South Australia

Retirement Villages Act 2016

An Act to regulate retirement villages and the rights of residents of such villages; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Retirement Villages Act 2016*.

3—Objects

The objects of this Act are—

(a) to provide a regulatory framework for the operation of retirement villages in South Australia under which a balance is achieved between the rights and responsibilities of—

(i) residents of retirement villages; and

(ii) operators of retirement villages;

(b) to encourage best practice management standards among the operators of retirement villages;

(c) to ensure that there is proper disclosure of information to prospective residents of retirement villages;

(d) to regulate the making, content, operation and termination of residence contracts;

(e) to ensure that residents are properly consulted about matters affecting their residence in the retirement village;

(f) to provide for dispute resolution processes.

4—Interpretation

(1) In this Act, unless the contrary intention appears—

annual meeting of residents means the meeting required to be convened in accordance with section 33(1)(b);

authorised officer—see section 14;

bailiff means a bailiff appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

business day means any day except a Saturday, Sunday or public holiday;

capital fund means a contingency, sinking or other reserve fund or account established for the purposes of capital replacement or improvements, long-term maintenance or other similar items in respect of a retirement village;

community retirement village means a retirement village divided into separate residences and common property by a community plan under the *Community Titles Act 1996* or a strata plan under the *Strata Titles Act 1988*;

Consumer Price Index, or ***CPI***, means the Consumer Price Index (All groups index for Adelaide) published by the Australian Bureau of Statistics;

Deputy President means a Deputy President of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*

disclosure statement—see section 21;

dispute resolution policy—see section 45;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

eligible person means a person who has attained the age of 55 years and retired from full-time employment;

enforceable voluntary undertaking—see section 64A(1);

exit entitlement means the amount of money that is, under a residence contract, payable by the operator of a retirement village on a person ceasing to reside in the retirement village or when certain conditions specified in the contract are fulfilled and includes an exit entitlement payable in circumstances referred to in section 27(2)(b);

exit fee means the amount of money that is, under a residence contract, payable by a resident of a retirement village on the resident ceasing to reside in the retirement village or on the sale of the resident's right to reside at the retirement village;

Note—

This would include, for example, any deferred management fees, refurbishment costs and remarketing costs.

ingoing contribution means a payment (however described) made by or on behalf of a person in consideration for, or in contemplation of, the person becoming a resident in a retirement village (which includes any deposit paid but does not include a recurrent charge, an exit fee, a special levy or any other payment excluded by the regulations from the ambit of this definition);

operator of a retirement village means the person by whom or on whose behalf the retirement village scheme is administered;

period of occupation—a resident's period of occupation of a residence in a retirement village is the period—

(a) commencing on the day on which the resident enters into occupation of the residence in the retirement village; and

(b) concluding on the day on which the resident ceases to reside in the residence in the retirement village;

Note—

See also subsection (2).

premises condition report—see section 23;

President means the President of the Tribunal appointed under the *South Australian Civil and Administrative Tribunal Act 2013*;

recurrent charge means a fee, charge or other amount (as specified in the residence contract) payable by a resident to the operator of a retirement village on a recurrent basis;

register—see section 12;

Registrar means the person for the time being holding or acting in the office of Registrar under section 6;

related body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

remarketing, in relation to a residence in a retirement village, means the activity undertaken by or on behalf of the operator in advertising or otherwise marketing the sale of a right of occupation of the residence;

remarketing policy—see section 22;

residence means premises or a part of premises designed for separate occupation as a place of residence;

residence contract means a contract under which a person enters into occupation of a residence in a retirement village in accordance with a retirement village scheme;

residence rules means the rules with which residents of a retirement village are expected by the operator to comply;

resident of a retirement village means a person who has entered into occupation of a residence in accordance with the scheme and (subject to the terms of a residence contract) includes a spouse or domestic partner of such a person who—

(a) is residing with that person; or

(b) was residing with that person at the time of their death;

retirement village means a complex of residences or a number of separate complexes of residences (including appurtenant land) occupied or intended for occupation under a retirement village scheme but does not include a complex excluded from the ambit of this definition by the regulations;

retirement village dispute means a dispute between an operator of a retirement village and a resident of the retirement village about the parties' rights and obligations under this Act or the resident's residence contract (which includes, for the avoidance of doubt, a dispute arising in connection with the application of a residence rule);

retirement village scheme or ***scheme*** means a scheme established for eligible persons and their spouses or domestic partners, or predominantly for eligible persons and their spouses or domestic partners, under which—

(a) residences are occupied pursuant to a lease or licence; or

(b) a right to occupation of residences is conferred by ownership of shares; or

(c) residences are purchased from the operator subject to a right or option of repurchase; or

(d) residences are purchased by prospective residents on conditions restricting their subsequent disposal,

but does not include a scheme under which no resident or prospective resident of a residence pays an ingoing contribution in consideration for, or in contemplation of, admission as a resident under the scheme;

senior manager, in relation to a retirement village, means any person to whom the village manager reports or who is responsible for directing the activities of the village manager (but does not include a person appointed as a receiver and manager of a body corporate);

special levy—see section 21(1)(a)(iii);

special resolution means a resolution passed at a meeting of residents of a retirement village in the following circumstances:

(a) at least 15 business days written notice of the meeting, containing a statement of the proposed special resolution, must have been given to all residents;

(b) the resolution must have been passed by at least 75% of residents who vote at the meeting (either in person or by way of an absentee vote exercised in accordance with this Act);

spouse—a person is the spouse of another if they are legally married;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

village land owner, in relation to a retirement village, means the owner of the land used for the retirement village but does not include an owner who is a resident of the retirement village;

village manager, in relation to a retirement village, means the person responsible for the day to day management of that retirement village but does not include a person appointed as a receiver and manager of a body corporate.

Note—

This could be the operator or a person employed or engaged by the operator to manage the retirement village.

(2) For the purposes of this Act—

(a) a person ***enters into occupation*** of a residence in a retirement village on the day on which the person's right of occupation arises (whether or not the person chooses to exercise the right on that day);

(b) a resident's ***settling-in period*** is—

(i) the period—

(A) commencing on—

- the day on which the resident enters into occupation of the residence in the retirement village; or
- the day on which the resident signs the residence contract,

whichever is later; and

(B) concluding 90 days after the day referred to in subsubparagraph (A); or

(ii) such longer period as may be specified in the resident's residence contract;

(c) a person will be taken to ***cease to reside*** in a residence in a retirement village—

(i) when the person (or someone else on behalf of the person) delivers up vacant possession of the residence to the operator; or

(ii) when the executor or administrator of the person's estate delivers up vacant possession of the residence to the operator following the person's death; or

(iii) if—

(A) the operator decides to terminate the person's right of occupation under Part 3; and

(B) the Tribunal confirms the operator's decision to terminate the right of occupation,

at the end of the period fixed by the Tribunal within which the person must vacate the residence;

(d) a person will be taken to have delivered up ***vacant possession*** of a residence in a retirement village if—

(i) the residence is no longer occupied; and

(ii) all personal property has been removed from the residence (other than property that remains the property of the operator of the retirement village or that is to remain in the residence by agreement with the operator).

5—Application of Act

(1) Subject to this section—

(a) this Act applies to retirement villages established either before or after the commencement of this Act; and

(b) this Act binds the Crown in right of this State and (so far as the legislative power of the State permits) the Crown in any other capacity, but not so as to impose criminal liability on the Crown.

(2) The Minister may, by notice in the Gazette, confer exemptions from this Act or specified provisions of this Act—

(a) on specified religious or charitable organisations or religious or charitable organisations of a specified class; or

(b) in relation to specified retirement villages or retirement villages of a specified class.

(3) An exemption under subsection (2) may be conditional or unconditional and may be varied or revoked by subsequent notice in the Gazette.

(4) A person who contravenes or fails to comply with a condition of an exemption is guilty of an offence.

Maximum penalty: $10 000.

Expiation fee: $500.

Note—

This Act does not apply in relation to aged care facilities under the *Aged Care Act 1997* of the Commonwealth.

Part 2—Administration

Division 1—Registrar

6—Appointment of Registrar

(1) There will be a Registrar for the purposes of this Act.

(2) The Minister will appoint a Public Service employee to be the Registrar.

(3) The Minister may assign a Public Service employee to act as the Registrar—

(a) during a vacancy in the office of Registrar; or

(b) when the Registrar is absent from, or unable to discharge, official duties.

7—Registrar's functions

(1) The Registrar's functions are—

(a) to provide guidance and advice to operators of retirement villages in relation to the operation of, and matters arising under, this Act, in particular the obligations of operators under the Act; and

(b) to provide guidance and advice to residents and prospective residents of retirement villages in relation to the operation of this Act, in particular the obligations, rights and liabilities of residents and prospective residents under a residence contract and any code of conduct to be observed by residents; and

(c) to gather and maintain current information about retirement villages and retirement village schemes in South Australia, including but not limited to information about the operations of retirement villages such as information relating to occupation and vacancy rates, ingoing contributions, recurrent charges, exit entitlements, dispute resolution, terminations of residence contracts, enforceable voluntary undertakings and prosecutions for offences against the Act; and

(d) to advise the Minister on the administration and operation of this Act; and

(e) to perform any other function assigned to the Registrar under this Act or by the Minister.

(2) The Registrar may, at any time, and must, at the request of the Minister, report to the Minister on any issue concerning retirement villages.

8—Registrar's power to require information

(1) The Registrar may, by written notice, require a person to provide specified information, or information of a specified kind, that is in the person's possession and that the Registrar reasonably requires for the performance of the Registrar's functions under this Act (including any function assigned to the Registrar by the Minister under section 7(1)(e)).

(1a) A person required to provide information to the Registrar by a notice under this section must—

(a) provide the information to the Registrar within the period, and in the manner and form, stated in the notice (which must be reasonable); and

(b) if required to do so by the notice, or by a subsequent written notice given by the Registrar, verify the information by statutory declaration.

Maximum penalty: $2 500.

Expiation fee: $210.

(2) A person cannot be compelled to give information under this section if the information might tend to incriminate the person of an offence.

9—Confidential information

Information classified by the Registrar as confidential is not liable to disclosure under the *Freedom of Information Act 1991*.

10—Delegation

(1) The Registrar may delegate a power or function vested in or conferred on the Registrar by or under this Act—

(a) to a particular person or body; or

(b) to the person for the time being holding or acting in a particular office or position.

(2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation—

(a) may be absolute or conditional; and

(b) does not derogate from the power of the delegator to act in a matter; and

(c) is revocable at will by the delegator.

11—Annual report

(1) The Registrar must, on or before 31 October in every year, forward to the Minister a report on their work and operations for the preceding financial year.

(2) The Minister must, within 12 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

Division 2—Registration of retirement village schemes

12—Register

(1) The Registrar must maintain a register containing the following information:

(a) in respect of each retirement village—

(i) the name and business address of the operator of the village; and

(ii) the name and address of each site comprising the village; and

(iii) the references for the certificates of title of the land used for the village; and

(iv) the name, address and contact details of the village land owner; and

(v) the name, address and contact details of the village manager; and

(vi) the name, address and contact details of any senior manager;

(b) any other information that the Registrar considers appropriate.

(1a) Without limiting the information that the Registrar may include on the register under subsection (1)(b), the Registrar may include information relating to any of the following matters on the register:

(a) enforceable voluntary undertakings accepted by the Minister and notified to the Registrar under section 64A;

(b) findings of guilt for offences against this Act.

(2) The register is to be available for public inspection, without fee—

(a) during ordinary office hours at a public office, or public offices, determined by the Minister; and

(b) on a website determined by the Minister.

(3) The Minister must ensure that copies of material on the register can be purchased for a reasonable fee at the public office, or public offices, at which the register is kept available for inspection.

13—Notification of information required for register

(1) The operator of a retirement village established after the commencement of this section must, within 28 days after the first person enters into occupation of their residence in accordance with the scheme, give the Registrar—

(a) the name and business address of the operator; and

(b) the name and address of each site comprising the village; and

(c) the references for the certificates of title of the land used for the village; and

(d) the name, address and contact details of the village land owner; and

(e) the name, address and contact details of the village manager; and

(f) the name, address and contact details of any senior manager; and

(g) any other information that the Registrar considers appropriate.

Maximum penalty: $2 500.

Expiation fee: $210.

(2) The operator of a retirement village must, within 28 days of any change in the information given under subsection (1) (including a change by virtue of the sale of an interest in the land within the village, or the name of the operator or business address), give the Registrar notice of details of the change.

Maximum penalty: $2 500.

Expiation fee: $210.

(3) Any information required under this section must be given in a manner and form determined by the Registrar.

Division 3—Authorised officers

14—Authorised officers

(1) The following persons are authorised officers for the purposes of this Act:

(a) the Registrar;

(b) a person appointed by the Minister to be an authorised officer.

(2) An appointment under subsection (1)(b) may be made subject to conditions specified in the instrument of appointment.

(3) The Minister may, at any time, revoke an appointment of an authorised officer appointed under subsection (1)(b) or vary or revoke a condition of appointment or impose a further condition of appointment.

15—Identification of authorised officers

(1) An authorised officer appointed under section 14(1)(b) must be issued with an identity card by the Minister.

(2) If the powers of the authorised officer have been limited by conditions, the identity card issued to the officer must contain a statement of those conditions.

(3) An authorised officer must, at the request of a person in relation to whom the officer intends to exercise powers under this Act, produce for the inspection of the person the officer's identity card or other evidence of their authority.

16—General powers of authorised officers

(1) An authorised officer may (subject to any conditions of the officer's appointment) exercise the following powers for the purposes of the administration or enforcement of this Act:

(a) subject to subsection (2)—enter and inspect at any reasonable time premises, a place or a vehicle that the authorised officer believes on reasonable grounds are used for purposes connected to the management of or carrying on of the business of a retirement village and use such force as may be reasonably necessary to gain entry;

(b) require a person to produce documents in the person's possession or control for inspection;

(c) require a person who has been issued a document under this Act, or who is required to keep records under this Act, to produce the document or records for inspection;

(d) inspect, take copies of or extracts from, or make notes from, any documents or records produced and, for that purpose, take temporary possession of any such documents or records;

(e) take possession of any documents or records produced (if the authorised officer considers it necessary to do so for the purpose of obtaining evidence or protecting evidence from destruction);

(f) take such photographs, films and audio, video and other recordings as the authorised officer considers necessary;

(g) require any person in the premises, place or vehicle to answer questions or otherwise furnish information in relation to the carrying on of the business of a retirement village or a contravention of a provision of this Act;

(h) require a person who the officer reasonably suspects has committed, is committing or is about to commit, an offence against this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;

(i) require the owner or occupier (including a resident) of the premises, place or vehicle to provide the authorised officer with such assistance and facilities as is or are reasonably necessary to enable the authorised officer to exercise the functions of an authorised officer under this Act.

(2) An authorised officer cannot exercise the power conferred by subsection (1)(a) to enter a part of premises used for residential purposes except—

(a) with the consent of the owner or occupier of the premises; or

(b) on the authority of a warrant issued by a magistrate.

