



Western Australia

Retirement Villages Act 1992

Compare between:

[02 Apr 2012, 03-i0-01] and [05 Nov 2012, 03-j0-01]

Western Australia

Retirement Villages Act 1992

An Act to regulate retirement villages and the rights of residents in such villages and for related purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Retirement Villages Act 1992*¹.

2. Commencement

The provisions of this Act shall come into operation on such day as is fixed by proclamation and in any event shall come into effect if not proclaimed, 6 months after Royal Assent¹.

3. Terms used in this Act

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

administering body, in relation to a retirement village, means the person by whom, or on whose behalf, the retirement village is administered and includes a person (other than a resident) who is the owner of land within the retirement village;

code means any code of practice prescribed under the *Fair Trading Act 2010* which relates to retirement villages;

Commissioner means the person for the time being designated as the Commissioner under section 7A;

Department means the department of the Public Service principally assisting in the administration of this Act;

owner, in relation to land under the operation of the *Transfer of Land Act 1893*, means a person who alone or with others is registered as the proprietor of an estate in fee simple;

premium means a payment (including a gift) made to the administering body of a retirement village in consideration for, or in contemplation of, admission of the person by or on whose behalf the payment was made as a resident in a retirement village (including any such payment made for the purchase of residential premises in a retirement village or for the purchase, issue or assignment of shares conferring a right to occupy any such residential premises) but does not include —

- (a) any such payment excluded by regulation from the ambit of this definition; or
- (b) recurrent charges;

recurrent charge means any amount (including rent) payable by a resident to the administering body of a retirement village on a recurrent basis;

Registrar of Titles has the meaning given to that expression by the *Transfer of Land Act 1893*;

residence contract means a contract, agreement, scheme or arrangement which creates or gives rise to a right to occupy residential premises in a retirement village, and may take the form of a lease or licence;

residence rules means the rules with which residents of a retirement village are expected by the administering body to comply, but does not include any prescribed subsidiary legislation (to which residents are subject) in force under any prescribed Act;

resident, in relation to a retirement village, means a person who has been admitted to occupation of residential premises in accordance with a retirement village scheme and includes a spouse or de facto partner of such a person who —

- (a) is residing with that person; or
- (b) was residing with that person at the time of his or her death;

residential premises means any premises or part of premises (including any land occupied with the premises) used or intended to be used as a place of residence and includes a hostel unit;

residential tenancy agreement has the same meaning as in the *Residential Tenancies Act 1987*;

retired person means a person who has attained the age of 55 years or retired from full-time employment or a person who is or was the spouse or de facto partner of such a person;

s. 3

retirement village means a complex of residential premises, whether or not including hostel units, and appurtenant land, occupied or intended for occupation under a retirement village scheme or used or intended to be used for or in connection with a retirement village scheme;

retirement village scheme or **scheme** means a scheme established for retired persons or predominantly for retired persons, under which —

- (a) residential premises are occupied in pursuance of a residential tenancy agreement or any other lease or licence;
- (b) a right to occupation of residential premises is conferred by ownership of shares;
- (c) residential premises are purchased from the administering body subject to a right or option of repurchase;
- (d) residential premises are purchased subject to conditions restricting the subsequent disposal of the premises; or
- (e) residential premises are occupied under any other scheme or arrangement prescribed for the purposes of this definition,

but does not include any such scheme under which no resident or prospective resident of residential premises pays a premium in consideration for, or in contemplation of, admission as a resident under the scheme;

service contract means a contract between an administering body or former administering body of a retirement village and a resident for the provision to the resident of —

- (a) hostel care;
- (b) infirmary care;
- (c) medical or nursing services;
- (d) meals;
- (e) administrative and management services;

- (f) maintenance and repair services;
- (g) recreation services; or
- (h) any other services,

and any collateral agreement or document relating to the provision of any such service;

working day means a day other than a Saturday, a Sunday or a public holiday.

- (2) For the purpose of determining whether a contract, agreement, scheme or arrangement is a residence contract as defined in subsection (1), it does not matter that the person granted the right of occupation is a corporation if the premises are used (or intended for use) as a residence by a natural person.

[Section 3 amended by No. 57 of 1997 s. 39(10); No. 28 of 2003 s. 179; No. 55 of 2004 s. 1023; No. 28 of 2006 s. 139; No. 58 of 2010 s. 199.]

4. Act binds the Crown

This Act binds the Crown.

5. Application of Act

- (1) Except as otherwise provided by or under this Act, this Act applies to retirement villages established either before or after the commencement of this Act.
- (2) This Act does not apply to a resident or prospective resident of a retirement village or to the administering body of that retirement village if —
 - (a) the administering body is an “approved provider” as defined in the *Aged Care Act 1997* Schedule 1 of the Commonwealth in relation to the residential premises used or intended to be used as a place of residence by the resident or prospective resident;
 - (b) the administering body provides, or is to provide, the resident or prospective resident with “residential care”

as defined in the *Aged Care Act 1997* section 41-3 of the Commonwealth; and

- (c) the resident or prospective resident is receiving, or is entitled to receive, residential care in respect of which the administering body is eligible for a “residential care subsidy” as defined in the *Aged Care Act 1997* Schedule 1 of the Commonwealth.

[Section 5 amended by No. 69 of 2006 s. 34.]

6. Contracting out

- (1) Subject to subsection (2), the provisions of this Act have effect despite any stipulation to the contrary in any contract, agreement, scheme or arrangement, and no residence contract or other contract, agreement or arrangement (whether oral or partly or wholly in writing) operates to annul, vary or exclude any of the provisions of this Act.
- (2) A provision of this Act does not apply to a contract, agreement or arrangement made or entered into before the commencement of that provision.
- (3) A person shall not enter into any contract, agreement or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act.

Penalty: \$2 000.

7. Effect of Act on other legislation

The provisions of this Act are, except as otherwise provided by this Act, in addition to and do not derogate from the provisions of any other written law.

Part 2 — Administration

7A. Commissioner

- (1) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the Department as the Commissioner for the purposes of this Act.
- (2) The Commissioner may be referred to by a title specified by the Minister by notice published in the *Gazette*.
- (3) In this section —
executive officer has the meaning given by section 3(1) of the *Public Sector Management Act 1994*.

[Section 7A inserted by No. 28 of 2006 s. 140.]

8. Functions of the Commissioner

- (1) The Commissioner has the following functions for the purposes of this Act —
 - (a) to investigate and conduct research into matters relating to or affecting retirement villages;
 - (b) to publish reports and disseminate information on matters relating to retirement villages;
 - (c) to give advice to consumers on the provisions of this Act;
 - (d) to investigate and attempt to resolve complaints by residents and administering bodies of retirement villages and to take action by negotiation, prosecution of any offence or otherwise;
 - (e) to make reports to the Minister on matters referred to the Commissioner by the Minister and matters of importance investigated by the Commissioner, whether referred to the Commissioner by the Minister or not.

[(2) deleted]

[Section 8 amended by No. 57 of 1997 s. 104; No. 28 of 2006 s. 141.]

9. Commissioner may institute or defend proceedings for a party

- (1) If a resident of a retirement village has made a complaint to the Commissioner and the Commissioner —
 - (a) after investigating the complaint, is satisfied that the resident may have a right to institute or defend proceedings under this Act; and
 - (b) is of the opinion that it is in the public interest that the Commissioner should institute, defend or assume the conduct of those proceedings on behalf of the resident,the Commissioner may institute, defend or assume the conduct of those proceedings.
- (2) The Commissioner shall not institute, defend, or assume the conduct of, any proceedings under subsection (1) on behalf of a resident without first obtaining the written consent of the resident which once given shall be irrevocable except with the consent of the Commissioner.
- (3) In relation to any proceedings referred to in subsection (1) the following provisions apply —
 - (a) the Commissioner shall, on behalf of the resident of the retirement village, have in all respects the same rights in, and control over, the proceedings, including the right to settle any action or part of any action, as the resident would have had in the conduct of those proceedings;
 - (b) the Commissioner may, without consulting or seeking the consent of the resident, conduct the proceedings in such manner as the Commissioner thinks appropriate and proper;
 - (c) in the case of proceedings already commenced by or against the resident, the State Administrative Tribunal or

- the court hearing the proceedings shall, on the application of the Commissioner, order that the Commissioner be substituted for the resident as a party to the proceedings, and may make such other orders or give such other directions in that behalf as the State Administrative Tribunal or the court thinks fit;
- (d) any moneys (excluding costs) recovered by the Commissioner shall belong and be paid to the resident without deduction and any amount awarded against the resident shall be paid by and recoverable from the resident, but in all cases the costs of the proceedings shall be borne by or paid to and retained by the Commissioner as the case may require; and
 - (e) if any party to the proceedings alleges another cause of action, or if the resident on whose behalf the proceedings are being defended has another cause of action, the State Administrative Tribunal or the court hearing the proceedings may, on the application of the Commissioner, order that the proceedings for the other cause of action be heard separately and that the party or the resident as the case may require be a party to those proceedings in his or her own right and may make such other orders or give such other directions in that behalf as the State Administrative Tribunal or the court thinks fit.
- (4) In any proceedings referred to in subsection (1), a document purporting to be signed by the Commissioner stating in respect of the proceedings that the Commissioner is satisfied that the resident may have a right to institute or defend proceedings under this Act and that it is in the public interest to institute, defend, or assume the conduct of, the proceedings, as the case may be, on behalf of the resident of the retirement village shall, in the absence of proof to the contrary, be accepted as proof that the Commissioner instituted, defended, or assumed the conduct of, the proceedings, as the case may be, in accordance with that subsection.

s. 10

- (5) In any proceedings referred to in subsection (1) a document purporting to be the consent of the resident of the retirement village to the Commissioner instituting, defending, or assuming the conduct of, the proceedings, as the case may be, shall, in the absence of proof to the contrary, be accepted as proof of that consent.
- (6) Notwithstanding anything in this section, if the State Administrative Tribunal or the court hearing the proceedings is satisfied whether on application by the resident or otherwise that any proceedings taken by the Commissioner under this section in the name of a resident are not in the interests of the resident the State Administrative Tribunal or the court, as the case may be, shall order that the proceedings shall be —
- (a) discontinued; or
 - (b) continued so as not to affect the interests of the resident and only in accordance with such directions including directions as to costs, as the State Administrative Tribunal or court, as the case requires, thinks just.
- (7) Any costs recovered by the Commissioner under subsection (3)(d) shall be credited to the Consolidated Account.
- (8) In this section **resident** includes a prospective resident or former resident.

