

2012

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

RETIREMENT VILLAGES BILL 2012

EXPLANATORY STATEMENT

**Presented by
Mary Porter MLA**

RETIREMENT VILLAGES BILL 2012

Overview of the Bill

Retirement villages are complexes, or parts of complexes, comprising residential premises (other than residential aged care facilities covered by the Commonwealth *Aged Care Act 1997*) predominantly or exclusively occupied by retired persons.

This Bill introduces legislative provisions into ACT law that regulate existing, proposed and future retirement villages in the ACT. These provisions replace the current regulatory scheme and are based on provisions in the NSW *Retirement Villages Act 1999*.

Retirement villages in the ACT operate under one of three main forms-

- Loan-licence agreements: These agreements typically involve the payment of an ingoing contribution (or ‘loan’) by a resident for the right to live in the premises on a long-term (or permanent) basis. The resident is typically entitled to a refund of the ingoing contribution minus exit fees payable on vacation of the premises. Some agreements also provide for a proportional share of the capital gain of the unit. These are the most common types of agreements used by the retirement village industry.
- Unit titled retirement villages: In unit titled retirement villages, residents own their unit. Residents are bound by the same requirements under the *Unit Titles (Management) Act 2011* as other unit owners in terms of ownership and maintenance of common property and must comply with the rules of the owners corporation (also referred to as ‘articles’).

This Bill provides clear guidance to residents in unit titled retirement villages as to how the provisions of the Bill apply to their circumstances (for instance, the Bill provides that the requirement to have village rules does not apply to unit titled retirement villages, which have owners corporation rules in place).

- Other agreements: Some residents obtain their right to live in a retirement village under a residential tenancy agreement (under the *Residential Tenancies Act 1997*) on a short term or long term basis. Some not-for-profit organisations that operate retirement villages often offer low-cost rental options for some residents.

This Bill provides for residential tenancies agreements in retirement villages and for retirement villages that offer a blend of accommodation options for residents (such as loan-licence agreements for some residents and long-term residential tenancies agreements for others).

Retirement villages are currently regulated by a mandatory Code of Practice (the *Retirement Villages Industry Code of Practice*) (“the Code”) under the *Fair Trading (Australian Consumer Law) Act 1992*. The Code is similar in form and substance to the NSW *Retirement Villages Industry Code of Practice* which was prescribed by a regulation (now repealed) made under the NSW fair trading legislation.

The Code sets out basic higher-level principles about:

- basic resident rights;
- disclosure requirements in advertising and sales promotion;
- the content of the village contract;
- a framework for dispute resolution; and
- the establishment of a Code Administration Committee.

In replacing the Code, this Bill builds on many of the basic higher-level principles in the Code – introducing greater clarity in relation to how those principles operate in practice.

This overview sets out where the Bill adds to existing requirements or where the Bill introduces new requirements. The substantive changes to the current scheme are summarised broadly as follows:

Residents’ rights

Both the Code and the Bill protect basic rights of residents in retirement villages. These rights include the right to privacy, freedom of association, resident input into the setting of budgets, the requirement for operators to exercise sound management and certain resident rights that must be provided for in the village contract.

Cooling off period

The Code currently requires that residence contracts (hereafter referred to as “village contracts”) include a cooling-off period of 5 days.

This Bill increases the period to 7 days.

Content of village contracts

Both the Code and this Bill require that the village contract comprehensively details the terms of the village contract.

The Bill introduces a new provision which allows standard-form contracts to be prescribed.

Settling-in period

The Code does not currently provide for a settling-in period.

This Bill introduces a new provision which allows new residents to permanently vacate their premises within 90 days of moving in without incurring liability for payment of departure fees. If a resident permanently vacates their premises within 90 days of moving in they are liable to pay to the village operator fair market rent for the period of their occupancy and a reasonable administrative fee (up to a maximum of \$200).

Under the Bill, the timing for payment of the refund depends upon the type of village contract in place. Where the resident does not have a registered interest in the premises, for example where they occupied the premises under a loan or licence arrangement, they will be entitled to a refund of their ingoing contribution within 14 days after termination of the village

contract. Where the resident purchased a registered interest in the premises, the resident is entitled to a refund of the purchase price once the unit is re-sold or re-occupied by another resident.

Safety and Emergency Procedures

Under this Bill and the Code, village operators have a duty of care in relation to village residents.

This Bill also requires all operators to prepare written safety and emergency procedures and to take reasonable steps to ensure that residents and staff are familiar with such procedures. Operators are also required to conduct a safety inspection at least once each year and report back to residents on the findings of these inspections.

Selling capital items to residents

This Bill prohibits village operators from selling capital items to residents or attempting to pass on responsibility to individual residents for the maintenance and replacement of capital items in their premises. Residents who have previously bought capital items in their premises from the operator or had agreed to be responsible for these items can notify the operator and pass responsibility back. This should be done as soon as possible.

NOTE: This does not apply to premises owned by a resident in a unit title, community or company title scheme.

Liability for payment of recurrent charges after vacating

The Bill provides that for residents who do not own their units, the maximum period of time a former resident or their estate can remain liable to pay recurrent charges after he or she vacates or passes away has been reduced from 6 months to 6 weeks.

For residents who are owners, after 6 weeks the recurrent charges must be shared between the outgoing resident and the operator in the same proportion as they are to share any capital gains under the contract.

Protecting refund entitlements

The Bill provides that (other than where a resident is a registered interest holder) a statutory charge is created over the retirement village land. The charge secures the entitlement of a refund of residents' ingoing contributions. The charge will be given priority over certain other creditors in the event that a village needs to be sold due to the insolvency of the operator.

Investigation and enforcement powers

The Bill provides that the Director-General has the power to issue a public warning notice involving a particular operator.

Access to dispute resolution through ACAT

The Code currently provides for internal dispute resolution through dispute resolution committees within retirement villages. There is also a Code Administration Committee established under the Code to discuss and resolve systemic issues in retirement villages.

This Bill allows access to the ACAT by residents and operators for the resolution of disputes that may not be resolved through internal dispute resolution processes.

Maintenance, repair and replacement of capital items

The Code requires operators to manage the retirement village in a sound manner. This Bill builds on this principle by providing detailed rules about the repair, maintenance and replacement of capital items in the retirement village.

Duty to maintain maintain/repair/replace

The Bill makes it clear which capital items are the responsibility of the village operator and which capital items are the responsibility of the resident.

The Bill provides that residents may be asked to contribute to the cost of replacement or repair if they damaged the item. Residents do not have to contribute for fair wear and tear of the item.

The Bill also requires that an operator directly meets the cost of replacement. Recurrent charges must not be used to pay for improvements to capital items or to repeatedly repair an item that it would be more cost effective to replace.

Budgeting for maintenance and repairs of capital items

The Bill requires that a capital works fund must be set up if any recurrent charges are going to be set aside for longer term maintenance. The costs of capital maintenance can be paid from the recurrent charges or from the village's capital works fund, if it has one.

If an operator intends to use recurrent charges or the capital works fund for capital maintenance, the annual budget must list the proposed items of work and their expected costs, and include any quotes obtained.

Recurrent charges and the capital works fund cannot be used to substantially improve a capital item beyond its original condition or to maintain or repair an item of capital that it would be more cost effective to replace.

Budgeting for replacing fixed capital items

The Bill requires that the operator is responsible for arranging and paying for the replacement of capital items which the operator is responsible for (for example, hot water systems or a dishwasher installed by the operator) out of its own funds.

Proposed annual budgets cannot include an allowance for replacing such items, either directly or through depreciation. The only exception is where an operator did not charge an ingoing contribution for residents to gain entry to the village before commencement. In these cases, the recurrent charges paid by residents can be used to fund the cost of replacing capital items.

Urgent repairs

The Bill provides that a resident may arrange for urgent repairs to be done and to be reimbursed for the reasonable costs. The resident must first notify the operator of the need for the repair and give the operator a reasonable opportunity to carry out the work. Any work arranged by a resident must be done by a person with the proper qualifications for the work, such as a licensed electrician or plumber. A resident can apply to the ACT Civil and Administrative Tribunal ('the ACAT') for orders if the operator does not reimburse them.

Disputes about maintenance, repairs or replacement

The Bill allows a resident who considers that the operator is not maintaining or replacing items of capital for which it is responsible when necessary to apply for an order from the ACAT. The ACAT has the power to order the operator to carry out maintenance or replacement within a specified time.

Fixtures and Alterations

The Bill provides a right for a resident to add or remove fixtures or make alterations to the premises with the consent of the operator, which cannot be unreasonably refused.

Financial Accounts

The Code provides that management must ensure that all financial accounts for the retirement village have been prepared in accordance with recognised accounting standards. The Code also requires retirement village operators to prepare audited annual accounts of the village within 4 months of the end of each financial year against budget.

The Bill prescribes certain information which must be included in the annual accounts.

The Bill also introduces a requirement for operators to prepare unaudited quarterly accounts of the retirement village within 4 weeks of the end of each quarter, which must detail the income and expenditure of the village for the quarter.

The Bill requires the format of the accounts to correspond as closely as possible with the layout of the proposed annual budget. The accounts should only contain details of the income and expenditure of the village. Details of nursing homes and hostels should be excluded.

The Bill requires that in general, the annual accounts of the village must be audited each year. A person qualified to audit accounts for the purposes of the Corporations Law must audit the annual accounts.

The Bill provides that an audit is not necessary if the recurrent charges collected in the village's financial year total \$50,000 or less and the residents have consented not to have the accounts audited. Quarterly accounts do not have to be audited.

The auditor

The Bill provides that if the audit fees are to be paid by the residents, the consent of residents is required to the appointment of an auditor in the same way residents must consent to the expenditure of the auditing fees and the fees must be itemised in the budget. This applies even where one auditor audits the accounts of a number of villages for the same operator. Residents' consent is not needed if the same auditor as for the previous financial year is reappointed or if the operator chooses to pay the cost of auditing out of its own funds.

Giving copies of accounts

The Bill requires copies of the quarterly accounts to be given to the residents' committee within 28 days after the end of the quarter. After the 28 days, a resident may ask the operator for a copy of the quarterly accounts, and the operator must provide this within 7 days.

Quarterly accounts do not have to be given to the residents committee if the total recurrent charges collected in the financial year are \$50,000 or less and the residents have consented not to receive quarterly accounts.

