

RETIREMENT VILLAGES BILL 2011

Introduction

This explanatory statement relates to the Retirement Villages Bill 2011 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview of the Bill

Retirement Villages in the ACT are currently regulated by the Fair Trading (Retirement Villages Industry) Code of Practice 1999. The Code has been subject to ongoing criticism by residents and operators of retirement villages as a consequence of its failure to provide an adequate framework to guide the operation of retirement villages. The Code has also been faulted for providing inefficient and ineffective processes for supplying information to prospective and current residents of retirement villages and for failing to create a structure to facilitate dispute resolution.

This Bill seeks to respond to the above issues, among others, by implementing provisions to ensure appropriate access to information by prospective and current residents of retirement villages and by creating a framework within which disputes can be resolved. Key areas the Bill deals with:

- the registration of retirement villages;
- the making and altering residence contracts;
- the release of information to prospective residents through the general inquiry document and the public information document;
- the management of the financial affairs of retirement villages;
- the protection of the rights of retirement village residents;
- the participation of residents in the operation of the village; and
- the process for the resolution of a dispute between retirement village operators and retirement village residents.

This Bill draws upon retirement villages legislation enacted in other Australian jurisdictions, particular Queensland and New South Wales. It should also be noted that as fair trading legislation, this Bill envisions a role for the Commissioner for Fair Trading in the administration and enforcement of its provisions.

Consultation

In addition to consultation undertaken in relation to the Discussion Paper preceding the Exposure Draft of the Retirement Villages Bill 2010, consultation was undertaken specifically on the provisions of the Exposure Draft.

Consultation involved speaking with the residents of retirement villages, the management of retirement villages, the owners of retirement villages, the relevant peak bodies and associations and members of the general community. Forums were organised at which key stakeholders were invited to comment. Written submissions were also invited and received.

The outcome of this consultation was broad support for legislation which created a framework for the operation of retirement villages. While there was some disagreement about exactly what legislation should require, the Bill seeks to balance the interests of both parties in an approach which meets the interests of all stakeholders and draws upon all of the information gathered during the consultation process.

Human rights implications

Human rights implications of the Bill will be dealt with in the detail component of the Statement.

Detail

Part 1: Preliminary

Section 1 Name of Act

The short title of the Act is the Retirement Villages Act 2011.

Section 2 Commencement

States that the Act commences on a day fixed by the Minister by written notice, and provides that if the Act has not commenced within 12 months which begins on the notification day, it automatically commences on the first day after that period. The exception to this is part 9 which automatically commences 30 months after the notification date, unless it commences earlier.

The period of 12 months is provided to allow time to implement the new legislative scheme.

Section 3 Dictionary

Provides that the dictionary at the end of the Act is part of the Act. The dictionary defines key words and expressions used in the Act, and includes references to other words and expressions defined in other parts of the Act or in other legislation.

Section 4 Notes

Provides that notes included in the Act are only explanatory.

Section 5 Offences against Act – application of Criminal Code etc

Provides that other legislation applies in regard to the offences against the Act.

This section increases awareness of the Criminal Code and alerts the reader to the fact that chapter 2 of the Criminal Code, setting out the general principles of criminal responsibility, applies to this Act.

Part 2: Objects and important concepts

Section 6 Objects of the Act

The two primary objects of the Act are to promote consumer protection and fair trading in relation to retirement villages and to encourage the continued growth of the ACT's retirement village industry. Additional objects of the Act are to:

- encourage best practice standards in the retirement village industry;
- establish a clear regulatory framework in the retirement village industry to ensure certainty and planning;
- facilitate participation by retirement village residents in the operation of their village; and
- provide processes for the resolution of disputes.

These objectives correspond to what consultation has found to be the key interests of the retirement villages industry, residents of retirement villages and other stakeholder groups.

Section 7 Meaning of *retirement village*

Provides that “retirement village”, for the purposes of the Act, means premises where older people or retired people live, or will live, in independent living units or serviced units, under a scheme for a retirement village.

Section 8 Meaning of *retirement village land*

States that “retirement village land”, for the purposes of the Act, means land that is, or will be, used for a retirement village and also, if a units plan is registered in relation to the retirement village under the *Unit Titles Act 2001*, “retirement village land” includes land indentified as units, unit subsidiaries and common property in the plan.

Section 9 Meaning of *scheme*

Provides that “scheme”, for the purposes of the Act, means a scheme under which a person may:

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

Section 10 Meaning of *resident*

Provides that “resident”, for the purposes of the Act, means a person with a right under a residence contract to live in a retirement village and receive one or more services in relation to the village.

Section 11 Meaning of *scheme operator*

States that “scheme operator”, for the purposes of the Act, means a person who controls, or purports to control, the operation of a scheme for a retirement village.

Part 3: Registering retirement village schemes

Division 3.1: Registration

Section 12 Application for registration

States that a person may apply to the Commissioner for Fair Trading to register a scheme for a retirement village, provided that that person is the proposed controller of the scheme and, if that person is an individual, the individual is above 18 years of age. The application must be accompanied by details of:

- the land involved;
- the units and facilities that will be provided and any factors upon which the provision of these services is dependent;
- anything else prescribed by regulation.

The application must be accompanied by the public information document related to the scheme.

The purpose of this provision is to ensure that the Commissioner for Fair Trading has the information necessary to make an informed decision as to whether to register a scheme or not.

Section 13 Decision on registration application

Provides that if a person applies to register a retirement village under section 12, the Commissioner for Fair Trading must register the scheme or refuse to register the scheme. The Commissioner may only register a scheme if the relevant person has lodged an application consistent with section 12 and the person applying to register the scheme is not prohibited from operating a scheme under section 94 or section 95. If the Commissioner does register the scheme, the Commissioner must give the person who applied a certificate stating the day the scheme was registered.

A decision not to register a retirement village scheme is a reviewable decision.

This section forms part of the process through which registration occurs.

Section 14 Power to ask for information etc from applicants and others

States that the Commissioner for Fair Trading may, in writing, ask a person who applies to register a scheme to supply additional information to the Commissioner. The Commissioner's request must state a reasonable time within which the request must be complied with.

As with section 12, the aim of this provision is to ensure that the Commissioner for Fair Trading has the information necessary to make an informed decision as to whether a register a scheme or not.

Division 3.2: Transferring registration

Section 15 Transferring registration

Provides that, where a scheme operator wishes to transfer control of the retirement village scheme to another person, the operator must apply in writing to the Commissioner for Fair Trading to transfer the registration of the scheme. As well as applying to the Commissioner, the operator must also provide selected information to each resident of the retirement village and the Commissioner.

Once the application is received, the Commissioner may make a decision to transfer the registration or to refuse to transfer the registration. This decision is a reviewable decision. The Commissioner may only transfer registration of a scheme if he is satisfied of certain matters, including that the transferring the registration is appropriate, having regard to any objections which have been made.

The purpose of this provision is to facilitate the transfer of retirement village schemes from one operator to another, where appropriate.

Division 3.3: Ending registration

Section 16 When registration ends

Provides that the registration of a scheme ends where registration is cancelled under section 17 or section 18.

Section 17 Cancelling registration – scheme no longer operating

Provides that the Commissioner for Fair Trading may cancel the registration of a scheme for a retirement village if the Commissioner believes, on reasonable grounds, that the scheme is no longer operating. The Commissioner must not cancel the scheme unless the Commissioner gives the scheme operator written notice of the Commissioner's intention and considers any response received from the scheme operator in making a decision about whether to cancel the scheme's registration. The notice must:

- state that the Commissioner intends to cancel the scheme's registration;
- explain why the Commissioner intends to cancel the scheme's registration; and
- advise that the scheme operator may give a written response to the Commissioner's notice.

If the Commissioner does cancel a scheme's registration, the cancellation takes effect 21 days after the written notice is given by the Commissioner to the scheme operator or, if a later date is stated on the notice, a later date.

This section allows the scheme operator to cancel a scheme's registration, but only where the operator has been given a reasonable opportunity to respond to the Commissioner's concerns.

Section 18 Cancelling registration – requested by scheme operator

Provides that a scheme operator can apply in writing to the Commissioner for Fair Trading to cancel a scheme if the operator has stopped operating the scheme or seeks to stop operating the scheme in the future.

In addition to applying to the Commissioner, the scheme operator must also provide a written notice to all of the retirement village's residents which advises:

- that the operator has asked to cancel the scheme's registration;
- where there is a charge over a scheme's retirement village land, whether the scheme operator has asked the Commissioner to release the charge;
- how residents will be affected if the scheme's registration is cancelled; and
- that the resident may object to the cancellation within 60 days after receiving the operator's notice by giving written notice of the objection to the Commissioner.

Once the application is received, the Commissioner may then cancel, or refuse to cancel, the registration of a scheme. The Commissioner may cancel the registration of a scheme only if:

- the scheme operator has provided residents with written notice in the manner set out above;

- having regard to any submissions made by residents, it is appropriate to cancel the registration of the scheme; and
- where there is a charge over a scheme's retirement village land, the Commissioner has released this charge.

Should the Commissioner cancel the registration of a scheme consistently with this section, the Commissioner must record the cancellation in the retirement village register.

The purpose of this section is to enable scheme operators to cancel the registration of their retirement village scheme where they no longer wish to operate the scheme. However, this section also seeks to ensure that the interests of residents are not unfairly prejudiced as a consequence of that decision.

Part 4: Residence contracts

Division 4.1: Residence contracts generally

Section 19 Purpose – pt 4

States that the purpose of part 4 is to state minimum requirements for residence contracts. Nothing stated in part 4 prevents a scheme operator and a resident of the scheme agreeing to terms that are more beneficial to the resident than the requirements of part 4.

This provision seeks to ensure that residents of retirement villages are guaranteed essential rights without unduly restricting the ability of parties to contract on terms that meet their individual needs.

Section 20 Meaning of *residence contract* – Act

States that a “residence contract”, for the purposes of the Bill, means one or more written contracts entered into by a person and a scheme operator which must:

- give an exclusive right to live in a unit in a retirement village or place obligations on a person in relation to the person, or someone else, living in the village;
- give, or purport to give, a person a right, in common with other village residents, to use the village's communal facilities;
- contain or incorporate a service agreement or an agreement to enter into such an agreement accompanied by a copy of that agreement as well as, where the residence contract includes an ancillary contract that is not signed when the residence contract is entered into, an agreement to enter that ancillary contract, this must be accompanied by a copy of the ancillary contract;
- restrict the way in which the right to live in residence may be disposed of and, where the resident owns the accommodation unit, how the unit may be disposed.

The section also provides that “residence contract” includes any other contract which depends on, or arises out of the residence contract as well as a public information document in relation to the scheme to which the residence contract relates.

