



Retirement Villages Act 1992

**Retirement Villages Amendment  
Regulations 2015**

Made by the Lieutenant-Governor and deputy of the Governor in Executive Council.

**1. Citation**

These regulations are the *Retirement Villages Amendment Regulations 2015*.

**2. Commencement**

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) regulations 3, 4, 5, 7, 9, 10, 11 and 15 — on 1 April 2015;
- (c) the rest of the regulations — on 1 October 2015.

**3. Regulations amended**

These regulations amend the *Retirement Villages Regulations 1992*.

**4. Part 1 heading inserted**

Before regulation 1 insert:

**Part 1 — Preliminary matters**

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**5. Regulations 3A and 3 inserted**

After regulation 2 insert:

**3A. Payments excluded from premium**

(1) In this regulation —

*payment* means a payment that is paid 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 the retirement village.

(2) A payment is excluded from the ambit of the definition of *premium* in section 3(1) of the Act if —

- (a) the payment relates to admission of a person as a resident of a retirement village for a period of 12 months or less; and
- (b) the total amount of the payment and each other payment (if any) that is paid in respect of that admission is an amount of \$1 500 or less.

**3. Memorial prescribed information**

The memorial approved by the Registrar of Titles under section 15(3) of the Act must contain the following information —

- (a) a description of the relevant land;
- (b) the name of the registered proprietor of the land;
- (c) the date on which the memorial is lodged.

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Before regulation 4 insert:

**Part 2 — Residence contracts****Division 1 — Preliminary****4A. Terms used**

In this Part —

*arrange*, in relation to carrying out work, includes supervision of the carrying out of the work;*Code* means the *Code of Fair Practice for Retirement Villages 2015* set out in the *Fair Trading (Retirement Villages Code) Regulations 2015* Schedule 1;*communal amenity* means any amenity provided or made available by the administering body of a retirement village for the use of all residents of the village;*communal service* means any service provided or made available by the administering body of a retirement village to all the residents of the village that —

- (a) is not provided or made available under a separate service contract; and
- (b) is not an administrative or management service; and
- (c) is not a service for the maintenance or repair of a residential premises or personal amenity; and
- (d) is not a communal amenity; and
- (e) is not a personal service;

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**exit fee** means a fee or charge, other than a recurrent charge, payable by or on behalf of a resident to the administering body of a retirement village on —

- (a) the resident permanently vacating residential premises in the retirement village; or
- (b) the settlement of the sale of the resident's right to reside in the residential premises;

**Note**, followed by a number, means the note of that number in the Notes section of the residence contract set out in Schedule 2 clause 2;

**personal amenity** means any amenity provided or made available for the use of a resident by the administering body of a retirement village, other than —

- (a) the residential premises; and
- (b) an amenity that forms part of, or is provided or made available with, the residential premises; and
- (c) communal amenities in the retirement village;

**personal service** means any service provided or made available by the administering body of a retirement village to a resident of the village that —

- (a) is not provided or made available under a separate service contract; and
- (b) is not a personal or communal amenity;

**reserve fund** has the meaning given in the Code;

**specified** means specified in a residence contract.

**4B. Form of residence contract**

A residence contract must —

- (a) be written in plain English; and
- (b) be printed in not less than 12 point type; and

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- (c) be set out clearly and logically and include —
  - (i) appropriate headings and subheadings;  
and
  - (ii) numbered provisions; and
  - (iii) a table of contents;and
- (d) if words and phrases used in the contract are used in the Act, these regulations or the Code, use those words and phrases consistently with the meanings in the Act, regulations or Code, as relevant.

**Division 2 — Section 13 requirements****7. Regulation 6 deleted**

Delete regulation 6.

**8. Regulation 6 and Part 2 Division 3 inserted**

After regulation 5 insert:

**6. Section 13 information**

- (1) For the purposes of section 13(2)(e) of the Act the following documents are prescribed —
  - (a) a copy of the residence contract and each other contract that the resident will be required to enter into in order to reside in the retirement village, including details of the payments to be made by the resident under each contract;

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- (b) if the residence contract relates to a retirement village that is already operating —
  - (i) if the financial statements of the village for the previous financial year have been audited — a copy of the audited financial statements and the audit report; and
  - (ii) if the financial statements of the village for the previous financial year have not been audited — a copy of the unaudited financial statements; and
  - (iii) a copy of the operating budget for the village for the current financial year; and
  - (iv) if the village has a reserve fund — a copy of the reserve fund budget for the current financial year;
- (c) if the residence contract relates to a retirement village that is not yet operating —
  - (i) a copy of the proposed operating budget for the first year of operation of the village; and
  - (ii) if the village is to have a reserve fund that will receive income from recurrent charges in the first year of operation of the village — a copy of the proposed reserve fund budget for the first year of operation of the village;
- (d) if the residence contract relates to premises that are comprised in a strata plan or survey-strata plan registered under the *Strata Titles Act 1985* —
  - (i) a copy of the by-laws of the relevant strata company; and

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- (ii) an authority to apply to the strata company under the *Strata Titles Act 1985* section 43.
- (2) A document referred to in subregulation (1)(b)(iv) is not a prescribed document in respect of a residence contract to be entered into by a person if —
- (a) the contract relates to residential premises in a retirement village that is operating before 1 April 2015; and
- (b) the person enters into the residence contract before 1 July 2016.