The Bill requires copies of the annual accounts to be given to the residents committee, as well as any resident who asks for a copy, within 4 months after the end of the village's financial year. If there is no residents committee, a copy of the annual accounts must be displayed on a notice board in a common area for at least one month and be provided to any resident who requests a copy.

Surpluses and deficits

The Bill provides that where there is a surplus, the residents can consent to a proposal for the expenditure of the whole or part of the surplus, or for the operator to distribute the whole or part of the surplus to the existing residents in equal shares. A proposal may be made by the operator or the residents committee (if any).

The Bill also provides that a deficit may be carried forward to a subsequent financial year to the extent that the deficit is caused by certain urgent capital maintenance, or is caused by increases in the cost of utilities (except telephones), statutory charges including rates and taxes, wages and salaries increased under an award or industrial agreement, and public liability and workers compensation insurance.

Resident input

Both the Code and the Bill make provision for resident input and residents' committees in retirement villages.

Residents' committees

A residents' committee is a group of residents, elected by their fellow residents, to represent their interests and to carry out certain functions. Residents' committees also provide a channel for communication between the residents and the operator.

The Bill introduces a requirement that only one residents' committee may be established in a retirement village, however the residents' committee is able to form sub-committees.

The Bill also introduces limits on who is entitled to be a committee member, the length of time that a person can hold the same office in the committee and limits on the number of proxies any person may hold at a meeting.

The Bill provides that non-residents such as friends and family of residents, the operator, employees or agents of the operator, residents of nursing homes, Commonwealth subsidised hostels and nursing homes, or residents from another village, are not eligible to be committee members.

The Bill also limits the term a person can hold the same office, or hold an office performing the same (or substantially the same) functions, on the residents committee to 3 consecutive years, unless the village has less than 20 residents or the annual budget of the village is less than \$50,000 (or both). They will still be able to hold other positions on the committee and be eligible to return to their original position at a later stage.

The Bill introduces a limitation on proxy voting, with the maximum number of proxies any person may hold for voting at a residents committee meeting being limited to 2. Residents will be able to vote at meetings by written ballot and will be able to submit postal votes on special resolutions.

Functions of the residents' committee

The Bill details the functions of residents' committees. Residents committees have a wide range of functions and rights such as:

- calling meetings of residents to consider and vote on matters requiring residents' consent or which affect the management and operation of the village;
- reporting to the operator decisions made by residents on matters requiring residents' consent;
- applying to the ACAT on behalf of some or all residents;
- requesting information from the operator about proposed variations to recurrent charges;
- receiving certain financial accounts from the operator;
- forming sub-committees;
- proposing changes to the village rules or the village services and facilities;

- acting as another contact point for prospective residents;
- meeting with the operator upon reasonable request;
- receiving notification from the operator when the retirement village is recorded by the Registrar-General;
- receiving a copy of the annual safety inspection report from the operator; and
- making proposals for the distribution of money in the capital works fund that is not needed to fund capital maintenance, and the surplus in the annual accounts.

Annual management meetings and budget consideration

The Bill extends the current right residents have to be involved in the preparation of the village budget by requiring operators to conduct annual management meetings with residents and to answer questions submitted by residents either before or at the meeting.

The Regulation to the Bill lists matters that must be included on the meeting agenda.

The Bill provides that other than in prescribed exceptional circumstances, village operators are required to make good any budget deficit at the end of each financial year. At the same time, operators have flexibility to vary expenditure between line items. Residents can be asked to fund a deficit only if it is caused by increases in certain costs specified in the Regulation. These are: utilities (except telephones), rates and taxes, award wages and salaries, urgent maintenance, and public liability and workers compensation insurance.

The Bill also provides that where the operator and residents do not agree to pass a budget, the ACAT may approve the deadlocked Budget.

Encouraging recurrent charge increases to be at or below inflation

The Bill encourages operators to keep increases in the recurrent charges payable by residents at or below the rate of inflation. There is no need to gain resident consent for such increases (the notice period is 14 days).

Closure of retirement villages

Both the Code and this Bill recognise that in exceptional cases retirement villages may close. Before closing, the operator needs to secure formal approval to terminate village contracts.

Under the Code, an operator wishing to close the retirement village must make an application to the Commissioner for Fair Trading, for determination by the Contract Referee, for termination of a resident's right to occupy the premises. The operator must give 14 days written notice to the resident before making such an application.

Under the Code an application for termination can only be made on certain grounds, such as where the management would, in the special circumstances of the application, suffer undue hardship if the resident's right to occupy was not terminated.

This Bill provides for closure of a retirement village for the purpose only of a change of use of the land (ie using the land for a purpose other than as a retirement village). Before the ACAT can terminate any retirement villages, a village operator must comply with strict procedural steps set out in the Bill.

Firstly, the Bill requires all residents to be given at least 12 months written notice of the operator's intention to apply to the ACAT to terminate residents' contracts. The notice must be in a prescribed form.

If an application is made to the ACAT for termination of a village contract, the ACAT is to be satisfied that the operator has obtained alternative accommodation or has offered it to all affected residents. Such accommodation must be of approximately the same standard as residents' current premises and must not cost any more for residents to live there.

If the ACAT orders the termination of any residents' contracts it may order the operator to pay compensation to the affected residents for removalist and utility expenses. The operator may also be ordered to compensate residents if their new village will cost them more or if they will lose access to services or facilities.

Unit titled retirement villages

This Bill provides guidance to residents in retirement villages who own their units as to how the requirements in the Bill are to apply to them. The *Unit Titles (Management) Act 2011* provides for the ownership and maintenance of common property and requires residents to comply with the owner's corporation's rules (also known as 'articles').

In a unit titled retirement village, residents who own a unit pay contributions to the owners corporation funds for the management and maintenance of the common property and pay recurrent charges to the village operator.

Recurrent charges cover services provided by the village operator, such as an emergency call system, advertising, the village bus and auditing of the village accounts.

Unit title levies are set by the residents each year at the annual general meeting of the owners corporation. Recurrent charges, on the other hand, are set out in the village contract between each resident and the operator.

Clause Notes

This Bill is based on the NSW *Retirement Villages Act 1999*. Wherever applicable, the below clause notes have been copied from the explanatory notes to the equivalent NSW provisions.

Part 1 Preliminary

Section 1 **Name of Act** – states that the name of the Act is the *Retirement Villages Act 2012*.

Section 2 **Commencement** – states that the Act commences on a day fixed by the Minister by written notice. If a date is not fixed, the Act will automatically commence after 6 months (see *Legislation Act 2001*, section 79).

Section 3 **Dictionary** – states that the dictionary at the end of the Act is part of the Act.

Section 4 **Notes** – states that a note included in the Act is explanatory and not part of the Act.

Section 5 **Offences against Act—application of Criminal Code etc** – states that other legislation applies in relation to offences against the Act, such as the *Criminal Code 2002*.

The definition of ‘retirement village’ is set out in section 10.

Part 2 Objects and Important Concepts

Section 6 **Objects of Act** – provides for the objects of the Act.

Section 7 **Meaning of operator** – sets out the meaning of “operator” for the purposes of the Act, which specifically excludes the owners corporation of a unit titled retirement village, the body corporate of a community title scheme village or a managing agent.

Section 8 **Meaning of residence right** – provides a definition of “residence right” as being the resident’s right to occupy their premises in the retirement village.

Section 9 **Meaning of sale, sale price etc** – provides that for a company title scheme (as defined in the Dictionary), a reference to the sale, the contract for sale or the sale price of residential premises is a reference to the residence right (as defined in section 9).

Section 10 **Meaning of retirement village** – sets out the meaning of “retirement village” for the purposes of the proposed Act. The definition makes it clear that certain premises that would otherwise fall within the definition of that term are excluded from it (for example, a building used or intended to be used predominantly for the provision of residential care, within the meaning of the Commonwealth *Aged Care Act 1997*).

Section 11 **Meaning of *ingoing contribution*** – sets out the meaning of “ingoing contribution”.

Section 12 **Meaning of *registered interest holder*** – sets out the meaning of “registered interest holder” which includes residents whose residence right arises from a registered long term lease (which is a lease of at least 50 years including any option to renew or a lease that is for the life of the lessee) with a provision that entitles the resident to at least 50% of any capital gain.

Section 13 **Meaning of *capital gain*** – provides a definition of “capital gain”.

Section 14 **Meaning of *permanently vacating residence*** – specifies the circumstances in which a person is taken to have permanently vacated residential premises in a retirement village.

Section 15 ***Consent of residents*** – deals with the granting of residents’ consent to a proposed measure or action. The procedure for obtaining that consent is set out in schedule 1 to the Bill.

Part 3 Representations and information about retirement villages

Section 16 **Offence—advertising or promoting village before development approval given-** prohibits the promotion of a proposed retirement village, and the sale of occupation rights in it, before any development consent required for the village has been obtained.

Section 17 **Offence—advertising without approval for facilities** – prohibits any representation by the operator of a retirement village (or a person intending to carry out development for the purposes of a retirement village) that a residential care facility (such as a nursing home) will form part of, or be associated with, the village unless any necessary authorisation for the facility has been obtained.

Section 18 **Exceptions to prohibitions on advertising** - provides for exceptions to proposed sections 16 and 17. It provides that a person is not guilty of an offence under either of those sections merely because the person carries out market surveys in relation to the proposed development before the relevant consent or authorisation is obtained, or because he or she advertises the relevant development application in accordance with the requirements of the *Planning and Development Act 2007*.

The section includes a note which refers the reader to section 58 of the *Criminal Code 2002* in relation to the defendant’s evidential burden in establishing an exception or excuse provided for in the law which provides the offence.

Section 19 **Offence—representation that complex is retirement village** - prohibits any representation by the operator of a complex containing residential premises that the complex is a retirement village unless the complex falls within the definition of “retirement village” in section 10.

Section 20 Offence—giving information inconsistent with disclosure statement – prohibits information being given to a prospective resident that is inconsistent with information in the disclosure statement given the prospective resident.

Section 21 Offence—information about services and facilities – prohibits an operator from representing that a service or facility is provided or available at or to a retirement village, or is associated with the village, if the service or facility is not so provided or available or associated.

A resident may apply to the ACAT for an order directing the operator to pay compensation if a service or facility mentioned in the contract is not provided or made available by the date stated in the contract, or if there is no date in the contract, within a reasonable time.

Section 22 Offence – making certain representations in promotional material – prohibits certain representations being made about the village or the village contract.