(3) A magistrate must not issue a warrant under this section unless satisfied on information given on oath, personally or by affidavit, that there are reasonable grounds for the issue of a warrant.

(4) In the exercise of powers under this Act, an authorised officer may be assisted by such persons as the officer considers necessary in the circumstances.

17—Power to require information etc

If an authorised officer believes on reasonable grounds that a person is capable of giving information, producing documents or answering questions in relation to a matter that constitutes, or may constitute, an offence under this Act or the regulations, the authorised officer may, by written notice given to the person, require the person—

(a) to provide an authorised officer with any such information in writing within the time and in the manner specified in the notice; or

(b) to produce to an authorised officer, in accordance with the notice, any such documents; or

(c) to appear before an authorised officer at a time and place specified in the notice and answer any such questions, either orally or in writing, and produce any such documents.

18—Offence to hinder etc authorised officers

(1) A person who—

(a) hinders or obstructs an authorised officer, or a person assisting an authorised officer, in the exercise of powers under this Act; or

(b) uses abusive, threatening or insulting language to an authorised officer or a person assisting an authorised officer; or

(c) subject to section 19—refuses or fails to comply with a requirement of an authorised officer under this Act; or

(d) provides information or answers questions in purported compliance with a requirement made or question asked by an authorised officer under this Act knowing the information or answer to be false or misleading in a material particular; or

(e) falsely represents, by words or conduct, that they are an authorised officer,

is guilty of an offence.

Maximum penalty: $10 000.

(2) A person who assaults an authorised officer, or a person assisting an authorised officer, in the exercise of powers under this Act, is guilty of an offence.

Maximum penalty: $20 000 or imprisonment for 2 years.

19—Self incrimination

A person may refuse to comply with a requirement of an authorised officer under this Division to provide information if the information might tend to incriminate the person of an offence.

Part 3—Rights of residents

Division 1—Creation and exercise of residents' rights

20—Residence contracts

(1) The operator of a retirement village must ensure that each residence contract is in writing, complies with the requirements prescribed by the regulations (if any) and includes the following information:

(a) details about the residence in respect of which the person is entering the contract;

(b) the name and contact details of the operator of the retirement village (and the manner in which the resident will be notified if the operator changes);

(c) details about the resident's rights and obligations created by or under the contract, including—

(i) the right to cool-off (that is, to rescind the contract and not proceed with becoming a resident in the retirement village); and

(ii) the right to occupation of the residence; and

(iii) recurrent charges for which the resident is liable; and

(iv) additional services and facilities available to residents of the retirement village and the costs of those services and facilities; and

(v) whether the resident may make alterations to the residence (including details of any necessary approval process that may apply) and any obligations applying at the end of the resident's right to occupation of the residence in relation to alterations made by the resident; and

(vi) any fee or charge payable in relation to the remarketing of the residence at the end of the resident's period of occupation, including the manner of calculation of such fees or charges; and

(vii) the right to terminate the right of occupation of the residence and to receive an exit entitlement; and

(viii) the amount of, or manner of calculation of, the exit fees that will be payable on the exercise of a right to terminate the right of occupation of the residence; and

(ix) the operator's dispute resolution policy;

(d) information about—

(i) who will be responsible for repairing or replacing the fixtures, fittings and furnishings provided in the residence and how the cost of repairing or replacing such fixtures, fittings and furnishings is to be funded; and

(ii) who will be responsible at the end of the contract for reinstating the residence to the same condition as when the resident first entered into occupation (allowing for fair wear and tear such as deterioration of the condition of the premises or a fixture or fitting caused by reasonable or natural environmental forces); and

(iii) who will be responsible at the end of the contract for any work to improve the residence in excess of that required to reinstate the premises to the condition it was when the resident first entered into occupation;

(e) any other information prescribed by the regulations.

Maximum penalty: $35 000.

(2) A residence contract will be taken to include a warranty on the part of the operator of the correctness of the information contained in the documents provided under section 22 (subject to any written alteration made by the operator with the consent of the resident on or before the signing of the contract by the operator), and that warranty prevails over any inconsistent contractual term unless the resident elects to rely on the contractual term (and then the contractual term will prevail to the extent of any inconsistency).

(3) For the purposes of subsection (1)(c)(ii), if the right to occupation under a residence contract is conferred pursuant to a lease or licence or by ownership of shares, the residence contract must clearly state at the front of the contract that—

(a) the right to occupation under the contract is conferred pursuant to a lease or licence or by ownership of shares (as the case requires); and

(b) the person entering into the contract as a prospective resident is not purchasing the residence.

21—Disclosure statements

(1) The operator of a retirement village must ensure that each disclosure statement is in writing, complies with the requirements prescribed by the regulations (if any) and includes—

(a) information about the financial arrangements relating to residents of the retirement village including—

(i) information about—

(A) all fees and charges that the person would be responsible for under the residence contract (whether as an ingoing contribution, as a recurrent or other fee or charge payable by a resident or as an exit fee) including a description of each fee or charge and the amount of the fee or charge or manner in which the fee or charge will be calculated; and

(B) what the operator does with the fees and charges; and

(C) any utilities, services or facilities provided or available to residents of the village (such as electricity, telephone or Internet provided by a third party) that the operator has an interest in or would obtain any fee or reward in relation to; and

(D) the manner in which the resident's exit entitlement will be calculated and the effect of section 30; and

(E) the insurance arrangements that are in place in relation to the village; and

(ii) a statement of—

(A) estimated exit entitlements and exit fees payable under the residence contract in the event that the right to occupation of the residence under the contract is terminated at 2 years, 5 years and 10 years after the contract is entered into; and

(B) the manner of calculation of the estimated entitlements and fees referred to in subsubparagraph (A) and any inbuilt assumptions used in such a calculation; and

(C) when an exit entitlement is payable; and

(iii) a statement advising that a resident may be required to pay a fee, charge or other amount to the operator to enable the operator to recover an unforeseen expense of the retirement village (a ***special levy***); and

(b) information about—

(i) the number of persons residing at the retirement village, and the percentages of residents—

(A) occupying a residence pursuant to a lease or licence; and

(B) occupying a residence pursuant to a right to occupation conferred by ownership of shares; and

(C) occupying a residence that they have purchased; and

(D) occupying land within the village pursuant to a lease or licence under section 57; and

(ii) any limitation or requirement that applies, or is known to apply at a future time, in relation to a resident's choice of provider for utilities, services and facilities that are provided or available to residents of the village (such as electricity, telephone or Internet services); and

(iii) any special levy in place and payable by residents of the retirement village, including the purpose of the special levy, the amount and frequency of payments and the proposed date of final payment; and

(iv) any major capital item expenditure project in place or planned for the next 2 years, including the cost of the project and how it will be funded; and

(c) a statement advising that—

(i) the disclosure statement is not a replacement for the residence contract but is intended only as a summary of certain information contained in the contract; and

(ii) the prospective resident must ensure that they understand the terms of the residence contract; and

(iii) the estimated exit entitlements and exit fees included under paragraph (a)(ii) are estimates only and are subject to change depending on circumstances prevailing at the relevant time in the future, such as the amount of a new ingoing contribution; and

(iv) it is recommended that the prospective resident seeks legal and financial advice about the residence contract; and

(d) any other information or statement prescribed by the regulations.

Maximum penalty: $35 000.

(2) For the purposes of subsection (1)(a)(ii), estimates of exit entitlements and exit fees, including the manner of calculation of the entitlements and fees and any inbuilt assumptions used in such a calculation, must be reasonable in the circumstances.

(3) Information provided by an operator under subsection (1)(b) must be as up to date as reasonably practicable, but in any event accurate as at 1 July of the financial year within which the information is provided to a prospective resident.

Maximum penalty: $10 000.

Expiation fee: $500.

22—Information to be provided before residence contract entered into

(1) Subject to subsection (2), the operator of a retirement village must, at least 10 business days before a person enters into a residence contract, give the person a copy of each of the following documents:

(a) the residence contract;

(b) the disclosure statement;

(c) if the contract relates to a retirement village already established—

(i) the financial statements presented at the last annual meeting of residents of the village, including a written statement of any subsequent change in the affairs of the village and the operator that may significantly affect the resident's decision to enter the village; and

(ii) a copy of the minutes of the last 2 annual meetings of residents of the village (if 2 or more such meetings have been held) or of the last annual meeting (if only 1 such meeting has been held);

(d) the residence rules;

(da) the policy applying at the retirement village for dealing with surplus and deficits in the accounts relating to recurrent charges for any financial year;

(e) the policy of the operator to be applied for the remarketing of residences (the ***remarketing policy***);

(f) any code of conduct to be observed by the operator, village manager, senior manager, person employed or engaged to work at the retirement village or residents;

(g) any other document prescribed by the regulations.

Maximum penalty: $35 000.

(2) The requirement in subsection (1) to provide documents at least 10 business days before a person enters into a residence contract does not apply if—

(a) the person has received the documents referred to in subsection (1); and

(b) the person's legal representative has confirmed, by notice in writing, the provision of legal advice to the person in relation to the documents and the proposal to enter into the residence contract; and

(c) the person has given notice in writing that they wish to enter into the contract before the 10 business day period referred to in subsection (1) has expired.

23—Premises condition report

(1) The operator of a retirement village must, before a person enters into occupation of a residence in a retirement village, complete and provide to the person a report (a ***premises condition report***) providing detailed information about—

(a) the condition of the fixtures, fittings and furnishings provided in the residence; and

(b) who has responsibility under the residence contract for the maintenance, repair and replacement of fixtures, fittings and furnishings provided in the residence and, if the operator is responsible for the maintenance, repair and replacement, how the maintenance, repair and replacement will be funded; and

(c) any other information prescribed by the regulations.

Maximum penalty: $35 000.

(2) A premises condition report must be in writing and comply with the requirements (if any) prescribed by the regulations (which may, without limitation, prescribe the form of a premises condition report).

Maximum penalty: $10 000.

Expiation fee: $500.

(3) A person who enters into occupation of a residence in a retirement village must complete the premises condition report provided to the person by the operator and return the completed report to the operator within 10 business days of entering into occupation of the residence.

(4) A resident who fails to return a completed report in accordance with subsection (3) is taken to have agreed to the premises condition report as provided to the resident by the operator.

24—Rights in relation to contract etc

(1) An operator of a retirement village must not, without the approval of the Minister—

(a) make a representation to a prospective resident that is inconsistent with information given to the prospective resident under this Division; or

(b) give information to a prospective resident under this Division that is inconsistent with a representation made by the operator to the prospective resident.

Maximum penalty: $35 000.

(2) For the purposes of subsection (1), a representation made by an employee or agent of an operator will be taken to be a representation of the operator unless the operator proves that the person was not acting in the course of their employment or agency.

(3) Subject to subsection (4), a prospective resident is entitled to rescind the residence contract (to ***cool-off***) at any time within the period of 10 business days after the day on which the prospective resident signed the contract.

(4) If the prospective resident—

(a) enters into occupation of the residence before the end of the period referred to in subsection (3); and

(b) signs a written waiver acknowledging that the operator has informed them of the entitlement to cool-off and they have chosen to waive that entitlement,

the prospective resident will be taken to have waived the entitlement to cool-off.

(5) A contract is rescinded under this section by written notice to the operator.

(5a) If a person rescinds a residence contract in accordance with this section, the operator must take all reasonable steps to refund the ingoing contribution paid by the person within 10 business days after—

(a) if the operator requests the person to provide the operator with the person's payee details under subsection (5b)—the payee details are provided to the operator; or

(b) in any other case—the rescinding of the residence contract.

Maximum penalty: $10 000.

Expiation fee: $500.

Example—

If an operator has engaged an external trustee service to hold funds received as an ingoing contribution from a person who rescinds a residence contract in accordance with this section, a direction from the operator to the trustee service to release the funds to the person as soon as reasonably practicable will be reasonable steps taken by the operator to refund the ingoing contribution to the person.

(5b) A resident who is entitled to a refund under this section must, at the request of the operator made by notice in writing to the resident, provide the operator with the resident's payee details for the purposes of the refund being made, and the payee details must be provided by the resident in accordance with any requirements specified in the regulations (and the refund to the resident will not be enforceable until such details have been provided).

(6) A residence contract may be enforced against the operator for the time being of the retirement village.

25—Offences

(1) If the right to occupation of a residence under a residence contract or a proposed residence contract is conferred pursuant to a lease or licence or by ownership of shares, a person must not represent that a resident or prospective resident (as the case requires), by entering into the contract, purchases the residence.

Maximum penalty: $35 000.

(2) A person must not knowingly make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided to a prospective resident under this Division.

Maximum penalty: $35 000.

Division 2—Financial matters

25A—Residence contract holding deposits

(1) The operator of a retirement village must not seek or accept a deposit from a person in contemplation of the person becoming a resident in the retirement village that exceeds—

(a) $5 000; or

(b) if an amount is prescribed by the regulations for the purposes of this paragraph, that amount.

Maximum penalty: $10 000.

Expiation fee: $500.

(2) If the operator of a retirement village accepts a deposit from a prospective resident in contemplation of the person entering into occupation of a particular residence under a residence contract, the operator must not, during the deposit holding period—

(a) increase a fee or charge under the residence contract that the person would be responsible for; or

(b) enter into a residence contract for the residence with another person.

Maximum penalty: $10 000.

(3) If an operator contravenes a provision of subsection (2), the prospective resident who had paid a deposit in contemplation of entering into occupation of the residence may apply to the Tribunal for an order that an increase in a fee or charge contrary to subsection (2)(a), or a residence contract entered into by the operator with another person contrary to subsection (2)(b) (as the case requires) is void and of no effect.

(4) The Tribunal may, on application under subsection (3) make any of the following orders:

(a) in the case of a contravention of subsection (2)(a), order that the increase to a fee or charge is void and of no effect;

(b) in the case of a contravention of subsection (2)(b), order that the residence contract entered into in contravention of that subsection is void and of no effect;

(c) any ancillary or incidental orders as the Tribunal sees fit.

(5) If the operator of a retirement village accepts payment of a deposit from a person in contemplation of the person entering into occupation of a residence in the retirement village but the person does not enter into a residence contract, the operator must, within 10 business days of any of the following occurring, take all reasonable steps to refund the deposit in full to the person:

(a) the person gives the operator notice that they do not intend to sign the residence contract;

(b) the operator enters into a residence contract with another person for the residence or otherwise determines to no longer hold the residence for the person.

Maximum penalty: $10 000.

Expiation fee: $500.

Example—

Where an operator has engaged an external trustee service to hold funds received as a deposit from a person who does not proceed, a direction from the operator to the trustee service to release the funds to the person as soon as reasonably practicable will be reasonable steps taken to refund the deposit to the person.

(6) In this section—

deposit holding period in relation to a deposit paid by a person to an operator in contemplation of the person entering into occupation of a particular residence, means the period commencing on the day the operator receives the deposit and ending on the earliest of the following:

(a) the person gives the operator notice that they do not intend to sign the residence contract;

(b) the 12th business day following the day on which the prospective resident received the documents required to be given to the prospective resident under section 22(1);

(c) the day agreed between the operator and the prospective resident for the purposes of this paragraph at the time the deposit was paid.