Section 21 Form and content of residence contracts

Provides that scheme operators must ensure residence contracts include information about:

- cooling-off and settling-in periods;
- the ingoing contribution payable or how the contribution is worked out;
- the exit fee payable or how the fee is worked out;
- the resident's exit entitlement or how the entitlement is worked out;
- the services charge payable or how the charges are worked out;
- the proportion of ingoing contribution attributable to the capital reserve fund;
- the insurance for the village;
- any conditions the resident must meet to live in the village;
- how a resident can deal with their right to live in the village;
- if a resident owns an accommodation unit, how the unit can be resold;
- the resident's entitlements around financial statements of the village;
- the dispute resolution process under the Act;
- any charge created over retirement village land;
- the right of the resident or the scheme operator to end the contract; and
- any other matter prescribed by regulation.

This provision ensures that residents are aware of their rights and obligations under the residence contract and the Act.

Section 22 Offence – noncompliant residence contracts

This provision makes it an offence for an operator not to comply with the requirements of section 21 of the Act. The maximum penalty under this section is 100 penalty units.

Section 23 Residence contracts – guidelines

Provides that the Commissioner for Fair Trading may issue guidelines setting out the terminology to be used in retirement village contracts. These guidelines are a notifiable instrument.

The section also states that the scheme operator is required to take all reasonable steps to ensure residence contracts comply with the guidelines issued by the Commissioner, are simple and are consistent with the scheme's public information document.

The purpose of this section is to ensure that residence contracts are as easy of possible for residents to understand, allowing them to better comprehend their rights and obligations under the contract.

Section 24 Dealing with inconsistencies between Act, residence contracts and public information documents

Provides that a residence contract has no effect to the extent that it is inconsistent with, or purports to limit the operation of, the Act or a public information document.

Division 4.2: Entering into residence contracts

Section 25 Offence – entering into residence contract if scheme not registered

Provides that a scheme operator commits an offence if they enter into a residence contract in relation to an unregistered village. The maximum penalty for this offence is 540 penalty units.

This provision ensures that residence contracts are only entered into in relation to registered retirement villages.

Section 26 Residence contracts not invalid etc because scheme not registered

States that a residence contract is not invalid or unenforceable as a result of the scheme operator entering the contract in relation to an unregistered village; however, the resident who entered the contract may end the contract under section 51 of the Act.

Section 27 Offences – failure to give copies of residence contracts to other parties

Provides that a scheme operator commits an offence if they enter into a residence contract in relation to a village with someone but fail to, as soon as is practicable, provide that person with a signed copy of the residence contract and a copy of the public information document. The maximum penalty for this offence is 100 penalty units.

The section also states that a scheme operator commits an offence where the operator enters into a residence contract with someone where the contract includes an ancillary contract that is not signed at the time the residence contract is signed and the operator does not supply the resident with the unsigned ancillary contract as soon as practicable. The maximum penalty for this offence is 100 penalty units.

The purpose of this provision is to ensure that residents have copies of all the documentation associated with their residence contract, allowing them to understand their rights and obligations.

Division 4.3: Amending residence contracts

Section 28 Amending individual residence contracts

The parties to a residence contract may only amend the contract by the written agreement of all parties. This is subject to section 29 of the Act.

Section 29 Amending all residence contracts for a retirement village

Provides that scheme operator may amend the conditions of the residence contracts for all residents of the village, but only where the amendments are no less beneficial than the existing contracts and residents of the retirement village agree, by way of special resolution at a residents meeting, to the proposed amendments.

The purpose of this provision is to allow scheme operators and residents to modify contracts where necessary. The provision also introduces measures to ensure that residents are not disadvantaged by amendments to their residence contracts.

Division 4.4: Rescinding residence contracts during cooling-off periods for residence contracts

Section 30 Meaning of *cooling-off period* – Act

States that, for the purposes of the Act, “cooling-off period” means the period starting on the day after the residence contract is entered into and ending 21 days after the day the contract is signed or, where the contract is subject to a later event happening, the day the later event happens.

Section 31 Offence – failure to notify end of cooling-off periods in certain circumstances

States that a scheme operator commits an offence where, if the commencement of the cooling-off period is subject to a later event happening, the operator fails to inform the resident of the date when that later event occurs and the date when the cooling-off period ends. The maximum penalty for this offence is 100 penalty units.

This section ensures that, where the commencement of the cooling-off period is subject to a later event occurring, residents are aware of the beginning and ending of the cooling-off period.

Section 32 Residence contract may be rescinded during cooling-off period

Provides that a resident may, by written notice, rescind a residence contract before the cooling-off period ends.

This provision aims to ensure that residents moving into a retirement village have an opportunity to experience retirement village living before being bound by a residence contract. This provision received strong support from both industry and resident peak bodies during consultation.

Division 4.5: Dealing with property assigned during cooling-off period

Section 33 Meaning of *authorised person*-div 4.5

For the purpose of Division 4.5, “authorised person” means the public trustee or the lawyer for a scheme operator.

Section 34 Offences – failure to deal with instruments assigning property during cooling-off period

Provides that a scheme operator commits an offence if:

- a person enters a residence contract with the operator to secure a right to live in the retirement village;
- the person assigns property before the cooling-off period ends; and
- the operator fails to ensure property is held on trust by an authorised person.

The maximum penalty for this offence is 100 penalty units.

Also states that an authorised person commits an offence if:

- they holds an instrument assigning property under a residence contract on trust;
- the residence contract is rescinded during the cooling-off period; and

- the authorised person fails to release the instrument to the person who assigned the property.

The maximum penalty for this offence is 100 penalty units.

Provides that an authorised person commits an offence if:

- that person hold an instrument assigning property under a residence contract on trust;
- the cooling-off period ends without the contract being rescinded; and
- the authorised person fails to release the instrument to the person to whom the property is assigned.

The maximum penalty for this offence is 100 penalty units.

The purpose of this provision is to protect persons to whom property is owed during the cooling-off period.

Section 35 Offences – reassigning property acquired during cooling-off period

A person (the assignee) commits an offence if:

- the assignee acquires property under a residence contract during the cooling-off period;
- the residence contract is rescinded; and
- the assignee fails to reassign the property as soon as possible to the person from whom the property was acquired.

The maximum penalty for this offence is 100 penalty units.

An assignee also commits an offence if:

- they acquire an instrument assigning property during the cooling-off period under a residence contract;
- the residence contract is rescinded; and
- the assignee fails to reassign the instrument free of all interests which have been added since it was acquired.

The maximum penalty for this offence is 100 penalty units.

The purpose of this provision is to ensure that a person who enters into a residence contract is able to recover their property in the event that that person decides to end their residence contract during the cooling-off period.

Section 36 Costs of reassigning property

Provides that a person who is assigned property under a residence contract is responsible for the costs and efforts related to reassigning the property consistently with section 35.

Section 37 Scheme operator to compensate assignor in certain circumstances

Provides that where an assignee is required to reassign property to a person on rescission of a residence contract and the assignee is unable to return the property, or can return it only with charges upon the property, the scheme operator must compensate the person the amount of the value of the property. This amount may also be recovered as a debt by the person, or by someone nominated the person in writing.

Division 4.6: Dealing with ingoing contributions

Section 38 Meaning of *ingoing contribution* – Act

States that “ingoing contribution”, for the purposes of the Act, means the amount a person must pay for the right to live in a retirement village, regardless of whether the right is enforceable, or if something additional is required to secure the right.

Section 39 Meaning of *trustee* – div 4.6

States that, for division 4.6 of the Act, “trustee” means the public trustee, a lawyer for the scheme operator, a real estate agent or a licensed trustee corporation.

Section 40 Offences – failure to give ingoing contribution to trustee

Provides that a person commits an offence if the person receives an ingoing contribution but fails to hold that amount on trust. The maximum penalty for this offence is 100 penalty units.

This provision works in conjunction with other provisions in division 4.6 to protect the ingoing contribution paid by retirement village residents.

Section 41 Offences – failure to hold and repay ingoing contributions

This provision provides that a trustee commits an offence where they receive an ingoing contribution and fail to hold the amount on trust until:

- any condition precedents to the contract are fulfilled;
- the cooling-off period ends; and
- the accommodation unit is suitable for habitation.

The maximum penalty for this offence is 100 penalty units.

A trustee also commits an offence where they receive an ingoing contribution and do not pay the amount to the person entitled to it upon:

- any condition precedents to the contract being fulfilled;
- the cooling-off period ending; and
- the accommodation unit being suitable for habitation.

The maximum penalty for this offence is 100 penalty units.

The purpose of this provision is to ensure that trustees ensure that ingoing contributions are given to those who are legally entitled to them.

Section 42 Receiving ingoing contributions after events

Provides that where a person receives an ingoing contribution after the last day that it would be required to be held on trust, the person can keep the amount if they are legally entitled to it, or if they are not legally entitled to it, they must assign the amount to the person who is.

The purpose of this provision is to ensure that trustees ensure that ingoing contributions are given to those who are legally entitled to them.

Section 43 Offence – failure to give notice of dispute

Provides that a scheme operator commits an offence if there is a dispute between them and a resident about who is entitled to the ingoing contribution and the operator does not immediately give written notice of the dispute to the trustee. The maximum penalty for this offence is 100 penalty units.

The purpose of this provision is to ensure that trustees are aware of any dispute about ingoing contributions and deal with the property associated with these contributions appropriately.

Section 44 Offence – failure to hold disputed amounts in trust

Provides that a trustee commits an offence where they receive property on trust and are given notice that there is a dispute about the property and the trustee fails to hold that amount on trust until the dispute is resolved. The maximum penalty for this offence is 100 penalty units.

Section 45 Offence – failure to repay trust amounts after residence contracts rescinded during cooling-off period

States that a trustee commits an offence where the trustee receives property as an ingoing contribution and the relevant residence contract is rescinded during the cooling-off period and the trustee fails to return the property to the person entitled to it immediately. The maximum penalty for this offence is 100 penalty units.

Section 46 Unpaid amount recoverable as debt

States that where a person who is required to pay an amount under division 4.6, but does not pay it, that amount can be recovered as a debt by the person who is entitled to the amount

Division 4.7: Ending residence contracts during settling-in period**Section 47 Meaning of *settling-in period* – Act**

Provides that, for purposes of the Act, the “settling-in period” ends 90 days after the resident is entitled to occupy their accommodation unit; or, should the resident occupy their unit before they have a right to, 90 days after the resident is occupies the unit; or, if the resident and operator agree to another day for the end of settling-in period, that day.

Section 48 Residence contract may be ended during settling-in period

A resident can end a residence contract by written notice to the operator within the settling-in period.

Section 49 Amounts payable by residents if residence contract ended during settling-in period

If a resident chooses to end the residence contract within the settling-in period, the resident must pay the scheme operator:

- fair market rent for the time they lived in the village;
- the costs of any repair work for their unit;
- a reasonable administration fee; and
- anything else prescribed by regulation.