Section 23 General inquiry document – requires the operator of a retirement village to provide a prospective resident with a general inquiry document within 14 days of request or expression of interest which gives a brief explanation of the premises, services and facilities and complies with any requirement prescribed by regulation.

Section 24 Disclosure statement – requires the operator of a retirement village to give a prospective resident a disclosure statement within 14 days of request or expression of interest containing detailed information about the village. The statement must be in the form, and contain the information, prescribed by the Act and regulation.

Section 25 Offence—failure to attach disclosure statement to village contract – makes it an offence for an operator to enter into a village contract with a prospective resident and fail to attach a copy of the disclosure statement to the village contract.

Section 26 Offence—entering into village contract less than 14 days after giving disclosure statement – makes it an offence for an operator to enter into a contract with a prospective resident less than 14 days after giving the prospective resident a disclosure statement.

Section 27 Orders for provision of general inquiry document or disclosure statement – provides that where an operator has failed to provide a prospective resident with a general inquiry document or disclosure statement, the prospective resident may apply to the ACAT for an order directing the operator to provide the general inquiry document or disclosure statement.

Section 28 Information to be given to prospective residents - provides that the director-general may approve the form and content of information that must be given to a prospective resident by notifiable instrument. It is an offence for an operator to fail to provide a prospective resident with the approved information with or before the general inquiry document is provided.

Section 29 Copies of certain documents to be made available – requires the operator of a retirement village to have available (or at a place of business in the ACT) copies of various

documents relating to the village. The documents include a site plan for the village, examples of the village contracts that an incoming resident may be required to enter into, audited accounts of the village for the previous 3 years, and the village rules. Copies are to be given to prospective residents on request. Failure to meet these requirements is an offence.

Section 30 Certain documents to be given on request – requires that where a prospective resident requests a copy of the documents mentioned in section 29, the operator must provide them within 7 days. Failure to do so is an offence.

Section 31 Orders for documents – provides that a prospective resident may apply to ACAT for an order directing the operator to comply with give copies of the documents if the operator has failed to do so.

Part 4 Entry into retirement villages

Section 32 Definitions—pt 4 – provides for definitions of terms used in part 4 of the Act.

Section 33 Offence – requesting or accepting waiting list fees – makes it an offence for an operator to request or accept payment of a waiting list fee, except where the fee is not more than \$200 and the operator has a written policy setting out how the waiting list operates and gives a copy of the policy and a receipt to the person paying the waiting list fee.

The section includes a note referring to the reader to section 58 of the *Criminal Code 2002* in relation to the onus of proof for the exception in section 34(2).

Section 34 Repayment of waiting list fees – prospective resident enters village contract – requires the operator to refund any waiting fees paid by a resident if the prospective resident enters into a village contract with the operator, unless the operator deducts the amount from any ingoing contribution paid by the resident.

Section 35 Repayment of waiting list fees – prospective resident does not enter village contract – requires the operator to refund the waiting list fee paid by a prospective resident who does not later enter into a village contract within 14 days after receiving a written request from the person.

Section 36 Orders for repayment of waiting list fees – provides that a person who paid a waiting list fee can apply to the ACAT for an order directing the operator to repay the fee, which may additionally include interest.

Section 37 Offence – requesting or accepting holding deposit – makes it an offence for an operator to request or accept payment of a holding deposit for residential premises occupied by a resident.

Section 38 Offence – failure to keep deposits in trust – makes it an offence for an operator to fail to give any holding deposit or deposit under a village contract to a trustee to hold on trust.

Section 39 Repaying etc holding deposits and ingoing contributions - requires any holding deposit paid in relation to residential premises in a retirement village to be held in trust until the prospective resident concerned enters a residence contract with the operator of the village (or the operator is notified in writing that he or she does not intend to enter such a contract or has died).

A deposit paid under a residence contract is (unless the contract relates to the sale of premises and provides for the manner in which the deposit is to be held) to be held in trust until final payment is made under the contract.

Section 40 Orders for repayment of holding deposits and ingoing contributions – provides that a person entitled to a refund may apply to the ACAT for an order directing the operator to repay the amount.

Part 5 Village contracts

Division 5.1 General

Section 41 Resident to enter village contract - prohibits the operator of a retirement village from allowing a prospective resident of the village to occupy residential premises in the village before the person enters into a contract (being a residence contract or a service contract) with the operator. The prohibition does not apply in respect of a person who occupies the premises together with a person who has entered into such a contract, or who enters into a residential tenancy agreement with the operator.

If the operator contravenes the proposed section, any continuing liability of a former occupant of the premises to pay recurrent charges or departure fees in respect of the premises ceases on the date that a person enters into occupation of the premises, and the operator must make any required refund of the former occupant's ingoing contribution (and make any other payment that is required, under a village contract, to be made to the former occupant) no later than one month after that date.

Section 42 Retirement village land to be registered under Land Titles Act – requires an operator to lodge a notice with the registrar-general that the land consisting of the retirement village is used as a retirement village. It is an offence to fail to comply with this requirement.

Notice must be given before entering into any residence contracts. A new notice must be given if the information in a notice is no longer accurate.

Section 43 Operator must give copy of retirement village notice – requires the operator to give a copy of the notice required to be given to the registrar-general to be given to the residence committee (if any) and each person with a registered interest in the land to which the notice relates.

Section 44 Application to remove retirement village notice from register – provides that a person may apply to the registrar-general for a notice to be removed. The registrar-general must remove the notice from the register if satisfied that there are no residential premises on the land and no amounts outstanding that are payable under a village contract.

Section 45 Inconsistency between village contract and disclosure statement - provides that, if any term of a village contract is inconsistent, to the detriment of the resident, with the information contained in the disclosure statement provided to the resident concerned, the contract is to be construed as if it contained the information in the statement, rather than the inconsistent term (unless the inconsistent term is a term of a standard contract prescribed by the regulations).

If there is a dispute as to whether a term is inconsistent, the resident may apply to the ACAT for an order deciding the dispute.

Section 46 Village contracts must be in writing – provides that a village contract is not enforceable by an operator against a resident unless in writing.

Section 47 Operator must allow time for reading of village contract – provides that it is an offence for an operator to enter into a residence contract with a person less than 14 days after providing the person a copy of the village contract.

Section 48 No restriction on right to obtain independent advice – makes it an offence for an operator to restrict a person from obtaining independent advice before entering a village contract with the operator or to require a resident or prospective resident to use the services of a legal practitioner or other adviser nominated by the operator.

An operator who requires a resident or prospective resident to use the services of a legal practitioner or advisor nominated by the operator, the operator must also reimburse the resident the costs of those services. A resident or prospective resident may apply to the ACAT for an order directing the operator to pay the amount.

Section 49 Amendment or replacement of village contract – voids any purported variation of a village contract (and any termination of a village contract and entry into a new one) unless the resident who is the other party to the contract concerned has obtained a certificate from a legal practitioner (of the resident's choosing) stating that the practitioner has explained the effect of the proposed variation (or the new contract) to the resident and the resident appeared to understand the explanation and to consent to the variation or the new contract. The provision does not apply if the resident concerned requested the variation or the new contract.

Section 50 Offence – failure to obtain certificate for amendment or replacement of village contract – makes it an offence for an operator to purport to amend a village contract or end a village contract and enter into a new contract with the same party and the resident has not obtained a certificate.

Section 51 Costs of obtaining certificate - specifies that the reasonable costs of obtaining the certificate are payable by the operator of the retirement village.

Section 52 Costs of preparation of village contracts - provides that the costs of the preparation of a village contract between the operator of a retirement village and a resident of the village (except as provided in the previous section) are to be borne equally by the operator

and the resident. Any registration costs (under the *Land Titles Act 1925*) associated with a lease, and any duty payable on the lease, is payable by the resident.

Section 53 Cooling-off period - allows a resident of a retirement village to rescind a village contract at any time within the period of 7 business days after entering it (the cooling-off period) unless, in the case of a residence contract, the resident has commenced to live in the residential premises concerned.

Section 54 Rescission of village contract on grounds relating to disclosure statement - permits a resident of a retirement village to apply to the ACAT for an order allowing the resident to rescind any village contract to which the operator of the village and the resident are parties on the grounds that the disclosure statement was false or misleading in a material particular or was not provided to the resident in accordance with the proposed Act. The application may be made at any time within the period of 3 months after the resident occupies residential premises in the village.

The ACAT is precluded from making the order sought in certain circumstances (for example, if it is of the opinion that the resident is in substantially as good a position as he or she would have been had the operator complied with the proposed Act in respect of the disclosure statement).

Section 55 Effect of rescission - provides that a notice of rescission of a village contract takes effect on service of the notice, and that a rescinded village contract is taken to be void.

Section 56 Consequences of resident's rescission of service contract - sets out the consequences of rescission of a service contract. If the service contract only is rescinded (leaving the residence contract on foot), the parties are to try to renegotiate the service contract. If they cannot agree, the ACAT may, on application of either party, make an order setting out the terms of the new contract.

Section 57 Consequences of resident's rescission of residence contract - sets out the consequences of rescission of a residence contract. Generally, rescission of a residence contract operates to rescind the service contract and any associated village contract. The rescinding party is to be repaid all money paid by or on behalf of that party under the rescinded contract.

If the rescinded contract relates to premises that are subject to a community land scheme, company title scheme or unit titled scheme the rescinding party must execute any necessary instruments and deliver up any necessary documents to enable the re-registration of the shares or title in the name of the operator under the rescinded contract.

Any costs associated with the rescission are payable by the operator. However, claims for compensation or other adjustments may be made to the ACAT (if, for example, the rescinding party had the benefit of possession of the residential premises concerned).

Section 58 Consequence of resident's rescission of other village contract - sets out the consequences of a rescission of a village contract other than a service contract or a residence contract. The rescinding party is to be repaid all money paid by or on behalf of that party

under the rescinded contract. Claims for compensation or other adjustments may be made to the ACAT.

Section 59 Condition report for certain residential premises - prohibits the operator of a retirement village from allowing a prospective resident of the village to occupy residential premises in the village unless the operator prepares, and gives to the prospective resident, a report relating to the condition of the premises at the commencement of the prospective resident's occupation of the premises.

A copy of the report must be annexed to the first village contract that the prospective resident enters into with the operator. However, the requirement does not apply to all residence contracts. (For example, a residence contract under which the resident will own the premises concerned is excluded from its operation.)