[Section 9 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 55 of 2004 s. 1044; No. 77 of 2006 s. 4.]

10. Delegation by Commissioner

The Commissioner may by notice published in the *Gazette* delegate any of his or her functions under this Act (other than this power of delegation) to the holder of any specified office in the public service of the State or to any specified officer of an agency or instrumentality of the Crown.

11. Protection of officers

No liability attaches to the Commissioner or any delegate of the Commissioner, or any officer of the Department for any act or omission by the Commissioner, the delegate, or the officer that occurred in good faith and in the performance or discharge or purported performance or discharge of the functions of the Commissioner or the Department under this Act but nothing in this section shall relieve the Crown of any liability that it might have for the actions of such persons but for this section.

11A. Information officially obtained to be confidential

- (1) A person who misuses information obtained by reason of any function that person has, or at any time had, in the administration of this Act commits an offence.
Penalty: \$20 000.
- (2) A person misuses information if it is, directly or indirectly, recorded, used, or disclosed to another person, other than —
 - (a) in the course of duty;
 - (b) under this Act;
 - (c) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence;
 - (d) in a manner that could not reasonably be expected to lead to the identification of any person to whom the information refers; or
 - (e) with the consent of the person to whom the information relates, or each of them if there is more than one.

- (3) In this section —
information means information concerning the affairs of a person.

[Section 11A inserted by No. 28 of 2006 s. 142.]

s. 11B

11B. Powers of investigation

The *Fair Trading Act 2010* section 61 and Part 6 of that Act apply to this Act.

[Section 11B inserted by No. 58 of 2010 s. 190.]

12. Annual report

- (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Commissioner shall prepare and forward to the Minister a report on the operation of this Act during that year.
- (2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

**Part 3 — Rights and obligations of residents, owners
and administering bodies**

13. Residence contract

- (1) A residence contract shall be in writing.
- (2) At least 5 working days before a person enters into a residence contract, the owner shall cause to be given to that person —
 - (a) a statement in the prescribed form completed and signed by the owner containing the information required by the regulations;
 - (b) a notice in the prescribed form of the person's rights under this section and section 14;
 - (c) a copy of the residence rules;
 - (d) a copy of any applicable code; and
 - (e) any other prescribed documents.

Penalty: \$20 000.

- (3) Where the owner is not an administering body, the administering body shall, upon written application by the owner, provide that owner with such information and documents in the possession of the administering body as will enable the owner to comply with subsection (2).

Penalty: \$20 000.

- (4) Where a person enters into a residence contract, the contract will be taken to include a warranty on the part of the owner of the correctness of the information contained in the statement given under subsection (2)(a) (subject to any written alteration to the statement made by the owner with the consent of the prospective resident on or before the signing of the residence contract by the owner), and that warranty prevails over any inconsistent contractual term.

s. 14

- (5) A person, including an owner, shall not, without the approval of the Commissioner —
- (a) make a representation to a person that is inconsistent with information contained in a statement given to that person under subsection (2)(a);
 - (b) give to a person a statement under subsection (2)(a) that contains information that is inconsistent with a representation made by the owner to that person.

Penalty: \$20 000.

- (6) In any proceedings taken for an offence against subsection (5) it is a defence for the accused to prove —
- (a) being an owner, that any representation was made without the consent or knowledge of the owner;
 - (b) being a person other than an owner, that the representation was to his or her belief a true representation;
 - (c) in any case, that the consent of the Commissioner was given in relation to the representation.
- (7) In this section *owner* means owner of the residential premises to which the residence contract relates.

14. Cooling-off period

- (1) Subject to subsection (2) and section 75, a prospective resident is entitled to rescind a residence contract entered into by that person —
- (a) at any time within 5 working days after the date of the contract; or
 - (b) if section 13(2) is not complied with — at any time before the expiration of 10 working days after the date on which the documents required under that section are given to the prospective resident.

- (2) A person is not entitled to rescind a residence contract under this section after entering into occupation of residential premises in a retirement village under the residence contract.

15. Owner to deliver memorial

- (1) A person or association of persons whether incorporated or not shall not use land for a retirement village unless the land is under the operation of the *Transfer of Land Act 1893*.

Penalty: \$20 000.

- (2) A breach of subsection (1) shall not be pleaded in bar to any claim for the repayment of a premium or any moneys under a contract of sale relating to any interest in the land.
- (3) Subject to subsection (6), where land is, or is proposed to be, used for the purposes of a retirement village, a memorial in the form approved by the Registrar of Titles containing such information as is prescribed shall be lodged with the Registrar of Titles.
- (4) The owner of retirement village land shall cause a memorial referred to in subsection (3) to be lodged with the Registrar of Titles —
- (a) if the retirement village was established or if the plan and specifications of the retirement village were approved under the *Local Government (Miscellaneous Provisions) Act 1960* before the commencement of this section and paragraph (b) does not apply — within 3 months after the commencement of this section; and
- (b) in any other case — before entering into a contract which creates or gives rise to a right to occupy residential premises in the retirement village or inviting other persons to make applications, offers or proposals to enter into such a contract.

Penalty: \$20 000.

s. 15

- (5) Before a memorial is lodged under subsection (3) the owner must —
- (a) notify each person who holds a mortgage, charge or encumbrance over the land; and
 - (b) if the memorial relates to a retirement village established, or for which the plan and specifications were approved under the *Local Government (Miscellaneous Provisions) Act 1960*, or for which a building permit was granted under the *Building Act 2011*, after the commencement of this section, obtain the consent of each such person to the registration of the memorial.

Penalty: \$5 000.

- (6) A resident who has an interest in land in a retirement village either as a tenant in common or as an owner of a lot under the *Strata Titles Act 1985* is not required to lodge a memorial under subsection (3) so long as —
- (a) the interest of the resident is related only to the place in the retirement village occupied by the resident; and
 - (b) the interest of the resident is not offered as security or the resident does not enter into a contract for the sale of that interest.
- (7) On receiving a memorial under subsection (3) and payment of the fee prescribed under the *Transfer of Land Act 1893*, the Registrar of Titles shall register that memorial and endorse the Register within the meaning of that Act and, where appropriate, the relevant strata plan, to that effect in relation to the land to which the memorial relates.
- (8) If there is produced to the Registrar of Titles documents, if any, prescribed for the purposes of this subsection and the Registrar of Titles is satisfied that no part of the land to which a memorial relates is still used, or proposed to be used, as a retirement village the Registrar of Titles shall, upon application for cancellation of the memorial and payment of the fee prescribed

under the *Transfer of Land Act 1893*, cancel the registration of the memorial and accordingly endorse the Register within the meaning of that Act and, if necessary, relevant strata plan, to that effect in relation to the land concerned.

[Section 15 amended by No. 14 of 1996 s. 4; No. 81 of 1996 s. 153(1); No. 24 of 2011 s. 171.]

16. Occupation right not to be created unless memorial is lodged

- (1) A person shall not invite other persons to make applications, offers or proposals to enter into a contract, which has or would have the effect of creating or giving rise to a right to occupy residential premises in a retirement village in respect of which a memorial is required to be lodged under section 15 and has not been so lodged.

Penalty: \$20 000.

- (2) An owner shall not enter into a contract which has or would have the effect of creating or giving rise to a right to occupy residential premises in a retirement village in respect of which a memorial is required to be lodged under section 15 and has not been so lodged.

Penalty: \$20 000.

- (3) Subject to section 75, a person who is a resident and has entered into a contract in respect of which there has been a contravention of subsection (1) or (2) may rescind the contract not later than 6 months after that person becomes aware of the contravention.

17. Termination of residence rights

- (1) A contract which is entered into between a resident and an owner of land used for the purposes of a retirement village and which creates or gives rise to a right to occupy residential premises in that retirement village binds the successors in title of the owners as if the successors had also entered into the

s. 18

contract and the right of occupation cannot be terminated unless —

- (a) the resident dies;
 - (b) the residence contract is terminated by the resident in accordance with the residence contract or under this Act;
 - (c) the resident abandons the residential premises;
 - (d) the residence contract is terminated by the State Administrative Tribunal under this Act; or
 - (e) the holder of a mortgage, charge or other encumbrance that was in existence before the commencement of this section becomes entitled to vacant possession of the premises in pursuance of rights conferred by the mortgage, charge or other encumbrance.
- (2) Sections 57, 65 to 70, the rights of termination of residence contracts under subsection (1)(a), (b), (c) and (d) and of recovery of possession of residential premises under this Act are subject to any rights of a resident of a retirement village —
- (a) arising because the resident is the owner of residential premises; or
 - (b) acquired under a contract between the administering body and the resident.
- (3) In this section *successor in title* includes a person who acquires any interest in or right affecting land or has a mortgage, charge or other encumbrance over land.

[Section 17 amended by No. 55 of 2004 s. 1044.]

18. Premiums

- (1) Subject to subsection (2), a premium paid to the administering body shall be held in trust (in a bank account or invested as trust funds may be invested under Part III of the *Trustees Act 1962*) until —
- (a) the person by or on whose behalf the premium was paid enters into occupation of the residential premises; or

- (b) it becomes apparent that that person will not enter into occupation of the residential premises.
- (2) The Commissioner may, on the application of an administering body, grant an exemption from subsection (1) if satisfied of the administering body's capacity and willingness to provide residential premises in accordance with its obligations under the residence contracts.
- (3) An exemption may be conditional or unconditional, and if an administering body contravenes or fails to comply with a condition of an exemption the administering body is guilty of an offence.
Penalty: \$5 000.
- (4) If the prospective resident does not enter into occupation of residential premises, any question affecting entitlement to or disposition of the premium shall be determined by reference to the residence contract subject to the following qualifications —
 - (a) if the prospective resident's failure to enter into occupation of residential premises is attributable to a failure on the part of the administering body to carry out contractual obligations, interest and accretions arising from investment of the premium must be paid to the prospective resident;
 - (b) in any other case, the administering body will be entitled to retain any such interest and accretions.
- (5) If a provision of this section is not observed, the administering body is guilty of an offence.
Penalty: \$20 000.