This provision aims to ensure that scheme operators are compensated in the event that residents choose to take advantage of the settling-in provisions. The requirement to have reasonable administrative fees ensures that the compensation paid to scheme operators is fair.

Division 4.8: Ending residence contracts in other circumstances

Section 50 Meaning of *resident* – div 4.8

Provides that, for the purposes of division 4.8, “resident” includes a person who enters a residence contract to secure someone else’s right to live in a retirement village. “Resident” still includes a person who enters into a residence contract to secure their own right to live in a retirement village.

Section 51 Ending residence contracts – div 4.8 – effect

Provides that ending a residence contact under division 4.8 does not extinguish any right accrued by either party under the contract.

Section 52 Ending residence contracts – residents

States that a resident can end their residence contract by giving one month’s written notice to the scheme operator. Where the retirement village scheme is not registered, the notice must be given within 14 days of the resident finding out that the scheme is not registered and must state the date when the contract is to end.

The purpose of this provision is to establish a framework through which residents of retirement villages can end their residence contract.

Section 53 Ending residence contracts – scheme operators

A scheme operator may end a residence contract by providing 14 days written notice where the resident has:

- injured another person in the retirement village;
- seriously damaged their unit; or
- seriously damaged the property of another person in the village.

A scheme operator may end a residence contract by providing 2 months written notice where:

- the resident has committed a material breach of their residence contract;
- the resident abandoned their right to live in the village; or
- the resident's accommodation is no longer suitable for the resident.

The written notice must state the reason why the residence contract is being ended and the date that the unit must be vacated. Where an operator is not aware of the resident's current address, the operator can satisfy the notice requirements by placing a notice in a daily newspaper and a newspaper circulating throughout Australia. An operator cannot end a person's residence contract by reason that their accommodation is no longer suitable unless they believe, reasonably, that suitable accommodation is available for the resident.

The purpose of this provision is to establish a framework through which operators of retirement villages can end the residence contract with a resident of the retirement villages in particular circumstances.

Section 54 Ending residence contracts – resident's address unknown

Where a scheme operator seeks to end a residence contract, but does not know the current address of the resident to whom the contract relates to, the operator can satisfy the notice requirements by placing a notice in a daily newspaper and a newspaper circulating throughout Australia. However, the operator commits an offence where they publish the grounds for ending the residence contract. The maximum penalty for this offence is 50 penalty units.

Section 55 Residence contracts end automatically on death

Provides that a residence contract automatically ends if the resident dies, or if there is more than one resident under the contract, the last resident dies.

Division 4.9: Exit entitlements

Section 56 Residents may request estimates of exit entitlements

States that a resident can ask the scheme operator for estimate of their exit entitlements by giving the operator a request in writing that states that the resident is considering ending their residence contract and they would like an estimate of their exit entitlements.

This provision aims to ensure that residents can gain information about the amount they would receive should they choose to end their residence contract.

Section 57 Offence – failure to give written estimates

Provides that a scheme operator commits an offence where the resident requests a written estimate of their exit entitlements and the operator fails to give a written estimate of that entitlement within 14 days. The maximum penalty for this offence is 40 penalty units. However, the operator does not commit an offence where they fail to supply a written estimate where they have done so in the previous six months.

Section 58 Offence – failure to refund ingoing contribution where scheme not registered

Provides that a scheme operator commits an offence where they fail to repay a resident's ingoing contribution within 30 days after the resident ends their residence contract if the scheme is not registered. The maximum penalty for this offence is 540 penalty units. If the ingoing contribution is not repaid, the resident can recover this amount as a debt.

Section 59 Offence – failure to pay exit entitlements to residents who own units

Provides that, where a resident owns their accommodation unit, the scheme operator commits an offence where they fail to pay the resident their exit entitlements within 14 days of the first of the following:

- the operator receiving full payment from an incoming resident for the unit;
- the operator entering into a resident contract with an incoming resident for the unit;
- a person begins living in the unit with the operator's consent;
- where the resident's residence contract states a date for payment, that date;
- where the operator buys the unit from the resident, the day the operator completes the purchase; or
- six months after resident delivers the empty unit to the operator.

The maximum penalty for this offence is 50 penalty units.

Section 60 Offence – failure to pay exit entitlement to residents who do not own units

States that, where a resident does not own their accommodation unit, the scheme operator commits an offence if they fail to pay the resident their exit entitlement within 14 days of the earliest of the following:

- 14 days after the operator receives full payment from an incoming resident for the unit;
- 14 days after the operator enters into a resident contract with an incoming resident for the unit;
- 14 days a person begins living in the unit with the operator's consent; or
- six months after the resident delivers the empty unit to the scheme operator.

Section 61 Offence – failure to give statement about exit entitlement and liabilities

States that a scheme operator commits an offence if they fail to give a resident an exit entitlements and liabilities statement at the time of paying the exit entitlement. The maximum penalty for this offence is 10 penalty units.

An exit entitlements and liabilities statement must set out information about:

- any exit fee;
- any outstanding service charges;
- any amount payable by the resident related to the sale of their unit;
- any other amount payable by the resident under their residence contract;
- where the resident is a long-term resident, the sale price of their accommodation unit; and
- the total amount of the resident's exit entitlement.

Section 62 Orders for payment of exit entitlements on sale of units

A resident may apply to the ACAT for an order requiring the scheme operator to pay exit entitlements where the operator has failed to pay the entitlements in accordance with the Act.

The resident may seek an order from the ACAT for the amount paid in the form of exit entitlements to be recalculated where the entitlement is not calculated in a manner consistent with the Act or the residence contract.

Where the ACAT thinks it appropriate, it may also make an order for the payment of interest at a rate which it thinks appropriate.

Division 4.10: Ending residence contracts

Section 63 Enforcing residence contracts

Provides that a resident can enforce a residence contract against the following people with respect to the recovery of any exit entitlement:

- a person who is a party to the contract;
- a person who is not currently a party to the residence contract but was the owner of the retirement village or the scheme operator for the village at the time the contract was entered into;
- a person who was not originally a party to the contract but who is, at the time of enforcement, the owner of the retirement village or the scheme operator for the village.

A court may only make an order for recovery from a person who is not currently a party to the residence contract but was the owner of the retirement village or the scheme operator for the village at the time the contract was entered into if it satisfied that making an order against a person who is a party to the contract at the time of enforcement or is currently the owner or scheme operator would be ineffectual and the making of such an order would be just in the circumstances.

The purpose of this provision is to ensure that residents can enforce residence contracts against prior scheme operators who may attempt to avoid liability.

Section 64 No liability for breach of residence contract

A scheme operator will not be liable for breaching a residence contract for failure to supply an essential service where the cost of supplying that service is greater than the general services charge, the residents of the village have not approved an increase in the general services charge to facilitate the supply of that service and the operator has acted reasonably.

Part 5: Other documents relating to retirement villages

Division 5.1: General inquiry documents and public information documents

Section 65 Meaning of *public information document*-Act

Provides that, for the purposes of the Act, “public information document” means a document which complies with section 67.

Section 66 Definitions – div 5.1

States that this section sets out definitions for a number of terms which operate for division 5.1.

“Accommodation information” means information about the kind and number of units in the retirement village, how many of them are available for sale, the sale price for each unit, the ingoing contribution, the right or interest the resident obtains upon entering a residence contract and the insurance arrangements for the village.

“Dispute resolution information” means information about the kinds of dispute that dispute resolution is available for, how the ACAT can be accessed and the fee for dispute resolution by the ACAT.

“Facilities information” means information about the facilities which will be offered under the residence contract as well as information about facilities which will be offered under the residence contract subject to conditions being met, what these conditions are and whether the scheme operator may collect a levy for these services.

“Fund information” means details of the funds the scheme operator is required to keep, the balance of each fund at end of the most recent financial year, the capital replacement fund contribution and any capital replacement report made under section 117 of the Act.

“Resale process information” means information about the process of selling an accommodation unit in the village including:

- how the asking price is determined;
- the provision of monthly sale information;
- when reinstatement work is necessary and which parties bear responsibility for paying for it;
- the process for accepting and rejecting offers; and
- how any capital gains and sale expenses will be shared.

“Resident contribution information” means details about:

- each charge the resident must pay in relation to the village;
- how the exit fee is calculated; and
- how the general services charge is calculated.

“Resident rights information” means information about:

- the resident’s right to rescind a residence contract during the cooling-off period;
- the resident’s rights in relation to financial information;
- the rights a resident has in the event that a residence contract is ended; and
- anything else added by regulation.

“Retirement village land information” means details of the charge established by part 10 of the Act as well as information about any other encumbrances over retirement village land.

“Scheme operator payment information” means information about any payments the scheme operator must make to the resident.

“Service information” means any general services and personal services that the scheme operator will offer a resident under a residence contract.

Section 67 Form and content of general inquiry documents

States that a general inquiry document must give a brief description of the services and facilities available at the retirement village and must also comply with any requirements added by regulation.

Section 68 Offence – failure to give copy of general inquiry document

Provides that a scheme operator commits an offence where the operator fails to supply prospective resident with a copy of the general inquiry document within 14 days of the resident requesting a copy of document or expressing an interest in the village.

This provision seeks to ensure that prospective resident have access to the broad information contained in the general information document.

Section 69 Form and content of public information documents

States that a general information document must relate to only one retirement village and must divulge any age limits that apply to the village, as well as:

- accommodation information;
- dispute resolution information;
- facilities information;
- fund information;
- resale process information;
- resident contribution information;
- resident rights information;
- retirement village land information;
- scheme operator payment information;
- services information; and
- information about anything else added by regulation.

A copy of the registration certificate must also be attached to the public information document.

The purpose of this section is to ensure that public information documents contain information which assists residents and prospective residents to understand their rights and obligations under a residence contract.

Section 70 Offences – failure to give public information document to prospective resident

Provides that a scheme operator commits an offence if a resident requests a copy of the public information document or expresses an interest in an accommodation unit in the retirement village and the operator fails to supply a copy of the public information document within 14 days. The maximum penalty for this offence is 100 penalty units.

The operator also commits an offence where they do not provide a copy of the public information document at least 14 days before the operator enters into a residence contract with a person. The maximum penalty for this offence is 100 penalty units. However, there operator does not commit this offence where a resident who owns an accommodation unit sells the unit and fails to give the operator enough notice to supply a public information document and the operator supplies a public information document as soon as practicable after they become aware of the sale.

The purpose of this section is to ensure that residents receive the information contained in the public information document.

Section 71 Offences – failure to notify inaccuracies in public information documents

Provides that a document will become “materially inaccurate”, for the purpose of this section, where it becomes inaccurate in a way that could materially affect the interests of residents.

The section also provides that a scheme operator commits an offence if:

- a detail in a public information document becomes materially inaccurate;
- this inaccuracy is likely to materially affect a resident of the village; and
- the operator fails to give written notice to the resident within 28 days after becoming aware of the inaccuracy.

The maximum penalty for this offence is 540 penalty units.

