retirement village commits an offence if the scheme operator fails to give a copy of the public information document for the retirement village to each existing resident of the village within 28 days of the commencement day.

Maximum penalty: 540 penalty units.

503 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

504 Transitional effect—Legislation Act, s 88

This part is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

505 Expiry—pt 16

This part expires 1 year after the commencement day.

Schedule 1 Reviewable decisions

(see pt 14)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	13 (1) (b)	refuse to register retirement village scheme	applicant for registration
2	16 (2)	cancel registration	scheme operator
3	17 (3)	refuse to cancel registration	scheme operator

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Schedule 2 Consequential amendments

(see s 224)

Part 2.1 Civil Law (Sale of Residential Property) Act 2003

[2.1] Section 8 (2) (c)

substitute

(c) land or a unit subject to the *Retirement Villages Act 2010*; or

[2.2] Section 20 , definition of *premises*, paragraph (e)

substitute

(e) a retirement village under the *Retirement Villages Act 2010*;

[2.3] Section 20, definition of *retirement village*

omit

[2.4] Dictionary, definition of *retirement village*

omit

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Part 2.2 Discrimination Act 1991

[2.5] New section 57KA

insert

57KA Accommodation and goods and services for retirement villages

- (1) Section 20 or section 21 does not make it unlawful to discriminate against a person on the ground of age in relation to the provision of goods and services or accommodation in a retirement village.

- (2) In this section:

retirement village—see the *Retirement Villages Act 2010*, section 7.

Part 2.3 Residential Tenancies Act 1997

[2.6] Section 4 (a)

substitute

- (a) a retirement village under the *Retirement Villages Act 2010*; or

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Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- ACT
- Australian statistician
- chief executive (see s 163)
- Commonwealth
- contravene
- Criminal Code
- daily newspaper
- document
- entity
- financial year
- function
- land
- lawyer
- Minister (see s 162)
- month
- must (see s 146)
- proceeding
- public trustee
- quarter
- registrar-general
- reviewable decision notice
- State
- territory law.

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accommodation information, for a retirement village scheme for a retirement village, for division 5.1 (Public information documents)—see section 56.

accommodation unit means the part of a retirement village where a resident of the retirement village has an exclusive right to live.

assignee, for division 4.4 (Cooling-off periods)—see section 37.

assignment instrument, for division 4.4 (Cooling-off periods)—see section 37.

at, premises, for part 12 (Enforcement)—see section 191.

authorised person, for division 4.4 (Cooling-off periods)—see section 37.

capital improvement—see section 89.

capital item, in relation to a retirement village, includes—

- (a) a building or structure in the retirement village that is owned by the scheme operator for the retirement village, other than an item that, under a residence contract, is to be maintained, replaced or repaired by a resident of the retirement village; and
- (b) plant, machinery or equipment used in the operation of the retirement village, other than an item that is property of an owners corporation for the village; and

Note **Owners corporation**, for retirement village land registered as a units plan under the *Unit Titles Act 2001*—see the dictionary.

- (c) infrastructure of the retirement village owned by the scheme operator for the retirement village.

Examples—par (a)

communal facilities, amenities, accommodation units

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Examples—par (b)

communal hot water and air conditioning, communal kitchen and dining room equipment, community facility furnishings, gardening equipment, retirement village bus or transportation services

Examples—par (c)

roadways, pathways, drainage, sewerage mains, landscaping, electrical distribution systems, water services and connections, distribution services

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

capital replacement fund means a fund established under section 99.

capital replacement fund amount, for division 8.2 (Capital replacement fund)—see section 98.

capital replacement fund contribution, for a retirement village—see section 97.

condition report, for division 6.2 (Condition of accommodation units)—see section 68.

connected, for part 12 (Enforcement)—see section 191.

conviction, for division 7.1 (Scheme operators)—see the *Spent Convictions Act 2000*, section 6.

cooling-off period, for a residence contract—see section 36.

dispute resolution information, for a retirement village scheme for a retirement village, for division 5.1 (Public information documents)—see section 56.