[Section 18 amended by No. 1 of 1997 s. 18.]

19. Contractual rights of residents

- (1) A service contract may be enforced against the administering body, for the time being, of the retirement village.
- (2) Every term relating to the provision of a service to a resident under a service contract binds a resident and each successor in

s. 19

title of the resident until the term is varied or cancelled by the State Administrative Tribunal under this Act.

- (3) Where a premium is paid under a contract providing that it will be repaid in whole or in part on the happening of a contingency and the contingency occurs, the sum repayable shall be paid —
 - (a) where the place formerly occupied by the resident in the retirement village is subsequently occupied by another person — within 7 days of that other person taking occupation;
 - (b) in any other case — within 45 days of the day on which the resident ceases to reside at that place in the retirement village.
- (4) Any amount not paid within the period referred to in subsection (3) may be recovered as a debt from the administering body for the time being of the retirement village.
- (5) Subsection (3) does not apply to a residence contract unless —
 - (a) the residence contract has been terminated in accordance with the terms of the residence contract; and
 - (b) the resident does not have the right to appoint or nominate his or her own agent for the purpose of disposing of the resident's interest in the retirement village.
- (6) Proceedings will not lie against the owner of land in a retirement village for the enforcement of rights under subsection (1) or (2) unless —
 - (a) the owner is a party to the contract under which the premium is repayable;
 - (b) the owner is the sole administering body of the retirement village; or
 - (c) an administering body other than the owner has failed to satisfy a judgment given for the enforcement of those rights.
- (7) In subsection (2) *service* means a service referred to in the definition of “service contract” in section 3.

[Section 19 amended by No. 55 of 2004 s. 1044.]

20. Charges

- (1) The rights of a resident to repayment of a premium, or part of a premium, under section 19 are a charge on land in the retirement village other than —
 - (a) residential premises owned by a resident; or
 - (b) any other prescribed part of, or interest in, a retirement village.
- (2) Subsection (1) has effect whether or not the charge is registered.
- (3) If the premium or part of a premium referred to in subsection (1) is paid after the time within which a memorial in respect of the land to which the charge relates is required to be lodged under section 15, the charge is a first charge on the land to which the charge relates, and has priority over all mortgages, charges or encumbrances created or arising after the creation of the charge, or created or arising before the creation of the charge but after the day on which a memorial in respect of the relevant land is registered under section 15.
- (4) If the premium or part of a premium referred to in subsection (1) was paid before the time within which a memorial in respect of the land to which the charge relates is required to be registered under section 15, the charge on the land to which the charge relates has priority over all mortgages, charges and encumbrances created or arising in relation to that land after the day on which a memorial in respect of the relevant land is registered under section 15.
- (5) Land which is charged under this section continues to be liable to the charge despite any change in ownership, and, subject to subsection (1) and section 19(6), the charge is enforceable against any administering body for the time being of the land, whether or not that administering body has notice of the charge.
- (6) The —

s. 21

- (a) interests and rights mentioned in the proviso to section 68 of the *Transfer of Land Act 1893*;
- (b) interests and rights prescribed for the purposes of this subsection,

have priority over a charge under this section.

21. Enforcement of charge

- (1) A resident of a retirement village in respect of which there is a charge protecting the resident's right to repayment of a premium or part of a premium may apply to the Supreme Court for an order for enforcement of the charge.
- (2) On application by a resident in accordance with subsection (1) the Supreme Court may make an order for enforcement of the charge if it is satisfied that —
 - (a) the resident has brought proceedings against the administering body for the time being of the land charged for the recovery of the resident's premium or part of a premium, has obtained judgment and has attempted to execute the judgment but is unable to obtain payment of the whole of the judgment debt; and
 - (b) it is not contrary to the interests of any of the residents of the retirement village to make the order.
- (3) An order for the enforcement of a charge may provide for the following matters —
 - (a) the sale of the land charged;
 - (b) a declaration that the charge is extinguished upon the completion of the sale of the land charged;
 - (c) a determination of the amount secured by the charge;
 - (d) a determination of the entitlements of residents to payments out of the proceeds of the sale of the land charged, having regard to the amount of each resident's refundable premium or part of a premium and the

- proportion which it bears to the total amount of premiums or parts of premiums secured by the charge;
- (e) the order in which the proceeds of sale are to be applied having regard to the matters set out in subsection (4).
- (4) Proceeds of sale are to be applied in the following order —
- (a) firstly, in payment of mortgages, charges and encumbrances which rank before the charge in priority unless the sale is subject to those mortgages, charges and encumbrances;
- (b) secondly, in payments of the costs incurred in applying for and obtaining the order for enforcing the charge and in selling the land charged;
- (c) thirdly, in making payments to residents;
- (d) fourthly, in payment of any mortgages, charges and encumbrances which rank after the charge in priority;
- (e) fifthly, in payments to the person who owned the land charged immediately before an order was applied for.
- (5) An order for enforcing a charge may contain such incidental and consequential provisions as the Court may decide.

22. Termination of retirement village scheme

- (1) A retirement village scheme cannot be terminated without the approval of the Supreme Court while a person who has been admitted to occupation of residential premises under the scheme remains in occupation of those premises.
- (2) The Commissioner will be a party to any proceedings in which the Supreme Court's approval of the termination of a retirement village scheme is sought.
- (3) If the Supreme Court approves the termination of a retirement village scheme it may make such orders as it thinks necessary to protect the interests of existing residents.

Part 4 — Resolution of disputes

Division 1 — General

[Heading inserted by No. 55 of 2004 s. 1024.]

[23-26. Deleted by No. 55 of 2004 s. 1025.]

[Divisions 2 and 3 (s. 27-37) deleted by No. 55 of 2004 s. 1026.]

[Heading deleted by No. 55 of 2004 s. 1027.]

[38-41. Deleted by No. 55 of 2004 s. 1028.]

42. Use of other means of resolution

The State Administrative Tribunal may decline to entertain an application if it considers that the matter in dispute could be adequately dealt with under an applicable code or applicable residence rules or by negotiation by the Department under section 8(1)(d).

[Section 42 amended by No. 55 of 2004 s. 1029.]

[43. Deleted by No. 55 of 2004 s. 1030.]

44. Extension of time

- (1) Notwithstanding any other provision of this Act, the State Administrative Tribunal may, on application by any person, extend or reduce the period of time for the doing of anything under an applicable code, this Act or the regulations.
- (2) An application referred to in subsection (1) may be made even though the relevant period of time has expired.

[Section 44 amended by No. 55 of 2004 s. 1031; No. 8 of 2009 s. 110.]

[45-47. Deleted by No. 55 of 2004 s. 1032.]

48. Reference of certain matters concerning administering bodies

The State Administrative Tribunal may, where it considers it appropriate, bring or cause to be brought to the attention of the Commissioner the conduct of the administering body of a retirement village in a particular matter before the State Administrative Tribunal.

[Section 48 amended by No. 55 of 2004 s. 1033 and 1044.]

[49-51. Deleted by No. 55 of 2004 s. 1034.]

Division 5 — Orders by State Administrative Tribunal

[Heading amended by No. 55 of 2004 s. 1035.]

52. Limits on orders by State Administrative Tribunal

- (1) The State Administrative Tribunal shall not make orders under this Act that are —
 - (a) inconsistent with any applicable code; or
 - (b) inconsistent with a residence contract.
- (2) Subsection (1) does not apply to a provision of a residence contract that contravenes section 6.

[Section 52 amended by No. 55 of 2004 s. 1044.]

[53. Deleted by No. 55 of 2004 s. 1036.]

54. Jurisdiction where title to land in question

Except as provided in section 75, the State Administrative Tribunal does not have jurisdiction under this Act to determine any question as to the title of land.

[Section 54 amended by No. 55 of 2004 s. 1044.]

[55. Deleted by No. 55 of 2004 s. 1036.]

56. Disputes in relation to service contracts

- (1) Where —
- (a) a party to a service contract proposes a variation or cancellation in relation to any of the terms of a service contract, whether during or on the expiry of its term; or
 - (b) a dispute arises between the parties to a service contract,
- either party to the service contract may make an application in relation to the matter to the State Administrative Tribunal.

[(2) deleted]

- (3) Where the State Administrative Tribunal is of the opinion that an order, if made under this section, may be relevant to more than one service contract the State Administrative Tribunal may require the administering body to furnish the State Administrative Tribunal with such information in relation to any other service contract or service contracts that may be relevant to the application and effect shall be given to any such order.
- (4) The State Administrative Tribunal may upon application made under this section order —
- (a) specific performance of the service contract;
 - (b) the payment of a sum of money,

and make such other orders as the State Administrative Tribunal considers appropriate and may declare that the order applies to such service contracts as are specified in the order and the order shall have effect accordingly.

[Section 56 amended by No. 55 of 2004 s. 1037 and 1044.]

57. Applications relating to transfer of residents

- (1) If a resident of a retirement village claims that —
- (a) a dispute has arisen between the resident and the administering body as to whether the resident should be

transferred from one kind of accommodation in the village to another; and

- (b) all procedures for settlement of the dispute under any applicable code and this Act (otherwise than by reference of the dispute to the State Administrative Tribunal) have been exhausted without resolving the dispute to the satisfaction of the resident or, if there are no such procedures, the dispute has not been resolved,

the resident may apply to the State Administrative Tribunal for an order in respect of the dispute.

- (2) The State Administrative Tribunal may, on application by a resident under this section, make one or more of the following orders —
 - (a) an order that —
 - (i) restrains the administering body from transferring the resident from one kind of accommodation in the retirement village to another; or
 - (ii) requires the resident to transfer, or the administering body to transfer the resident, from one kind of accommodation in the retirement village to another;
 - or
 - (b) an order terminating the residence contract of the resident.
- (3) If the State Administrative Tribunal makes an order terminating a residence contract under this section, the State Administrative Tribunal shall fix in the order a date by which the resident must vacate the residential premises.
- (4) In addition to any other order the State Administrative Tribunal may make under this section, the State Administrative Tribunal may make an order for the payment or refund of money by an administering body to a resident or by a resident to an administering body.