Also states that a scheme operator commits an offence if: a detail in a public information document becomes materially inaccurate; this inaccuracy is likely to materially affect a resident of the village; and the operator fails to give written notice to the Commissioner for Fair Trading within 28 days after becoming aware of the inaccuracy. The maximum penalty for this offence is 540 penalty units.

An operator also commits an offence if a detail in a public information document becomes materially inaccurate and a person has signed a residence contract and the cooling-off period for that contract has not ended and the operator fails to provide written notice before the cooling-off period ends. If the cooling-off period has ended, the operator must provide written notice before the settling-in period ends. If the operator has a reasonable excuse for not giving written notice of the inaccuracy before the cooling-off or settling-in periods end, the operator must give the notice as soon as is practicable. The maximum penalty for this offence is 540 penalty units.

A scheme operator will also commit an offence if a detail in a public information document becomes materially inaccurate and a person has signed a residence contract and the settling-in period for that contract has not ended and the operator fails to provide written notice before of the inaccuracy before the settling-in period ends. If the operator has a reasonable excuse for not giving written

notice of the inaccuracy before the settling-in period ends, the operator must give the notice as soon as practicable. The maximum penalty for this offence is 540 penalty units.

If a detail in the public information document becomes materially inaccurate and a person has told the operator that they intend to enter into a resident contract, the operator commits an offence by entering a residence contract with that person. The maximum penalty for this offence is 540 penalty units.

The purpose of this provision is to ensure that where information contained in public information documents is incorrect, residents are aware of this and are not adversely affected by any omissions or errors.

Section 72 Offence – failure to correct inaccuracies in public information documents

Provides that a scheme operator commits an offence where there is an inaccurate detail in a public information document and the operator fails to correct the error as soon as practicable after becoming aware of it. The maximum penalty for this offence is 540 penalty units.

The purpose of this provision is to ensure that information contained in public information documents is correct and current and prospective residents can be confident relying upon it.

Division 5.2: Other matters

Section 73 Access by residents to certain documents

Provides that upon receipt of a written request specifying a time which is seven days after the request is lodged, the scheme operator must allow a resident to inspect the relevant document and, upon payment of reasonable costs, give a copy of the document to the resident. Documents which residents can request access to under this section include their residence contract and the public information document for their village.

The purpose of this provision is to ensure that residents can access documents relevant to their life in the retirement village.

Section 74 Offence – failure to comply with requests for access

Provides that an operator commits an offence by failing to comply with section 73.

The purpose of this provision is to ensure that residents can access documents relevant to their life in the retirement village.

Section 75 Residential care service information

States that where an operator is approved to provide residential care services and promotes this service, any promotional material promoting the service must contain a statement, set out in the Act, to the effect that access to residential aged care is governed by the Aged Care Act 1997.

This section seeks to ensure that residents are aware that even though residential aged care facilities are located on a retirement village, entry into residential aged care facilities is subject to the Aged Care Act 1997.

Part 6: Dealing with accommodation units

Division 6.1: Waiting list fees

Section 76 Meaning of *waiting list fee*-div 6.1

Provides that, for the purposes of division 6.1, “waiting list fee” means any amount paid to a scheme operator that is not an ingoing contribution or a payment under a residence contract.

Section 77 Offence – requiring or accepting waiting list fees

States that a scheme operator commits an offence if the operator requires or accepts payment of a waiting list fee, unless:

- the fee is \$200 or less (or another amount set by regulation);
- the operator has a written policy setting out how waiting list fees are to function; and
- the scheme operator supplies a copy of the waiting list policy and a receipt for the waiting list fee.

The maximum penalty for this offence is 100 penalty units.

The purpose of this provision is to ensure that waiting list fees charged are fair and how they work is well understood by current and prospective residents.

Section 78 Offences – failure to repay waiting list fees

Provides that a scheme operator commits an offence if a waiting list fee is paid on behalf of a prospective resident and the resident later enters into a residence contract, but the operator does not refund the waiting list fee or deduct it from the ingoing contribution. The maximum penalty for this offence is 100 penalty units.

The section also provides that a scheme operator commits an offence if a waiting list fee is paid on behalf of a prospective resident and the resident does not later enter into a residence contract, but the operator does not refund the waiting list fee. The maximum penalty for this offence is 100 penalty units.

Section 79 Orders for repayment of waiting list fees

States that a resident can apply to the ACAT to have a waiting list fee refunded, the ACAT may also, if it considers it appropriate, make an order for payment of interest.

Division 6.2: Condition of accommodation units

Section 80 Meaning of *reinstatement work* - Act

For the purposes of the Act, “reinstatement work” means repairs needed to restore an accommodation unit to its original conditional as set out in the condition report, less any fair wear and tear.

Section 81 Definitions-div 6.2

States that, for the purposes of division 6.2, “resident” does not include someone who owns their accommodation unit. “Owns” is defined in the dictionary of the Act.

“Condition report” is taken to have the meaning ascribed to it by section 82(1).

Section 82 Condition reports

Provides that “condition report”, for the purposes of division 6.2, is a report about the state of repair or condition of a resident’s accommodation unit and the goods associated with the unit.

The operator must give two copies of the condition report to the resident on the day they move into their accommodation unit. Both copies must be signed by the operator. The resident must, within two weeks, sign one copy of the report and return it to the retirement village operator. Where the resident disagrees with any part of the report, the resident must state which part of the report they disagree with.

Section 83 Condition on vacating units

A resident must, as far as possible, leave their accommodation unit, less any fair wear and tear, as described in the condition report. Where the resident does not leave the resident as described in the condition report, the scheme operator can require the resident to meet the cost of any repair work that is necessary.

A resident may apply to the ACAT for an order in relation to the cost of repair work if they believe the work required by the operator is unnecessary or the cost is excessive. Where an application is made to the ACAT, the scheme operator bears the burden of substantiating the repair work.

The purpose of this section is to facilitate the reasonable renovation and alteration of fixture in a resident’s unit, should they choose to do so.

Section 84 Renovation and alteration of fixtures or fittings

Provides that a resident may only carry out renovations or the addition or removal of fixtures with the consent of the scheme operator. The scheme operator must not unreasonably withhold consent and may give consent subject to conditions. A resident may apply to the ACAT for an order allowing the resident to carry out any work or amending the conditions the operator’s consent is subject to.

The section also provides that a resident may remove or alter fixtures they have added, unless such work is likely cause major damage to the accommodation unit or significant disruption to other residents.

Division 6.3: Reselling accommodation units**Section 85 Definitions-div 6.3**

States that, for purposes of division 6.3:

- “Resident” means a resident who owns their accommodation unit; and
- “Selling agent” means a person appointed by a resident to sell their unit.

Section 86 Appointing selling units

States that a resident can appoint a selling agent of their choice, including the scheme operator.

Also states that the scheme operator cannot make it a condition of entry to the village that the operator act as the selling agent or set the sale price of the resident's accommodation unit.

The purpose of this provision is to enable residents to select a selling agent of their choice, including the scheme operator.

Section 87 Setting asking price of accommodation units

Provides that the asking price for an accommodation unit should be agreed between the resident and scheme operator. Where the two parties cannot agree within 14 days, an independent valuer, agreed to by both parties, should be appointed. If the two parties cannot agree on an independent valuer within 28 days, either party can apply to the ACAT to decide the valuer.

This provision seeks to ensure that prices for the sale of an accommodation unit should be set by agreement, where possible, between the scheme operator and the resident. The provision also sets out an alternate route for setting the price where the operator and the resident cannot agree to a price.

Section 88 Selling accommodation units

States that where a scheme operator, or a person appointed by them, is the selling agent for a resident's accommodation unit, the operator must notify resident of all offers to buy the unit as well as details about the marketing program for the unit, the details of people who inquire about unit and the asking price of other accommodation units in the same retirement village.

Where somebody other than the scheme operator is appointed as the selling agent, the resident must give the operator the name and contact details of that person and update the operator of any changes to the appointment and details of the agent.

The purpose of this provision is to ensure that both parties to the residence contract receive information about the progress of the sale process.

Section 89 Buyers and scheme operators to enter into resident contracts

States that a contract for the sale of an accommodation unit is taken to include a condition that the buyer of unit will enter into a residence contract with the scheme operator. If the operator does not enter a residence contract with the buyer, the operator must, within 21 days of learning of the sale notify the buyer of the operator's decision and apply to the ACAT for an order that the operator is not obligated to enter a residence contract with the buyer.

Section 90 Offence – failure to give notice about sale of units

Provides that a resident commits an offence if they sell an accommodation unit and fail to notify the scheme operator of the sale in enough time for the operator to comply with section 70 (which relates to the failure by an operator to supply prospective residents a copy of the public information document). The maximum penalty for this offence is 60 penalty units.

A resident also commits an offence if they sell their accommodation unit in the village and do not notify the operator as soon as practicable after the contract for sale is entered into. The maximum penalty for this offence is 60 penalty units.

Division 6.4: Relatives in accommodation units

Section 91 Relatives may continue to live in units

Provides that, where a resident's right to live in a retirement village ends because the resident dies or vacates the unit and a relative of the resident, who is not a party to the residence contract, was living in the unit at the time the contract ends and had been doing so for at least the previous six months before the contract ends, the relative has a right to live in the retirement village for three months, provided that they agree to abide by the terms of the original resident's residence contract.

Section 92 Relatives may enter into residence contracts

Provides that a relative may, at least 14 days before the end of the three month period discussed in section 91, give notice in writing to the scheme operator that they wish to enter into a residence contract if:

- the resident's right to live in a retirement village ends because the resident dies or vacates the unit;
- a relative of the resident who is not a party to the residence contract was living in the unit at the time the contract ends and had been doing so for at least the previous six months before the contract ended;
- no other person has a right to live in the accommodation unit; and
- the relative meets any criteria in place for resident's of the retirement village.

Where the relative provides such notice, the scheme operator must enter into a residence contract with the relative before the end of the three month period. The contract should be on the same terms as those offered to other residents; however, it may be amended to take into account an agreement between the relative and scheme operator about repairs to the unit.

Part 7: Operation and management of retirement villages

Division 7.1: Scheme operators

Section 93 Definitions-div 7.1

States that, for the purposes of Division 7.1:

- "Conviction" has the meaning given to it by section 6 of the Spent Convictions Act 2000;
- "Insolvent under administration" has the meaning given to it by section 9 of the Corporations Act 2001;
- "Relevant conviction" means a conviction offence involving fraud or dishonesty for which the penalty is greater three months goal, but does not include a spent conviction.

Section 94 Offence – operating retirement village scheme etc while insolvent

Provides that a person commits an offence if they are insolvent under administration and they operate, promote, manage or sell a right to live in a retirement village. The maximum penalty for this offence is 100 penalty units. However, a resident or former resident of a village, or someone acting for them, does not commit an offence where the person promotes or sells a right to live in a village to end a resident or former resident's right to live in the village.