Section 60 Operator to give residents and prospective residents copies of village contracts - requires the operator of a retirement village to ensure that the other party to a village contract has a copy of the contract signed by the operator. A copy of a village contract signed by the resident or prospective resident of the village must be given to the resident or prospective resident if the contract is not entered into at the time the signed copy is given to the operator.

The proposed section also requires the operator to lodge for registration any sublease that is to be registered under the *Land Titles Act 1925* within one month after it is returned to the operator in registrable form. The resident is also to be provided with a copy of the fully-executed lease within 14 days after the sublease is returned to the operator after its registration.

It is an offence to fail to comply with the requirements of this section.

Section 61 Contractual rights of residents against new operator - provides that a contract between the operator of a retirement village and a resident of the village is enforceable against any operator for the time being of the village, except an operator who is merely a landowner in the village.

Section 62 New operator to convene meeting of residents - requires a person who is to become a new operator of a retirement village (if the person is to manage or control the village) to convene a meeting of the residents and to report at the meeting on the person's financial ability to operate the village and on his or her plans for its future management and operation. It is an offence to fail to comply with this requirement.

Section 63 Renovations and alteration of fixtures or fittings – provides that a resident of a retirement village may add, remove or alter fixtures and fittings, and make renovations to residential premises, with the consent of the operator of the retirement village. The operator must not unreasonably withhold consent. The consent of the operator is not required in respect of certain alterations or renovations.

Section 64 Renovations and alteration of fixtures or fittings–ACAT orders – provides that a resident may apply to the ACAT for an order allowing the addition, removal or alteration of a stated fixture or fitting in his or her premises, allowing a stated renovation to

his or her premises or amending a condition to which the operator's consent is subject. The ACAT may make an order if the withholding of the operator's consent or a condition of the consent was unreasonable.

Section 65 Renovations and alteration of fixtures or fittings – limitation of s 64 and s 65 – provides that sections 64 and 65 are limited insofar as a resident must obtain necessary consent under territory law or to obtain development consent under the *Planning and Development Act 2007*.

Section 66 Prescribed matters in village contracts – enables regulations to make provision for or with respect to matters that must be included in, and matters that must be excluded from, contracts relating to retirement villages.

Section 67 Standard form of village contract – enables regulations to prescribe a standard form of village contract.

Section 68 Effect of noncompliance with standard form contract – provides that a village contract for which a standard form is prescribed and that is entered into after the day when the form is prescribed is void to the extent it is not in or to the effect of the standard form contract.

A standard term not included in a village contract is taken to include the standard term and an amendment to a standard term has no effect.

The section also provides that a residence right given to a person under a village contract is not voided by the section, and that the parties may contract additional terms provided they are not in contravention with the Act or another territory law or inconsistent with a prescribed term.

The ACAT can order that an additional term is void if the ACAT is satisfied the term is in contravention of the Act or another territory law or inconsistent with the standard terms.

Section 69 Provision for payment of ingoing contributions – provides that a village contract that provides for an ingoing contribution may also provide that the contribution must be paid by instalments at intervals stated in the contract and for interest payable on the unpaid amount to be worked out as prescribed by regulation.

Section 70 Parties to minimise loss from breach of village contract – provides that the rules of law relating to mitigation of loss or damage on breach of a contract apply to a breach of a village contract.

Division 5.2 Settling-in period for residents

Section 71 Meaning of end of the settling-in period—div 5.2 – provides a definition for the term “end of the settling-in period” for the division.

Section 72 Ending of village contract during settling-in period – provides that a resident of a retirement village may terminate a village contract before the end of the settling-in period.

Section 73 Liability of former occupant if village contract ended during settling-in period – provides that a resident who terminates a village contract before the end of the settling-in period is only required to make certain payments under the contract.

Section 74 Operator to refund certain payments made by resident – provides that the operator is required to refund certain payments made by the resident under a village contract that is terminated in accordance with the division, and in certain cases, the proceeds from the sale of the premises.

Section 75 Time for making of payments – sets out the time within which a refund must be paid after termination under the division. If the amounts are not paid within the required time the operator or former occupant may apply to the ACAT in relation to the refund.

Section 76 Former occupant not required to pay certain amounts – provides that a resident who has terminated a village contract under the division is not required to pay certain fees.

Part 6 General management of retirement villages

Division 6.1 Village rules

Section 77 Application–div 6.1 – provides that the division does not apply to residents who own their units. There is a note in the section informing the reader that the body corporate's by laws (for a community title scheme) or the owners corporation's rules (for a units plan) apply to residents who own their units.

Section 78 Subject-matter of village rules – provides for the making of written rules relating to the use, enjoyment, control and management of a retirement village.

Section 79 Village rules to be consistent with other laws - provides that a village rule is of no effect to the extent that it is inconsistent with any law.

Section 80 Model village rules - permits the regulations to prescribe model village rules that may be adopted in respect of a retirement village.

Section 81 Operator may make village rules for new villages - allows an operator of a retirement village to make village rules for proposed villages and villages that do not have any residents.

Section 82 Village rules for existing villages - allows village rules to be made for existing retirement villages that do not have any rules in the same way that village rules may be amended.

Section 83 Proposed amendment of village rules - provides for the amendment of village rules (at the instigation of either the operator of the village or the residents) with the consent, by special resolution, of the residents.

Section 84 Operator’s objection to proposed amendment of village rules - allows the operator of a retirement village who objects to an amendment to the rules proposed by the residents to apply to the ACAT for an order prohibiting the proposed amendment.

Section 85 Operator’s concern that amendment will impose additional cost – requires the operator to seek the residents’ consent to an amendment of the approved annual budget if an amendment to the rules which has been consented to by the residents increases costs on the operator above that approved in the budget.

An operator can apply to the ACAT for an order amending the budget if the residents do not consent.

Section 86 Other applications to ACAT about village rules - allows the operator or a resident of a retirement village to apply to the ACAT for an order concerning a village rule whose validity is in dispute or that the operator or resident considers to be unjust, unconscionable, harsh or oppressive. The Tribunal is empowered to set aside the rule, to modify it or to uphold it.

Section 87 Compliance with village rules - requires the operator and residents of a retirement village to comply with the village rules.

Section 88 Compliance with village rules by people other than operator and residents - requires the operator and residents to use their best endeavours to ensure compliance with the village rules by certain other persons (such as tenants of the operator or resident or other persons in the village at the invitation of the operator or resident).

Division 6.2 Certain obligations of operators

Section 89 Offence—certain people not to be operators - prohibits any involvement of certain persons (such as a person who is insolvent under administration within the meaning of the *Corporations Law*) in the promotion or sale of residence rights in a retirement village. It also prohibits their being an operator of a retirement village or being in any way concerned in the management or control of a retirement village.

Section 90 Operator to provide secure premises - requires the operator of a retirement village to ensure that the village is reasonably secure.

Section 91 Operator to provide safe premises – requires the operator to ensure that the village generally is reasonably safe.

Section 92 Operator to provide village emergency system on request - requires the operator of a retirement village, on the request of the residents, to provide or arrange for a village emergency system. A resident may apply to the ACAT for an order directing that the operator provide or arrange for an emergency system.

Section 93 Offence – failure to provide emergency and home care service vehicles access to retirement village – makes it an offence for a retirement village to fail to take all reasonable steps to ensure that emergency and home care service personnel have unimpeded

vehicular access to the premises at all times and that residents, local emergency and home care service agencies are consulted and kept informed about any arrangements made to secure that access.

Section 94 Change in services or facilities provided at village - provides for variations (at the instigation of either the operator of a retirement village or its residents) in the services or facilities provided in the village by or on behalf of the operator. The variation may not be made unless the residents of the village, by special resolution, consent to it.

Section 95 Operator not to reduce or withdraw certain services and facilities - prohibits the operator of a retirement village from reducing or withdrawing a service or facility (despite the consent of the residents) if the development approval for the village requires that it is to be provided for the life of the village unless the development consent is amended to allow it.

Section 96 Consequence of unlawful change in services or facilities - allows a resident of a retirement village to apply to the ACAT for various orders if the operator of the village reduces or withdraws a service or facility from the village (unless agreed to by special resolution of the residents). The order sought may be, for example, for the reinstatement of the service or facility or for the payment of compensation.

Section 97 Operator not to require residents to patronise particular businesses - prohibits the operator of a retirement village from restricting the rights of a resident of the village to purchase goods and services from a person of the resident's own choosing.

Section 98 Operator not to demand power of attorney - prohibits the operator of a retirement village from requiring a resident or prospective resident of the village to give the operator, a close associate of the operator or a person nominated by the operator a power of attorney in favour of the operator, a close associate or nominated person.

The proposed section also terminates, on the commencement of the proposed section, any such power given before the commencement of the proposed section and voids any such power given after the commencement of the proposed section. However, the proposed section does not apply if the person who gave the power is a relative of the operator.

Division 6.3 Certain rights of residents

Section 99 Operator to respect rights of residents - requires the operator of a retirement village to respect the rights of residents of the village. In particular, the proposed section prohibits any interference by the operator with the residents' peace, comfort, autonomy and self-reliance. It also obliges the operator to use the operator's best endeavours to ensure each resident lives in an environment free from harassment and intimidation.

A resident can apply to the ACAT for orders relating to a failure by an operator to meet these requirements.

Section 100 Restriction of operator’s access to residential premises – makes it an offence for an operator, or person authorised by an operator, to enter residential premises while a resident has residence rights in the premises except in certain circumstances.

The operator can apply to the ACAT for access, and a resident can apply to the ACAT for a contravention of the provision.

Section 101 Right to appoint agent - provides for the appointment of a person as the agent of a resident of a retirement village for the purpose of receiving notices or other documents to be given to the resident under a village contract or the proposed Act.

Section 102 Residents to be given access to information about them - requires the operator of a retirement village to give a resident (on request) access to any information about the resident that the operator holds, and to give the resident a copy of the information if the resident requests it.

Section 103 Residents committees and organisations - provides for the establishment of a Residents Committee in a retirement village for the purposes of the proposed Act. Other committees of residents may be established for other purposes.

Section 104 Membership of residents committee – provides that a resident must not hold the same office, or hold an office performing the same (or substantially the same) functions, on the Residents Committee for the retirement village for more than 3 consecutive years except as provided by regulation. The election of a person to office in contravention of the proposed section is void.

Section 105 Regulations about residents committee - allows the regulations to make provision for or with respect to the election, functions and procedure of Residents Committees and sub-committees. The regulations may also prescribe model rules that may be adopted by a Residents Committee.