26—Ingoing contributions

(1) Subject to subsection (2), an ingoing contribution must be held in trust (in an ADI account or in a form of investment in which trustees are authorised by statute to invest trust money) until the person by or on whose behalf the ingoing contribution was paid enters into occupation of the residence.

Maximum penalty: $35 000.

(2) The Minister may, on the application of an operator, grant an exemption from subsection (1) if satisfied of the operator's capacity and willingness to provide residences in accordance with a contract entered into between the operator and a prospective resident.

(3) An exemption may be conditional or unconditional and if an operator contravenes or fails to comply with a condition of an exemption, the operator will be guilty of an offence.

Maximum penalty: $10 000.

27—Exit entitlements

(1) This section applies despite the terms of a residence contract (but subject to any order of the Tribunal under subsection (7)).

(2) If a residence contract provides for payment of an exit entitlement when certain conditions specified in the contract are fulfilled, the resident (or a person claiming under the resident) may recover the amount payable as a debt from the operator, for the time being, of the retirement village when—

(a) the specified conditions are fulfilled; or

(b) a period of 12 months has elapsed since the end of the relevant period; or

(c) the operator agrees to pay the exit entitlement to the resident,

whichever occurs first.

(5) If—

(a) an amount becomes payable to a person in accordance with subsection (2)(b); and

(b) that amount should, in accordance with the residence contract, be calculated based on the consideration paid on sale of a right to reside in the retirement village; and

(c) the sale referred to in paragraph (b) has not yet occurred,

the following provisions apply:

(d) the person to whom the exit entitlement is payable may, by written notice given to the operator of the retirement village within the prescribed period, elect not to receive the payment at that time but to wait until the exit entitlement becomes payable in accordance with subsection (2)(a);

(e) if the person does not so elect—the amount payable must be calculated in the manner provided in the residence contract but as if the consideration paid on sale of the relevant right to reside in the retirement village was the current market value of that right.

(6) For the avoidance of doubt, if a resident receives a payment in accordance with subsection (2)(b), that payment is taken to be the exit entitlement for the purposes of the contract (and is not subject to any adjustment when the conditions specified in the contract for payment of the exit entitlement later occur).

(7) The Tribunal may, on the application of the operator of the retirement village made within the period referred to in subsection (2)(b), extend that period if satisfied that special circumstances exist.

(9) The Tribunal may, when making an order under subsection (7), make any consequential or ancillary orders it thinks fit.

(10) The rights of a resident to payment of an exit entitlement are a charge on land in the retirement village other than—

(a) a residence owned by a resident; or

(b) common property in a community retirement village,

provided that the charge only operates to the extent of the ingoing contribution paid by the resident.

(11) Despite the *Real Property Act 1886*, the charge referred to above ranks in priority to any other mortgage, charge or encumbrance over the land to which the charge relates.

(12) The charge referred to above can only be enforced—

(a) with the approval of the Supreme Court; and

(b) subject to any conditions to which the Supreme Court's approval is subject.

(13) If the Supreme Court approves the enforcement of the charge it may, subject to the conditions stipulated by the Court, be enforced in the same way as a mortgage registered under the *Real Property Act 1886*.

(14) If the Supreme Court approves the enforcement of the charge in a case where the operator is not the village land owner, the village land owner may, subject to any order of the Supreme Court, recover the amount of the charge so enforced from the operator as a debt.

(15) An operator is guilty of an offence if the operator fails to take all reasonable steps to pay the whole or any part of an exit entitlement within 10 business days after—

(a) if the operator requests the resident to provide the operator with the resident's payee details under subsection (18)—the payee details are provided to the operator; or

(b) in any other case—the resident becomes entitled to recover the amount as a debt in accordance with this section.

Maximum penalty: $10 000.

Expiation fee: $500.

Example—

If an operator has engaged an external trustee service to hold funds being the exit entitlement of a resident, a direction from the operator to the trustee service to release the funds to the person as soon as reasonably practicable will be reasonable steps taken by the operator to pay the exit entitlement to the person.

(16) If a resident of a retirement village disagrees with the operator's determination of the market value of the right to reside in a residence made for the purposes of determining an exit entitlement, the resident may require the operator to obtain an independent valuation in accordance with any requirements prescribed by the regulations (and in such a case the operator may recover half of the costs of obtaining the valuation from the resident as a debt or by subsequently deducting those costs from the resident's exit entitlement).

(17) A reference in this section to a ***resident*** includes—

(a) any person who has entered into a residence contract (whether or not the person has entered into occupation of the residence); and

(b) any person who has entered into a residence contract but has not entered into occupation of the residence as a result of a failure of the operator to comply with a term or condition in the residence contract,

and such a person will, for the purposes of this section, be taken to have ceased to reside in the residence on the day on which the person gave written notice to the operator that they did not intend to enter into occupation of the residence and wished to terminate the residence contract.

(18) A resident who is entitled to a payment under this section must, at the request of the operator made by notice in writing to the resident, provide the operator with the resident's payee details for the purposes of the payment being made, and the payee details must be provided by the resident in accordance with any requirements specified in the regulations (and the debt to the resident will not be enforceable until such details have been provided).

(19) In this section—

relevant period, in relation to a residence in a retirement village, means a period of 30 business days commencing on the first business day after the resident delivered up vacant possession of the residence.

28—Payment of capital fund contributions deducted from exit entitlement

(1) If an amount is deducted from an exit entitlement as a contribution to a capital fund, the operator of the retirement village must pay that amount into the relevant fund or account—

(a) within 10 business days after making the deduction; or

(b) if subsection (2) applies—in accordance with subsection (2).

Maximum penalty: $5 000.

Expiation fee: $315.

(2) If an exit entitlement is paid to a resident in accordance with section 27(2)(b), the operator may, instead of paying an amount deducted from it into a fund or account within 10 business days (in accordance with subsection (1)(a)), pay the amount into the relevant fund or account—

(a) if the operator determines that the residence will not be subject to another residence contract—at any time before the end of the financial year in which the exit entitlement was paid; or

(b) in any other case—at any time before another person enters into occupation of the residence,

provided that the operator must keep a record of the outstanding payments, and identify them in any relevant financial statements prepared for the purposes of this Act (while those payments remain outstanding).

(3) If any amounts are deducted from an exit entitlement as contributions to 1 or more capital funds, the total amount that is deducted must not exceed—

(a) in relation to an amount deducted under a residence contract entered into before the commencement of this subsection—an amount that is 12.5% of the current market value of the residence to which the exit entitlement relates; or

(b) in relation to an amount deducted under a residence contract entered into after the commencement of this subsection—the lesser of the following amounts:

(i) an amount that is 1% of the current market value of the residence to which the exit entitlement relates multiplied by the number of years (including any part year) of occupation of the residence under the residence contract;

(ii) an amount that is 12.5% of the current market value of the residence to which the exit entitlement relates.

Note—

This subsection provides a cap on the deductions. If the residence contract provides for some lesser amount as the deduction, then this subsection will not apply.

(4) If an operator deducts an amount from an exit entitlement in contravention of subsection (3) the operator is guilty of an offence.

Maximum penalty: $ 35 000.

(5) For the purposes of subsection (3), the ***current market value*** of a residence to which an exit entitlement relates is—

(a) if the right to reside in the retirement village has been sold—the amount paid by the new purchaser as an ingoing contribution; or

(b) in any other case—calculated in the manner provided in the residence contract but as if the consideration paid on sale of the right to reside in the retirement village was the current market value of that right.

29—Arrangements if resident is absent or leaves

(1) If a resident is absent from a retirement village for a continuous period of at least 28 days, the resident is not liable to pay, in respect of a period of absence after those 28 days, any amount in respect of any personal service that the retirement village (or the operator) ceases to provide to the resident because of their absence from the retirement village.

(2) If a resident ceases to reside in a retirement village—

(a) the resident ceases to be liable to pay any amount (other than an amount that has already accrued) in respect of any personal service that the retirement village (or the operator) formerly provided to the resident; and

(b) the operator must assume responsibility for the payment of any recurrent or other charges in respect of the residence formerly occupied by the resident, or otherwise payable by the resident in connection with the retirement village (other than with respect to any amount attributable to a charge that has already accrued).

Note—

Other charges in respect of the residence, or in connection with the retirement village, that the operator must assume responsibility for in accordance with this provision would include, for example, council rates, water rates and emergency services levy.

(3) If—

(a) an operator must assume responsibility for recurrent or other charges on account of a resident ceasing to reside in a retirement village; and

(b) the resident is entitled to the payment of an exit entitlement,

then the operator is entitled, subject to subsection (4), to recover from the resident an amount equal to the amount paid by the operator for recurrent or other charges that would otherwise have been payable by the resident over the prescribed period.

(4) An amount recoverable under subsection (3)—

(a) cannot exceed the amount of the exit entitlement payable to the resident (and if it would exceed that amount, the amount recoverable under subsection (3) must be reduced so as to equal the amount of the exit entitlement payable to the resident); and

(b) cannot be recovered until the exit entitlement is due to be paid to the resident (and may then be recovered as a deduction from the exit entitlement payable to the resident).

(5) For the purposes of subsection (3), the ***prescribed period***, in relation to a resident who has ceased to reside in a retirement village, is—

(a) unless paragraph (b) applies—the period of 6 months from the day on which the resident ceased to reside in the retirement village; or

(b) if the Tribunal has, on the application of the operator, determined that the prescribed period for the purposes of that subsection should in the circumstances of the particular case be longer than 6 months—the period determined by the Tribunal,

subject to the qualification that the prescribed period will in any event come to an end when the residence occupied by the resident before they left the retirement village is resold or relicensed, or otherwise taken over or occupied by another resident.

(6) The Tribunal should not make a determination extending the prescribed period under subsection (5) unless the Tribunal is satisfied that in the circumstances of the particular case it would be harsh and unreasonable to limit the prescribed period to 6 months.

(8) If an operator does not make 1 or more payments for which the operator must assume responsibility under subsection (2)(b) at the same time as the resident would have been required to make the payments if they had remained in the retirement village, the operator—

(a) must keep a record of the outstanding payments, and identify them in any relevant financial statements prepared for the purposes of this Act (while those payments remain outstanding); and

(b) must make the outstanding payments before any other person enters into occupation of the residence; and

(c) must not attempt to recover the outstanding payments by increasing the recurrent charges payable by other residents.

Maximum penalty: $5 000.

Expiation fee: $315.

(9) In this section—

personal service means a service provided to a resident individually (rather than to residents generally).

30—Arrangements if resident leaves to enter residential aged care facility

(1) A resident of a retirement village—

(a) who has been approved under the *Aged Care Act 1997* of the Commonwealth to enter into residential care at an aged care facility provided by an approved provider under that Act; and

(b) who, in order to do so, chooses to pay a refundable accommodation deposit or a refundable accommodation contribution under that Act; and

(c) who does not have ready access to funds to make the payment, or whose personal finances would be seriously affected by any such payment; and

(d) who will be entitled, on conditions specified in the residence contract being fulfilled or otherwise in accordance with section 27, to payment of an exit entitlement,

may, within 60 days after being so approved for entry into the facility or ceasing to reside in the village (whichever is the later), apply to the operator for payments to be made to the aged care facility on behalf of the resident under this section.

(2) The operator may require a resident to provide evidence of a kind prescribed by regulation with an application under subsection (1).

(3) The operator must, within 30 days after receiving an application properly made under this section, commence making payments to the aged care facility for the daily accommodation payment applicable to the resident's care at the aged care facility.

(4) The operator must continue to make the payments referred to in subsection (3) until—

(a) the total amount of the payments made by the operator on behalf of the resident under this section equals 85% of the operator's reasonable estimate of the amount of the resident's exit entitlement; or

(b) the resident becomes entitled to be paid the resident's exit entitlement,

whichever occurs first.

(5) If an operator fails to pay an amount as required under this section, the operator is guilty of an offence.

Maximum penalty: $10 000.

Expiation fee: $500.

(6) An operator may recover all amounts paid on behalf of a resident under this section by deducting the total of such amounts from the resident's exit entitlement.

31—Certain taxes, costs and charges must not be charged to residents

(1) Subject to subsection (2), land tax payable in respect of any of the land comprising a retirement village is not recoverable by the taxpayer directly or indirectly from the residents of the village.

(2) Subsection (1) does not prevent a taxpayer from recovering directly from the resident of a residence land tax payable in respect of that residence and its appurtenant land if the residence is not being occupied by the resident as their principal place of residence.

(3) Subject to this Act, the operator of a retirement village must assume responsibility for—

(a) costs relating to the depreciation, amortisation or writing-off of assets of the retirement village; and

(b) costs incurred by the operator in obtaining legal advice or undertaking legal proceedings relating to the retirement village; and

(c) fines or other penalties incurred by the operator; and

(d) fees, charges or other monetary amounts payable by the operator in respect of newly constructed residences in a retirement village that are not yet subject to a residence contract,

and must not attempt to recover these amounts by increasing the recurrent charges payable by residents.

(4) Despite any provision of a residence contract or other agreement, a resident or prospective resident is not liable to pay recurrent or other charges relating to a residence in a retirement village (other than an ingoing contribution) in respect of a period before they entered into occupation of the residence.

(5) A person must not charge an amount as a fee or charge to a resident in relation to the remarketing of a residence under a residence contract unless—

(a) the amount is as specified in, or calculated in accordance with, the residence contract; or

(b) if the residence contract was entered into before the commencement of this paragraph and does not specify the fee or charge or the manner of its calculation—the amount represents the reasonable costs incurred by the operator in relation to the remarketing of the residence (which may include a reasonable portion of the costs of the general marketing strategy of the retirement village).

Maximum penalty: $10 000.

Expiation fee: $500.

31A—Recurrent charges

(1) The operator of a retirement village must give a resident at least 10 business days' written notice of any proposed variation to a recurrent charge payable by the resident under the resident's residence contract.

Maximum penalty: $10 000.

Expiation fee: $500.

(2) A resident of a retirement village is not required to pay any increase in a recurrent charge unless notice of the increase is given as required under subsection (1).

(3) The operator of a retirement village must not increase recurrent charges payable under a residence contract by an amount that is greater than—

(a) if the residence contract provides for the recurrent charges to be varied by specified amounts—the specified amounts; or

(b) if the residence contract provides for the recurrent charges to be varied according to a fixed formula—the amount calculated under the fixed formula; or

(c) in any other case—an amount that is the CPI percentage increase,

unless—

(d) a majority of the residents whose recurrent charges will be affected by the increase agree to the increase by resolution passed at a meeting of those residents; or

(e) the increase is allowed under subsection (4); or

(f) the Tribunal makes an order under subsection (6) that the increase is to take effect.

Maximum penalty: $10 000.

Expiation fee: $500.