Section 95 Offence – operating retirement village schemes etc with relevant conviction

States that a person commits an offence if they have a relevant conviction and they operate, promote, manage or sell a right to live in a retirement village. The maximum penalty for this offence is 100 penalty units. However, a resident or former resident of a village, or someone acting for them, does not commit an offence where the person promotes or sells a right to live in a village to end a resident or former resident's right to live in the village.

Division 7.2: Operating etc unregistered retirement village schemes

Section 96 Offence – operating etc unregistered retirement village

Provides that a person commits an offence where they operate a retirement village scheme, induces or invites people to live in the scheme, pay an ingoing contribution or do another act in relation to a scheme or extends retirement village land where no scheme is registered. The maximum penalty for this offence is 540 penalty units. A person does not commit an offence where they merely invite expressions of interest in a village.

Section 97 ACAT orders to stop operating etc unregistered retirement villages

Provides that if the Commissioner for Fair Trading believes, reasonably, that a person is operating an unregistered retirement scheme in the terms set out in section 96, the Commissioner may apply to the ACAT for an order to stop the person contravening section 96.

Section 98 Orders appointing people to control operations of retirement villages

Provides that where the Commissioner for Fair Trading reasonably believes that the interests of residents are compromised by the current management of a retirement village, the Commissioner may apply to the ACAT for an order appointing a particular person to manage the village.

Division 7.3: Exercise of powers of attorney by scheme operators

Section 99 Offence – exercising powers of attorney

Provides that a scheme operator commits an offence where they exercise, or purport to exercise, a resident's power of attorney. The maximum penalty for this offence is 540 penalty units. However, no offence is committed where the operator is a relative of the resident or the operator exercises the resident's power of attorney to execute a surrender of a registered lease over an accommodation unit after the resident's residence contract has ended.

Division 7.4: Other matters

Section 100 Consultation about retirement village redevelopment

States that where a scheme operator proposes to redevelop a retirement village they must call a residents meeting by written notice and present a plan for the development as well as answering any reasonable questions asked by residents.

The scheme operator must not undertake the redevelopment unless they have considered the rights of all residents and, where necessary, made arrangements for residents affected by the redevelopment.

The maximum penalty for a breach of this section is 200 penalty units.

This provision ensures that the rights of residents are respected as part of any redevelopment planning and work.

Part 8: Financial management of retirement villages

Division 8.1: Capital improvement

Section 101 Meaning of *capital improvement*

States that, for the purposes of the Act, “capital improvement” means the initial provision of a capital item and a thing that is capital improvement under a ruling under the Taxation Administration Act 1953.

Section 102 Responsibility for capital improvement of retirement villages

States that a scheme operator is solely responsible for paying for capital improvement in the retirement village; this is subject to sections 103 and 104.

Section 103 Responsibility of residents for capital improvement – accommodation units

Where a resident requests capital improvement to their accommodation unit and the operator agrees to make the improvement, the resident is solely responsible for the cost of the improvement.

This provision allows residents, where they are willing to pay the costs of capital improvement work, to undertake that work, provided that it does not interfere with the rights of the scheme operator.

Section 104 Responsibility of residents for capital improvement – retirement villages

Where residents of a retirement village pass a special resolution at a residents meeting which asks the scheme operator to make a capital improvement to the village and the operator agrees to make the improvement, all residents of the village at the time the resolution was passed are responsible for the cost of the improvement.

This provision allows residents, where they are willing to pay the costs of capital improvement work, to undertake that work, provided that it does not interfere with the rights of the scheme operator.

Section 105 Responsibility of former residents for capital improvement

Where a resident ceases to be liable for general services charges under section 142(2)(b), the resident also ceases to be liable to pay costs owed by way of sections 103 and 104 and the scheme operator must pay those costs.

Section 106 Quotation for capital improvement

Where a resident, or residents by agreement at a residents meeting, ask the scheme operator to get a quotation for a capital improvement, the operator must obtain at least two quotations where possible and forward the quotation to the resident or residents who requested it. The costs associated with procuring the quotations are to be paid by the resident or residents who requested the quotation.

Section 107 Payment of capital improvement

Provides that where a resident or residents ask for a capital improvement to be made, the scheme operator may make it a condition to agreeing to the improvement that the cost of the improvement is paid before the improvement is undertaken.

Section 108 Offences – dealing with amounts received for capital improvement

Provides that a scheme operator commits an offence where they receive money to undertake a capital improvement and fail to keep that money in a trust account. The maximum penalty for this offence is 540 penalty units.

Also provides that a scheme operator commits an offence where they receive money to undertake a capital improvement and spend that amount on something other than the capital improvement. The maximum penalty for this offence is 540 penalty units.

A scheme operator will also commit an offence where they receive an amount for capital improvement which exceeds the cost of the improvement and the operator fails to return the excess amount to the person or persons who paid it. The maximum penalty for this offence is 540 penalty units.

Division 8.2: Capital replacement fund

Section 109 Meaning of *capital replacement fund contribution-Act*

Provides that, for the purposes of the Act, “capital replacement fund contribution” means the proportion of ingoing contribution which is payable to the retirement village’s capital replacement fund.

Section 110 Meaning of *capital replacement fund amount-div 8.2*

Provides that, for the purposes of Division 8.2, “capital replacement fund amount” has the meaning given to it by section 113 of the Act.

Section 111 Capital replacement funds

States that the scheme operator must create and keep a fund, known as the capital replacement fund for the replacement of the retirement village's capital items. The operator is the only party who has an obligation to contribute to the capital replacement fund.

Section 112 Offence – failure to open and keep accounts

Provides that a scheme operator commits an offence where they fail to create and maintain accounts for capital replacement which includes the operator's name and the purpose of the account and from which only the operator can withdraw amounts. The maximum penalty for this offence is 540 penalty units.

Section 113 Payments into capital replacement funds

Provides that any amounts received by the scheme operator under an insurance policy relating to capital items, as part of a capital replacement fund contribution, as an amount paid by a resident under section 122 or as interest on a capital replacement fund amount must be paid into the capital replacement fund.

Section 114 Offences – payments into capital replacement funds

Provides that a scheme operator commits an offence if they fail to pay a capital replacement fund amount into the capital replacement fund. The maximum penalty for this offence is 540 penalty units.

Also provides that a scheme operator commits an offence where the operator pays a capital replacement fund amount into an account other than the capital replacement fund. The maximum penalty for this offence is 540 penalty units.

Section 115 Offences – misuse of capital replacement fund amounts

States that a scheme operator commits an offence where they capital replacement fund amounts for something other than replacing the retirement village's capital items, paying fees associated with the capital replacement reserve reports and paying tax on amounts paid into the capital replacement fund. The maximum penalty for this offence is 540 penalty units.

A scheme operator will also commit an offence where they use a capital replacement fund amount for capital improvement, maintenance or repairs or for capital replacement or repairs owned by an owner's corporation. The maximum penalty for this offence is 540 penalty units.

Section 116 Charge created over capital replacement funds

Provides that, upon the establishment of the capital replacement fund, a charge is created over the fund for the benefit of the retirement village's residents. The charge will only be revoked after the day the village stops operating and the last resident's exit entitlements are paid and takes precedence over all other charges, except those given priority by an ACT or Commonwealth law.

Section 117 Capital replacement reserve – reports

Provides that, before deciding on the retirement village’s budget for the year, the scheme operator must obtain a written report from an independent quantity surveyor about the costs of replacing the village’s capital items for the next 10 years. Such a report needs to be obtained in the first year that the village prepares financial reports and then each third financial year after that, unless major changes have affected the village, in which case a new capital replacement reserve report needs to be produced.

Section 118 Capital replacement reserve reports – independent quantity surveyor report not needed in certain circumstances

Provides that, where the amount of the general services charges collected for the village is less than \$50 000 or another amount set by regulation for a financial year, the residents can, by special resolution, waive the obligation of the scheme operator to have an independent auditor prepare the capital replacement reserve report. The waiver of the residents remains in place until residents revoke their consent or the village collects general services charges in excess of \$50 000 or another amount set by regulation.

The purpose of this provision is to allow residents to relieve small scheme operators of the obligation to prepare an audited capital replacement reserve report and instead requires them to prepare an unaudited capital replacement reserve report.

Section 119 Offence – failure to obtain reports

States that, where a scheme operator is not exempted under section 118, a scheme operator commits an offence where they fail to prepare a capital replacement reserve report consistently with section 117. The maximum penalty for this offence is 540 penalty units.

Section 120 Capital replacement reserve – amounts in reserve

Provides that the scheme operator has the obligation to decide what amount of funds should be allocated to the capital replacement fund. In determining this amount, the operator should take into account the fund’s purpose and the capital replacement reserve report in light of the objects of the Act and the particular retirement village’s circumstances.

If the cost of replacing a capital item exceeds the amount in the capital replacement fund, the scheme operator is obligated to pay the difference.

Section 121 Capital replacement fund budgets

This section requires a scheme operator to adopt a budget for the capital replacement fund each year which allows the operator to raise sufficient funds to meet capital replacement fund costs in the next financial year and over the next nine years, and fix an amount to be raised by capital replacement fund contributions which will meet these costs.

Residents, by agreement at a residents meeting, can request a copy of the draft capital replacement budget from the scheme operator. If residents of the village make a request, the operator must provide a copy of the draft budget 14 days before the start of the relevant financial year.

Section 122 Residents liable for replacing certain capital items

Provides that, where a resident deliberately damages property or subjects an item to unreasonable wear and tear, that resident will be liable for the costs of replacing that capital item.

Section 123 Resident may carry out urgent work

This section allows a resident to undertake urgent repair work and have the costs of the work refunded to them by the scheme operator where the resident gives the operator reasonable notice. If the operator does not reimburse the resident, the resident can apply to the ACAT for an order for them to do so. Details of what work is considered urgent are set out in the section.

Division 8.3: Maintenance reserve fund**Section 124 Meaning of *maintenance reserve fund contribution***

States that, for the purposes of the Act, “maintenance reserve fund contribution” means the proportion of an incoming resident’s ingoing contribution goes towards the maintenance reserve fund.

Section 125 Meaning of *maintenance reserve fund amount* – div 8.3

Provides that, for the purposes of Division 8.3, “maintenance reserve fund amount” has the meaning given to it by section 128(1).

Section 126 Maintenance reserve funds

Provides that an operator must establish and maintain a fund a fund, to which only residents are responsible for contributing towards, for maintaining and repairing the retirement village’s capital items.

Section 127 Offence – failure to open and keep accounts

Provides that a scheme operator commits an offence where they fail to establish and maintain a maintenance reserve fund account which includes the name of the operator and the purpose of the account and requires withdrawals to be signed by the operator. The maximum penalty for this offence is 540 penalty units.

Section 128 Payments into maintenance reserve funds

This section requires a scheme operator to pay any maintenance fund contributions and any interest from the maintenance reserve fund amounts into the retirement village’s maintenance reserve fund.