Section 106 Meetings between residents committee and operator - requires the operator of a retirement village to meet the Residents Committee (or a representative of the Committee) of the village on the reasonable request of the Committee, and vice versa.

Section 107 Operator must hold annual management meeting – provides that the operator of a retirement village is to hold an annual management meeting within 4 months of the end of a financial year for the retirement village.

Section 108 Operator must give notice of annual management meeting – provides that it is an offence for an operator to fail to give 14 days notice of an annual management meeting of the time and place of the meeting and the agenda. The notice must also include an invitation to submit written questions to the operator at least 7 days before the meeting and other questions at the meeting. Regulation may prescribe matters that must be on the agenda.

Section 109 Annual management meeting—chair – requires the operator or representative of operator authorised to answer questions on the operator’s behalf to chair the annual management meeting.

Section 110 Questions to be answered at annual management meeting – provides that the operator, or operator’s representative, is to respond to requests for information at that meeting or as soon as practicable afterwards.

Section 111 Villages without residents committee – requires the operator of a village that has no residents committee to call a meeting of the residents if requested to do so by residents from a majority of occupied premises for a complex with fewer than 10 occupied premises or the greater of 5 residents or 10% of residents (whichever is the greater) for a village with 10 or more occupied premises.

Section 112 Meetings of residents - makes it clear that the residents of a retirement village have the right to meet for the purpose of considering and voting on various matters affecting the village. It is an offence for an operator to interfere with this right.

Section 113 Attendance at meetings of residents - limits the attendance of persons other than residents at meetings of residents of a retirement village. The proposed section also makes it clear that a resident is not obliged to attend, or to vote at, any such meeting.

Section 114 Meetings of residents—attendance by investigator – provides that it is an offence for an operator to prevent or hinder an investigator attending a meeting where the residents have consented to the investigator attending a meeting of the residents.

Section 115 No restrictions on voting - voids any term of a village contract that purports to bind a resident to a particular system for the conduct of meetings and voting. It also voids any covenant (or contract or arrangement) under which a particular vote of a resident (or the resident’s failure to vote) on any matter relating to the village attracts a penalty.

Section 116 Proxies - enables a resident of a retirement village to appoint a person as the proxy of the resident for the purpose of voting on the resident’s behalf at meetings of the residents.

Section 117 Certain limitations on proxies - limits the number of proxies that a person may hold for the purposes of the proposed Act. It also specifies the way in which a person’s appointment as another person’s proxy may be revoked, and provides for its termination if it is not revoked.

Section 118 Effect of certain votes - provides that any vote or resolution of the residents of a retirement village that purports to oblige the operator of the village to abandon or amend plans for further development of the village or to cease to act as the operator of the village is not binding on the operator.

Section 119 Notice of intention to vacate - provides that a resident of a retirement village cannot be required to give more than one month’s notice in writing of an intention to vacate his or her residential premises in the village.

Division 6.4 Right of certain relatives to become residents

Section 120 Relative to ask to enter into residence contract - provides that certain relatives of residents of residential premises in a retirement village who are living in the premises with the resident at the time that the resident vacates may ask the operator to enter into a residence contract in relation to the premises (unless the resident is, or was a registered interest holder (other than a long-term sublessee) or taken to be a resident under s 8(2).)

Section 121 Application to ACAT by relative of resident – provides that if the operator does not enter into a residence contract with a relative’s request under section 120, the relative may apply to the ACAT for an order directing the operator to enter into the contract.

Section 122 Application to ACAT by operator in relation to possession of premises by relative or resident – provides that the operator may apply to the ACAT for an order requiring vacant possession if a residence contract is not entered into under section 120 and the vacant possession has not been given up to the operator.

Section 123 Application to ACAT by operator in relation to possession of premises by other person – provides that the operator may apply to the ACAT for an order requiring vacant possession for a person other than a person in section 120.

Division 6.5 Certain obligations of residents

Section 124 Residents to respect rights of other people - provides that it is a term of every residence contract that the resident will respect the rights of other residents of, and other persons in, the village.

Division 6.6 Administrators, receivers and managers

Section 125 Application for order appointing administrator - allows the director-general to apply to the Supreme Court for an order appointing a specified person as an administrator of a retirement village. Such an application may be made only if the Director-General is of the opinion that the well-being or financial security of the residents of the village concerned is at risk or the Director-General reasonably believes the operator is wilfully and repeatedly acting in contravention of an ACAT or court order or the village is the subject of an order under the section.

Section 126 No application without consent - provides that an application is not to be made unless the person the subject of the application consents to the appointment.

Section 127 Order may exempt administrator from certain obligations – provides that the order of appointment may exempt the administrator from complying with stated obligations of the operator.

Section 128 Effect of appointment - prohibits an operator of a retirement village from exercising any of the functions of the operator that the administrator is authorised to exercise while the order appointing the administrator is in force in respect of the village. The proposed

section also requires a person appointed as the administrator to comply with all the obligations of an operator of the village in respect of the functions that the administrator is authorised to exercise (unless the terms of the administrator’s appointment exempt the administrator from that requirement).

Section 129 Expenses of administration – provides that the costs incurred by an administrator are payable from recurrent charges and any other funds that would be made available to the operator if the administrator had not been appointed.

The section also provides that the Territory is not liable for any expenses incurred by the administrator or any liability of the operator.

Section 130 Administrator may amend village contract - provides that an administrator appointed under the principal Act has power, with the consent of the Director-General, to vary the approved annual budget, recurrent charges payable or the services offered by the village to assist in finding a new operator for the village and to maintain the financial viability of the village.

Section 131 Revocation of appointment – provides that the appointment of an administrator may be revoked or amended by the Supreme Court.

Section 132 Receivers and managers - requires any person appointed as a receiver, or a receiver and manager, in respect of an operator of a retirement village to comply with the operator’s obligations under the proposed Act as if the person were the operator (unless the terms of the appointment exempt the person from that requirement).

The section provides that it does not apply to the extent that it is inconsistent with the Corporations Act.

Section 133 Protection from liability—administrator, receiver or receiver and manager – provides that an administrator, receiver or receiver and manager is not civilly liable in the exercise of a function under the Act or in the reasonable belief that the conduct was in the exercise of a function under the Act.

Part 7 Financial management of retirement villages

Division 7.1 Preliminary

Section 134 Financial year of retirement village - requires the operator of a retirement village to determine a financial year for the village.

Division 7.2 Capital maintenance and replacement

Section 135 Meaning of *capital item*—div 7.2 – sets out the meaning of “capital item” for the division with reference to the capital items that the operator is not responsible for.

Section 136 Meaning of urgent—div 7.2 – defines the term “urgent” for the division in terms of repairs or replacement of capital items.

Section 137 Operators obligations—capital maintenance or replacement – sets out the obligations of the operator of a retirement village with respect to certain capital maintenance and replacement.

Section 138 Residents obligations—capital maintenance or replacement - sets out the obligations of a resident of a retirement village with respect to capital maintenance and replacement including an obligation for a resident of a retirement village to reimburse the operator of the village in respect of any damage (other than fair wear and tear) caused by the resident to an item of capital for which the operator of the retirement village is responsible.

Section 139 Resident may carry out urgent work - provides that a resident of a retirement village may carry out urgent capital maintenance or replacement after giving the operator a reasonable opportunity to carry out the work. The proposed section also provides that the operator is to reimburse the resident for any reasonable costs incurred in carrying out any such work.

Section 140 ACAT may make orders for capital maintenance and replacement - provides that the ACAT may make orders for capital maintenance and replacement in certain circumstances.

Section 141 Funding of certain capital maintenance and capital replacement - provides for the funding of capital maintenance and replacement generally.

Section 142 Capital maintenance to be included in proposed annual budget - requires that where the operator is required to supply residents with a proposed annual budget and the operator proposes to use recurrent charges or any part of the capital works fund for the cost of maintenance, the operator must include in the proposed annual budget each item of capital maintenance proposed to be carried out and the expected cost and any quotes obtained for each item, as well as provision for urgent capital maintenance.

Section 143 Capital works fund - provides for the establishment of a capital works fund. A capital works fund is to be established if recurrent charges are to be used for funding capital maintenance that will extend beyond the end of a financial year.

Section 144 Misuse capital works fund amounts – makes it an offence to use a capital works fund for anything other than meeting the cost of capital maintenance or distributing any amounts not required for capital maintenance to residents in equal shares (where consented to by the residents) or for any purpose in the regulation.

The section also provides that where the residents have agreed to a proposal by the residents committee to distribute capital works fund amounts under the section, the operator can apply to the ACAT for an order that the distribution not be made, or an order approving or amending the proposed distribution.

Section 145 Retirement village to be insured – makes it an offence for an operator to fail to insure and keep insured the village.

Section 146 Sale of capital items to residents – makes it an offence for an operator of a retirement village must not sell an item of capital for which the operator of the retirement village is responsible to a resident or prospective resident or enter into any other contract, arrangement or scheme to pass responsibility (whether directly or indirectly) for the capital maintenance or replacement of any such item to the resident.

Division 7.3 Recurrent charges

Section 147 Operator to pay certain recurrent charges – requires the operator of a retirement village to pay in relation to new residential premises in the village, an amount equal to the recurrent charges for general services payable under the village contract in relation to comparable (or the most nearly comparable) residential premises in the building.

Section 148 Amendment of recurrent charges - allows a service contract to provide for the variation of recurrent charges payable under it. The variation may be according to a fixed formula (such as in proportion to variations in the Consumer Price Index) or otherwise. If the contract does not specify the intervals at which the charges are to be varied, they must not be varied more frequently than once a year.

Section 149 Recurrent charge amended by fixed formula - requires the operator of a retirement village to give at least 14 days' written notice of a variation in recurrent charges when the variation is made according to a fixed formula.

The section makes it an offence for an operator to increase the recurrent charges otherwise than in accordance with the fixed formula or the section.

Section 150 Recurrent charges amended otherwise than by a fixed formula—not exceeding variation in CPI – The proposed section provides that the operator of a retirement village is required to give at least 14 days written notice to the residents of a retirement village if the operator proposes to vary the recurrent charges payable by the residents and the recurrent charges are to be varied otherwise than in accordance with a fixed formula and the variation does not exceed the variation in the Consumer Price Index for the period since the recurrent charges were last varied.