- (5) An application under this section may be made during the currency or after the termination of a residence contract.
- (6) For the purpose of determining any application under this section, the State Administrative Tribunal may —
 - (a) with the consent of the resident, request the chief executive officer of the Department as defined in section 3 of the *Health Legislation Administration Act 1984* or any other person or any body to prepare a report with respect to the resident's physical or mental capacity; and
 - (b) have regard to any such report and any other report prepared on behalf of the resident or the administering body of the retirement village.

[Section 57 amended by No. 55 of 2004 s. 1044; No. 28 of 2006 s. 143.]

58. Termination of occupation on medical grounds

- (1) If the administering body of a retirement village is of the opinion that residential premises occupied by a resident of the retirement village are, because of the resident's physical or mental incapacity, unsuitable for occupation by the resident, the administering body may apply to the State Administrative Tribunal for an order terminating the resident's residence contract and fixing a date by which the resident must vacate the residential premises occupied by the resident.
- (2) The State Administrative Tribunal may, on application by an administering body under this section, make an order terminating the residence contract, but only if the State Administrative Tribunal is satisfied that any procedures specified under any applicable code or the residence contract for giving notice of intention to terminate the residence contract and for termination of the contract have been followed by the administering body and the State Administrative Tribunal is of the opinion that —

- (a) the residential premises occupied by the resident are, because of the resident's physical or mental incapacity, unsuitable for occupation by the resident; or
 - (b) having considered the circumstances of the case, it is otherwise appropriate to make an order terminating the residence contract.
- (3) In determining whether to terminate a residence contract under this section, the State Administrative Tribunal may —
- (a) with the consent of the resident, request the chief executive officer of the Department as defined in section 3 of the *Health Legislation Administration Act 1984* or any other person or any body to prepare a report with respect to the resident's physical or mental capacity; and
 - (b) have regard to any such report and any other report prepared on behalf of the resident or the administering body.
- (4) If the State Administrative Tribunal makes an order terminating a residence contract under this section, the State Administrative Tribunal shall fix in the order a date by which the resident must vacate the residential premises occupied by the resident.
- (5) In addition to any other order the State Administrative Tribunal may make under this section, the State Administrative Tribunal may make an order for the payment or refund of money by an administering body to a resident or by a resident to an administering body.

[Section 58 amended by No. 55 of 2004 s. 1044; No. 28 of 2006 s. 143.]

59. Termination of occupation on grounds of breach of residence contract or rules

- (1) If —

Retirement Villages Act 1992

Part 4 Resolution of disputes

Division 5 Orders by State Administrative Tribunal

s. 59

- (a) a resident of a retirement village breaches the resident's residence contract or the residence rules of a retirement village; and
- (b) any procedures specified under any applicable code or the residence contract for giving notice of intention to terminate the residence contract and for termination of the residence contract have been complied with by the administering body of the retirement village,

the administering body may apply to the State Administrative Tribunal for an order terminating the contract and fixing a date by which the resident must vacate the residential premises occupied by the resident.

- (2) The State Administrative Tribunal may, on application by an administering body under this section, make an order terminating the residence contract, but only if the State Administrative Tribunal is satisfied that —
 - (a) the breach, in the circumstances of the case, is such as to justify termination of the contract; or
 - (b) persistent breaches by the resident are, in the circumstances of the case, such as to justify termination of the contract; or
 - (c) having considered the circumstances of the case, it is otherwise appropriate to do so.
- (3) If the State Administrative Tribunal makes an order terminating a residence contract under this section, the State Administrative Tribunal shall fix in the order a date by which the resident must vacate the residential premises occupied by the resident.
- (4) In addition to any other order the State Administrative Tribunal may make under this section, the State Administrative Tribunal may make an order for the payment or refund of money by an administering body to a resident or by a resident to an administering body.

[Section 59 amended by No. 55 of 2004 s. 1044.]

60. Parties to minimise loss from breach of residence contract

- (1) The rules of law relating to mitigation of loss or damage on breach of a contract apply to a breach of a residence contract.
- (2) Nothing in this section affects the operation of section 69(2) (which also deals with mitigation of loss).

61. State Administrative Tribunal may waive defect in notice of intention to terminate

The State Administrative Tribunal may, if the State Administrative Tribunal thinks it appropriate to do so in the special circumstances of the case, make an order terminating the residence contract under section 58 or 59 even though any procedures specified under any applicable code or the residence contract for giving notice of intention to terminate the residence contract have not been complied with.

[Section 61 amended by No. 55 of 2004 s. 1044.]

62. State Administrative Tribunal may terminate residence contract where resident causes serious damage or injury

- (1) The State Administrative Tribunal may, on application by the administering body of a retirement village, make an order terminating a residence contract if the State Administrative Tribunal is satisfied that the resident has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit —
 - (a) serious damage to the residential premises; or
 - (b) injury to the administering body or an employee of the administering body or any other resident.
- (2) If the State Administrative Tribunal makes an order terminating a residence contract under this section, the State Administrative Tribunal —
 - (a) shall fix in the order a date by which the resident must vacate the residential premises occupied by the resident; and

- (b) may make such other orders (including an order that the resident pay compensation to the administering body or that the administering body pay to the resident compensation for the resident's loss of rights under the contract) as the State Administrative Tribunal thinks fit.
- (3) An application under this section may be made whether or not the administering body has given notice of intention to terminate the residence contract.

[Section 62 amended by No. 55 of 2004 s. 1044.]

63. State Administrative Tribunal may terminate residence contract where administering body would otherwise suffer undue hardship

- (1) The State Administrative Tribunal may, on application by the administering body of a retirement village, make an order terminating a residence contract if the State Administrative Tribunal is satisfied that the administering body would, in the special circumstances of the case, suffer undue hardship if the contract were not terminated.
- (2) If the State Administrative Tribunal makes an order terminating a residence contract under this section, the State Administrative Tribunal —
 - (a) shall fix in the order a date by which the resident must vacate the residential premises occupied by the resident; and
 - (b) may make such other orders (including an order that the administering body pay to the resident compensation for the resident's loss of rights under the contract) as the State Administrative Tribunal thinks fit.

[Section 63 amended by No. 55 of 2004 s. 1044.]

64. Suspension or refusal of orders to terminate

- (1) The State Administrative Tribunal may suspend the operation of an order fixing a date by which a resident of a retirement village must vacate residential premises occupied by the resident if the State Administrative Tribunal is satisfied that it is desirable to do so, having regard to the relative hardship likely to be caused by the suspension to —
 - (a) the resident; and
 - (b) other residents or the administering body of the retirement village.
- (2) The State Administrative Tribunal may, as a condition of the suspension of the operation of an order referred to in subsection (1), require the resident to pay to the administering body an occupation fee specified by the State Administrative Tribunal for the period for which that order is suspended.
- (3) The State Administrative Tribunal may refuse to make an order terminating a residence contract if the State Administrative Tribunal is satisfied that —
 - (a) the administering body was wholly or partly motivated to seek the termination of the contract by the fact that —
 - (i) the resident had applied or proposed to apply to the State Administrative Tribunal for an order;
 - (ii) the resident had complained to a governmental authority or had taken some other action to secure or enforce his or her rights as a resident;
or
 - (iii) an order of the State Administrative Tribunal was in force in relation to the resident and the administering body;
 - or
 - (b) in the case of an application by an administering body under section 59 the resident remedied the breach concerned.

[Section 64 amended by No. 55 of 2004 s. 1044.]

65. Prohibition on certain recovery proceedings in courts etc.

No proceedings in any court to obtain recovery of possession of residential premises occupied by a resident of a retirement village under a residence contract shall be commenced by the administering body of the retirement village against the resident.

66. Recovery of possession of premises prohibited except by order

- (1) A person shall not, except under a judgment, warrant or order of a court or an order of the State Administrative Tribunal, enter residential premises occupied by a resident of a retirement village under a residence contract for the purpose of recovering possession of the premises.

Penalty: \$2 000.

- (2) This section applies to a person who enters residential premises whether on his or her own behalf or on behalf of another person.
- (3) A court before which proceedings for an offence under this section are brought may (in addition to imposing any penalty) order the person who committed the offence or any person on whose behalf that person acted to pay to the person entitled to occupy the premises concerned such compensation as it thinks fit.

[Section 66 amended by No. 55 of 2004 s. 1044.]

67. Liability of resident remaining in possession

- (1) If a resident of a retirement village refuses or fails to comply with an order to give possession of residential premises in the retirement village to another person on a fixed date, the resident is liable to pay compensation to the administering body of the retirement village for any loss caused to the administering body by that refusal or failure.

- (2) The State Administrative Tribunal may, on application by an administering body under this section made not later than 30 days after the day on which the order fixing the date to give possession took effect, order the resident to pay to the administering body such compensation as the State Administrative Tribunal thinks fit.

[Section 67 amended by No. 55 of 2004 s. 1044.]

68. Abandoned premises

- (1) The State Administrative Tribunal may, on application by the administering body of a retirement village, make an order that declares that residential premises occupied by a resident of a retirement village were abandoned by the resident on a day specified by the State Administrative Tribunal.
- (2) The resident shall be taken for the purposes of this Act to have abandoned the residential premises on the day specified by the State Administrative Tribunal.

[Section 68 amended by No. 55 of 2004 s. 1044.]

69. Right of administering body to compensation where resident abandons premises

- (1) If a resident of a retirement village abandons the residential premises, the resident is liable to pay compensation to the administering body of the retirement village for any loss (including loss of rent) caused by the abandonment.
- (2) The administering body shall take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by taking those steps.
- (3) The State Administrative Tribunal may, on application by the administering body, order the resident to pay to the administering body such compensation (including compensation for loss of rent) as the State Administrative Tribunal thinks fit.

[Section 69 amended by No. 55 of 2004 s. 1044.]