(4) For the purposes of subsection (3)(e), an increase in a recurrent charge relating to a retirement village is allowed to the extent that the charge is attributable to—

(a) an increase in rates, taxes or charges levied under an Act in relation to the retirement village land or its use; or

(b) an increase in the salary or wages of a person engaged in the operations of the retirement village and payable under an award, certified agreement or other industrial instrument made, approved, certified or continued in force under the *Fair Work Act 1994* or an Act of the Commonwealth; or

(c) an increase in insurance premiums, or insurance excesses paid, in relation to the retirement village or its use; or

(d) subject to subsection (5), an increase in charges applying under prescribed maintenance contracts relating to the operations of the retirement village; or

(e) an increase in the rates applying to utilities supplied to the retirement village.

(5) Before increasing the amount included in a recurrent charge that applies under a prescribed maintenance contract, the operator must consider whether there is a more cost-effective alternative to the maintenance service.

(6) The Tribunal may, on application by an operator for an order that an increase to recurrent charges payable by residents take effect—

(a) order that the proposed variation is to take effect, with or without modification; or

(b) order that the proposed variation is not to take effect.

(7) An operator may only apply to the Tribunal under subsection (6) if a meeting of the residents whose recurrent charges will be affected by the increase has been convened and the residents resolved to not agree to the increase in the recurrent charges.

(8) In determining an application made under this section, the Tribunal may have regard to the following:

(a) the level and cost of services and facilities provided for in the proposed annual budget;

(b) any proposed variations (including additions) to those services and facilities, being variations to which the residents have agreed;

(c) the cost of general services required to be provided by the operator;

(d) the frequency and amount of past variations of the recurrent charges;

(e) any other relevant matter.

(9) For the purposes of this section, the ***CPI percentage increase***, in relation to a proposed increase in a recurrent charge under a residence contract, is the increase (rounded to the nearest dollar) that would result from the recurrent charge being increased in proportion to the difference between—

(a) the CPI published most recently before 30 June in the financial year that precedes the financial year in which the increase is to take effect; and

(b) the corresponding CPI published 12 months before the Consumer Price Index referred to in paragraph (a).

(10) In this section—

prescribed maintenance contract means a contract for the provision of maintenance services for—

(a) security infrastructure and systems; or

(b) lift infrastructure and systems; or

(c) waste management infrastructure and systems; or

(d) any other infrastructure or system of a kind prescribed by the regulations.

Division 3—Meetings

33—Convening meetings of residents

(1) The operator of a retirement village—

(a) may convene a meeting of the residents at any time; and

(b) must convene such a meeting on an annual basis.

(2) The annual meeting must be held not more than 4 months after the end of the financial year that applies in relation to the retirement village.

(3) The annual meeting must be chaired by a representative of the operator who is authorised to speak on behalf of the operator and to give responses to questions put at the meeting in accordance with the requirements of this section.

(4) A meeting of residents may also be convened by a residents' committee.

(5) A meeting will be convened by sending to each resident, at least 10 business days before the day of the meeting, a written notice setting out—

(a) the time and place of the meeting; and

(b) the business to be transacted at the meeting.

(6) A notice for an annual meeting of residents of a retirement village (whether or not given in compliance with subsection (5)) must be accompanied by—

(a) information that enables a comparison to be made between the previous financial year's income and expenditure and the estimates of income and expenditure for the current financial year including—

(i) an audited statement of accounts in respect of the previous financial year showing income and expenditure for that financial year and separately detailing the income and expenditure in respect of any capital fund; and

(ii) estimates of income and expenditure for the current financial year, separately detailing—

(A) estimates of income and expenditure in respect of any capital fund (including a description of each general category of proposed expenditure from the fund and the estimated amount of expenditure for each such category); and

(B) expenditure items covered, or proposed to be covered, by the recurrent charges (including a description of each general category of item and the amount of expenditure for each such category); and

(C) estimates of any management expenditure (including an explanation of each expenditure item and, if the expenditure is apportioned between more than 1 retirement village or other businesses, the manner in which such apportionment is calculated); and

(b) an invitation to residents to submit written questions to the operator at least 5 business days before the date of the meeting and other questions at the meeting; and

(c) any other information required by the regulations.

(7) The operator must ensure—

(a) that information provided under subsection (6) complies with any standard or principle prescribed by the regulations; and

(b) that a resident is afforded, on request, a reasonable opportunity to inspect, depending on how the operator prepares its accounts—

(i) an audited balance sheet (with appropriate notes) for the retirement village; or

(ii) an audited balance sheet (with appropriate notes) for the operator,

as at the end of the previous financial year.

(8) In the case of a community retirement village, a meeting convened under this section may be held in conjunction with a meeting of the community corporation or the strata corporation.

(9) The operator of a retirement village must, for the purposes of this section, establish a financial year that is to apply (on a yearly basis) in relation to the retirement village.

(10) An audit required under this section must be conducted in accordance with any requirements prescribed by the regulations.

(11) In this section—

management expenditure means expenditure by a retirement village towards management fees or administrative costs and includes any expenditure of a kind prescribed by the regulations for the purposes of this definition.

34—Proceedings at meetings

(1) This section applies to a meeting convened under section 33.

(2) The operator must ensure that—

(a) residents have a reasonable opportunity to put questions to the operator or its representative at a meeting of residents convened by the operator; and

(b) questions submitted in writing under section 33(6)(b), or asked at a meeting, are answered—

(i) if possible—in reasonable detail at the relevant meeting; or

(ii) to the extent that compliance with subparagraph (i) is not possible—within 10 business days after the meeting by the presentation of detailed written answers.

(3) The convener of a meeting must cause accurate minutes to be kept of proceedings at the meeting.

(4) The convener of a meeting must ensure that the minutes of the meeting, within 10 business days after the meeting—

(a) in the case of an annual meeting—be provided, in writing, to each resident; or

(b) in any other case—be made available for inspection by residents in a manner that is easily accessible by residents.

(5) If a question asked by a resident is answered at a meeting and the resident requests the answer to be provided in writing, the operator must ensure that a detailed written answer is provided to the resident within 10 business days after the meeting.

(6) Nothing in this section requires an operator, or the representative of an operator, to answer an unreasonable question.

(8) A special levy may not be imposed on residents of a retirement village unless authorised by special resolution passed at a meeting of residents.

(9) Subject to subsection (11)—

(a) each resident present at a meeting of residents has 1 vote on any question arising for decision at the meeting; and

(b) a resident may exercise an absentee vote on a question arising for decision at the meeting by giving the operator written notice of the proposed vote at least 24 hours before the time of the meeting.

(10) A decision at a meeting is to be determined by a simple majority of the votes cast by the residents voting at the meeting (in person or by absentee vote).

(11) If 2 or more residents are in occupation of the same residence in a retirement village only 1 of them may exercise a vote at a meeting of the residents and if more than 1 purport to vote, the person presiding at the meeting may determine which vote is to be recognised.

35—Offences relating to meetings

(1) An operator who fails to comply with section 33(6) is guilty of an offence.

Maximum penalty: $10 000.

Expiation fee: $315.

(2) If—

(a) any other requirement of section 33; or

(b) any requirement of section 34,

applying to the operator of a retirement village is not complied with, the operator is guilty of an offence.

Maximum penalty: $10 000.

Expiation fee: $315.

36—Consultation with new operator

(1) It will be a term of every agreement that will result in a change in the operator of a retirement village (including a change by virtue of the sale of an interest in the land within the village) that, before the change is effected, the operator will convene a meeting of residents under this section at which the person who is to be the new operator (or their representative) will—

(a) present a report on any changes that are proposed for the retirement village (including any proposal to change a charge, fee or levy payable by residents), and their plans for the future management and operation of the retirement village; and

(b) answer any reasonable question put by a resident.

(2) A meeting will be convened by sending to each resident, at least 10 business days before the date of the meeting, a written notice setting out—

(a) the time and place of the meeting; and

(b) the reason for the meeting.

(3) If a change in an operator of a retirement village is effected by an agreement without compliance with the term referred to in subsection (1), the former operator and the person who is the new operator are each guilty of an offence.

Maximum penalty: $10 000.

Expiation fee: $500.

37—Consultation about village redevelopment

(1) It will be a term of every residence contract that, before any redevelopment of a retirement village is commenced, the operator will convene a meeting of residents under this section at which the operator will—

(a) present a plan of, and report on, the proposed redevelopment; and

(b) answer any reasonable question put by a resident.

(2) A meeting will be convened by sending to each resident, at least 10 business days before the date of the meeting, a written notice setting out—

(a) the time and place of the meeting; and

(b) the reason for the meeting.

(3) Redevelopment cannot take place unless the operator has given due consideration to a resident's rights arising from their residence contract and, if relevant, reasonable arrangements have been put in place with respect to the provision of alternative accommodation.

(4) If redevelopment that would have a significant effect on a resident's rights arising from their residence contract occurs without compliance with the term referred to in subsection (1), the operator is guilty of an offence.

Maximum penalty: $10 000.

Division 4—Residents' committees

38—Residents' committees

(1) The residents of a retirement village may elect a residents' committee.

(2) The function of a residents' committee is to consult with the operator of the retirement village, or a representative of the operator, in relation to matters of interest to residents and to represent the interests of the residents.

(3) Only 1 residents' committee may be established in a retirement village and only a resident of the retirement village may be a member of such a committee.

(4) If more than 1 body or committee (regardless of its name) purports to be the residents' committee in a particular retirement village, the operator or a resident of the village may apply to the Tribunal for (and the Tribunal may make) an order determining which body or committee (if any) is the residents' committee for the village.

(5) Each member of a residents' committee will hold office for 1 year from election but is eligible for re-election.

(6) A member may be removed from office by a special resolution at a meeting of the residents.

(7) The members of a residents' committee must ensure that the operator is provided with sufficient information about the membership of the committee and the manner in which the operator may contact members of the committee (or a representative or representatives of the committee).

(8) If subsection (7) is not complied with, each member of the residents' committee is guilty of an offence.

Maximum penalty: $1 500.

Expiation fee: $105.

(9) Subject to the regulations, a residents' committee may—

(a) determine its own procedure; and

(b) appoint sub-committees and determine their procedures.

(10) An operator must not—

(a) discourage or prevent the appointment of a committee under this section; or

(b) obstruct a committee in the performance of its functions.

Maximum penalty: $2 500.

(11) If a residents' committee reasonably requests a meeting with the operator by written notice setting out the time, place and business agenda of the meeting, the operator must attend the meeting (or ensure that a representative of the operator authorised to speak on behalf of the operator attends the meeting).

Maximum penalty: $2 500.

(12) If an operator reasonably requests a meeting with the members of a residents' committee (or a representative or representatives of a residents' committee) by written notice setting out the time, place and business agenda of the meeting, the members of the residents' committee (or a representative or representatives of the residents' committee) must attend the meeting.

(13) If a contravention of subsection (12) occurs, each member of the residents' committee who is in default is guilty of an offence.

Maximum penalty: $2 500.

(14) A member of a residents' committee, or a sub-committee appointed by a residents' committee, incurs no civil liability for an act or omission in good faith in the exercise of functions under this section.

(15) The regulations may make provision for or with respect to the election, functions and procedure of residents' committees and sub-committees including, without limitation—

(a) imposing requirements in relation to the holding of meetings of residents under Division 3 for purposes relating to a residents' committee; and

(b) prescribing model rules that may be adopted by a residents' committee; and

(c) imposing requirements in relation to record keeping, audit or other matters relating to a residents' committee.

39—Mandatory consultation with residents' committee in relation to annual budget

(1) Subject to subsection (2), if—

(a) there is a residents' committee in relation to a retirement village; and

(b) the committee has provided the operator with the information referred to in section 38(7),

the operator must, before any annual meeting is held, convene at least 2 meetings with the members of the residents' committee to discuss the matters set out in section 33(6)(a).

(2) However, the meetings, or either 1 of the meetings, required by subsection (1) need not be convened if the residents' committee has advised the operator, in writing, that it does not require the meetings or meeting (as the case may be) to be held.

(3) A meeting required under this section will be convened by sending to each member of the residents' committee, at least 10 business days before the date of the meeting, a written notice setting out the time, place and business agenda of the meeting.

(3a) The business agenda of a meeting must include a summary of the matters set out in section 33(6)(a) to be discussed at the meeting and be accompanied by the statements and information on which the summary is based (and for that purpose it does not matter whether or not those statements and information are in their final audited form).

(4) A meeting under this section must be chaired by the operator or by a representative of the operator who is authorised to speak on behalf of the operator and to give responses to questions put at the meeting in accordance with the requirements of this section.

(5) The operator must ensure that—

(a) members of the residents' committee have a reasonable opportunity to put questions to the operator or its representative at a meeting under this section; and

(b) questions asked at a meeting under this section are answered—

(i) if possible—in reasonable detail at the relevant meeting; or

(ii) to the extent that compliance with subparagraph (i) is not possible—before the holding of the annual meeting, either at a subsequent meeting under this section or by the presentation of detailed written answers.

(6) Nothing in this section requires an operator, or the representative of an operator, to answer an unreasonable question.

(7) If an annual meeting is held without compliance by the operator with this section, the operator is guilty of an offence.

Maximum penalty: $10 000.

Expiation fee: $500.

Division 5—General matters

40—Interim financial reports

(1) An operator must, on the request of a resident or residents' committee, provide an interim financial report that incorporates 1 or more of the following, as requested by the resident or residents' committee:

(a) a statement of income received from residents, and expenditure of that income, for the relevant accounting period;

(b) a statement of estimates of income from residents, and expenditure of that income, for the balance of the financial year;

(c) a statement of income (from any source), and expenditure, for the relevant accounting period in respect of a capital fund;

(d) a statement of estimates of income (from any source), and expenditure, for the balance of the financial year in respect of a fund or account referred to in paragraph (c);

(e) other information as required by the regulations.

(2) The operator must, if requested to do so by the resident or residents' committee, include as part of an interim financial report provided under subsection (1) copies of invoices substantiating expenditure for the relevant accounting period.

(3) The ***relevant accounting period*** that applies with respect to a request under subsection (1) is the period from the beginning of the financial year in which the request is made to the end of the last completed quarter for that financial year (as determined at the time of the making of the request).

(4) The operator must ensure that information provided under subsection (1) complies with any standard or principle prescribed by the regulations.

(5) An interim financial report must be provided within 15 business days after the request is made.

(6) If a contravention of subsection (1), (2), (4) or (5) occurs, the operator is guilty of an offence.

Maximum penalty: $5 000.

(7) If—

(a) a request is made under subsection (1) or (2); and

(b) the operator, on receiving the request, indicates that a fee of, or not exceeding, a specified amount will be payable to cover the cost of preparing and providing the relevant report; and

(c) the specified amount is reasonable in the circumstances,

then the operator may, in connection with providing the report under subsection (1) or (2), require the payment of an amount not exceeding the amount so specified.

(8) For the purposes of this section, a quarter of a financial year is any of the periods of 3 calendar months that together make up the financial year that applies in relation to the relevant retirement village.