Section 151 Recurrent charges amended otherwise than by fixed formula—exceeding variation in CPI - requires the operator of a retirement village to give at least 60 days' written notice of a variation in recurrent charges where the contract provides that the recurrent charges are to be made otherwise than in accordance with a fixed formula and the increase would be more than the CPI increase. It also allows the operator to give a subsequent notice providing for a lesser increase (if any) in the recurrent charges.

Section 152 Amending certain recurrent charges otherwise than in accordance with Act – makes it an offence for an operator to increase the recurrent charges under section 150 or 151 and the increase is greater than any upper limits stated in the contract (if any) or not in accordance with sections 150 or 151.

Section 153 Residents consent to amendment - makes it clear that a variation notified under proposed section 106 does not take effect unless the residents consent to it or the ACAT so orders.

Section 154 ACAT orders—recurrent charges - allows the operator of a retirement village to apply to the ACAT for an order in respect of a proposed variation in recurrent charges where resident consent is required by the Act and where the residents do not consent.

The proposed section specifies the matters to which the ACAT may have regard when determining such an application (for example, the general market level of recurrent charges paid at similar retirement villages in the locality of the retirement village concerned or a similar locality). The ACAT may order that the variation is to take effect, with or without modification, or that it is not to take effect.

Section 155 ACAT orders—refund of recurrent charges – provides that a resident of a retirement village may apply to the ACAT for an order directing the refund of overpaid recurrent charges.

Section 156 Failure to give receipt for payment of recurrent charges – requires that a person who receives a payment for recurrent charges must give a receipt for the payment to the person entitled to it.

Section 157 Reduction of recurrent charges in certain circumstances – if a retirement village or destroyed or ceases to be usable, the recurrent charges payable by the resident of the village are reduced accordingly.

Division 7.4 Proposed and approved annual budgets

Section 158 Meaning of proposed annual budget—div 7.4 - is a formal provision.

Section 159 Proposed annual budget - provides that the operator of a retirement village must supply the residents of the retirement village with a proposed annual budget at least 60 days before the commencement of the financial year to which the budget relates.

Section 160 Residents may consent to not receiving proposed annual budget – provides that residents may consent to not being given a proposed budget in certain circumstances, namely that if the total of the recurrent charges collected by the operator of the village is less than \$50,000 (or other prescribed amount) and the residents of the village consent to not getting a budget.

Section 161 ACAT order—proposed annual budget – provides that a resident of the village may apply to the ACAT for an order directing the operator to give the budget (where in breach of s159).

Section 162 Residents consent to spending – provides that the operator of a retirement village must have the residents’ consent for the spending stated in the proposed annual budget for the village.

Section 163 ACAT orders—decisions about spending – in the event of deadlock between residents and the operator, ACAT may make an order in relation to the spending proposed for the financial year.

Section 164 Proposed annual budget may provide for contingencies – provides that a regulation may limit the amount a proposed annual budget may allocate for contingencies.

Section 165 Spending to be in accordance with approved annual budget – provides when a budget is taken to be the approved annual budget.

Section 166 Spending otherwise than in accordance with approved annual budget – provides offences for spending not in accordance with the approved annual budget. A defence is provided where the contravention was a variation between items in the approved annual budget and does not cause a reduction in the level of services provided by the village or cause the total expenditure to exceed the amount provided for by the approved annual budget.

Section 167 Amendment of approved annual budget – permits the amendment of an approved annual budget.

Division 7.5 Annual accounts

Section 168 Auditing of Accounts - requires the operator of a retirement village to ensure that the accounts for the village are audited annually by a person qualified to audit accounts for the purposes of the Corporations Law. If the audit fees are to be paid by the residents of the village, the fees must be itemised in the statement of proposed expenditure, the name of the auditor to be appointed must also be itemised, and the residents' consent to that appointment must be obtained.

It also requires the operator of a retirement village to ensure that village quarterly accounts (which need not be audited) are provided to residents.

Section 169 Copies of annual accounts to be given to residents – requires copies of annual accounts to be given to residents. It details the matters to be included within the accounts.

Section 170 Accounts need not be audited in certain circumstances – provides that the annual accounts of a retirement village are not required to be audited if the total of the recurrent charges collected by the operator of the village is less than \$50,000 (or other prescribed amount) and the residents of the village consent to not have the accounts audited.

Section 171 Quarterly accounts need not be given to residents in certain circumstances - provides that the operator of a retirement village is not required to provide the residents of the village with a copy of the quarterly accounts for the village if the total of the recurrent charges collected by the operator of the village is less than \$50,000 (or other prescribed amount) and the residents of the village consent to not receive a copy.

Division 7.6 Surplus or deficit of accounts

Section 172 Meaning of surplus—div 7.6 – is a formal provision.

Section 173 Any surplus to be carried over - provides that any surplus in the annual accounts of a retirement village is to be carried forward into the next financial year unless the residents of the village consent to a proposal for the expenditure of the surplus or consent to a proposal that the whole or part of the surplus be distributed to the residents of the village. The proposed section also provides that the Tribunal may order that the surplus is not to be distributed to the residents.

Section 174 Making good of deficit - provides that the operator of a retirement village is to make good any deficit in the annual accounts of the retirement village and prevents the operator from requiring the residents to contribute to the making good of any such deficit except as provided by the regulations.

Part 8 Disputes

Division 8.1 Preliminary

Section 175 Preliminary - provides that the proposed Part has effect despite anything in the proposed Act or in any other law.

Division 8.2 Dispute resolution

Section 176 Disputes between operator and resident – allows the operator of a retirement village or a resident of the village to apply to the ACAT for an order in respect of any dispute between the operator and the resident.

Section 177 ACAT jurisdiction – allows a resident of a retirement village to apply to the ACAT for an order in relation to any village contract to which the resident is a party if the resident considers the contract to be harsh, oppressive, unconscionable or unjust.

The proposed section also confers on the ACAT the same jurisdiction as the Supreme Court has in proceedings in which relief is sought in relation to a contract between an operator of a retirement village and a resident of the village.

This section does not affect the jurisdiction of the Supreme Court in relation to contracts between operators and residents of retirement villages.

Section 178 Informal resolution of disputes – makes it clear that the operator and residents of a retirement village may establish other mechanisms for the purpose of attempting, informally, to resolve disputes in the village. However, the proposed section voids any term of a village contract that provides that the parties to the contract must attempt to resolve disputes between them by any process other than the process provided for under the proposed Act.

Division 8.3 The ACAT

Section 179 Jurisdiction – empowers the ACAT to exercise the jurisdiction conferred on it by the proposed Act.

Section 180 No monetary limit on jurisdiction of ACAT – makes it clear that the ACAT is not limited in the amount of money it may order to be paid under the proposed Act.

Section 181 ACAT orders – empowers the ACAT to make various orders on application by the operator of a retirement village or a resident of the village (for example, an order that requires the operator or resident to comply with a requirement of the proposed Act or the regulations, an order for compensation, an order that restrains any action in breach of a contract or the village rules).

Part 9 Ending residence contracts

Division 9.1 General principles about ending residence contracts

Section 182 How and when residence right or contract ends – sets out the circumstances in which, and the time when, a residence right or a residence contract in a retirement village ends.

The residence right of a resident who owns his or her residential premises ends only on the completion of the sale of the premises.

A residence right arising from a contract that is the form of assignable sublease ends when the sublease is assigned.

A residence contract relating to any other residential premises in the village (and the residence right under that contract) ends on disclaimer, on the death of the resident, on frustration of the contract, if the resident abandons the premises or delivers up vacant possession to the operator in various circumstances or if the ACAT ends the contract.

Section 183 ACAT cannot end certain residence contracts – makes it clear that the ACAT does not have jurisdiction under the proposed Act to end a residence contract relating to residential premises that are owned by the resident or to decide any question as to the title to land.

Section 184 Notice of intention to seek ending of contract – requires the operator of a retirement village or a resident who intends applying to the ACAT for an order ending a residence contract to give written notice of that intention to the other party to the contract. The ACAT must not make an order ending the contract unless satisfied that notice has been given.

Section 185 Ending of residence contract if premises uninhabitable etc – provides for the ending of a residence contract on frustration of the contract (for example, if the residential

premises the subject of the contract are rendered wholly or partly uninhabitable otherwise than as a result of a breach of a village contract).

Section 186 Ending of residence contract if premises uninhabitable etc – application to ACAT – provides that a party to a residence contract for residential premises in a retirement village who receives a termination notice and thinks the premises are not in the condition stated in the notice may apply to the ACAT for an order about the condition of the premises. Clause 186 (3) sets out what the ACAT must do on receiving an application.

Division 9.2 Ending by ACAT on application of either operator or resident

The proposed Division empowers the ACAT to make orders, on the application of either the operator or a resident of a retirement village, and on various grounds, ending residence contracts relating to the village. In making such an order, the ACAT must fix a date by which the resident concerned must vacate the residential premises.

Section 187 Ending on medical grounds – provides for ending of a residence contract on the grounds that the residential premises occupied by the resident are unsuitable for occupation by the resident because of the resident’s physical or mental incapacity.

Section 188 Ending of residence contract on grounds of breach of village contract or rules – provides for the ending of a residence contract on the grounds that the operator or the resident breached his or her village contract or a village rule in such a way (for example, so seriously or so persistently) as to justify the ending of the contract. Either party may apply to the ACAT for, and the ACAT may make, an order ending the contract.

Division 9.3 Ending by ACAT on application of operator

The proposed Division deals with the ending of residence contracts by the ACAT on the application of the operator of a retirement village. In making such an order, the ACAT must fix a date by which the resident concerned must vacate the residential premises.

Section 189 Ending on grounds of resident’s causing serious damage or injury – provides for the ending of a residence contract on the grounds that the resident intentionally or recklessly caused or permitted (or is likely intentionally or recklessly to cause or permit) serious damage to any part of the village or injury to the operator or an employee of the operator or any other resident.

Section 190 Ending on grounds of upgrade or change of use – provides for the ACAT to make an order the ending of a residence contract on the grounds that the operator requires vacant possession of the residential premises concerned to carry out substantial works to improve the village, or because the land on which the village is situated is to be used for another purpose.

Division 9.4 Ending by Supreme Court on application of administrator

Section 191 Ending on grounds of retirement village ceasing to operate – provides that the administrator of a retirement village may apply to the Supreme Court for an order ending village contracts in relation to the retirement village if there is no reasonable prospect of finding a new operator for the village.