Section 129 Offences – payments into maintenance reserve funds

States that a scheme operator commits an offence where they pay fail to maintenance reserve fund amounts into the maintenance reserve fund. The maximum penalty for this offence is 540 penalty units.

A scheme operator will also commit an offence where the operator pays a maintenance reserve fund amount into another fund. The maximum penalty for this offence is 540 penalty units.

Section 130 Offences – misuse of maintenance reserve fund amounts

Provides that a scheme operator commits an offence where they use an amount from the maintenance reserve funds for something other than maintaining the retirement village's capital items, paying reasonable fees associated with maintenance reserve reports and tax associated with interest earned on the capital maintenance reserve fund. The maximum penalty for this offence is 540 penalty units.

Also provides that a scheme operator commits an offence where they use a maintenance reserve fund amount for general maintenance of the retirement village, improvement or replacement of capital items or capital replacement, or maintenance or repairs on property owner by the owners corporation for the village. The maximum penalty for this offence is 540 penalty units.

Section 131 Charge created over maintenance reserve funds

Provides that, upon the establishment of the maintenance reserve fund, a charge is created over the fund for the benefit of the retirement village's residents. The charge is irrevocable until the later of the day the village stops operating and the last resident's exit entitlements are paid and take precedence over all other charges, except for those given priority by an ACT or Commonwealth law.

Section 132 Maintenance reserve – reports

States that, before deciding on the retirement village's budget for the year, the scheme operator must obtain a written report from an independent quantity surveyor about the costs of maintaining and repairing capital items in the village for the next 10 years. Such a report needs to be obtained in the first year that the village prepare financial report and then each third financial year after that, unless major changes have been affected in the village, in which case a new capital replacement reserve report needs to be produced.

Section 133 Maintenance reserve reports – independent quantity surveyor report not needed in certain circumstances

Provides that, where the amount of the general services charges collected for the village is less than \$50 000 or another amount set by regulation for a financial year, the residents can, by special resolution, waive the obligation of the scheme operator to have an independent auditor prepare the maintenance reserve report. The waiver of the residents remains in place until residents revoke their consent or the village collects general services charges in excess of \$50 000 or another amount set by regulation.

The purpose of this provision is to allow residents to relieve small scheme operators of the obligation to prepare an audited maintenance reserve report and instead requires them to prepare an unaudited maintenance reserve report.

Section 134 Offence – failure to obtain reports

States that, where a scheme operator is not exempted under section 133, a scheme operator commits an offence where they fail to prepare a capital replacement reserve report consistently with section 132. The maximum penalty for this offence is 540 penalty units.

Section 135 Maintenance reserve – amounts in reserve

Provides that the scheme operator has the obligation of deciding what amount of funds should be allocated to maintenance reserve fund. In determining this amount, the operator should take into account the fund's purpose and the capital replacement reserve report in light of the objects of the Act and the retirement village's particular circumstances.

If the maintenance and repair costs associated with the retirement village exceed the amount in the maintenance reserve fund, the scheme operator is obligated to pay the difference. This amount is treated as an interest-free loan by the operator.

Section 136 Maintenance reserve fund budgets

This section requires a scheme operator to adopt a budget for the maintenance reserve fund each year which allows the operator to raise sufficient funds to meet amounts to be paid from the maintenance reserve fund in the next financial year and over the next nine years, and fix an amount to be raised by maintenance reserve fund contributions to meet these costs.

Residents, by agreement at a residents meeting, can request a copy of the draft maintenance reserve fund budget from the scheme operator. If residents of the village make a request, the operator must provide a copy of the draft budget 14 days before the start of the relevant financial year.

Division 8.4: Services charges**Section 137 Meaning of *general services charge budget-Act***

Provides that, for the purposes of the Act, "general services charge budget" has the meaning given to it by section 139(1).

Section 138 Meaning of *general services charge – div 8.4*

States that, for the purposes of division 8.4, "general services charge" means a charge to be paid by a resident for general services supplied under a residence contract.

Section 139 General services charge budget

This section requires a scheme operator to adopt a budget for the general services charge each year which allows the operator to raise sufficient funds to provide general services in the next financial and fix an amount to be raised by contributions from resident to meet these costs.

Residents, by agreement at a residents meeting, can request a copy of the general services charge budget from the scheme operator. If residents of the village make a request, the operator must provide a copy of the draft budget 14 days before the start of the relevant financial year.

Where there is a surplus or deficit for a general services charge, the surplus or deficit should be carried into the general services charge budget for the next financial year.

Section 140 Offences – working out and paying general services charge

This section provides that a scheme operator commits an offence where the operator charges a resident a general services charge which is calculated in a way other than that set out in the retirement village's public information document. The maximum penalty for this offence is 200 penalty units.

The section also provides that a scheme operator commits an offence where a general services charge in a residence contract provides for an amount that is for replacing the retirement village's capital items. The maximum penalty for this offence is 200 penalty units.

States that a scheme operator commits an offence where a general services charge in a residence contract provides for an amount that is payable in relation to costs awarded against the operator in the ACAT. The maximum penalty for this offence is 200 penalty units.

Section 141 Responsibility of residents for general services charge

Provides that, subject to the operation of section 142, a resident is only liable for their proportion of the general service charge.

Section 142 Working out and paying general services charge for former residents

States that a former resident is liable for their share of the general services charge until the earliest of the following events:

- the right to live in that residents accommodation unit is sold;
- a period of 90 days elapses; or
- the ACAT orders the scheme operator to pay the resident's exit entitlement to them under section 208 of the Act.

If a former resident's right to live in the village has not been sold during the 90 day period, the scheme operator can accrue the resident's proportion of the general services charges as a book debt against the resident's exit entitlements.

Where the former resident's right to live in the village has not been sold 90 days after the resident vacates their accommodation, the resident and the scheme operator are each liable to pay the resident's share of the general services charge in the same proportion as they share the gross ingoing contribution associated with the sale of the resident's right to live in the village. The general services charge is to be paid on this basis until the accommodation unit is sold or a period of six months elapses.

Section 143 Offence – no interest on accrued amounts

States that a scheme operator commits an offence by charging interest on amounts accrued as a book debt under section 142. The maximum penalty for this offence is 100 penalty units.

Section 144 Offence – failure to pay general services charge for unsold right to live in accommodation units

Provides that a scheme operator commits an offence where they do not pay the proportion of the general services charge associated to with a right to live in a retirement village where the relevant accommodation unit is not occupied under a residence contract or the liability of a former resident for the general services charge has ended or no residence contract is in force for the accommodation unit. The maximum penalty for this offence is 200 penalty units.

Section 145 Scheme operators paying general services charge

States that where a scheme operator must pay an amount under section 144, that amount should be paid into the retirement village’s maintenance reserve fund.

Section 146 Offence – increasing general services charge by more than CPI

This section provides that a scheme operator commits an offence where they increase the general services charge by an amount greater than the consumer price index during a financial year unless the residents of the retirement village approve the increase by special resolution at a residents meeting or the increase can be attributed to increases in rates, taxes or charges, increases in salaries, increases in insurance costs or maintenance reserve fund contributions. The maximum penalty for this offence is 200 penalty units.

Section 147 Cost-effective alternative for services

Before increasing the charge for a general service, a scheme operator must consider cost-effective alternatives to that service.

Section 148 No liability for failing to supply goods or services

States that a scheme operator is not liable for failing to supply goods or services where the cost of delivering those services requires a greater increase in the general services charge than is permitted under section 146 and the operator has considered other, more cost effective, methods of providing the service.

The purpose of this provision is to ensure that scheme operators are not penalised where residents have refused to approve an increase in costs which is, in the circumstances, reasonable.

Section 149 Supplying new general services

States that a scheme operator may offer residents a new service for which a general services charge is payable only if residents agree, by special resolution passed at a residents meeting, and the service is not:

- a personal service;
- a cost-effective alternative service; or
- if the public information document states that another service is to be supplied, that service.

Before supplying the service, the resident must obtain quotations consistently with section 150. Where the provision of the service requires capital improvements, those improvements must be requested by residents in the method set out in section 104.

A scheme operator is prohibited from charging a resident for a new service before the service is supplied to the resident.

Section 150 Quotations for new services

This section requires that, where a scheme operator offers to supply a new service, the operator must, where possible, obtain two quotations from people who the operator believes have the skill to provide the service. A copy of the quotation must then be given to residents as soon as practicable.

Section 151 Charging residents for personal services during temporary absences

Provides that where a resident receives personal services under their residence contract and they are away from the retirement village for 28 days, the resident is not liable for the cost of personal services after the 28 days and until their return to the village.

This ensures that, where a resident is away for a considerable period of time, they do not have to pay for personal services.

Section 152 Offences – charging former residents for personal services

Provides that a scheme operator commits an offence where a resident receives personal services as part of their residence contract, the resident ends the contract under section 51 or section 53 and the operator charges for personal services after the end of the notice period. The maximum penalty for this offence is 540 penalty units.

A scheme operator also commits an offence where a resident who receives personal services dies, causing the residence contract to end, and the operator continues to charge for personal services for more than 28 days after the contract ends. The maximum penalty for this offence is 540 penalty units.

Division 8.5: Insurance

Section 153 Meaning of *building* – div 8.5

Provides that, for the purposes of division 8.5, building includes any fixtures or improvements associated with the building, any fixtures or improvements consisting entirely of common property as well as anything added by regulation. Building, for the purpose of division 8.5, does not include paint, wallpaper, floor and ceiling covering, fixtures removable by a resident at the end of their residence contract as well as anything added by regulation.

Section 154 Building insurance by scheme providers

States that a scheme operator must insure all buildings on retirement village land replacement value against a series of risks which are set out in the section. However, where there are buildings on retirement village land which are covered by a units plan, the operator need not insure them: this is dealt with in the *Unit Titles (Management) Act 2011*.

The section also provides that a scheme operator commits an offence where they fail to take out insurance to protect against the risks set out in the section to the maximum extent possible as well as any costs incidental to replacing the building.

Also states that a regulation can make provision about the insurance policy to be taken out by an operator including in relation to:

- payment by residents of any excess related to the policy;
- combining the policy with other insurance policies;
- notification requirements for improvements made by residents to units;
- valuation of insured buildings.

Section 155 Public liability insurance by scheme operators

States that a scheme operator commits an offence where they do not have public liability insurance of at least \$10 000 000, or another amount set by regulation, in relation to death, bodily injury or illness of any person and loss of, or damage to, the property of any person. The maximum penalty for this offence is 540 penalty units.

The section also provides that no offence is committed in relation to land which is common property in a units plan if the relevant owners corporation has taken out public liability insurance under the *Unit Titles (Management) Act 2011* in relation to the common property.