41—Residence rules

(1) If a residence rule, or a provision of a residence rule, is harsh, oppressive, unconscionable or unjust, the rule or provision is void.

(2) On application by a resident to whom a residence rule applies, the Tribunal may, if satisfied that the residence rule, or a provision of the residence rule, is harsh, oppressive, unconscionable or unjust—

(a) order that the residence rule, or provision of the residence rule, is void and of no effect; or

(b) order that the residence rule, or provision of the residence rule, is to apply in modified form as specified in the order,

and the Tribunal may make any ancillary or incidental orders as the Tribunal sees fit.

(3) The operator of a retirement village may only make an alteration to the residence rules applying in relation to the village in accordance with the requirements prescribed by the regulations.

Maximum penalty: $10 000.

Expiation fee: $500.

(4) In this section, an ***alteration*** to residence rules includes the following:

(a) the variation of a residence rule;

(b) the addition of a new rule to the residence rules;

(c) the omission of a residence rule that is in force.

42—Documents to be supplied to residents

(1) The operator of a retirement village must, at the request of a resident, provide the resident, free of charge and within 10 business days of the request, with—

(a) a copy of the residence contract under which the resident was admitted to the retirement village; and

(b) a copy of the residence rules that are applicable to the retirement village; and

(c) a statement of the amount to which the resident would be entitled, by way of exit entitlement and exit fee, if the resident were to cease to reside at the retirement village; and

(d) details of all current policies of insurance that are in place in relation to the village (such as a copy of the relevant certificates of insurance).

Note—

This does not include policies of insurance taken out by individual residents of the village.

Maximum penalty: $2 500.

(2) If an alteration is made to residence rules, the operator must issue an amended set of the rules to every resident.

Maximum penalty: $2 500.

43—Information about managers to be supplied to residents

(1) The operator of a retirement village must, by written notice provided in accordance with the regulations, inform each resident of the village of the name and contact details of the village manager and any senior manager.

(2) The operator of a retirement village must, by written notice provided in accordance with the regulations, inform each resident of the village of any change in details previously provided under this section.

(3) If the operator of a retirement village refuses or fails to comply with this section, the operator is guilty of an offence.

Maximum penalty: $2 500.

43A—Duty of operator to ensure common areas reasonably safe

(1) The operator of a retirement village must ensure that the common areas of the village are reasonably safe.

(2) In particular, the operator of a retirement village must—

(a) ensure that an effective emergency plan is prepared and maintained for the retirement village; and

(b) take reasonable steps to ensure that all residents and staff are familiar with the emergency plan and prescribed safety information; and

(c) undertake a safety inspection of communal areas (if any) within the retirement village at least once each calendar year, and make a safety inspection report on the findings of each inspection available to residents; and

(d) ensure that prescribed safety information is clearly displayed in communal areas (if any) within the retirement village and is provided to residents in accordance with any requirements specified in the regulations; and

(e) take such other action as the regulations may require to ensure that the communal areas of the village are reasonably safe.

(3) An operator commits an offence if the operator contravenes a provision of subsection (2).

Maximum penalty: $20 000.

Expiation fee: $500.

(4) Without limiting subsection (2)(e), the regulations may make provision for, or with respect to, the following:

(a) emergency procedures in retirement villages or any class of retirement villages;

(b) the form and content of the emergency plan under subsection (2)(a);

(c) the conduct of safety inspections required under subsection (2)(c);

(d) the manner and form of a safety inspection report under subsection (2)(c);

(e) the display and provision of prescribed safety information.

(5) The obligations imposed on an operator under this section are in addition to and do not derogate from any other obligation or duty of an operator under any other Act or law.

(6) In this section—

prescribed safety information means—

(a) a map indicating the location of assembly areas, exits and fire extinguishers and other emergency equipment for the communal areas and residences concerned; and

(b) instructions concerning the evacuation of residents and staff from the communal areas and residences concerned in the event of a fire or other emergency; and

(c) any other information of a kind prescribed by the regulations.

43B—Prescribed alterations

(1) A resident of a retirement village may, by notice in writing to the operator, request approval to make an alteration of a prescribed kind to the resident's residence.

(2) An operator must, within 10 business days of receiving a request under subsection (1)—

(a) decide whether to approve or refuse the alteration; and

(b) give the resident notice in writing of the decision (which, in the case of a refusal, must include the grounds for the refusal).

(3) An operator may only refuse a request to approve an alteration of a prescribed kind to a residence if reasonable grounds exist for the refusal.

(4) An approval of an operator for the purposes of this section may be subject to reasonable conditions (which may include, without limitation, a condition that the resident is responsible for reinstating the residence to the same condition as before the alteration was made).

(5) This section prevails over any inconsistent term of a residence contract to the extent of the inconsistency unless the resident elects to rely on the contractual term (and then the contractual term will prevail to the extent of any inconsistency).

(6) For the purposes of this section, an alteration to a residence is of a ***prescribed kind*** if the alteration—

(a) involves the installation of a functional aid, equipment or infrastructure recommended as necessary for the resident by a registered health practitioner; or

(b) is of a kind prescribed by the regulations for the purposes of this subsection.

Division 6—Termination of residents' rights

44—Termination of residents' rights

(1) A resident of a residence in a retirement village has a right of occupation that cannot be terminated unless—

(a) the resident dies; or

(b) the resident terminates the residence contract or ceases to reside in the retirement village in circumstances in which there is no reasonable prospect of the resident returning to reside in the retirement village; or

(c) the resident—

(i) commits a breach of the residence contract or the residence rules; or

(ii) acts in a manner that adversely affects the health and safety of persons working in the retirement village or that seriously disturbs the peace or comfort of other residents of the retirement village,

and the operator terminates the resident's right of occupation on that ground; or

(d) the residence becomes an unsuitable place of residence for the resident because of the resident's mental or physical incapacity and the operator terminates the resident's right of occupation on that ground; or

(e) the holder of a mortgage or charge that was in existence at the commencement of the *Retirement Villages Act 1987* becomes entitled to vacant possession of the residence pursuant to rights conferred by the mortgage or charge; or

(f) circumstances exist that make it no longer appropriate for the resident to continue to reside in the residence; or

(g) the Supreme Court terminates the residence contract in proceedings under section 58.

(2) Subject to subsection (4), the rights of termination under subsection (1)(a), (b), (c) or (d) are subject to—

(a) any limitations or qualifications arising from the residence contract; and

(b) any rights of the resident deriving from the resident's ownership of an interest in the residence.

(3) The rights of termination under subsection (1)(c)(ii) must not be exercised unless the operator has made reasonable efforts to stop the resident acting in the manner complained of by—

(a) giving the resident a written notice warning the resident to stop acting in such a manner; or

(b) conducting some form of mediation or other dispute resolution process with the resident; or

(c) any other means appropriate in the circumstances,

and those efforts have failed to prevent the resident so acting.

(4) A residence contract cannot limit or qualify the right of a resident to terminate a right of occupation during their settling-in period.

(5) If a resident terminates a right of occupation during their settling-in period, the resident is only liable to pay—

(a) fair market rent in respect of their period of occupation of a residence, less any amount paid by the resident for services that would otherwise be included in the assessment of fair market rent (for example, the recurrent charges paid by the resident); and

(b) remarketing fees; and

(c) subject to subsection (5a), refurbishment fees; and

(d) subject to subsection (5b), the costs to reinstate the residence to the condition it was before an alteration was made by the resident (or to some other agreed condition).

(5a) A resident is only liable to pay a refurbishment fee under subsection (5)(c) in circumstances where refurbishment of the residence is reasonably necessary due to damage to, or degradation of, the residence caused by an act or omission of the resident during the resident's period of occupation of the residence.

(5b) A resident is only liable to pay reinstatement costs under subsection (5)(d) if the resident, having made alterations to the residence, is bound under an agreement made with the operator to reinstate the residence to the same condition as before the alteration was made (or to some other agreed condition), but has failed to do so.

(6) An amount payable by a resident under subsection (5) may be deducted from an exit entitlement due to the resident.

(7) No provision in a contract between the operator and the resident can have the effect of making the resident liable to pay an amount by way of a penalty if they terminate a right of occupation during their settling-in period (and any such provision is void to the extent that it would have such an effect).

(8) The operator's decision to terminate a resident's right of occupation under subsection (1)(c), (d) or (f) is ineffective unless the Tribunal, on the application of the operator—

(a) is satisfied that proper grounds, which are sufficiently serious to justify termination of the right of occupation, exist; and

(b) confirms the operator's decision.

(8a) An application to the Tribunal under subsection (8) in relation to a decision to terminate a resident's right of occupation may only be made by an operator if the operator has given the resident notice of the application in writing at least 5 business days before the making of the application.

(9) If the Tribunal confirms the operator's decision to terminate a right of occupation, it must fix a period within which the resident must vacate the residence.

(10) The Tribunal may make an order for the ejectment of a resident who has not vacated a residence at the expiration of the period referred to in subsection (9).

(11) An order under subsection (10) may be enforced by a bailiff in the same manner as an order for the possession of premises under the *Residential Tenancies Act 1995* (and, for that purpose a bailiff may, in particular, exercise the powers of a bailiff under section 99 of that Act).

(12) If the operator decides to terminate a resident's right of occupation, the operator must give the resident a notice—

(a) setting out the grounds of the operator's decision; and

(b) providing the resident with a copy of the operator's dispute resolution policy; and

(c) informing the resident that the decision is subject to review by the Tribunal; and

(d) informing the resident of their rights with regard to such a review.

Maximum penalty: $20 000.

Division 7—Resolution of disputes

45—Dispute resolution policy

(1) The operator of a retirement village must have a written policy in relation to resolution of disputes between the operator and residents of the retirement village (a ***dispute resolution policy***).

(2) A dispute resolution policy must comply with any requirements prescribed by the regulations.

(3) A copy of a dispute resolution policy must be provided, on request, to a resident of the retirement village (and must be so provided within 5 business days of the making of the request).

(3a) In the event of a dispute between the operator of a retirement village and a resident, the operator must take all reasonable steps to resolve the dispute in accordance with the dispute resolution policy of the retirement village unless—

(a) the resident, at the time of the dispute, agrees to take steps to resolve the dispute otherwise than in accordance with the dispute resolution policy; or

(b) exceptional circumstances exist in relation to which the Tribunal has granted permission to apply to the Tribunal under section 46.

(4) An operator who fails to comply with this section is guilty of an offence.

Maximum penalty: $10 000.

Expiation fee: $500.

46—Application to Tribunal for resolution of retirement village dispute

(1) A party to a retirement village dispute may apply to the Tribunal for resolution of the dispute.

(2) However—

(a) an application should not be made to the Tribunal unless—

(i) the parties have made reasonable attempts to resolve the dispute in accordance with the operator's dispute resolution policy, or in accordance with an agreement under section 45(3a), and such attempts have failed to resolve the dispute; or

(ii) the Tribunal has granted permission to apply, and permission is only to be granted in relation to exceptional circumstances in which an urgent application is warranted; and

(b) an application must not be made to the Tribunal in relation to an act or omission that occurred more than 4 years before the day on which the application is made except with the permission of the Tribunal.

(3) If, on application under subsection (1), the Tribunal finds that—

(a) a party to the dispute has breached, or failed to comply with, a provision of this Act, a residence contract or a residence rule; or

(b) an operator has acted in a harsh or unconscionable manner,

the Tribunal may—

(c) restrain the breach or failure to comply with this Act, a residence contract or residence rule; or

(d) require action to comply with this Act or action in performance of a residence contract or residence rule; or

(e) order the payment of an amount determined by the Tribunal as an amount payable under this Act, a residence contract or residence rule; or

(f) order the payment of compensation for loss or injury (other than personal injury) caused by a breach of this Act, a residence contract or rule or a failure to comply with this Act, a residence contract or rule; or

(g) require an operator to vary or reverse a decision or the effect of an act of the operator; or

(h) order that a residence rule, or a provision of a residence rule, is void or modified as specified in the order; or

(i) order a party to the dispute to refrain from future action of a kind specified in the order; or

(j) avoid *ab initio*, or modify, terms or conditions of an agreement between an operator and a resident; or

(k) require an operator to repay to a resident any amount paid by the resident pursuant to a term or condition of an agreement (that has been avoided or modified by the Tribunal); or

(l) make any other order the Tribunal considers appropriate in the circumstances (including consequential or ancillary orders).

(5) The Tribunal may refuse to determine an application under this section if the Tribunal considers that it is appropriate to do so for any reason.

(6) The Tribunal may make an order under this section notwithstanding that it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which that remedy would not otherwise be available.

(7) However, a member of the Tribunal who is not a legally qualified member (within the meaning of the *South Australian Civil and Administrative Tribunal Act 2013*) cannot make an order under subsection (6) without the approval of the President or a Deputy President of the Tribunal.

(8) The Tribunal may make ancillary or incidental orders for the purposes of proceedings under this section.

(8a) Without derogating from any other provision of this section, the Tribunal may, in connection with an application to the Tribunal under this section, make an order (a ***restraining order***) restraining a person from engaging in conduct of a kind described in the order if the Tribunal is satisfied that—

(a) there is a risk that the person will engage in the conduct; and

(b) the conduct, if engaged in, will result in a breach of this Act, a residence contract or a residence rule.

(8b) If a restraining order is made against a person without giving them a reasonable opportunity to respond to the proposed order, the Tribunal must allow the person a reasonable opportunity to satisfy it that the order should not continue in operation.

(8c) A person must not contravene a restraining order.

Maximum penalty: $50 000 or imprisonment for 2 years.

(9) A dispute as to the payment of an exit entitlement may also be brought before a court competent to hear and determine a claim founded on contract for the amount in dispute.

(10) This section does not derogate from—

(a) the other provisions of this Act that relate to applications to the Tribunal; and

(b) the jurisdiction of a court, or of another tribunal constituted by law.

(11) In this section—

resident of a retirement village includes a former resident of a retirement village.

Part 4—Administrators, receivers and managers

47—Application for order appointing administrator

(1) The Minister may apply to the Supreme Court, in accordance with the rules of the Court, for an order appointing a specified person as an administrator of a retirement village—

(a) to exercise all the functions of the operator of the retirement village; or

(b) to exercise specified functions of the operator; or

(c) to exercise all the functions other than specified functions of the operator.

(2) The Minister may apply for an order under this section only if—

(a) the Minister is of the opinion that the well-being or financial security of the residents of the retirement village concerned has been, or is likely to be, seriously affected by the continued operation of the retirement village by the operator; or

(b) the Minister is of the opinion that the operator of the retirement village concerned is wilfully and repeatedly acting in contravention of an order made by the Tribunal or a court in relation to the retirement village; or

(c) the retirement village concerned is the subject of an existing order under this section.

(3) For the purposes of determining whether an application for an order under this section should be made, the Minister may appoint a person to inquire into, and report to the Minister on, the well-being and financial security of the residents of a retirement village.

48—No application without consent

The Minister is not to apply for an order appointing a person as an administrator under this Part unless the person has consented in writing to the appointment.