Division 9.5 Suspension or refusal of orders for ending

Section 192 ACAT may suspend or refuse order for ending contract – enables the ACAT to suspend the operation of an order setting a day by when a resident whose residence contract is ended must vacate the residential premises if it is satisfied that it is desirable to do so, after considering the relative hardship likely to be caused to the resident and other residents of the village. The proposed section also sets out the circumstances in which the ACAT may refuse to make an order terminating a residence contract.

Division 9.6 Recovery of possession of premises

Section 193 Prohibition on certain recovery proceedings in courts – provides that the operator of a retirement village does not have standing to commence proceedings in the Supreme Court or the Magistrates Court to obtain recovery of possession of residential premises in the village (except as mortgagee of the premises).

Section 194 Person not to recover possession of premises except by order – prohibits entry to residential premises in a retirement village for the purpose of recovery of possession of the premises by a person otherwise than in accordance with the Act or another Territory law. In a proceeding for an offence against the proposed section, the court may order compensation to be paid to the person against whom the offence was committed.

Section 195 Enforcement of orders for possession – provides for a sheriff's officer to enforce an order for possession of residential premises in a retirement village after the ACAT has issued a warrant authorising the sheriff's officer to do so.

Section 196 Liability of resident remaining in possession – makes a resident who fails to comply with an order of the ACAT setting a date by which the resident must vacate residential premises in a retirement village after the end of his or her residence contract liable to pay compensation to the operator for loss caused by failure to comply with the order. However, the operator must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by the taking of those steps.

Division 9.7 Abandonment of premises

Section 197 Application – div 9.7 – provides that the proposed division applies only in relation to residential premises the subject of a residence contract under which the resident is

not entitled to any repayment of ingoing contribution, or any other payment, on termination of the contract.

Section 198 Abandoned premises – enables the ACAT to make an order, on application by the operator of a retirement village, declaring that residential premises occupied by a resident of the village were abandoned by the resident on a day stated in the order.

Section 199 Right of operator to compensation where resident abandons premises – entitles the operator of a retirement village to apply to the ACAT for compensation from the resident concerned for any loss caused to the operator by the resident's abandonment of the residential premises. However, the operator must take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by the taking of those steps.

Division 9.8 Uncollected goods

Section 200 Application – div 9.8 – provides that the proposed Division does not apply in relation to residential premises that are occupied by a resident who is a registered interest holder in relation to the premises.

Section 201 Uncollected Goods Act does not apply – provides that the *Uncollected Goods Act 1996* does not apply to goods left on residential premises in a retirement.

Section 202 Delivery of uncollected goods – enables a former resident of a retirement village (or any other person having an interest in the goods concerned) to apply to the ACAT for an order for the delivery of goods left behind by the resident after the ending of his or her residence contract.

Section 203 Disposal of uncollected goods – enables the operator of a retirement village to apply to the ACAT for an order relating to goods left behind by a former resident of the village whose residence contract has been ended. Before doing so, however, the operator must send notice of his or her intention to the former resident if the operator has a forwarding address for the former resident.

Section 204 Title to sold goods – provides that a purchaser of goods sold by an operator under this division acquires a good title to the goods.

Section 205 Sale of uncollected goods in contravention of this Act – provides that it is an offence to sell, remove destroy or dispose of goods under section 203 (1) otherwise than in accordance with this division.

Section 206 Protection from liability – operator – provides that the operator of a retirement village does not incur any civil liability in relation to the operator's dealing with the goods in accordance with this division. Clause 206 (2) provides that a person who has an interest in the goods may apply to the ACAT for an order directing the operator to pay compensation to the applicant.

Part 10 Matters relating to vacation of premises

Division 10.1

Preliminary

Section 207 Meaning of *permanently vacating residence* – pt 10 – The proposed section provides that, for this part, a former occupant who died or vacated residential premises in a retirement village in the circumstances described in proposed section 120(1)(b) (Relative may ask to enter into residence contract) is taken to have permanently vacated the premises on the day the occupant died or vacated the premises.

Section 208 Meaning of *sale of residential premises* – pt 10 – The proposed section provides that a reference to the *sale of the residential premises* by a registered long-term sublessee is taken to be a reference to the sale of the residence right in respect of the premises.

Division 10.2

Recurrent charges

Section 209 Recurrent charges for optional services – provides that a resident or former occupant of a retirement village who is absent from the village for a period of 28 consecutive days is not liable to pay recurrent charges in respect of personal services in respect of the remainder of that period of absence. If the operator of the village and the resident or former occupant cannot agree on the apportionment of recurrent charges between personal services and general services, either of them may apply to the ACAT for an order making that apportionment.

Section 210 Recurrent charges for general services – registered interest holders – provides that a registered interest holder's liability to pay recurrent charges in respect of general services arising after the registered interest holder's permanently vacates the premises ceases on the earliest of the following dates (unless the contract between the operator and the resident or former occupant provides for an earlier cessation of the liability):

- (a) the date on which the operator of the retirement village enters into:
 - (i) a village contract with an incoming resident, or
 - (ii) a residential tenancy agreement with an incoming tenant, in relation to the premises, or
- (b) the date on which a person takes up residence in the premises with the consent of the operator, or
- (c) if the operator buys the premises from the former occupant—the date on which contracts for the purchase are exchanged, or
- (d) if the former occupant is a registered long-term sublessee, unless the contract between the former occupant and the operator provides for an earlier day, the earlier of the following:
 - (i) if the ACAT ended the residence contract—the date on which the former occupant delivered up vacant possession of the premises, or
 - (ii) if the former occupant delivered up vacant possession of the premises to the operator after receiving notice of the operator's intention to apply to the ACAT for an order terminating the residence contract—the date on which the former occupant permanently vacated the premises.

Section 211 Recurrent charges for general services – generally – is a similar provision relating to non-registered interest holders. The dates for cessation of liability are the same as in proposed section 210, except that the paragraph referring to exchange of contracts for the sale of the premises is omitted and a paragraph referring to the delivery of vacant possession (otherwise than after termination of the residence contract by the Tribunal or after receiving notice of the operator’s intention to apply to the Tribunal for an order terminating the contract) is added. The maximum period of time for which a non-registered interest holder can be liable for recurrent charges for general services is 42 days after delivering vacant possession to the operator.

Section 212 Time of payment of recurrent charges – provides for the former occupant to elect to pay recurrent charges either when the liability for them arises or at a later date (or partly as the liability arises and partly at a later date).

Section 213 Interest on recurrent charges – provides for interest on recurrent charges arising after the former occupant vacated the residential premises if payment is not made when the liability arises. A regulation may prescribe a maximum rate of interest.

Division 10.3 Departure fees

Section 214 Meaning of *departure fee* – explains that a departure fee is any fee calculated in relation to the period (or part of a period) during which a person has or had a residence right in a retirement village (and, in certain limited cases, in respect of a period after the termination of the person’s residence contract), or a fee declared by the regulations to be a departure fee.

Section 215 Meaning of *village contract* – div 10.3 – provides that, for this division, village contract means a village contract that provides for payment of a departure fee.

Section 216 Payment of departure fee – provides that any departure fee is payable to the operator of the retirement village. It is payable out of the former occupant’s ingoing contribution unless the former occupant owns or owned his or her premises (in which case, it is payable out of the proceeds of the sale of the premises).

Section 217 Departure fees payable – provides a departure fee is not payable to the extent that it is calculated in relation to a period occurring after a former occupant has permanently vacated the residential premises.

Division 10.4 Repair and refurbishment of residential premises

Section 218 Meaning of *refurbishment* – div 10.4 – defines refurbishment of residential premises the subject of a residence contract as meaning (for the purposes of the Division) any improvement of the premises in excess of that required to reinstate the premises to the condition they were in (fair wear and tear excepted) at the commencement of their occupation by the resident under the contract.

Section 219 Condition of premises on ending of residence contract – requires a former occupant (other than a registered interest holder) to leave his or her residential premises as nearly as possible in the same condition (fair wear and tear excepted) as the premises were in

at the beginning of the residence contract.

Provision is made for an application to the ACAT for an order in relation to a dispute between the operator and the former occupant as to whether the premises have been left in such a condition as to require repairs, or a dispute about the cost of the repairs, or a dispute about both.

Section 220 No refurbishment required – makes it clear that a former occupant who entered into his or her residence contract on or after the commencement of the proposed section is not liable to refurbish (or pay for the cost of the refurbishment of) the premises.

Division 10.5 Sale or letting of premises by certain residents

Section 221 Application – div 10.5 – makes it clear that the proposed Division applies only to residents of retirement villages who have a registered interest in his or her premises in the village.

Section 222 Options – requires an operator of a retirement village who holds an option to purchase any residential premises in the village from a resident to decide whether or not to exercise the option (and to give the resident notice of that decision) no later than 28 days after the resident permanently vacates the premises concerned. If notice is not given, the option lapses. The provision overrides any term of the option.

Section 223 Sale of premises – allows a resident of a retirement village to set the sale price for his or her residential premises, and to appoint a selling agent of the resident's choice (who may be the operator of the retirement village). Any appointment of the operator (or a person of the operator's choice) as the selling agent, if made as part of the consideration for entry into the village or otherwise at the operator's request, is voided. The proposed section sets out certain obligations of the selling agent (if the agent is the operator or a person chosen by the operator), and requires the resident to give the operator details of the selling agent if the resident appoints a person other than the operator or a person chosen by the operator.

Section 224 Operator not to interfere in sale – prohibits the operator of the retirement village from interfering in the sale.

Section 225 Costs of sale – provides that the operator and the resident are to share the costs of the sale in the same proportion (if any) as they are to share any capital gains on the sale. However, if the resident appointed a person other than the operator or a person of the operator's choice as the selling agent, the resident is liable to pay the selling agent's commission.

Section 226 Buyer and operator to enter contract – requires a vendor of residential premises in a retirement village who is not the operator of the village to give the operator sufficient notice of the sale to enable the operator to provide the purchaser with the disclosure statement and other information that the operator is obliged to provide to a prospective resident. The proposed section also makes a contract for the sale of residential premises in a retirement village conditional on the purchaser's entering into a service contract with the operator of the village. If the operator decides not to enter such a contract, the operator must advise the vendor of that decision and of the reasons for it, and must apply to the ACAT for

an order declaring that the operator is not obliged to enter into the service contract.

Section 227 Seller’s application to ACAT concerning proposed buyer – provides that, if the operator does not either enter into the service contract or apply to the ACAT within 14 days after being notified of exchange of contracts for the sale, the vendor may apply to the ACAT for an order directing the operator to enter the contract concerned.