Section 156 Application of insurance money by scheme operators

Provides that where a scheme operator receives insurance money as a consequence of damage to a building on retirement village land, the operator must immediately use that money for rebuilding or repairing the building which was the basis of the insurance claim.

Section 157 Insurance information

States that the scheme operator must, within 14 days of a resident's request, allow the resident to inspect, and make a copy of, current insurance policies taken out by the operator of the village as well as any premiums paid under those policies.

Section 158 Additional insurance – scheme operator

States that nothing in division 8.5 limits the ability of the scheme operator to take out additional insurance.

Section 159 Additional insurance – residents

Provides that nothing in division 8.5 limits the ability of the resident who owns an accommodation unit in a retirement village to take out insurance in relation to damage or destruction of the unit.

Division 8.6: Financial accounts and statements

Section 160 Offence – scheme operator must keep separate accounts for capital replacement fund and maintenance reserve fund

Provides that a scheme operator commits an offence where they fail to keep separate accounts for the retirement village's capital replacement fund and maintenance reserve fund. The maximum penalty for this offence is 540 penalty units.

Section 161 Offences – failure to give quarterly financial statements

The section provides that a scheme operator commits an offence where the operator fails to give residents an auditable quarterly financial statement within 28 days after the end of the quarter. The maximum penalty for this offence is 540 penalty units.

The section also states that a scheme operator commits an offence where a resident asks them for an explanatory document and they fail to provide such a document to the residents of the village within 28 days. An explanatory document is defined by the section as a document which explains the costs involved in supplying each general service as well as setting out details of any increase in the costs of supplying a general service compared to the general services budget. The maximum penalty for this offence is 540 penalty units.

Section 162 Quarterly financial statements need not be given to residents in certain circumstances

Provides that, where the amount of the general services charges collected for the village is less than \$50 000 or another amount set by regulation for a financial year, the residents can by, special resolution, waive the obligation of the scheme operator to give residents quarterly financial statements. The waiver of the residents remains in place until residents revoke their consent or the village collects general services charges in excess of \$50 000 or another amount set by regulation.

Section 163 Preparing annual financial statements

States that a scheme operator must, each year, prepare a financial statement, in accordance with generally accepted accounting principles, in relation to the village that show details about:

- the retirement village's income and expenditure during from the capital replacement fund and the maintenance reserve fund for the relevant financial year;
- the village's expenditure associated with supplying each general service in the financial year;
- amounts received in relation to insurance claims about the village during the financial year;
- the village's assets and liabilities at the end of the financial year; and
- interests, mortgages and other charges affecting the village's property as at the end of the financial year.

The financial statement must be audited.

Section 164 Annual financial statements need not be audited in certain circumstances

Provides that, where the amount of the general services charges collected for the village is less than \$50 000 or another amount set by regulation for a financial year, the residents can by, special resolution, waive the obligation of the scheme operator to have the financial statements, prepared in accordance with section 163, audited. The waiver of the residents remains in place until residents revoke their consent or the village collect general services charges in excess of \$50 000 or another amount set by regulation.

The purpose of this provision is to allow residents to relieve small scheme operators of the obligation to prepare an audited maintenance reserve report and instead requires them to prepare an unaudited maintenance reserve report.

Section 165 Offences – failure to give annual financial statements

States that a scheme operator commits an offence where they fail to give the Commissioner for Fair Trading a financial statement for the village within five months after the end of the most recent financial year. The maximum penalty for this offence is 200 penalty units.

States that a scheme operator commits an offence where they fail to give the residents of the retirement village a financial statement for the village within five months after the end of the most recent financial year. The maximum penalty for this offence is 200 penalty units.

A financial statement for the purpose of the section means a financial statement prepared consistently with section 163.

Section 166 Classification of expenditure

Provides that regulations can prescribe model rules about how expenditure items are to be classified which the scheme operator must comply with when dealing with items of expenditure in relation to the retirement village. Where the model rules allow an operator to decide how to classify certain items of expenditure, the operator must give residents notice of how the operator has classified items of expenditure.

Part 9: Charges created over retirement village land to protect residents' rights

Division 9.1: Preliminary

Section 167 Meaning of *resident*-Pt 9

Provides that, for the purposes of Part 9, “resident” does not include someone who owns an accommodation unit in the village.

Division 9.2: Creating charges over retirement village land

Section 168 Creating charges over retirement village land

Where the Commissioner for Fair Trading registers a scheme, a charge is created over the retirement village land related to that scheme. As soon as possible after the registration of the scheme, the Commissioner must lodge a memorandum of charge, which sets out the relevant retirement village land and the day the scheme was registered, with the register-general for registration under the Land Titles Act 1925. However, the Commissioner can exempt a scheme from this requirement:

- if the operator is a religious, charitable or community organisation and the Commissioner is satisfied that the operator is of good standing; or
- exceptional circumstances exist and the operator provides an alternative form of security to protect the rights of residents under their residence contract.

An exemption granted by the Commissioner is a notifiable instrument.

The purpose of this provision is to allow retirement villages who do not operate for a profit or that are in exceptional circumstances to be relieved of the obligation to have a charge placed over the retirement village land.

Section 169 Charges extend to new land

States that where additional land becomes retirement village land after a charge is placed on the original retirement village land, the charge created under section 168 is released and a new charge is placed on the additional land and the original land.

The section also provides that a scheme operator must advise the Commissioner for Fair Trading within a month that the new land has become retirement village land. After receiving this notice, the Commissioner must, as soon as practicable, lodge a memorandum of charge under the Land Titles Act 1925 which identifies the retirement village and the date on which the new land became retirement village land.

Section 170 Offence – failure to give notice of new land

Provides that the scheme operator commits an offence if they fail to give the Commissioner for Fair Trading written notice as required by section 169. The maximum penalty for this offence is 540 penalty units.

Section 171 Effect of charges

States that a charge over retirement village secures the right of each resident of the village to occupy their accommodation, to use the village's communal facilities and to be paid their exit entitlement.

Section 172 Priority of charges

The section provides that a charge lodged with the registrar-general under Division 9.2 has priority over all other registered securities with the exception of a charge given priority under another ACT law or a Commonwealth law.

Division 9.3: Enforcing charges over land

Section 173 Enforcing charges

Provides that where retirement village land is subject to a charge under section 168 or section 169 and a court or tribunal orders an amount to be paid by a scheme operator to whom the retirement village land relates but the amount to be paid is not paid within six months, the person who is owed the money may apply for an order that the retirement village land be sold. A person can only apply for such an order where the person has given the Commissioner for Fair Trading notice and the amount to be recovered is greater than \$10 000, or a another amount set by regulation. Any person

with a sufficient interest in the application is entitled to be joined as a party to the proceedings or be heard on the application.

Section 174 Orders court may make

Provides that, where an application is made under section 173, the court can make an order that retirement village land be sold only if satisfied that the original order made against the scheme operator is not likely to be satisfied in any other way and the making of such an order does not run counter to the interests of any other residents. The section also provides that, along with other orders, the court can appoint someone to act as the seller's agent.

Section 175 Effect of court orders

The section states that where an order for sale is made by a court under section 174, the order allows the sale of the land free of any securities except those not removed by the court and has effect notwithstanding any caveat attached to the land or the provisions of any other Act. A person appointed by the court as the seller's agent has the power to do all things necessary to effect the conveyance of land. The section also sets out the order in which the proceeds of the sale are to be applied.

Division 9.4: Extinguishing and releasing charges over land

Section 176 Extinguishing charges

Provides that a charge created over retirement village land will be extinguished upon either the release of the land by the Commissioner for Fair Trading, or by the court order to sell land under section 174, whichever occurs first.

Section 177 Scheme operator may ask for release of charge if land stops being retirement village

States that the scheme operator can request that the Commissioner for Fair Trading release the charge over retirement village land if the land stops being retirement village land or the land is no longer to be used for a retirement village. Where the operator makes such a request, they must also provide residents with written notice that they have requested that the Commissioner release the charge over retirement village land, how this might affect the resident and advise the resident that they can object to the release. The operator must also provide the Commissioner with a statutory declaration stating that they have given notice to residents as required by the section. This must be accompanied by a copy of the notice given to residents.

The purpose of this provision is to allow a scheme operator to have a charge released over retirement village land should the land cease to be used for a retirement village. The provision is also intended to protect the interests of residents should such a situation arise.

Section 178 Commissioner for fair trading to release charge

States that the Commissioner for Fair Trading must release the charge over retirement village land if satisfied that the scheme operator has complied with section 177 and, with reference to any objections made under section 177, it is appropriate for the charge to be released.

Once the Commissioner releases the charge over retirement village land, they should give notice of this to the registrar-general who must register the release of the charge.

Part 10: Residents participation**Division 10.1: Residents committees****Section 179 Establishing residents committees**

Provides that residents, through elections conducted among themselves, may elect a residents committee for their retirement village. Only residents can be members of residents committees and there can be only one residents committee for a village. Where there is more than one body claiming to be the residents committee for a village, the operator or a resident of the village can apply to the ACAT for an order determining which body is the residents committee.

The section clearly sets out that nothing is stated in the section prevents residents forming other bodies or committees for other purposes.

Section 180 Operating residents committees

Provides that, subject to any regulations made, a residents committee can decide its own procedure and the procedure of any subcommittees related to the committee. The residents committee can also organise meetings in which residents can vote any matter set out in the Act, or any other matter affecting the operation of the village, as well as anything prescribed by regulation.

Section 181 Offence – preventing etc residents committees

States that a scheme operator commits an offence where they discourage or prevent:

- the formation of a residents committee;
- the exercising of the functions of the residents committee; or
- a resident from joining a residents committee.

The maximum penalty for this offence is 50 penalty units.

Section 182 Scheme operator to provide administrative assistance

Provides that a scheme operator must render reasonable administrative assistance to the residents committee where the committee asks for it and the cost of the service has been included in the general services charge budget.

Section 183 Meetings between residents committees and scheme operators

States that, where the residents committee makes a reasonable request to meet with the scheme operator, the operator must meet with the committee or the committee's representative. The section also provides that, where the scheme operator makes a reasonable request to meet with the residents committee, the residents committee, or their representative, must meet with the operator. Where a request under this section is not complied with, the person who made the request may apply to the ACAT requiring the person to comply with the request.

Section 184 Retirement villages without residents committees

Provides that, where a retirement village does not have a residents committee, the scheme operator must convene a residents meeting at least once every 12 months and if the scheme operator receives a written request from a quota set in the section. Any meeting convened must be held in, or near, the relevant retirement village.

Division 10.2 Meetings of residents committees**Section 185 Meaning of *decision* – div 10.2**

Provides that, for the purposes of division 10.2, "decision" does not include a decision to be made by the owners corporation of a unit plan under the *Unit Titles (Management) Act 2011*.

Section 186 Decision-making at meetings

States that decision-making at meeting is by ordinary resolution, unless the Act states a requirement for a special resolution. Where residents pass a motion by a particular type of resolution, a resolution of the same type is required to amend or revoke the previous resolution.