49—Terms and conditions of appointment

Without limiting the terms and conditions of the order of appointment of an administrator under this Part, the terms and conditions may exempt the administrator from the requirement to comply with such obligations of the operator as are specified or described in the order of appointment.

50—Effect of appointment

(1) The operator of a retirement village must not, while an order under this Part is in force in respect of the village, exercise any of the functions of the operator that the administrator is authorised to exercise.

(2) However, the appointment of an administrator does not relieve the operator of any of their liabilities under a residence contract.

(3) Subject to the terms of the appointment, a person appointed as an administrator of a retirement village must comply with all the obligations of the operator in relation to the functions that the person is authorised to exercise (including functions under a residence contract) and is, in the exercise of those functions, taken to be the operator.

51—Expenses of administration

(1) The expenses incurred by an administrator appointed under this Part in exercising the functions of the operator of a retirement village are payable from recurrent charges and such other funds as would be available to the operator for such expenses if the administrator had not been appointed.

(2) Neither the Crown, nor the Minister is liable for—

(a) any expenses incurred by an administrator appointed under this Part to exercise the functions of the operator of a retirement village; or

(b) any liability of an operator of a retirement village in respect of which an administrator is appointed.

52—Administrator may vary residence contract

(1) Despite any other provision of this Act, an administrator appointed under this Part may, with the consent of the Minister—

(a) amend or revoke an approved annual budget; or

(b) vary the recurrent charges payable by the residents of the retirement village; or

(c) vary the services offered by the retirement village.

(2) The Minister may give consent under subsection (1) only if, in the opinion of the Minister, the proposed revocation, variation or amendment is done for the purpose of—

(a) assisting in the process of finding a new operator for the retirement village; or

(b) ensuring the financial viability of the retirement village.

(3) Nothing done by the administrator in accordance with this section is to be regarded as a breach of contract or otherwise as a civil wrong.

(4) No compensation is payable to a person because of the operation of this section or anything done under this section.

53—Revocation of appointment

(1) An order made under this Part may be revoked or varied by the Supreme Court (whether or not on the application of the Minister) and (unless sooner revoked) ceases to have effect at the expiration of the period specified in the order.

(2) More than 1 order may be made under this Part in respect of the same retirement village.

54—Receivers and managers

(1) If a receiver, or a receiver and manager, is appointed in respect of an operator of a retirement village, the appointee must (subject to the terms of the appointment) comply with the operator's obligations under this Act as if that person were the operator.

(2) The terms and conditions of appointment of a receiver, or a receiver and manager, may exempt the appointee from the requirement to comply with obligations of the operator specified or described in the order of appointment.

(3) This section does not apply to the extent that it is inconsistent with the *Corporations Act 2001* of the Commonwealth.

55—No personal liability of administrator, receiver or receiver and manager

An administrator, a receiver or a receiver and manager (or any person acting under the direction of an administrator, a receiver or a receiver and manager) is not personally liable for an act or omission done or omitted in good faith under this or any other Act.

Part 5—Miscellaneous

56—Endorsement of certificates of title

(1) If land is, or is to be, used as a retirement village, a note of that fact must be endorsed on the relevant certificates of title before a residence contract in respect of that retirement village is entered into.

(2) The owner of land that is to be used as a retirement village must apply to the Registrar-General for endorsement of the relevant certificates of title before any residence contract relating to the retirement village is entered into.

Maximum penalty: $35 000.

(3) An operator must not enter into a residence contract in respect of a retirement village (or a proposed retirement village) on any land unless satisfied that the endorsements on the relevant certificates of title have been made in accordance with this section.

Maximum penalty: $35 000.

(4) Before an application is made under subsection (2), the owner must notify each person who holds a mortgage, charge or encumbrance over the land and, if the application relates to a retirement village that had not been established before the commencement of this Act, the application can only be made with the consent of each such person.

(5) The Registrar-General may cancel an endorsement made under this section if satisfied that the land is no longer used, or to be used, as a retirement village.

57—Lease of land in retirement village for residential purposes

(1) The operator of a retirement village may lease, or grant a licence to occupy, a residence in the village that is not immediately required for the purposes of the scheme to an eligible person for residential purposes.

(2) However, the operator must not, under subsection (1), lease, or grant a licence to occupy, a residence in the village that has formerly been occupied pursuant to the scheme unless either the former resident consents (in accordance with any requirements prescribed by the regulations) to the lease or licence or the exit entitlement owing to the former resident in relation to the cessation of such occupation has been paid in full and all amounts deducted from the exit entitlement have been paid to the relevant fund, account or person.

(3) Subject to this section, a person to whom a lease or licence is granted under this section does not become a resident of the retirement village (and Part 3 does not apply in relation to the person).

Note—

Such a lease would be subject to the *Residential Tenancies Act 1995*.

(4) However, a person to whom a lease or licence is granted under this section—

(a) may be elected as a member of a residents' committee under section 38 (and that section applies as if the person were a resident); and

(b) is entitled to participate in a meeting of the residents of the retirement village and to vote on any issue arising for consideration at the meeting (other than an issue that is directly related to the financial management of the village), as if the person were a resident of the retirement village.

57A—Lease of land in retirement village for commercial purposes

(1) The operator of a retirement village may lease, or grant a licence to occupy, land within the village to any person for commercial purposes related to the functioning of the village.

(2) However, the operator must not, under subsection (1), lease, or grant a licence to occupy, land within the village that has formerly been occupied pursuant to the scheme unless either the former resident consents (in accordance with any requirements prescribed by the regulations) to the lease or licence or the exit entitlement owing to the former resident in relation to the cessation of such occupation has been paid in full and all amounts deducted from the exit entitlement have been paid to the relevant fund, account or person.

(3) Unless the Minister authorises a lease or licence for a longer term, the term of any such lease or licence must not exceed 5 years.

57B—Offences relating to leases etc

If a lease or licence is granted contrary to section 57 or 57A, the operator is guilty of an offence.

Maximum penalty: $10 000.

57C—Duty to insure

(1) An operator of a retirement village must—

(a) maintain insurance such that all buildings and building improvements forming part of the village of which the operator is an owner are insured to their replacement value; and

(b) take all reasonable steps to ensure that all buildings and building improvements forming part of the village of which the operator is not an owner are insured to their replacement value.

Maximum penalty: $20 000.

(2) An operator of a retirement village must be insured against—

(a) liability in tort (which, if an amount is prescribed by the regulations for the purposes of this paragraph, must be for at least that amount); and

(b) any other liability—

(i) determined at a meeting of residents by special resolution (where insurance against such liability is reasonable in the circumstances and reasonably able to be obtained from an insurer); or

(ii) prescribed by the regulations.

Maximum penalty: $20 000.

(3) For the purposes of this section the replacement value of buildings and building improvements is the cost of their complete replacement including the cost of any necessary preliminary demolition work, any necessary surveying, architectural or engineering work and any other associated or incidental costs.

(4) The insurance under subsection (1) must be against—

(a) risks of damage caused by events (other than subsidence) declared to be prescribed events in relation to home building insurance under Part 5 of the *Insurance Contracts Act 1984* of the Commonwealth; and

(b) risks against which insurance is required by the regulations.

(5) Any money which an operator receives under a contract of insurance in relation to damage to buildings or building improvements must, subject to the termination of the retirement village scheme or any contrary order of the Tribunal or a Court, be applied by the operator in reinstating or repairing those buildings or building improvements.

57D—Notice of proposal to terminate retirement village scheme

(1) The operator of a retirement village must not take any step under this Part towards the termination of the retirement village scheme or part of the retirement village scheme unless the operator—

(a) has given notice of the proposed termination in writing to the Registrar; and

(b) after giving the notice referred to in paragraph (a), has given each resident of the village, by notice in writing—

(i) notice of the proposed termination and the grounds for the termination; and

(ii) a recommendation, and a reasonable period within which, to seek independent legal advice.

Maximum penalty: $35 000.

(2) An operator must pay for the reasonable legal costs incurred in obtaining independent legal advice on the proposed termination of the scheme or part of the scheme if—

(a) the legal advice is provided by a legal practitioner approved by a majority of residents of the village at a meeting of those residents; and

(b) a copy of the legal advice has been provided to all residents of the village.

(3) The obligation under subsection (2) to pay legal costs applies only once in relation to each proposal to terminate a scheme or part of a scheme.

(4) If the operator fails to comply with subsection (2), the operator is guilty of an offence.

Maximum penalty: $35 000.

58—Termination of retirement village scheme on application to Supreme Court

(1) Subject to this Act, a retirement village scheme or part of a retirement village scheme cannot be terminated without the approval of the Supreme Court while a person who has entered into occupation of a residence under the scheme or the relevant part of the scheme remains in occupation of that residence.

(2) The Minister will be a party to any proceedings in which the Supreme Court's approval of the termination of a retirement village scheme or part of a retirement village scheme is sought.

(2a) In addition, the following persons are entitled to appear in proceedings before the Supreme Court under this section:

(a) a resident of the retirement village the subject of the application;

(b) any other any person who, in the opinion of the Court, has a sufficient interest in the proceedings.

(2b) Subject to subsection (2c), a person who proposes to apply for the termination of a retirement village scheme or part of a retirement village scheme under this section must, before making the application—

(a) give notice in writing of the proposed application and termination to each resident along with any prescribed information relating to the proposed termination; and

(b) allow a period of 60 days after giving the notice for residents to make representations to the person in response to the notice; and

(c) keep a record of representations made by residents in response to the notice.

(2c) The Supreme Court may, on application, dispense with the requirement to comply with subsection (2b) if satisfied that it is appropriate in the circumstances of a particular case.

(2d) Notice of an application to the Supreme Court under subsection (2c) must be given to each resident.

(2e) An application for the termination of a retirement village scheme or part of a retirement village scheme under this section must include information about the results of consultation undertaken in accordance with subsection (2b) (if any).

(2f) In determining whether to approve the termination of a retirement village scheme or part of a retirement village scheme under this section, the Supreme Court must have regard to the following matters (insofar as the matters are relevant to the proposed termination):

(a) the views of residents of the retirement village (including the results of any consultation undertaken in accordance with subsection (2b)) and the operator in relation to the proposed termination;

(b) whether the proposed termination would be likely to benefit residents of the retirement village or may result in detriment to residents;

(c) whether the proposed termination would be likely to affect the capital value of residences in the retirement village;

(d) whether the proposed termination would be likely to involve a breach of any residence contracts;

(e) the conduct of the operator and residents of the retirement village,

and the Court may have regard to any other matter the Court considers to be relevant in the circumstances of the particular case.

(3) If the Supreme Court approves the termination of a retirement village scheme or part of a retirement village scheme it may make such orders as it thinks necessary to protect the interests of existing residents.

(4) Without limiting subsection (3), if the Court makes an order under this section that will terminate residence contracts, the Court—

(a) must fix in the order a date by which the residents who are affected by the order must vacate their residential premises in the village; and

(b) may order an operator or former operator (other than an administrator appointed under Part 4) to pay compensation to each resident affected by the order for the resident's loss of rights under a residence contract; and

(c) may make such other orders as it thinks fit.

(5) A reference in this section to a ***resident*** includes a person who is not in occupation of a residence but is, under a residence contract, entitled to payment of an exit entitlement and has not received payment of the exit entitlement.

59—Voluntary termination of retirement village scheme

(1) The Minister may, by notice in the Gazette, terminate a retirement village scheme or part of a retirement village scheme if satisfied (in such manner as the Minister thinks fit) that all residents of the retirement village (if any) wish to terminate the scheme or the relevant part of the scheme (as the case requires).

(3) The Minister may make such orders as the Minister thinks necessary or appropriate on account of the termination of a retirement village scheme or part of a retirement village scheme under this section.

(4) The termination of a retirement village scheme or part of a retirement village scheme will take effect from the day specified for the purpose in the notice.

(5) The Registrar-General must, at the request of the Minister, take any action for or in connection with the issue, alteration, correction or cancellation of certificates of title necessary to give effect to the provisions of this section.

(6) If the Minister requests the Registrar-General to give effect to a particular determination or action, the Minister will, if so required by the Registrar-General, furnish the Registrar-General with a certificate certifying the determination or action.

59A—Termination of part of retirement village scheme on application to Minister

(1) On application by the operator of a retirement village the Minister may, by notice in the Gazette, terminate part of the retirement village scheme if satisfied that—

(a) at least 90% of residents at the retirement village wish to terminate that part of the scheme; and

(b) the termination will not affect the right to occupation of a residence of any resident who wishes to remain in occupation of their residence at the retirement village; and

(c) the termination is otherwise appropriate in the circumstances.

(2) The Minister may, in a notice under subsection (1) terminating part of a retirement village scheme, make such orders as the Minister considers necessary or appropriate on account of the termination and such orders will have effect according to their terms.

(3) An operator may not make an application under subsection (1) in relation to the proposed termination of part of a retirement village scheme unless—

(a) the operator has given to each resident of the village notice in writing of the proposed application along with any prescribed information relating to the proposed termination; and

(b) a period of at least 60 days has expired since the notice and information required under paragraph (a) was given to residents; and

(c) taking into account any representations made by or on behalf of residents in response to the notice and information, the operator is satisfied that—

(i) the proposed termination will not affect the right to occupation of a residence of any resident who wishes to remain in occupation of their residence at the retirement village; and

(ii) at least 90% of residents at the retirement village wish to terminate that part of the scheme.

Note—

An operator must have complied with section 57D before giving notice and information to residents under subsection (3)(a).

(4) An application under subsection (1) must—

(a) be made in the manner and form determined by the Minister; and

(b) be accompanied by the prescribed fee; and

(c) be accompanied by evidence, in a form approved by the Minister, of the agreement of all residents who agree with the proposed termination; and

(d) comply with the requirements (if any) prescribed by the regulations.

(5) As soon as reasonably practicable after making an application under subsection (1), the operator must give a copy of the application to each resident of the retirement village along with information in a form approved by the Minister setting out how, and the time within which, the resident may make a submission to the Minister in relation to the proposed termination.

(6) The Minister may, by notice in writing, require an operator to provide the Minister, within the time and in the manner specified in the notice, with such additional information as the Minister may reasonably require for the purposes of determining an application made by the operator under this section.

(7) The termination of part of a retirement village scheme will take effect from the day specified for the purpose in the notice.

(8) The Registrar-General must, at the request of the Minister, take any action for or in connection with the issue, alteration, correction or cancellation of certificates of title necessary to give effect to the provisions of this section.

(9) If the Minister requests the Registrar-General to give effect to a particular determination or action, the Minister will, if so required by the Registrar-General, furnish the Registrar-General with a certificate certifying the determination or action.

60—Disqualified persons not to be involved in certain roles or functions at retirement village

(1) A disqualified person must not undertake any of the following roles or functions as part of the operations of a retirement village:

(a) operator;

(b) village manager;

(c) senior manager;

(d) a role or function prescribed by the regulations.

Maximum penalty: $35 000 or imprisonment for 1 year.