Section 228 ACAT decision in relation to proposed buyer – provides that the ACAT, on application by the operator or the vendor in regard to the service contract, must determine whether the operator’s decision not to enter into such a contract is unreasonable in the circumstances, having regard to the physical and mental capacity of the purchaser and any other factor that the ACAT considers relevant. On making that determination, the ACAT may make an order of the kind referred to in proposed sections 226 and 227, as appropriate, regardless of whether that was the order sought.

Section 229 Letting or subletting of premises – allows a resident to let (or, in the case of a resident who is taken to be a registered interest holder for the purposes of this section by virtue of subletting) his or her residential premises in the retirement village under a residential tenancy agreement to which the *Residential Tenancies Act 1997* applies. Any such agreement must not be for a term of more than 3 years and the tenant or subtenant must be a retired person.

The resident must provide the operator with written details of the proposed agreement (and the proposed tenant or subtenant) and must not enter into the agreement unless the operator has consented in writing to it. The operator may refuse consent to a second or subsequent agreement if the proposed term, when added to the term of any preceding such agreement relating to the premises entered into by the same resident, would exceed 3 years.

If the operator refuses consent in any other case, the operator must advise the resident of that decision and of the reasons for it, and must apply to the ACAT for an order declaring that the operator is not obliged to consent to the agreement. If the operator does not apply for the order within the time allowed by the proposed section (7 days after receiving the written details the resident is required to provide), the operator is taken to have consented to the agreement.

Section 230 ACAT decision in relation to proposed tenant or subtenant – provides for the ACAT to determine, on application by the operator in regard to the proposed residential tenancy agreement, whether the operator’s decision not to consent to the agreement is unreasonable in the circumstances, having regard to the physical and mental capacity of the proposed tenant and any other factor that the ACAT considers relevant.

The ACAT may order the operator to consent to the agreement, or may declare that the operator is not obliged to consent to it. If the ACAT orders the operator to consent, the operator is taken to have consented to the agreement on the making of the order.

Section 231 Effect of granting of residential tenancy agreement under this division – provides that services under the service contract between the operator of a retirement village and the resident are to be provided to a tenant or subtenant of the resident as if the tenant or subtenant were the resident, and the contract may be enforced accordingly. It also provides that the letting or subletting of residential premises in accordance with the proposed Division does not affect any right or obligation of the resident and the operator under a village

contract.

Section 232 Operator not to interfere in letting – prohibits the operator of the retirement village from interfering in the letting of the premises, with the limited exceptions outlined in the section.

Section 233 No assignment or subletting – prohibits a tenant or subtenant under the residential tenancy agreement from assigning his or her interest under the agreement or subletting the premises the subject of the agreement.

Section 234 Legal ability to sublet – provides that, for the purposes of the proposed Division (and despite the termination of the resident’s residence contract), a resident who is a registered long term sublessee is also taken to possess a legal estate in his or her residential premises such as to enable the resident to lease the premises under a residential tenancy agreement.

Division 10.6 Payments to former occupants

Section 235 Payments to former occupants who were registered interest holders – is concerned with final payments to former occupants who owned their residential premises in a retirement village.

It requires the operator of the village to make any payment required to be made to the former occupant following the sale of the premises within 14 days after the earliest of the following (unless the contract between the operator and the former occupant provides for earlier payment):

- (a) the date on which the operator receives full payment under a residence contract with an incoming resident of the premises,
- (b) the date on which the operator enters into a village contract with an incoming resident of the premises,
- (c) the date on which the operator enters into a residential tenancy agreement with an incoming tenant of the premises,
- (d) the date on which a person takes up residence in the premises with the consent of the operator,
- (e) if the operator buys the premises from the former occupant—the date on which the operator completes the purchase.

Section 236 Statements to former occupants who were registered interest holders – this section applies if the operator makes a payment to a former occupant under proposed section 235.

At the same time as the payment is made, the operator is required to give the former occupant a statement setting out various fees and charges (such as any departure fee payable, any accrued or outstanding recurrent charges) and the amount of the payment due to the former occupant. The statement must also show how the various amounts were calculated.

Section 237 ACAT order – recalculation of amount under s 235 – this section applies if the operator must make a payment to a former occupant under section 235. Provision is made for the former occupant to apply to the ACAT for the appropriate order if the payment is not made within the time allowed by the proposed section or if the amount of the payment

is not calculated in accordance with the proposed Act and any relevant village contract.

Section 238 Payments to former occupants who were not registered interest holders – is concerned with final payments to former occupants who were not registered interest holders.

It provides that the date on which the operator of a retirement village must make any refund of the former occupant's ingoing contribution that is required, under a village contract, to be made is the earliest of the following (unless the operator and the former occupant agree on an earlier date or the contract provides for earlier payment):

- (a) the date that is 14 days after the date on which the operator receives full payment under the residence contract of an incoming resident of the premises,
- (b) the date that is 14 days after the date on which the operator enters into a residential tenancy agreement with an incoming tenant of the premises,
- (c) the date that is 14 days after the date on which a person takes up residence in the premises with the consent of the operator,
- (d) if the Tribunal terminated the residence contract—the date that is one month after the date of the termination,
- (e) if the former occupant delivered up vacant possession of the premises to the operator after receiving notice of the operator's intention to apply to the Tribunal for an order terminating the residence contract—the date that is one month after the date on which vacant possession was delivered,
- (f) the date that is 6 months after the date on which the former occupant otherwise delivered up vacant possession of the premises to the operator.

Any other payment that is required, under a village contract, to be made to the former occupant and that is dependent on the amount of the ingoing contribution of the incoming resident is to be paid to the former occupant within 14 days after the earlier of:

- (a) the payment, under a village contract, of any money to the operator, by that incoming resident, or
- (b) the incoming resident's taking up residence in the premises.

At the same time as the payment is made, the operator is required to give the former occupant a statement setting out various fees and charges (such as any departure fee payable, any accrued or outstanding recurrent charges) and the amount of the payment due to the former occupant. The statement must also show how the various amounts were calculated.

Section 239 ACAT order – recalculation of payment under s 238 – Provision is made for the former occupant to apply to the ACAT for the appropriate order if the payment is not made within the time allowed by the proposed section or if the amount of the payment is not calculated in accordance with the proposed Act and any relevant village contract.

Section 240 Payments to executors and administrators – provides that if a payment under the proposed Division is required to be made to the executor or administrator of a former occupant's estate and the operator of the retirement village concerned is unable to ascertain the identity of the executor or administrator, the operator may apply to the ACAT for an order directing the operator to deal with the money as specified in the order.

Part 11 Protection of ingoing contributions paid by residents other than registered interest holders

Part 11 makes provision for the creation of a statutory charge over land in a retirement village to ensure that a former occupant of a retirement village (other than a registered interest holder) receives the amount to which they are entitled under a village contract on the termination of that contract.

Section 241 Application—pt 11 - provides that the proposed Part applies to a village contract that provides for the refund of the whole or any part of an ingoing contribution paid by a resident of the retirement village under a village contract.

The proposed section also provides that the Part does not apply in respect of a village contract for residential premises, the occupant of which is a registered interest holder in respect of those premises.

Section 242 Creation of charge - provides that a statutory charge is created over the land within the retirement village on the day that a resident enters into a village contract to which the Part applies. The proposed section also provides that the charge is not created over land that is not registered as part of a retirement village or which is held by a resident as a registered interest holder.

Section 243 Disposal of land subject to charge - provides that it is an offence for a person to dispose of land that is subject to such a charge otherwise than in accordance with an order of the Supreme Court. The proposed section does not prevent the sale of the retirement village as a going concern.

Section 244 Effect of charge on successors of title - provides that a statutory charge is not terminated by the transfer of title in the land.

Section 245 Application for enforcement of charge - provides that certain persons may apply for an order of the Supreme Court to dispose of land that is the subject of a charge if it appears that it is unlikely that the operator of the retirement village will be able to refund any part of an ingoing contribution that a resident or former occupant is entitled to be refunded.

Section 246 Order for enforcement of charge - provides that the Supreme Court may, on the application for enforcement of a charge, order that land subject to a charge be sold, order the appointment of a person to act as an agent for the sale and decide the entitlements of residents and former residents.

The section also provides that the Court may make any other orders with respect to the distribution of the proceeds of the sale in accordance with the priority of interests prescribed in section 247 and make any other order it considers appropriate.

Section 247 Priority of interests - provides the order in which interests in land that is subject to a charge are to be satisfied from the proceeds of the sale of that land.

Section 248 Order not to disadvantage residents – provides that the Supreme Court must

not make an order under this part unless satisfied that it would be in the best interests of the majority of residents to do so.

Section 249 Removal of charge - provides that a charge created under the part remains in force until the village contract that caused the creation of the charge has been terminated and all of the operator's liabilities under that contract have been met or the land has been sold in accordance with an order under the part.

Part 12 Administration

This part deals with administrative functions of the Director-General, such as the power to issue warning notices, conduct proceedings and intervene. There is also a section granting the Director-General protection from liability.

These provisions are modelled on provisions in the NSW *Retirement Villages Act 1999*, and have been redrafted as appropriate consistent with ACT legislative drafting style and practice.

Part 13 Miscellaneous

This part deals with miscellaneous provisions, such as charges, inconsistency between this Act and the *Civil Law (Sale of Residential Property) Act 2003*, contracting out of the Act, determination of fees, approved forms and regulation-making power.

This part also includes a requirement for the Minister to review the operation of this Act as soon as practicable after the end of the Act's 2nd year of operation.

Part 14 Repeal

This part repeals the *Fair Trading (Retirement Villages Industry) Code of Practice 1999*.

Part 20 Transitional

This part deals with transitional arrangements for existing contracts, as part of transitioning from the Code of Practice to the new legislation.

This part includes a transitional regulation making power, which permits the making of a regulation to modify Territory law to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, deal with in this part.

This part expires 5 years after commencement date.

Schedule 1 Consent of residents

The schedule includes provisions relating to consent of residents (refer section 15). The schedule deals with entitlement to vote, when votes are to be taken, method of voting and special resolutions.

These provisions are modelled on provisions in the NSW *Retirement Villages Act 1999*, and have been redrafted as appropriate consistent with ACT legislative drafting style and practice.

Dictionary

The dictionary contains definitions for defined terms used in the Act. The Legislation Act contains definitions for terms used more generally in ACT legislation.