70. Goods abandoned by resident after residence contract is terminated

- (1) If a residence contract is terminated and goods are abandoned on the residential premises by a former resident of a retirement village, the administering body of the retirement village may —
 - (a) apply to the State Administrative Tribunal for an order under this section; or
 - (b) dispose of the goods in the prescribed manner,or both.
- (2) The State Administrative Tribunal may, on application by an administering body under this section, make any one or more of the following orders —
 - (a) an order authorising the removal, destruction or disposal of the goods;
 - (b) an order authorising the sale of the goods;
 - (c) an order directing that notice of any action or proposed action in relation to the goods be given to the former resident or any other person;
 - (d) an order as to the manner of sale of the goods;
 - (e) an order as to the proceeds of sale of the goods;
 - (f) any ancillary order which the State Administrative Tribunal, in the circumstances, thinks appropriate.
- (3) A purchaser of goods sold by an administering body in accordance with an order of the State Administrative Tribunal or the regulations acquires a good title to the goods in defeasance of the interest of the former resident or any other person who has an interest in the goods.
- (4) An administering body does not incur any liability in respect of the removal, destruction, disposal or sale of goods in accordance with an order of the State Administrative Tribunal or regulations made under section 82.

[Section 70 amended by No. 55 of 2004 s. 1044.]

[71-73. Deleted by No. 55 of 2004 s. 1038.]

74. Protection

No liability attaches to a member of a committee convened under a code to hear and mediate disputes within a retirement village, any such committee, or any other person for any act or omission by him or her or on his or her part or by any such committee or on the part of any such committee that occurred in good faith and in the performance or discharge or purported performance or discharge, of his or her or its functions under this or any other written law.

[Section 74 amended by No. 55 of 2004 s. 1039.]

Part 5 — Miscellaneous

75. Rescission of contract

- (1) A contract is rescinded under section 14 or 16 by notice in writing given by the person entitled to rescind the contract to all other parties to the contract.
- (2) The rescission of a contract under section 14 or 16 takes effect on the date of service of the notice under subsection (1) of this section and the contract is terminated at the time when the notice is so given.
- (3) Subject to the making of an order to the contrary under subsection (4), if a contract is rescinded under section 14 or 16 —
 - (a) the rescission notice is to be regarded as applying to the service contract, the residence contract and all collateral contracts entered into by the person rescinding the contract; and
 - (b) that person is entitled to the repayment of all moneys paid by that person or on that person's behalf in connection with those contracts and such moneys shall be recoverable, by action as for debt, by that person accordingly.
- (4) If a contract is rescinded under section 14 or 16, the State Administrative Tribunal may, upon application by any party to that contract, make —
 - (a) such orders as it thinks just providing for the repayment of part or all of the moneys paid by the person rescinding the contract, or on that person's behalf, in connection with the contracts to which the rescission notice applies under subsection (3)(a); and
 - (b) such other vesting or consequential orders as it thinks just,and for the purposes of carrying out this section the State Administrative Tribunal may give such directions as it considers necessary or expedient.

- (5) An application under subsection (4) shall be made within 30 days of the day on which the contract is rescinded.
- (6) An owner or administering body who refuses or fails to return moneys to which a person is entitled under subsection (3) or (4) commits an offence.
Penalty: \$20 000.
- (7) A rescission of a residence contract under section 14 or 16 shall have effect notwithstanding that the residence contract may also be subject to the provisions of the *Strata Titles Act 1985* and nothing in this section shall derogate from the rights of a purchaser under that Act.
- (8) Where under section 14 or 16 a person rescinds a residence contract entered into by him or her after the property purchased by him or her has been registered in his or her name, then that person, subject to the tender to him or her of repayment as provided by subsection (3) or (4), shall —
- (a) execute such instruments as, being necessary to register that title in the name of the former owner or his or her nominee, are presented to him or her for execution by or on behalf of the former owner; and
 - (b) deliver up to the former owner or his or her nominee any relevant certificate of title in his or her possession or under his or her control,

but the person rescinding the contract shall not be liable for any costs or expenses in respect of the transaction.

[Section 75 amended by No. 55 of 2004 s. 1040 and 1044.]

[76. Deleted by No. 55 of 2004 s. 1041.]

77. Non-compliance may be excused by Court

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

s. 79

- (2) Where the District Court acts under subsection (1), it may —
 - (a) make consequential orders protecting the interests of any 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.

[78. Deleted by No. 28 of 2006 s. 144.]

79. Liability of directors etc.

- (1) Where a body corporate has committed an offence against this Act and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any person who was an officer or was purporting to act as an officer of the body corporate, that person, as well as the body corporate, commits that offence.
- (2) In subsection (1) *officer* has the same meaning as in the *Corporations Act 2001* of the Commonwealth but does not include an employee of the body corporate unless he or she was concerned in the management of the body corporate.

[Section 79 amended by No. 10 of 2001 s. 220.]

80. Time for bringing proceedings

Proceedings for an offence against this Act may be commenced at any time within 2 years of the day on which the offence is alleged to have been committed.

[81. Deleted by No. 55 of 2004 s. 1042.]

82. Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required

or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) In particular, the regulations may make provision for or with respect to —
- [(a) deleted]*
 - (b) the service of notices under this Act or a code;
 - (c) goods abandoned or apparently abandoned by a resident of a retirement village;
 - [(d) deleted]*
 - (e) fees to be paid under this Act.
- (3) A regulation may create an offence punishable by a penalty not exceeding \$500.

[Section 82 amended by No. 55 of 2004 s. 1043.]

83. Review of the Act

- (1) The Minister shall carry out a review of the operation and effectiveness of this Act within 6 months after the expiration of one year from the commencement of section 6 and subsequently shall carry out such a review as soon as practicable after the expiration of each period of 5 years.
- (2) The Minister shall prepare a report based on each review under subsection (1) and shall, as soon as is practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

84. Savings and transitional

Schedule 1 has effect.

[85, 86. Omitted under the Reprints Act 1984 s. 7(4)(e).]

Schedule 1 — Savings and transitional provisions

[s. 84]

[Heading amended by No. 19 of 2010 s. 4.]

1. Existing disputes and other matters

This Act does not apply to disputes as to the transfer of a resident from one kind of accommodation in a retirement village to another which occurred, or proceedings to terminate residence contracts or regain possession of residential premises, which commenced before the commencement of section 84.

2. Regulations

- (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the commencement of section 84 or a later day.
- (3) To the extent to which a provision referred to in subclause (1) 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.

3. Exemption

- (1) The Minister may by order exempt any —
 - (a) administering body that administers a retirement village established before the commencement date;
 - (b) retirement village established before the commencement date,from all or any of the provisions of this Act to such extent as the exemption relates to any matter arising before the commencement

date and either unconditionally or subject to such conditions as are specified in the order.

(2) In subclause (1) —

commencement date means the date on which this Act comes into operation.

Notes

¹ This is a compilation of the *Retirement Villages Act 1992* and includes the amendments made by the other written laws referred to in the following table ^{1a, 2}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Retirement Villages Act 1992</i>	34 of 1992	19 Jun 1992	s. 1 and 2: 19 Jun 1992; Act other than s. 1 and 2: 10 Jul 1992 (see s. 2 and <i>Gazette</i> 10 Jul 1992 p. 3185)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Transfer of Land Amendment Act 1996 s. 153(1)</i>	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
<i>Trustees Amendment Act 1997 s. 18</i>	1 of 1997	6 May 1997	16 Jun 1997 (see s. 2 and <i>Gazette</i> 10 Jun 1997 p. 2661)
<i>Statutes (Repeals and Minor Amendments) Act 1997 s. 39(10) and 104</i>	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
Reprint of the <i>Retirement Villages Act 1992</i> as at 22 Jan 1999 (includes amendments listed above)			
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 60(1)</i>	43 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2(2) and <i>Gazette</i> 16 Feb 2001 p. 903)

Short title	Number and year	Assent	Commencement
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 52	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 62	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 113 ^{3,4}	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
Reprint 2: The Retirement Villages Act 1992 as at 1 Apr 2005 (includes amendments listed above)			
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 4 Div. 21 ⁵	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Consumer Protection Legislation Amendment and Repeal Act 2006</i> Pt. 10	69 of 2006	13 Dec 2006	14 Jul 2007 (see s. 2 and <i>Gazette</i> 13 Jul 2007 p. 3453)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
Reprint 3: The Retirement Villages Act 1992 as at 10 Oct 2008 (includes amendments listed above)			
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 110	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Acts Amendment (Fair Trading) Act 2010</i> s. 190 and 199	58 of 2010	8 Dec 2010	1 Jan 2011 (see s. 2(c) and <i>Gazette</i> 24 Dec 2010 p. 6805)
<i>Building Act 2011</i> s. 171	24 of 2011	11 Jul 2011	2 Apr 2012 (see s. 2(b) and <i>Gazette</i> 13 Mar 2012 p. 1033)

Short title	Number and year	Assent	Commencement
Retirement Villages Amendment Act 2012 s. 1 and 2	36 of 2012	5 Nov 2012	5 Nov 2012 (see s. 2(a))

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 60(2)</i> ⁶	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
Retirement Villages Amendment Act 2012 s. 3-21 ⁷	36 of 2012	5 Nov 2012	To be proclaimed (see s. 2(b))

² The *Courts Legislation Amendment and Repeal Act 2004* Sch. 2 cl. 45 was repealed by the *Criminal Law and Evidence Amendment Act 2008* s. 77(13).

³ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁴ The *State Administrative Tribunal Regulations 2004* r. 37 reads as follows:

37. Retirement Villages Act 1992

- (1) In this regulation —
commencement day means the day on which the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Part 2 Division 113 comes into operation.
- (2) If a matter being dealt with under the *Retirement Villages Act 1992* by the Retirement Villages Disputes Tribunal before the commencement day is transferred to the Tribunal under the Act section 167(4)(b) —

- (a) the Act section 39 does not apply; and
- (b) the matter is to be dealt with by the Tribunal as if the *Retirement Villages Act 1992* section 47 in force immediately before the commencement day continued to apply and a reference in that section to the Tribunal were a reference to the State Administrative Tribunal.

⁵ The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 4 Div. 23 (other than s. 151) (as amended by *Acts Amendment (Fair Trading) Act 2010* s. 184) reads as follows:

Division 23 — Transitional provisions

[151. Deleted by No. 58 of 2010 s. 184.]