(2) The operator of a retirement village must not engage a person—

(a) as village manager; or

(b) as a senior manager; or

(c) in a prescribed role or function,

unless, in accordance with the requirements prescribed by the regulations (if any), the operator is satisfied that the person is not a disqualified person.

Maximum penalty: $35 000.

(3) The operator of a retirement village must not continue to engage a person—

(a) as village manager; or

(b) as a senior manager; or

(c) in a prescribed role or function,

unless, within the preceding 3 years, the operator has, in accordance with the requirements prescribed by the regulations (if any), been satisfied that the person is not a disqualified person.

Maximum penalty: $35 000.

(4) The regulations may prescribe circumstances in which an operator is not required to comply with the requirements of subsection (2) or (3).

(5) A person who becomes a disqualified person while engaged at a retirement village as a village manager, senior manager or in a role or function referred to in subsection (1)(d) must, as soon as practicable after becoming a disqualified person, notify the operator of the retirement village that they are a disqualified person.

(6) In this section—

disqualified person means a person—

(a) who has been found guilty of a prescribed offence; or

(b) in relation to whom prescribed circumstances exist;

prescribed circumstances—prescribed circumstances exist in relation to a person if—

(a) the person is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or

(b) the person has during the preceding 5 years been convicted of an offence against the person or an offence involving fraud or dishonesty; or

(c) the person has served a sentence of imprisonment for an offence against the person or an offence involving fraud or dishonesty, being a sentence that ended during the preceding 5 years; or

(d) any other circumstances prescribed by the regulations for the purposes of this definition exist in relation to the person;

prescribed offence means—

(a) an offence against section 11 of the *Criminal Law Consolidation Act 1935* (murder); or

(b) an offence against a provision of Part 3 Division 11 of the *Criminal Law Consolidation Act 1935* (rape and other sexual offences); or

(c) an offence brought within the ambit of this definition by the regulations.

61—Non-compliance may be excused by the Tribunal

(1) The Tribunal may, on the application of any person, excuse that person from the consequences of inadvertent non-compliance with a provision of this Act.

(2) If the Tribunal acts under subsection (1), it may—

(a) make consequential orders protecting the interests of a person affected by the contravention; and

(b) make any other order that the justice of the case may require.

(3) An application may not be made under this section after proceedings for an offence relating to the non-compliance have been commenced.

62—Contract to avoid Act

An agreement or arrangement that is inconsistent with a provision of this Act or purports to exclude, modify or restrict the operation of this Act, or a right conferred by or under this Act is to that extent void and of no effect (except where such inconsistency, exclusion, modification or restriction is expressly permitted by this Act).

63—Codes of conduct

(1) The regulations may prescribe codes of conduct to be observed by—

(a) operators of retirement villages;

(b) village managers and senior managers;

(c) persons employed or engaged to work at a retirement village;

(d) residents of retirement villages.

(2) It is a term of a residence contract that the operator and residents will observe any code of conduct applying to them (subject to any agreement between the operator and the resident that, pursuant to a power contained in the code of conduct, provides for the exclusion or modification of a provision of the code of conduct in the circumstances of the particular case).

(3) If an operator breaches a code of conduct, the operator is, in addition to any civil remedy that may be available against the operator, liable to a fine not exceeding $2 500 or an expiation fee of $210 as if the operator had breached the regulations.

63A—Duty of operator to provide staff training

(1) The operator of a retirement village must ensure that a village manager, a senior manager and any other person employed or engaged to manage, or work at, the retirement village undertakes training on the operational policies and procedures of the village that are relevant to the person's role and responsibilities within the village—

(a) before the person commences duties at the retirement village (or, if the person commenced their duties before the commencement of this section, within the period of 12 months after the commencement of this section); and

(b) thereafter, within each 3 year period or sooner if there are changes to any of the following that are relevant to the person's role and responsibilities within the village:

(i) the operational policies and procedures of the village;

(ii) this Act or any other Act or law.

Maximum penalty: $10 000.

Expiation fee: $500.

Note—

Such training could, for example, include a formal induction, on the job learning, viewing videos and reading information, supervision and self-reflection.

(2) Subsection (1) does not apply in relation to—

(a) a person who provides a service or undertakes work at a retirement village under a contract for service where the service or work (as the case requires) does not form part of the ordinary operations of the village or require direct contact with residents of the village; or

(b) a volunteer; or

(c) any other person of a prescribed class.

64—Representations relating to retirement villages

(1) A person must not represent that a complex of residences is a retirement village if the person knows, or could reasonably be expected to know, that the complex is not a retirement village within the meaning of this Act.

Maximum penalty: $10 000.

(2) A person must not represent that a residence is part of a retirement village if the person knows, or could reasonably be expected to know, that the residence is not part of a retirement village within the meaning of this Act.

Maximum penalty: $10 000.

(3) A person must not represent that a complex of residences proposed to be established will constitute a retirement village if the person knows, or could reasonably be expected to know, that the complex will not constitute a retirement village within the meaning of this Act.

Maximum penalty: $10 000.

(4) A person must not represent that a residence proposed to be built will be part of a retirement village if the person knows, or could reasonably be expected to know, that the residence will not be part of a retirement village within the meaning of this Act.

Maximum penalty: $10 000.

64A—Enforceable voluntary undertakings

(1) The Minister may accept (by written notice) a written undertaking (an ***enforceable voluntary undertaking***) given by a person in connection with a matter relating to a contravention or alleged contravention by the person of this Act.

(2) The giving of an undertaking under this section does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates.

(3) A person must not contravene an undertaking made by the person that is in effect.

Maximum penalty: $35 000.

(4) If the Minister considers that a person has contravened an undertaking accepted by the Minister, the Minister may apply to the Magistrates Court for enforcement of the undertaking.

(5) If the court is satisfied that the person who made the undertaking has contravened the undertaking, the court, in addition to the imposition of any penalty, may make any of the following orders:

(a) an order that the person must comply with the undertaking or take specified action to comply with the undertaking;

(b) an order discharging the undertaking;

(c) an order directing the person to pay to the State—

(i) the costs of the proceedings; and

(ii) the reasonable costs of the designated entity in monitoring compliance with the undertaking in the future;

(d) any other order that the court considers appropriate in the circumstances.

(6) A person must not fail to comply with an order of the court under subsection (5).

Maximum penalty: $50 000.

(7) A person who has made an undertaking may, at any time, with the written agreement of the Minister—

(a) vary the undertaking; or

(b) withdraw the undertaking.

(8) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of this Act.

(9) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if an undertaking is in effect in relation to that contravention.

(10) The Minister may commence proceedings for a contravention or alleged contravention of this Act despite an undertaking being in effect in relation to that contravention if the Minister, after accepting the undertaking, is in receipt of additional information relating to the contravention which the Minister considers significantly increases the seriousness or extent of the contravention.

(11) No proceedings may be brought for a contravention or alleged contravention of this Act against a person who has made an undertaking in relation to the contravention and has completely discharged the undertaking.

(12) The Minister may accept an undertaking in relation to a contravention or alleged contravention before proceedings that have been commenced in relation to the contravention have been finalised.

(13) If the Minister accepts an undertaking before the proceedings are finalised, the Minister must take all reasonable steps to have the proceedings discontinued as soon as possible.

(14) If the Minister accepts an undertaking given by a person under this section, the Minister must notify the Registrar of the acceptance of the undertaking and forward to the Registrar—

(a) a copy of the undertaking; and

(b) details of the contravention or alleged contravention to which the undertaking relates.

65—Offences

(1) A prosecution for an offence against this Act can only be commenced by the Minister or a person authorised by the Minister.

(2) In proceedings for an offence against this Act, a document apparently signed by the Minister that appears to be an authorisation for the purposes of subsection (1) will be accepted, in the absence of proof to the contrary, as proof of such an authorisation.

(3) If the Minister or a person authorised by the Minister commences a prosecution for an offence against this Act, the Minister or the authorised person (as the case requires) must—

(a) notify the Registrar of the prosecution and forward to the Registrar a copy of the information and the allegations; and

(b) at the conclusion of the prosecution, notify the Registrar of the outcome.

65A—Limitation period for prosecutions

Subject to this Act, proceedings for an offence against this Act (including an expiable offence) may be brought within the latest of the following periods to occur:

(a) the period of 2 years after the offence first comes to the notice of the Minister;

(b) if an undertaking has been accepted in relation to the offence under section 64A, the period of 6 months after—

(i) the undertaking is contravened; or

(ii) it comes to the notice of the Minister that the undertaking has been contravened; or

(iii) the Minister has agreed to the withdrawal of the undertaking.

65B—Publication in public interest

The Minister may, if of the opinion that it is in the public interest to do so, publish information (in such manner as the Minister thinks fit) relating to any action taken by the Minister in connection with the enforcement of this Act.

66—Delegation

(1) The Minister may delegate a power or function vested in or conferred on the Minister by or under this Act—

(a) to a particular person or body; or

(b) to the person for the time being holding or acting in a particular office or position.

(2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation—

(a) may be absolute or conditional; and

(b) does not derogate from the power of the delegator to act in a matter; and

(c) is revocable at will by the delegator.

67—Service

A notice or document required to be given to a person under this Act may—

(a) be served on the person personally; or

(b) be posted in an envelope addressed to the person's last known address; or

(c) be transmitted by fax or email to the person's fax number or email address (in which case the notice or document will be taken to have been given or served at the time of transmission).

68—Review of Act

(1) The Minister must, 5 years after the commencement of the *Retirement Villages (Miscellaneous) Amendment Act 2024*, undertake a review of the operation of this Act.

(2) The Minister must cause a report on the outcome of the review to be tabled in both Houses of Parliament within 12 sitting days after its completion.

69—Regulations

(1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may—

(a) prescribe fees (including differential fees) for the purposes of this Act and provide for the payment of fees at intervals and in such manner as may be prescribed;

(b) prescribe amounts payable for late payment of fees so prescribed;

(c) prescribe forms and the information to be contained in forms;

(d) provide that a residence contract or other document required under this Act must be printed or typewritten (apart from insertions or amendments) in type of a prescribed kind and size;

(e) make provision in relation to the form or content of any document referred to in this Act;

(f) make provision in relation to the keeping of records for the purposes of this Act;

(fa) make provision in relation to requirements that will apply to the making of alterations to residence rules;

(fb) make provision in relation to property (including for the disposal of property) left at a residence by a resident who has ceased to reside in the retirement village;

(g) require the preparation, and the provision to residents (or prospective residents), of policies relating to matters prescribed by the regulations;

(h) require the provision to residents (or prospective residents) of such other information or documents as may be prescribed by the regulations;

(i) prescribe penalties (not exceeding $2 500) for breach of a regulation.

(3) The regulations—

(a) may be of general or limited application; and

(ab) make different provision according to the classes of persons, or the matters or circumstances, to which they are expressed to apply; and

(b) may leave any matter to be determined according to the opinion or discretion of the Registrar, Registrar-General or the Minister; and

(c) may incorporate, adopt or apply, with or without modifications, a document formulated or published by any body or authority (as in force at a particular time or from time to time).

Schedule 1—Proceedings before the Tribunal

1—Application of Schedule

Subject to any variation or exclusion prescribed by the regulations, this Schedule applies to proceedings before the Tribunal under this Act.

3—Presentation of cases before Tribunal

(1) Except as provided in this clause, a party to proceedings before the Tribunal under this Act must present their own case and not be represented or assisted in the presentation of the case by another person.

(2) A party to proceedings before the Tribunal may be represented by an agent or assisted by an agent in the presentation of their case if the Tribunal is satisfied that—

(a) the party is unable to appear personally or conduct the proceedings properly themself; and

(b) no other party will be unfairly disadvantaged by the fact that the agent is allowed so to act.

(3) All or any of the parties to any proceedings before the Tribunal may be represented by legal practitioners—

(a) if all the parties agree and the Tribunal is satisfied that any party who is not so represented will not be unfairly disadvantaged; or

(b) if 1 of the parties is a legally qualified person; or

(c) if the proceedings involve an amount which exceeds $50 000 or such other amount as is prescribed instead by regulation; or

(d) if the Tribunal gives leave for such representation.

(4) If a party applies for leave permitting representation by a legal practitioner under subclause (3)(d), it must be granted if the Tribunal is satisfied—

(a) that the granting of leave is likely to reduce costs or shorten the proceedings; or

(b) that the applicant would, if leave were not granted, be unfairly disadvantaged.

(5) This clause does not prevent—

(a) a body corporate from being represented by an officer or employee of the body corporate (not being a legally qualified person) authorised to conduct the proceedings on its behalf (whether or not they are remunerated by the body corporate for representing it in the proceedings); or

(b) a person from acting as an interpreter for a party provided that their fee does not exceed an amount fixed by the Tribunal at the hearing.

(6) A person must not demand or receive any fee or reward for representing or assisting a party to proceedings before the Tribunal unless—

(a) the person is a legal practitioner; or

(b) if the party is a body corporate—the person is an officer or employee of the body corporate representing it under subclause (5).

Maximum penalty: $750.

(7) In this clause—

agent means a person who is not a legally qualified person;

legally qualified person means a legal practitioner, an articled law clerk, or a person who holds or has held legal qualifications under the laws of this State or any other place.

4—Costs on referral of question of law

Any costs arising from the referral of a question of law to the Supreme Court under section 26(2)(b) of the *South Australian Civil and Administrative Tribunal Act 2013*, including costs incurred by the parties to the proceedings, must be paid out of the General Revenue of the State and this Act, without any further appropriation, is sufficient authority for such payment.

Schedule 2—Transitional provisions

Part 4—Transitional provisions

5—Exemptions

An exemption conferred by notice under section 4 of the *Retirement Villages Act 1987* and in force immediately before the commencement of this clause continues as if it were an exemption conferred by notice under section 5 of this Act.

6—Registrar

A person holding office as the Registrar under the *Retirement Villages Act 1987* immediately before the commencement of this clause will continue as the Registrar under this Act for the balance of his or her term of appointment (and is then eligible for reappointment under this Act).

7—Register

The register maintained under the *Retirement Villages Act 1987* forms part of the register under this Act.

8—Authorised officers

An appointment as an authorised officer issued under the *Retirement Villages Act 1987* and in force immediately before the commencement of this clause, continues as if it were an appointment under Part 2 of this Act.

9—Residence contracts

A residence contract that was entered into in compliance with the *Retirement Villages Act 1987* before the commencement of this Act (and that is in force immediately before the commencement of this Act) continues as if it were a residence contract entered into in compliance with this Act.

10—Exit entitlements

If a resident ceased to reside in a retirement village before the commencement of section 27, that section applies in relation to the resident as if the period of 18 months referred to in section 27(2)(b)(i) were the period of 18 months after the commencement of that section.

11—Surplus or deficit of accounts

(1) If 1 or more residence contracts in force in relation to a retirement village immediately before the commencement of this clause do not make provision for dealing with surplus and deficits, the operator of the village must, within 6 months after the commencement of this clause, hold a meeting of the residents to adopt a policy as to the manner in which a surplus or a deficit will be dealt with in relation to the village.