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exit entitlement means an amount that a scheme operator may be liable to pay, or to credit to the account of, a former resident under a residence contract arising from—

- (a) the resident ceasing to live in the accommodation unit to which the contract relates; or
- (b) the settlement of the sale of the right to live in the accommodation unit.

exit fee means the amount that a resident may be liable to pay to a scheme operator under a residence contract in relation to an accommodation unit, arising from—

- (a) the resident stopping living in the accommodation unit; or
- (b) the settlement of the sale of a right to live in the accommodation unit.

facilities information, for a retirement village scheme for a retirement village, for division 5.1 (Public information documents)—see section 56.

former resident includes—

- (a) a person who, personally or for someone else, entered into a residence contract to secure the person's, or other person's, right to live in a retirement village; or
- (b) the former resident's personal representative.

fund information, for a retirement village scheme for a retirement village, for division 5.1 (Public information documents)—see section 56.

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general services means services supplied, or made available, to all residents of a retirement village.

Examples

- management and administration
- gardening and general maintenance
- a shop or other facility for supplying goods to residents
- a service or facility for the recreation or entertainment of residents

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

general services charge, for a retirement village, for division 8.4 (Services charges)—see section 123.

general services charge budget—see section 122.

incoming contribution—see section 27.

insolvent under administration, for division 7.1 (Scheme operators)—see the Corporations Act, section 9.

maintenance reserve fund means a fund established under section 112.

maintenance reserve fund amount, for division 8.3 (Maintenance reserve fund)—see section 111.

maintenance reserve fund contribution, for division 8.3 (Maintenance reserve fund)—see section 110.

occupier, of premises, for part 12 (Enforcement)—see section 191.

offence, for part 12 (Enforcement)—see section 191.

own—a person *owns* an accommodation unit if the person has a leasehold interest in the parcel on which the accommodation unit is located.

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owners corporation, for retirement village land registered as a units plan under the *Unit Titles Act 2001*, means an owners corporation for the units plan established under that Act.

personal services means optional services supplied or made available for the benefit, care or enjoyment of a resident of a retirement village.

Examples

laundry, meals, cleaning a resident's accommodation unit

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

public information document, for a retirement village scheme—see section 55.

registered, for a security, for division 9.2 (Creating statutory charges etc)—see section 150.

reinstatement work, in relation to an accommodation unit—see section 67.

relevant conviction, for division 7.1 (Scheme operators)—see section 82.

resale process information, for an accommodation unit in a retirement village, for division 5.1 (Public information documents)—see section 56.

residence contract, in relation to a retirement village—see section 19.

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resident—

- (a) for this Act generally—see section 10; and
- (b) for division 4.5 (Ending residence contracts)—see section 44; and
- (c) for division 6.2 (Condition of accommodation units)—see section 68; and
- (d) for division 6.3 (Reselling accommodation units)—see section 71; and
- (e) for part 9 (Statutory charges over retirement village land)—see section 149.

resident contribution information, for a resident of a retirement village, for division 5.1 (Public information documents)—see section 56.

resident rights information, for a resident of a retirement village, for division 5.1 (Public information documents)—see section 56.

residents committee, for a retirement village, means a committee established under section 163.

retirement village—see section 7.

retirement village dispute—see section 179.

retirement village land—see section 8.

retirement village land information, for a retirement village, for division 5.1 (Public information documents)—see section 56.

retirement village scheme—see section 9.

retirement village scheme register means the register mentioned in section 215.

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reviewable decision, for part 14 (Notification and review of decisions)—see section 218.

scheme operator, for a retirement village scheme—see section 11.

scheme operator payment information, for division 5.1 (Public information documents)—see section 56.

selling agent, for division 6.3 (Reselling accommodation units)—see section 71.

services charge means a charge payable by a resident for general or personal services under a residence contract.

services information, for a retirement village scheme, for division 5.1 (Public information documents)—see section 56.

spent, for a conviction, for division 7.1 (Scheme operators)—see section 82.

statutory charge means a charge created over retirement village land under section 151.

trustee, for division 4.3 (Dealing with ingoing contributions)—see section 28.

waiting list fee, for division 6.1 (Waiting list fees)—see section 63.

warrant, for part 12 (Enforcement)—see section 191.

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Endnotes

- 1 Presentation speech**
Presentation speech made in the Legislative Assembly on 2010.
 - 2 Notification**
Notified under the Legislation Act on 2010.
 - 3 Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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