152. Commissioner for Corporate Affairs and Registrar of Co-operative and Financial Institutions

- (1) A thing done or omitted to be done by, to or in relation to, the Commissioner for Corporate Affairs before commencement under, or for the purposes of, the *Companies (Co-operative) Act 1943* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.
- (2) A thing done or omitted to be done by, to or in relation to, the Registrar of Co-operative and Financial Institutions before commencement under, or for the purposes of, the *Co-operative and Provident Societies Act 1903* has the same effect after commencement as if it had been done or omitted by, to or in relation to, the Registrar as defined in that Act as in force after commencement.

153. Consumer Affairs Act 1971

Each office in existence immediately before commencement because of section 15(1) of the *Consumer Affairs Act 1971* does not cease merely because that subsection is repealed by this Act.

154. Petroleum Products Pricing Act 1983

Each office in existence immediately before commencement because of section 5(2)(b) of the *Petroleum Products Pricing Act 1983* does not cease merely because that paragraph is deleted by this Act.

155. Interpretation

In this Division —

commencement means the time at which this Division comes into operation;

Commissioner for Fair Trading means the Commissioner for Fair Trading referred to in section 15 of the *Consumer Affairs Act 1971* as in force before commencement;

Prices Commissioner means the Prices Commissioner referred to in section 5(1) of the *Petroleum Products Pricing Act 1983* as in force before commencement.

⁶ On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 60(2) had not come into operation. It reads as follows:

60. Retirement Villages Act 1992 amended

- (2) Section 25(1)(g)(i) of the *Retirement Villages Act 1992* is amended by deleting “, and in particular his or her rights, if any, under the *Superannuation and Family Benefits Act 1938*”.

The section that it seeks to amend has been repealed.

⁷ On the date as at which this compilation was prepared, the *Retirement Villages Amendment Act 2012* s. 3-21 had not come into operation. They read as follows:

3. Act amended

This Act amends the *Retirement Villages Act 1992*.

4. Section 3 amended

- (1) In section 3(1) insert in alphabetical order:

levy means a single amount that the residents of a retirement village are required to pay to recover an unforeseen operating expense of the retirement village not provided for in the recurrent charges;

- (2) In section 3(1) in the definition of *premium* delete paragraph (b) and insert:

(b) a levy or recurrent charges;

(3) In section 3(1) in the definition of *service contract* delete paragraph (g) and insert:

(g) recreation services or amenities or entertainment services or amenities; or

(4) In section 3(1) in the definition of *service contract* after each of paragraphs (a) to (f) insert:

or

5. Section 6 amended

(1) In section 6(1) delete “subsection (2),” and insert:

subsection (2) and without affecting the operation of sections 23(4) and 24(6).

(2) In section 6(2) delete “A” and insert:

Unless this Act provides that this subsection does not have effect in relation to the provision concerned, a

6. Section 11 amended

(1) At the beginning of section 11 insert:

(1) In this section —

statutory manager means a person appointed under section 75B and includes an agent of, or a person employed or engaged by, a statutory manager who is assisting the statutory manager in the performance of the functions of the statutory manager under this Act.

(2) In section 11:

(a) delete “No” and insert:

(2) No

(b) after “of the Department” insert:

or a statutory manager

(c) delete “or the officer” and insert:

the officer or the statutory manager

(d) delete “Commissioner or the Department under this Act but” and insert:

Commissioner, the Department or the statutory manager under this Act but, except as stated in subsection (3),

(3) At the end of section 11 insert:

(3) The Crown is relieved of any liability that it might otherwise have had for any act or omission, as described in subsection (2), by a statutory manager.

7. Section 13 amended

(1) In section 13(2) delete “5 working days” and insert:

10 working days

(2) After section 13(3) insert:

(4A) A person must not demand or receive any fee or charge for any information or document given under subsection (2) or (3).
Penalty: a fine of \$5 000.

8. Section 14A inserted

After section 13 insert:

14A. Residence contracts to comply with prescribed requirements

- (1) The regulations may provide for provisions or matters that must be included, or provisions or matters that must not be included, in residence contracts or in residence contracts of a specified kind.
- (2) A person must not enter into a residence contract with a prospective resident unless the residence contract, otherwise than because of the operation of subsection (3) or (4), complies with any regulations made for the purposes of subsection (1).
Penalty: a fine of \$20 000.
- (3) If regulations made for the purposes of subsection (1) provide that residence contracts or residence contracts of a specified kind must contain a provision in the terms specified in those regulations, a residence contract to which those regulations apply that does not include a provision in the specified terms is to be taken to include that provision.
- (4) If regulations made for the purposes of subsection (1) provide that any provision or matter must not be included in residence contracts or residence contracts of a specified kind, a residence contract to which those regulations apply that includes any provision or matter contrary to those regulations is void to the extent of the provision or matter.
- (5) The regulations may provide that section 6(2) does not have effect in relation to any specified regulations, or any specified provisions of regulations, made for the purposes of subsection (1).

9. Section 14 amended

In section 14(1):

(a) in paragraph (a) delete “5 working days” and insert:

7 working days

(b) in paragraph (b) delete “10 working days” and insert:

17 working days

10. Section 18 amended

(1) Delete section 18(1)(a) and insert:

(a) the person by or on whose behalf the premium was paid —

(i) enters into occupation of the residential premises; or

(ii) is entitled to enter into occupation of the residential premises and is no longer entitled to rescind the residence contract under section 14 because the applicable period referred to in that section has expired,

whichever occurs first; or

(2) After section 18(1) insert:

(2A) If —

(a) a premium is paid to an administering body and subsection (2) does not apply; and

(b) the premium is not held in trust or invested as required by subsection (1),

the administering body is guilty of an offence.

Penalty: a fine of \$20 000

(3) In section 18(3) in the Penalty before “\$5 000” insert:

a fine of

(4) Delete section 18(5) and insert:

(5) If —

(a) a question affecting entitlement to or disposition of the premium is required by subsection (4) to be determined by reference to the residence contract and the administering body fails to act in accordance with that requirement; or

(b) interest and accretions arising from investment of the premium are required by subsection (4)(a) to be paid to the prospective resident and that interest and those accretions are not paid accordingly.

the administering body is guilty of an offence.

Penalty: a fine of \$20 000.

11. Sections 23 to 25 inserted

At the end of Part 3 insert:

23. Recurrent charges payable by former residents

(1) In this section —

former resident means a former resident of a retirement village who has permanently vacated residential premises in the retirement village and who does not have an interest in the retirement village as a tenant in common or as an owner of a lot under the *Strata Titles Act 1985* in relation to the residential premises in the retirement village that he or she formerly occupied;

permanently vacated, in relation to a former resident and residential premises in a retirement village, means that —

- (a) if required by the residence contract — the administering body has been given notice of the former resident's intention to vacate the residential premises; and
- (b) the goods and belongings of the former resident have been removed from the residential premises; and
- (c) the former resident has ceased to reside in the residential premises; and
- (d) the right to exclusively occupy the residential premises has been given up by the former resident (or, if the former resident is deceased, by the estate of the former resident) by returning the keys to the residential premises to the administering body;

recurrent charges, except in subsection (6), means recurrent charges —

- (a) that are payable in respect of the residential premises in a retirement village that a former resident formerly occupied; and
- (b) that arise —
 - (i) after those premises have been permanently vacated by the former resident; and
 - (ii) on or after the commencement of the *Retirement Villages Amendment Act 2012* section 11.

- (2) This section applies to a former resident of residential premises in a retirement village, whether that former resident permanently vacated those premises before or after the commencement of the Retirement Villages Amendment Act 2012 section 11.
 - (3) Subject to subsection (4), a former resident's liability to pay recurrent charges —

 - (a) begins when the residential premises have been permanently vacated by the former resident; and
 - (b) ceases in accordance with the regulations.
 - (4) If a former resident's residence contract provides for the former resident's liability to pay recurrent charges to cease at a time that would occur before the time provided for in regulations made for the purposes of subsection (3)(b), that liability ceases in accordance with that contract.
 - (5) The administering body of a retirement village must pay recurrent charges, at the time when a former resident would have been required to pay those charges if the former resident were still liable to pay them, that are payable in respect of the period that —

 - (a) begins when the former resident's liability to pay the recurrent charges ceases in accordance with regulations made for the purposes of subsection (3) or with the residence contract referred to in subsection (4), as the case requires; and
 - (b) ceases when a new resident of the residential premises becomes liable to pay the recurrent charges.
 - (6) The administering body must not seek to recover from the residents of the retirement village, by increasing the recurrent charges payable by them or by demanding or receiving from them any additional fee or charge, any amount payable by the administering body under subsection (5).
- Penalty: a fine of \$20 000.
- (7) Section 6(2) does not have effect in relation to this section.

24. Recurrent charges may be deducted from premium repayable to former resident

- (1) In this section —

 - former resident* has the meaning given in section 23(1);
 - recurrent charges* means recurrent charges —

 - (a) that are payable in respect of the residential premises in a retirement village that a former resident formerly occupied; and

-
- (b) that arise —
- (i) after those premises have been permanently vacated by the former resident; and
 - (ii) on or after the commencement of the *Retirement Villages Amendment Act 2012* section 11.
- (2) If a premium is repayable in whole or in part to a former resident, the former resident may elect, by notice in writing given to the administering body of the retirement village, to pay any recurrent charges for which he or she is liable (including any interest payable in respect of those charges under subsection (4)) by their deduction from the amount of premium repayable.
- (3) A former resident who elects to pay recurrent charges under subsection (2) may give the notice to the administering body at any time after the former resident has permanently vacated the residential premises that he or she formerly occupied.
- (4) Subject to subsection (6) and to any regulations made for the purposes of this subsection, a former resident who elects to pay recurrent charges under subsection (2) is liable to pay interest to the administering body in respect of those charges if the effect of that election is to defer the payment of the charges.
- (5) Interest is payable —
- (a) from the time the recurrent charges would, apart from subsection (2), be payable by the former resident until their deduction from the premium repayable to the former resident; and
 - (b) at the rate determined in the prescribed manner.
- (6) If —
- (a) the administering body and the former resident agree to a rate of interest that is lower than the rate referred to in subsection (5)(b); or
 - (b) the former resident's residence contract specifies a rate of interest for the purposes of this section that is lower than the rate referred to in subsection (5)(b).
- interest is payable by the former resident at that lower rate.
- (7) If the effect of the election under subsection (2) is to defer the payment by a former resident of any recurrent charges, the administering body —
- (a) must pay the recurrent charges at the time when the former resident would have been required to pay those charges apart from subsection (2); and

(b) may deduct the amount paid from the premium that is repayable to the former resident.