(2) A policy is only adopted if it is approved by a special resolution at the meeting of residents.

(3) The operator must, as soon as practicable after a policy is adopted under this clause, make the policy available for inspection by residents (in a manner that ensures it is easily accessible by residents).

(4) If an operator fails to have a policy adopted as required by this clause, the policy set out in the regulations for the purposes of this clause will be taken to have been adopted in relation to the retirement village.

(5) A policy adopted, or taken to be adopted, under this clause in relation to a retirement village applies to each residence contract in force in relation to the village that does not make provision for dealing with surplus and deficits as if the policy formed part of the residence contract.

(6) In this clause—

deficit means a deficit in the accounts relating to recurrent charges of a retirement village for any financial year commencing after the commencement of this section;

surplus means a surplus in the accounts relating to recurrent charges of a retirement village for any financial year.

12—Proceedings

(1) In this clause—

relevant day means the day on which the *Statutes Amendment (SACAT) Act 2014* came into operation;

repealed Act means the *Retirement Villages Act 1987*;

Residential Tenancies Tribunal means the Tribunal established under the *Residential Tenancies Act 1995*;

Tribunal means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

(2) A right to make any application or to seek a review under the repealed Act with respect to any matter in existence before the relevant day, with the effect that the relevant proceedings would have been commenced before the Residential Tenancies Tribunal, will be exercised as if this Act had been in operation before the right arose, so that the relevant proceedings may be commenced instead before the Tribunal.

(3) Nothing in this clause affects a right to appeal to the District Court against a decision, direction or order of the Residential Tenancies Tribunal made or given before the relevant day (as the right existed under section 39 of the repealed Act before the relevant day).

13—Application of offences under section 64

A person does not commit an offence against section 64 in respect of a representation contained in, or made in relation to, a lease or other contract or agreement entered into before the commencement of that section.

14—Regulations

(1) The regulations may make provisions of a savings or transitional nature consequent on the repeal of the *Retirement Villages Act 1987* and the enactment of this Act.

(2) For the avoidance of doubt, any such provision may, if the regulations so provide, have effect despite any specified provision of this Act (including a provision of this Schedule).

(3) Any such provision may, if the regulations so provide, take effect from the date of commencement of the provision of this Act to which the provision relates or a later date.

(4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation repealed by principal Act

The *Retirement Villages Act 2016* repealed the following:

Retirement Villages Act 1987

Legislation amended by principal Act

The *Retirement Villages Act 2016* amended the following:

Residential Tenancies Act 1995

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2016	50	*Retirement Villages Act 2016*	10.11.2016	1.1.2018 (*Gazette 8.8.2017 p3141*)
2019	14	*Statutes Amendment (SACAT) Act 2019*	11.7.2019	Pt 24 (s 148)—1.10.2019 (*Gazette 29.8.2019 p3138*)
2024	**57**	***Retirement Villages (Miscellaneous) Amendment Act 2024***	**5.12.2024**	**2.2.2026 except s 43(3)—5.12.2026 (*Gazette 14.8.2025 p3219*)**
2025	15	*South Australian Civil and Administrative Tribunal (Miscellaneous) Amendment Act 2025*	27.3.2025	Sch 1 (cl 4)—28.4.2025 (*Gazette 24.4.2025 p773*)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under *Legislation Revision and Publication Act 2002*	1.10.2019
Pt 1		

s 2	*omitted under Legislation Revision and Publication Act 2002*	*1.10.2019*
s 4		
s 4(1)		
authorised officer	**substituted by 57/2024 s 3(1)**	**2.2.2026**
Consumer Price Index or CPI	**inserted by 57/2024 s 3(2)**	**2.2.2026**
enforceable voluntary undertaking	**inserted by 57/2024 s 3(3)**	**2.2.2026**
ingoing contribution	**amended by 57/2024 s 3(4)**	**2.2.2026**
Registrar	**inserted by 57/2024 s 3(5)**	**2.2.2026**
remarketing	**inserted by 57/2024 s 3(6)**	**2.2.2026**
retirement village dispute	**inserted by 57/2024 s 3(7)**	**2.2.2026**
special levy	**amended by 57/2024 s 3(8)**	**2.2.2026**
special resolution	**amended by 57/2024 s 3(9)**	**2.2.2026**
s 5		
s 5(3)	**amended by 57/2024 s 4(1)**	**2.2.2026**
s 5(4)	**amended by 57/2024 s 4(2)**	**2.2.2026**
Pt 2		
s 7		
s 7(1)	**substituted by 57/2024 s 5**	**2.2.2026**
s 8		
s 8(1)	**substituted by 57/2024 s 6**	**2.2.2026**
s 8(1a)	**inserted by 57/2024 s 6**	**2.2.2026**
s 9	**substituted by 57/2024 s 7**	**2.2.2026**
s 11		
s 11(1)	**amended by 57/2024 s 8**	**2.2.2026**
s 12		
s 12(1)	**amended by 57/2024 s 9(1)**	**2.2.2026**
s 12(1a)	**inserted by 57/2024 s 9(2)**	**2.2.2026**
s 12(2)	**substituted by 57/2024 s 9(3)**	**2.2.2026**
s 13		
s 13(1)	**amended by 57/2024 s 10**	**2.2.2026**
s 14		
heading	**amended by 57/2024 s 11(1)**	**2.2.2026**
s 14(1)	**substituted by 57/2024 s 11(2)**	**2.2.2026**
s 14(2)	**amended by 57/2024 s 11(3)**	**2.2.2026**
s 14(3)	**amended by 57/2024 s 11(4)**	**2.2.2026**
s 15		
s 15(1)	**amended by 57/2024 s 12(1)**	**2.2.2026**
s 15(3)	**amended by 57/2024 s 12(2)**	**2.2.2026**

s 16		
s 16(2)	**amended by 57/2024 s 13(1)**	**2.2.2026**
s 16(3)	**substituted by 57/2024 s 13(2)**	**2.2.2026**
s 16(5)	***deleted by 57/2024 s 13(3)***	***2.2.2026***
Pt 3		
ss 20 and 21	**substituted by 57/2024 s 14**	**2.2.2026**
s 22		
s 22(1)	**s 22 amended and redesignated as s 22(1) by 57/2024 s 15(1)—(5)**	**2.2.2026**
s 22(2)	**inserted by 57/2024 s 15(5)**	**2.2.2026**
s 23	**substituted by 57/2024 s 16**	**2.2.2026**
s 24		
s 24(1)	**amended by 57/2024 s 17(1)**	**2.2.2026**
s 24(5a) and (5b)	**inserted by 57/2024 s 17(2)**	**2.2.2026**
s 25		
s 25(1)	**substituted by 57/2024 s 18**	**2.2.2026**
s 25A	**inserted by 57/2024 s 19**	**2.2.2026**
s 27		
s 27(2)	**amended by 57/2024 s 20(1)**	**2.2.2026**
s 27(3) and (4)	***deleted by 57/2024 s 20(2)***	***2.2.2026***
s 27(7)	**amended by 57/2024 s 20(3)**	**2.2.2026**
s 27(8)	***deleted by 57/2024 s 20(4)***	***2.2.2026***
s 27(15)	**substituted by 57/2024 s 20(5)**	**2.2.2026**
s 27(18) and (19)	**inserted by 57/2024 s 20(6)**	**2.2.2026**
s 28		
s 28(1)	**amended by 57/2024 s 21(1)**	**2.2.2026**
s 28(3)—(5)	**inserted by 57/2024 s 21(2)**	**2.2.2026**
s 29		
s 29(2)	**amended by 57/2024 s 22(1), (2)**	**2.2.2026**
s 29(3)	**amended by 57/2024 s 22(3)**	**2.2.2026**
s 29(7)	***deleted by 57/2024 s 22(4)***	***2.2.2026***
s 29(8)	**amended by 57/2024 s 22(5)**	**2.2.2026**
s 30		
s 30(1)	**amended by 57/2024 s 23(1)**	**2.2.2026**
s 30(5)	**amended by 57/2024 s 23(2)**	**2.2.2026**
s 31		
s 31(5)	**inserted by 57/2024 s 24**	**2.2.2026**
s 31A	**inserted by 57/2024 s 25**	**2.2.2026**
s 32	***deleted by 57/2024 s 26***	***2.2.2026***
s 33		
s 33(6)	**substituted by 57/2024 s 27(1)**	**2.2.2026**
s 33(7)	**amended by 57/2024 s 27(2)**	**2.2.2026**
s 34		

s 34(4)	**amended by 57/2024 s 28(1)**	**2.2.2026**
s 34(7)	***deleted by 57/2024 s 28(2)***	***2.2.2026***
s 36		
s 36(1)	**amended by 57/2024 s 29(1)**	**2.2.2026**
s 36(3)	**amended by 57/2024 s 29(2), (3)**	**2.2.2026**
s 38		
s 38(14)	**amended by 57/2024 s 30**	**2.2.2026**
s 39		
s 39(3a)	**inserted by 57/2024 s 31(1)**	**2.2.2026**
s 39(7)	**amended by 57/2024 s 31(2)**	**2.2.2026**
s 41	**substituted by 57/2024 s 32**	**2.2.2026**
s 42		
s 42(1)	**amended by 57/2024 s 33(1), (2)**	**2.2.2026**
ss 43A and 43B	**inserted by 57/2024 s 34**	**2.2.2026**
s 44		
s 44(5)	**amended by 57/2024 s 35(1)—(3)**	**2.2.2026**
s 44(5a) and (5b)	**inserted by 57/2024 s 35(4)**	**2.2.2026**
s 44(8a)	**inserted by 57/2024 s 35(5)**	**2.2.2026**
s 44(12)	**amended by 57/2024 s 35(6)**	**2.2.2026**
s 45		
s 45(3a)	**inserted by 57/2024 s 36(1)**	**2.2.2026**
s 45(4)	**amended by 57/2024 s 36(2)**	**2.2.2026**
s 46		
heading	**amended by 57/2024 s 37(1)**	**2.2.2026**
s 46(1)	**substituted by 57/2024 s 37(2)**	**2.2.2026**
s 46(2)	**amended by 57/2024 s 37(3)**	**2.2.2026**
s 46(3)	**substituted by 57/2024 s 37(4)**	**2.2.2026**
s 46(4)	***deleted by 57/2024 s 37(5)***	***2.2.2026***
s 46(8a)—(8c)	**inserted by 57/2024 s 37(6)**	**2.2.2026**
s 46(7)	amended by 15/2025 Sch 1 cl 4	28.4.2025
Pt 5		
s 57	**substituted by 57/2024 s 38**	**2.2.2026**
ss 57A—57D	**inserted by 57/2024 s 38**	**2.2.2026**
s 58		
s 58(1)	**amended by 57/2024 s 39(1), (2)**	**2.2.2026**
s 58(2)	**amended by 57/2024 s 39(3)**	**2.2.2026**
s 58(2a)—(2f)	**inserted by 57/2024 s 39(4)**	**2.2.2026**
s 58(3)	**amended by 57/2024 s 39(5)**	**2.2.2026**
s 58(5)	**inserted by 57/2024 s 39(6)**	**2.2.2026**
s 59		
s 59(1)	**substituted by 57/2024 s 40(1)**	**2.2.2026**
s 59(2)	***deleted by 57/2024 s 40(1)***	***2.2.2026***
s 59(3)	**amended by 57/2024 s 40(2)**	**2.2.2026**

s 59(4)	**amended by 57/2024 s 40(3)**	**2.2.2026**
s 59A	**inserted by 57/2024 s 41**	**2.2.2026**
s 60	**substituted by 57/2024 s 42**	**2.2.2026**
s 63		
s 63(1)	**substituted by 57/2024 s 43(1)**	**2.2.2026**
s 63(2)	**amended by 57/2024 s 43(2)**	**2.2.2026**
s 63(4)—(6)	inserted by 57/2024 s 43(3)	5.12.2026—not incorporated
s 63A	**inserted by 57/2024 s 44**	**2.2.2026**
s 64A	**inserted by 57/2024 s 45**	**2.2.2026**
s 65		
s 65(3)	**inserted by 57/2024 s 46**	**2.2.2026**
ss 65A and 65B	**inserted by 57/2024 s 47**	**2.2.2026**
s 68		
s 68(1)	**substituted by 57/2024 s 48**	**2.2.2026**
s 69		
s 69(2)	**amended by 57/2024 s 49(1)**	**2.2.2026**
s 69(3)	**amended by 57/2024 s 49(2), (3)**	**2.2.2026**
Sch 1		
cl 2	*deleted by 14/2019 s 148*	*1.10.2019*
Sch 2		
Pts 1—3	*omitted under Legislation Revision and Publication Act 2002*	*1.10.2019*

Transitional etc provisions associated with Act or amendments

Retirement Villages (Miscellaneous) Amendment Act 2024—Transitional provisions

1—Interpretation

In this Schedule—

disclosure statement has the same meaning as in the principal Act;

exit entitlement has the same meaning as in the principal Act;

principal Act means the *Retirement Villages Act 2016*;

residence contract means a residence contract under the principal Act.

2—Residence contracts

Section 20 of the principal Act, as inserted by this Act, applies in relation to a residence contract entered into after the commencement of section 14 of this Act except where, before that commencement, the information (including the residence contract) required to be given to a person under section 22 of the principal Act had been given to the person, in which case section 20 of the principal Act as in force before that commencement continues to apply.

3—Disclosure statements

Section 21 of the principal Act, as inserted by this Act, applies only in relation to a disclosure statement given to a person under section 22 of the principal Act after the commencement of section 14 of this Act.

4—Residence contract holding deposits

Section 25A of the principal Act, as inserted by this Act, applies only in relation to a deposit paid after the commencement of section 19 of this Act.

5—Exit entitlements

The amendments made by this Act to section 27 of the principal Act apply in relation to a residence contract irrespective of whether the contract was entered into before or after the commencement of section 20 of this Act except where, before that commencement, the resident had—

(a) ceased to reside in the retirement village; or

(b) given notice to the operator in accordance with section 27(2)(b)(ii) of the principal Act,

in which case section 27 of the principal Act as in force before that commencement continues to apply.

6—Recurrent charges

Section 31A of the principal Act, as inserted by this Act, applies in relation to recurrent charges under a residence contract irrespective of whether the contract was entered into before or after the commencement of section 25 of this Act.

7—Application to Tribunal for resolution of retirement village dispute

The amendments made by this Act to section 46 of the principal Act apply in relation to a dispute relating to a residence contract irrespective of whether the contract was entered into before or after the commencement of section 37 of this Act.

8—Termination of retirement village scheme on application to Supreme Court

Subsections (2a) to (2f) of section 58 of the principal Act, as inserted by this Act, apply only in relation to proceedings commenced under section 58 of the principal Act after the commencement of section 39 of this Act.

9—Limitation period for prosecutions

Section 65A of the principal Act, as inserted by this Act, applies only in relation to proceedings for an offence where the conduct constituting the offence was engaged in after the commencement of section 47 of this Act.

Historical versions

1.10.2019

28.4.2025