Section 187 Ordinary resolutions

Provides that an ordinary resolution will be passed for the purposes of the Bill where more votes are cast in favour of the resolution than against it.

Section 188 Special resolutions

States that for a special resolution to be passed at a residents meeting there must be more votes in favour of a resolution than against it and the votes cast against the resolution are less than a third of the total votes that can be cast at the meeting.

Section 189 Who may vote

Provides that a former resident that is still liable for any proportion of their general services charge is able to cast one vote per former residence at a residents meeting. Where a special resolution has been passed allowing each resident to vote, each resident has one vote at a residents meeting; otherwise, one vote is exercisable by each accommodation unit.

A vote may be exercised at a residents meeting by the resident, a person in whom the resident has invested power of attorney or a person that the resident has appointed as their proxy.

Section 190 Secret ballot

States that if a person entitled to vote at the residents meeting asks for a secret ballot, the vote must be taken by secret ballot.

Section 191 Proxy votes

Provides that votes can be cast by proxy, but any person acting as proxy can only be appointed for one meeting at a time and a scheme operator cannot be appointed as a proxy. No person can hold more than two proxy votes at a meeting.

Section 192 Postal votes

The section provides that votes at a residents meeting can be cast by placing them in a secure plastic container before the meeting takes place.

Section 193 Offences – postal votes

Provides that a scheme operator commits an offence if they fail to supply a secure plastic container 24 hours before a residents meeting so that residents can make postal votes. The maximum penalty for this offence is 10 penalty units.

The section also states that a scheme operator commits an offence if they fail to deliver the secure plastic container to the chairperson before the chairperson opens the residents meeting. The maximum penalty for this offence is 10 penalty units.

A scheme operator will also commit an offence if they open, or allow someone else to open, the secure plastic container prior to its delivery to the chairperson of the residents meeting. The maximum penalty for this offence is 10 penalty units.

Section 194 Quorum at meeting

States that a standard quorum exists if half of the total people entitled to vote on the motion are present and a reduced quorum exists if two people entitled to vote on the motion are present.

The section also provides that, where there is no standard quorum within a half hour, a motion, and any subsequent motions, can be passed by a reduced quorum. If there is no reduced quorum after half an hour, the motion being considered by the residents meeting is adjourned to the same time and place next week. If a motion is adjourned, and no quorum exists at the subsequent meeting, a reduced quorum at the subsequent meeting is made up of the persons in attendance who are entitled to vote. Any decision at the subsequent meeting must be notified under section 195.

If a motion is passed by a reduced quorum, then section 195 applies to that motion.

Section 195 Notice of reduced quorum decisions and adjournments

States that where a decision is made by a reduced quorum, a scheme operator must notify residents of the decision. Where a meeting is adjourned under section 176, an operator must provide notice of the time and place where the adjourned meeting will be held.

Section 196 Reduced quorum decisions – effect

The section provides that a reduced quorum decision has effect 21 days after being made unless the:

- operator fails to give notice under section 195; or
- the scheme operator is presented a petition signed by the majority of residents.

In which case the decision does not take effect. Reduced quorum decisions can be confirmed by a standard quorum, which gives effect to the resolution immediately, even where a petition has been presented to the operator.

Part 11: Retirement village disputes

Division 11.1: General

Section 197 Meaning of *retirement village dispute*-Act

Provides that, for the purposes of the Act, “retirement village dispute” includes a dispute between parties to a residence contract or, if the resident is not a party to a residence contract, a resident, or a former resident, and the scheme operator.

Section 198 Applications to ACAT

States that, subject to section 199, an application can be made to the ACAT in relation to a retirement village dispute.

Section 199 Preliminary negotiations

States that a person may only make an application to the ACAT regarding a retirement village dispute if the person has attempted to resolve a dispute under this section. The section requires parties to the dispute set out their view of the matters in dispute and attempt to resolve this through meeting and negotiating.

Division 11.2: Mediation

Section 200 Referral to mediation

Provides that, where an application is made to the ACAT regarding a retirement village dispute, the registrar must refer the subject matter of the application to a registered mediator and advise the parties who the mediator is and the time, date and place that the mediation conference will take place.

Section 201 Parties attendance at mediation conferences

States that no party can be compelled to attend a mediation conference.

Section 202 Representation at mediation conferences

The section provides that a party to a retirement village dispute may be accompanied at the mediation conference by a lawyer of an agent, unless the mediator is satisfied, reasonably, that a party should not be represented.

Section 203 People who may attend mediation conferences

Provides that a mediator can allow another person to take part in the mediation conference if that person has a sufficient interest in the dispute.

Section 204 Mediation agreements

States that, should the parties come to a mediated agreement in relation to the dispute, both parties, as well as the mediator, must sign the agreement. The mediator must also provide a copy of the signed agreement to the registrar as soon as is practicable.

Division 11.3: ACAT orders**Section 205 ACAT orders generally**

This provision sets out some of the orders that the ACAT can make in relation to a retirement village dispute, but places no limit on the orders the ACAT can make.

Section 206 ACAT orders – removal from retirement village etc

Where a person is threatened with removal from the retirement village, threatened with the cessation of the resident's right to live in the village, or a restriction is placed on person's use of village land, the ACAT can make order for operator to do, or not do a stated thing. In making the order, the ACAT should be satisfied that the action contemplated is a breach of the resident's residence contract or is not justified.

Section 207 ACAT orders – false or misleading documents

The section provides that where a retirement village dispute arises as a consequence of the scheme operator having breached section 388 of the Criminal Code, which is concerned with giving false or misleading information, and the resident is prejudiced by the contravention, the ACAT may make an order setting aside resident's residence contract and make an order it thinks appropriate, including an order for the refund of the resident's ingoing contribution or an order that the operator pay compensation to resident.

Section 208 ACAT orders – payment of exit entitlement

States that, where a scheme operator fails to comply with Division 6.3 of the Act, which relates to the reselling of accommodation units, and a former resident is prejudiced by failure, the ACAT may make an order requiring the operator to pay the former resident their exit entitlements. The amount of the exit entitlements must be based on the value of the right to live in the resident's accommodation unit.

Part 12: Retirement village scheme register**Section 209 Retirement village scheme register**

Provides that that Commissioner for Fair Trading must keep a register of schemes for retirement villages which are registered under this Act as well as setting out what details about a scheme should be recorded in the register. Records can be kept in any form that the Commissioner thinks appropriate and must be kept for at least 10 years.

Section 210 Correcting retirement village scheme register

States that, subject to any requirements prescribed by regulation, the Commissioner for Fair Trading can correct any mistake in the retirement village scheme register.

Section 211 Public access to retirement village scheme register

Provides that the retirement village scheme register must be available for inspection at reasonable times and a person can copy part, or all of the register.

Part 13: Notification and review of decisions**Section 212 Meaning of *reviewable decision*-Pt 13**

Provides that, for the purposes of Part 13, “reviewable decision” means a decision mentioned in Column 3 of Schedule 1 of this Act.

Section 213 Reviewable decision notices

States that where a person makes a reviewable decision, the person must provide a reviewable decision notice to each person mentioned in Column 4 of Schedule 1 in relation to the decision.

Section 214 Applications for review

An entity in Column 4 of Schedule 1 or any other person whose interests are affected by the reviewable decision may apply to the ACAT for a review of the decision.

Part 14: Miscellaneous**Section 215 Review of Act**

Provides that the Minister must, as soon as practicable after the second year that the Act has been in operation, review the operation of the Act and present a report of the review to the Legislative Assembly. This review must consider the operation of part 9 of the Act and a consideration of how effective the Act has been in fulfilling its objects.

Section 216 Determination of fees

States that the Minister may determine fees for this Act. The determination of fees is a disallowable instrument.

Section 217 Approved forms

Provides that the Commissioner for Fair Trading may approve forms for this Act. If there are approved forms, they must be used. An approved form is a notifiable instrument.

Section 218 Regulation-making power

Provides that the Executive may make regulations for this Act

Section 219 Legislation amended-sch 2

Provides that the Act amends the legislation in Schedule 2.

Section 220 Legislation repealed

Provides that the Fair Trading (Retirement Villages Industry) Code of Practice 1999 is repealed.

Part 15: Transitional**Section 500 Definitions – pt 16**

Provides that, for the purposes of Part 16: “commencement day” means the day, under section 6, that the Act commences; “existing contract” means a residence contract under the repealed code and any other contract, arrangement or scheme through which a person gained a right to live in a retirement village; and “repealed code” means the Fair Trading (Retirement Villages Industry) Code of Practice 1999.

Section 501 Transitional – status of existing residence contracts

An existing residence contract is taken to be a residence contract under the Act. This is subject to section 502 and 503 of the Act.

Section 502 Noncompliant residence contracts

States that sections 21 and 22 which relate to the form and content of residence contracts do not apply to contracts which are existing residence contracts.

Section 503 Inconsistencies between Act and existing contracts

The section provides that if an existing contract contains a provision which deals with a matter covered by the Act, the Act applies to the contract to the extent possible without being inconsistent with the contract. Where the Act is inconsistent with the contract, the contract prevails to the extent of the inconsistency.

Section 504 Parties may agree to apply Act to existing contract

Providing that parties may agree, in writing, that the Act applies to an existing contract. If the parties agree, the Act applies to the contract.

Section 505 Offence – failure to give public information documents to existing residents

Provides that a scheme operator commits an offence if they fail to give each current resident a copy of the retirement village’s public information document within 28 days of the commencement of the Act. The maximum penalty for this offence is 540 penalty units.

Section 506 Cooling-off periods

Provides that division 4.4, which relates to rescinding residence contracts during the cooling-off period, does not apply to existing residents.

Section 507 Settling-in periods

States that division 4.7, which relates to ending residence contracts during the settling-in period, does not apply to existing residents.

Section 508 Waiting list fees

States that division 6.1, which relates to waiting list fees, does not apply to a waiting list fee paid before the commencement of the Act.

Section 509 Existing disputes

Provides that where a dispute resolution process was commenced in relation to an existing contract before the commencement of the Act, the existing dispute resolution process remains in place for that dispute.

Section 510 Transitional regulations

The section enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the Act. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act's purpose.

This section also enables the making of a regulation that modifies the Act. A regulation under this section may only modify Part 15 of the Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

A provision of Part 15 of the Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. The section is not expressed, and does not intend, to authorise the making of a regulation limiting *future* enactments of the Legislative Assembly. Also, any modification by regulation of Part 15 of the Act has no ongoing effect after the expiry of that part.

Section 511 Expiry – pt 16

States that Part 16 expires one year after the commencement day.

Schedule 1: Reviewable decisions

This schedule sets out decisions which are reviewable by the ACAT.

Schedule 2: Consequential amendments

This schedule provides details of the consequential amendments made to other ACT legislation as a consequence of the Act being enacted.