(8) A former resident is to be taken to have paid any recurrent charges in respect of which a deduction is made from the premium that is repayable to the former resident.

(9) If a former resident elects to pay any recurrent charges under subsection (2), the administering body must not demand or receive payment of those charges otherwise than in accordance with that election.

Penalty: a fine of \$20 000.

(10) Section 6(2) does not have effect in relation to this section.

25. Administering body not to require payment in respect of prescribed matters

(1) The administering body of a retirement village must not demand or receive payment from a resident or former resident in respect of any matter prescribed for the purposes of this section.

Penalty: a fine of \$20 000.

(2) Section 6(2) does not have effect in relation to this section.

12. Section 52 amended

After section 52(2) insert:

(3) Subsection (1)(b) does not apply to —

(a) an order made under section 55(3) or 57A(4) or Part 5A;
or

(b) if the order is made in relation to a residence contract —
an order made under section 56(4).

13. Section 55 inserted

After section 54 insert:

55. Applications to SAT in relation to residence contracts

(1) If a dispute arises between the parties to a residence contract as to the residence contract's compliance with a requirement of regulations made for the purposes of section 14A(1) —

(a) either party to the residence contract; or

-
- (b) if the dispute has been brought to the attention of the Commissioner — the Commissioner, may make an application in relation to the matter to the State Administrative Tribunal.
- (2) If the State Administrative Tribunal is of the opinion that an order, if made under subsection (3), may be relevant to other residence contracts (including residence contracts that relate to another retirement village), the State Administrative Tribunal —
- (a) may order the administering body of a retirement village or other person to provide the State Administrative Tribunal with specified information or documents in relation to any residence contract; and
- (b) on its own initiative or at the request of the administering body or other person — may order that the administering body or other person be joined as a party to the proceeding under this section.
- (3) The State Administrative Tribunal may, on an application made under this section, order —
- (a) the variation or cancellation of any of the terms of the residence contract, as specified in the order;
- (b) specific performance of the residence contract;
- (c) the payment of a sum of money,
- and may make such other orders as the State Administrative Tribunal considers appropriate and may declare that the order applies to any residence contracts specified in the order, and the order is to have effect accordingly.
- (4) Subsection (2) does not limit the *State Administrative Tribunal Act 2004* section 35 or 38.

14. Section 56 amended

- (1) Before section 56(1) insert:
- (1A) A reference in this section to a service contract includes a reference to a residence contract but only to the extent that the residence contract provides for the provision to a resident of a service or amenity that may be provided to the resident under a service contract.
- (2) Delete section 56(3) and insert:

(3) If the State Administrative Tribunal is of the opinion that an order, if made under subsection (4), may be relevant to other service contracts (including service contracts that relate to another retirement village), the State Administrative Tribunal —

(a) may order the administering body of a retirement village or other person to provide the State Administrative Tribunal with specified information or documents in relation to any service contract; and

(b) on its own initiative or at the request of the administering body or other person — may order that the administering body or other person be joined as a party to the proceeding under this section.

(3) Before section 56(4)(a) insert:

(aa) the variation or cancellation of any of the terms of the service contract, as specified in the order;

(4) After section 56(4) insert:

(5) Subsection (3) does not limit the *State Administrative Tribunal Act 2004* section 35 or 38.

15. Section 57A inserted

After section 56 insert:

57A. Disputes in relation to recurrent charges or levy payable by residents

(1) This section applies if a dispute arises between the residents of a retirement village and the administering body of the retirement village regarding an increase in recurrent charges or the imposition of a levy.

(2) If the residents pass a special resolution that authorises the application to be made, the residents may make an application in relation to the matter in dispute to the State Administrative Tribunal.

(3) In subsection (2) —

special resolution means a resolution passed at a meeting of the residents of a retirement village that is held in accordance with the requirements in an applicable code for passing a special resolution.

(4) The State Administrative Tribunal may, on an application made under this section, make such orders as the State Administrative Tribunal considers appropriate.

(5) Nothing in this section limits the matters in relation to which an application may be made under section 56.

(6) Section 6(2) does not have effect in relation to this section.

16. Part 5A inserted

After section 74 insert:

Part 5A — Statutory manager

75A. Terms used

In this Part —

assets, of the administering body of a retirement village, means —

(a) if the owner of land in the retirement village is the sole administering body of the retirement village — that land and any other property held for the purposes of the retirement village by the owner; or

(b) if the owner of land in the retirement village is not the sole administering body of the retirement village — the land and property of the owner referred to in paragraph (a) and any other property held for the purposes of the retirement village by an administering body other than the owner;

functions, of the administering body of a retirement village, means the powers and duties that the administering body exercises and performs in the administration of the retirement village under this Act or another written law;

property includes money, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit;

statutory manager means a person appointed under section 75B.

75B. SAT may appoint statutory manager on application of Commissioner

(1) The State Administrative Tribunal may, on application by the Commissioner under this section, make an order appointing one or more persons specified in the application to perform —

- (a) all the functions of the administering body of a retirement village; or
 - (b) specified functions of the administering body of a retirement village; or
 - (c) all the functions other than specified functions of the administering body of a retirement village.
- and may make such other orders as the State Administrative Tribunal thinks fit.
- (2) An application under this section is to be accompanied by —
 - (a) a copy of the consent given under section 75C(1) by each person to be appointed; and
 - (b) the Commissioner’s recommendations as to the statutory manager’s terms and conditions to be dealt with in the order under section 75E.
- (3) The Commissioner must give a copy of the application to the administering body.
- (4) For the purposes of the *State Administrative Tribunal Act 2004* section 36, the administering body is a party to the proceeding on an application under this section.
- (5) The State Administrative Tribunal may make an order appointing a statutory manager only if the State Administrative Tribunal is satisfied that —
 - (a) the wellbeing or financial interests of the residents of the retirement village may be at risk if the administering body continued to perform all the functions of the administering body of the retirement village; or
 - (b) the administering body has contravened, or is contravening, an order made by the State Administrative Tribunal or a court in relation to the administering body or the retirement village; or
 - (c) the administering body has contravened, or is contravening, section 18 or another provision of this Act, or a provision of the regulations, prescribed for the purposes of this subsection.
- (6) Without limiting the matters to which the State Administrative Tribunal may have regard for the purposes of subsection (5)(a), for those purposes the State Administrative Tribunal must have regard to any prescribed provisions of any applicable code.
- (7) If 2 or more persons are appointed under subsection (1), a function of the administering body to be performed by the statutory manager under this Part may be performed by any one of them, or

by any 2 or more of them together, except to the extent that the order appointing them provides otherwise.

(8) Unless sooner revoked, an order under this section has effect for the period specified in the order.

(9) The State Administrative Tribunal is not to require the Commissioner, as a condition of granting an application under this section, to give an undertaking as to damages.

75C. Proposed statutory manager must consent to appointment

(1) The Commissioner is not to make an application for an order under section 75B appointing a person to be a statutory manager unless the person has given the Commissioner written consent to the application.

(2) The order appointing a person to be a statutory manager does not have effect unless the person has given the Commissioner written consent under subsection (1) and has not withdrawn that consent as at the time of the appointment.

75D. Variation and revocation of orders

(1) In this section —

other persons means —

(a) if an application is made under this section by the Commissioner — the administering body of the retirement village and the statutory manager;

(b) if an application is made under this section by the administering body of the retirement village — the Commissioner and the statutory manager;

(c) if an application is made under this section by the statutory manager — the Commissioner and the administering body of the retirement village.

(2) The State Administrative Tribunal may, on application by the Commissioner, the administering body of the retirement village or the statutory manager under this section, vary or revoke an order appointing a statutory manager under section 75B.

(3) The applicant must give a copy of the application to the other persons.

(4) The State Administrative Tribunal may give any directions it considers necessary or expedient for the purposes of this section.

(5) For the purposes of the *State Administrative Tribunal Act 2004* section 36, the other persons are parties to the proceeding on an application under this section.

75E. Matters to be dealt with in order appointing a statutory manager

- (1) An order under section 75B appointing a statutory manager is to —

 - (a) set out the terms and conditions that the State Administrative Tribunal considers appropriate to the appointment, including terms and conditions as to the remuneration and expenses payable to the statutory manager; and
 - (b) specify the assets of the administering body of the retirement village that are to be under the control of the statutory manager; and
 - (c) specify the assets of the administering body of the retirement village that may be applied for the purpose of providing funds for —

 - (i) the performance by the statutory manager of the functions of the administering body conferred on the statutory manager under section 75B(1); and
 - (ii) the payment of the remuneration and expenses of the statutory manager.
- (2) The State Administrative Tribunal may give any directions it considers necessary or expedient for the purposes of this section.
- (3) Without limiting section 11, neither the Crown, the Minister nor the Commissioner is liable for the remuneration of a statutory manager or any expenses incurred by a statutory manager in performing any functions of the administering body of a retirement village.

75F. Other matters arising from appointment of statutory manager

- (1) In this section —

appointed means appointed by an order under section 75B.
- (2) The administering body of a retirement village must not, during the period of a statutory manager's appointment, perform any of the administering body's functions that the statutory manager is appointed to perform.

Penalty: a fine of \$20 000.
- (3) Subject to any terms and conditions to which the appointment is subject, a statutory manager must perform any function of the administering body that the statutory manager is appointed to perform in accordance with any residence contract, service contract or other contract, agreement or arrangement —

- (a) to which the administering body is a party; and
 - (b) that relates to the performance of that function.
- (4) Any act or thing done, in good faith, by or with the consent of a statutory manager in the performance of any function of the administering body that the statutory manager is appointed to perform is valid and effectual for the purposes of this Act.
- (5) A statutory manager must, in accordance with the regulations, provide the prescribed persons with the prescribed written information about the performance of any function of the administering body that the statutory manager is appointed to perform.

75G. Appointment of both statutory manager and external administrator

- (1) In this section —
 - external administration* means external administration under the *Corporations Act 2001 (Commonwealth) Chapter 5;*
 - external administrator* means a person appointed under the *Corporations Act 2001 (Commonwealth)* for the purposes of the external administration of the administering body of a retirement village.
- (2) This section applies if the administering body of a retirement village is the subject of both —
 - (a) the appointment by an order under section 75B of a statutory manager; and
 - (b) the appointment of an external administrator.
- (3) The statutory manager is under a duty to tell the external administrator of the appointment of the statutory manager, whether the appointment precedes, follows or happens at the same time as the appointment of the external administrator.
- (4) The appointment of the statutory manager continues to have effect while the administering body is subject to external administration, but the statutory manager may perform any function that the statutory manager is appointed by an order under section 75B to perform —
 - (a) only if authorised in writing by the external administrator to do so; and
 - (b) subject to any condition or limitation specified in that authorisation.

75H. Administering body to cooperate with statutory manager

- (1) In this section —

records includes documents and information;

relevant means relevant to the performance of a function referred to in subsection (2).

(2) This section applies if a statutory manager is appointed by an order under section 75B to perform any function of the administering body of a retirement village.

(3) The administering body of a retirement village must cooperate with the statutory manager to the extent reasonably required by the statutory manager to perform a function referred to in subsection (2).

Penalty: a fine of \$20 000.

(4) Without limiting subsection (3), that subsection requires the administering body —

(a) to answer, orally or in writing, relevant questions asked by the statutory manager; and

(b) to produce to the statutory manager relevant documents in the administering body's custody or under the administering body's control; and

(c) to give the statutory manager access to relevant records stored electronically, including any translation, code, password or other information necessary to gain access to, or to interpret and understand, those records; and

(d) to give the statutory manager any other relevant assistance the statutory manager reasonably requires.

(5) The administering body must not hinder or obstruct the statutory manager in the performance of a function referred to in subsection (2).

Penalty: a fine of \$20 000.

75I. State Administrative Tribunal may require reports and recommendations from statutory manager

(1) The State Administrative Tribunal may, on its own initiative or on application by the Commissioner under this section, make an order directing a statutory manager to prepare a report and make recommendations concerning the retirement village in respect of which the statutory manager is appointed.

(2) An order under subsection (1) is to specify the matters that are to be the subject of the statutory manager's report and recommendations and the period within which the report and recommendations are to be prepared.

- (3) The statutory manager must provide a copy of the report and recommendations to the State Administrative Tribunal and the Commissioner and to any other person the State Administrative Tribunal specifies in the order under subsection (1).

17. Sections 76 to 77C inserted

After section 75 insert:

76. Persons who are not to be involved in administration of retirement villages

- (1) Subject to section 77A, this section applies to these persons —
- (a) a person who is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws;
 - (b) a person who has been convicted, within or outside Western Australia, of —
 - (i) an offence involving violence to another person punishable on conviction by imprisonment for not less than 3 months; or
 - (ii) an offence involving fraud or dishonesty punishable on conviction by imprisonment for not less than 3 months; or
 - (iii) an offence under *The Criminal Code Chapter XXXI* or an offence that, if committed in Western Australia, would constitute such an offence; or
 - (iv) a prescribed offence;
 - (c) a person who is disqualified from managing corporations under the *Corporations Act 2001* (Commonwealth) Part 2D.6;
 - (d) a person who was a director of, or concerned in the management of, a corporation, as defined in the *Corporations Act 2001* (Commonwealth) section 57A, when it was wound up otherwise than voluntarily;
 - (e) a person prescribed as a person to whom this section applies.
- (2) A person to whom this section applies must not —
- (a) be the administering body of a retirement village; or
 - (b) be in any way, whether directly or indirectly, concerned in the administration of a retirement village.

Penalty: a fine of \$20 000.

(3) In any proceeding taken for an offence against subsection (2), it is a defence to prove that, at the time the offence occurred, the accused held a current exemption certificate granted under section 77C.

(4) A person must not employ or engage a person to whom this section applies if the person's employment or engagement is or is to be in any way, whether directly or indirectly, concerned in the administration of a retirement village.

Penalty: a fine of \$20 000.

(5) In any proceeding taken for an offence against subsection (4), it is a defence to prove that, at the time the offence occurred, the person employed or engaged held a current exemption certificate granted under section 77C.

77A. Limitation of period for which section 76 applies to certain persons

(1) Section 76 applies to a person referred to in subsection (1)(b) of that section, in relation to the person's conviction of an offence, only for the period of 5 years —

(a) from the time of the person's conviction; or

(b) if the conviction results in a term of imprisonment, from the time of the person's release from custody.

(2) Section 76 applies to a person referred to in subsection (1)(c) of that section, in relation to the person's disqualification from managing corporations, only for the period of 5 years from the time of that disqualification.

(3) Section 76 applies to a person referred to in subsection (1)(d) of that section, in relation to the winding up of a corporation, only for the period of 5 years from the time of that winding up.

77B. Offences by persons involved in administration of retirement village

(1) In this section —

relevant information, in relation to a person, means information as to the application of section 76 to the person.

(2) A person —

(a) whose employment or engagement is in any way, whether directly or indirectly, concerned in the administration of a retirement village; and

(b) who becomes a person to whom section 76 applies because of the occurrence, after that employment or engagement has commenced, of a bankruptcy, conviction, disqualification, winding up or other matter relevant to that section.

must give relevant information to the person by whom he or she is employed or engaged within 14 days after that occurrence.

Penalty: a fine of \$20 000.

(3) A person must not give relevant information that is false or misleading to a person who employs or engages, or who proposes to employ or engage, him or her if the employment or engagement is or is to be in any way, whether directly or indirectly, concerned in the administration of a retirement village.

Penalty: a fine of \$20 000.

77C. Commissioner may grant exemption certificates

(1) The Commissioner may grant an exemption certificate to a person to whom section 76 applies if —

(a) the person applies for the certificate in the form approved by the Commissioner and pays the prescribed fee; and

(b) satisfies the Commissioner that neither the wellbeing nor financial interests of the residents of a retirement village will be at risk if the person —

(i) is the administering body of the retirement village; or

(ii) is in any way, whether directly or indirectly, concerned in the administration of the retirement village.

as the case requires.

(2) An exemption certificate may be granted subject to any condition or limitation the Commissioner considers appropriate and specifies in the certificate, which may include a limitation on the period during which the certificate has effect.

(3) The Commissioner may at any time revoke an exemption certificate by written notice given to the person granted the certificate.

(4) An exemption certificate is cancelled by force of this subsection if the person granted the certificate becomes a person to whom section 76 applies because of the occurrence, after the person has been granted the certificate, of a bankruptcy, conviction,

disqualification, winding up or other matter relevant to that section.

- (5) A person must return his or her exemption certificate to the Commissioner within 14 days after the certificate is revoked under subsection (3) or cancelled under subsection (4).

Penalty: a fine of \$20 000.

18. Section 80 amended

In section 80 delete “2 years” and insert:

3 years

19. Section 82 amended

In section 82(3) delete “\$500.” and insert:

\$5 000.

20. Schedule 1 Division 1 heading inserted

Before Schedule 1 clause 1 insert:

Division 1 — Provisions relating to commencement of Act

21. Schedule 1 Division 2 inserted

At the end of Schedule 1 insert:

**Division 2 — Provisions relating to Retirement Villages
Amendment Act 2012**

4. Exemption certificate taken to have been granted to certain persons

- (1) In this clause —

commencement day means the day on which the *Retirement Villages Amendment Act 2012* section 17 comes into operation;

relevant information, in relation to a person, means information as to the application of section 76 to the person.

- (2) Subclause (3) applies to a person (a *relevant person*) who on the *commencement day* —

- (a) is —
- (i) the administering body of a retirement village;
or
 - (ii) in any way, whether directly or indirectly,
concerned in the administration of a retirement
village;
- and
- (b) is a person to whom section 76 applies.
- (3) On the commencement day, an exemption certificate is to be taken
to have been granted under section 77C to a relevant person that
has effect, subject to subclause (4) and section 77C(3) and (4), for
the period of 6 months from that day.
- (4) If —
- (a) an exemption certificate is to be taken to have been
granted to a relevant person; and
 - (b) the person makes an application under section 77C(1)
during the period referred to in subclause (3),
the exemption certificate —
 - (c) continues to have effect, whether or not the period
referred to in subclause (3) expires, until the application
is determined; and
 - (d) is cancelled by force of this subclause at the time of that
determination.
- (5) A person who on the commencement day —
- (a) is employed or engaged in any way that, whether directly
or indirectly, is concerned in the administration of a
retirement village; and
 - (b) is a person to whom section 76 applies,
must give relevant information to the person by whom he or she is
employed or engaged within 14 days after the commencement day.
Penalty: a fine of \$20 000.

5. Transitional regulations

- (1) In this clause —
- amending Act* means the *Retirement Villages Amendment*
Act 2012;
 - commencement day* means the day on which section 21 of the
amending Act comes into operation;
 - Gazettal day* means the day on which transitional regulations are
published in the *Gazette*;

transitional matter means a matter of a transitional, savings or application nature;

transitional regulations means regulations under subclause (2).

(2) Regulations may prescribe anything necessary or convenient to be prescribed in relation to a transitional matter in connection with amendments made to this Act by the amending Act.

(3) Without limiting subclause (2), transitional regulations may modify the operation of section 6(2) in respect of any matter specified in the regulations.

(4) Transitional regulations can only be made before the end of the period of 12 months beginning on commencement day.

(5) If transitional regulations provide that a state of affairs is to be taken to have existed, or not to have existed, on and from a day (the *operative day*) that is earlier than Gazettal day, the regulations have effect according to their terms as long as the operative day is not earlier than the commencement day.

(6) If transitional regulations contain a provision referred to in subclause (5), 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 Gazettal day; 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 Gazettal day.