**Division 3 — Matters to be included in residence contract****7A. General matters to be included in residence contract**

A residence contract must include the general provisions or matters listed in the Table.

**Table**

<b>Item</b>	<b>General provision or matter</b>
1.	A boxed statement in 16 point type about the terms of access to aged care services under the <i>Aged Care Act 1997</i> (Commonwealth) as set out in Schedule 2 clause 1.
2.	A separate definitions provision containing the definitions of words and phrases used in the contract, including words and phrases that are defined in the Act, these regulations and the Code.

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<b>Item</b>	<b>General provision or matter</b>
3.	A separate Notes section as set out in Schedule 2 clause 2.
4.	In a prominent place in the contract, a boxed statement in 16 point type about seeking independent advice as set out in Schedule 2 clause 3.
5.	<p>A statement that refers the resident to the Act, these regulations and the Code and the rights of the resident under that legislation including a reference to —</p> <p>(a) the right set out in the Code to be consulted on, and have access to information about, the administrative and financial arrangements of the retirement village; and</p> <p>(b) the rights set out in the Code in relation to processes available to the resident for the resolution of disputes in relation to the retirement village; and</p> <p>(c) a reference to Note 1.</p>
6.	A provision detailing the registration number of the memorial in respect of the retirement village lodged with the Registrar of Titles under section 15(3) of the Act.

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<b>Item</b>	<b>General provision or matter</b>
7.	<p>A provision setting out the legal basis of occupancy of the residential premises.</p> <p>Examples:</p> <ul style="list-style-type: none"> <li>(a) as a non-owner resident under a residential tenancy agreement or another lease or licence arrangement;</li> <li>(b) as the owner of the premises in a strata scheme or survey-strata scheme;</li> <li>(c) as a tenant in common in a purple title scheme that applies to the village.</li> </ul>
8.	<p>A provision setting out the type of residential premises the resident will be occupying in the village.</p> <p>Examples:</p> <ul style="list-style-type: none"> <li>(a) a self-care or independent living unit;</li> <li>(b) a serviced unit.</li> </ul>
9.	<p>Plans that show the location, floor plan and significant dimensions of the residential premises and any amenity that forms part of, or is provided or made available with, the residential premises.</p>
10.	<p>A provision setting out the period of residency in the retirement village provided for under the contract.</p> <p>Examples:</p> <ul style="list-style-type: none"> <li>(a) a lease for life tenancy;</li> <li>(b) a fixed term tenancy for a specified period.</li> </ul>

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<b>Item</b>	<b>General provision or matter</b>
11.	If the contract provides for a period of residency of a fixed term, a provision stating that the resident's financial rights and obligations under the contract will not be affected if the residence contract is renewed or extended.
12.	A description of the internal and external fixtures, chattels and amenities that are, or are to be, provided or made available in the residential premises to be occupied by the resident.
13.	If a fixture or chattel is to be provided or made available after the resident has entered into occupation of the residential premises —  (a) a statement of the latest date by which the fixture or chattel is to be provided or made available; or  (b) if the provision or availability of a fixture or chattel is dependent on the happening of an event, a description of the event.
14.	If the residence contract relates to residential premises in an existing retirement village, a warranty that the residential premises will be in a reasonable condition when the resident takes possession.

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<b>Item</b>	<b>General provision or matter</b>
15.	<p>A provision setting out the circumstances in which a resident may terminate a residence contract after the cooling-off period and the arrangements that relate to such a termination including —</p> <ul style="list-style-type: none"> <li>(a) liability for any recurrent charges after the termination; and</li> <li>(b) the period for which that liability will continue; and</li> <li>(c) any other costs or charges relating to the premises for which the resident may be liable; and</li> <li>(d) a reference to Note 2.</li> </ul>
16.	<p>A schedule in a form approved by the Commissioner setting out a summary of the provisions of the Act relating to termination of a residence contract and the resident's right of occupation under a residence contract.</p>
17.	<p>A provision that the administering body may only terminate a residence contract in accordance with the Act.</p>

**7B. Matters relating to personal amenities to be included in residence contract**

A residence contract must include the provisions or matters listed in the Table relating to personal amenities that are to be provided or made available under the contract.

**Retirement Villages Amendment Regulations 2015****r. 8****Table**

<b>Item</b>	<b>Provision or matter relating to personal amenity</b>
1.	<p>A list of —</p> <ul style="list-style-type: none"> <li>(a) the personal amenities that will be provided or made available for the exclusive use of the resident; and</li> <li>(b) the amenities the administering body provides or makes available in the retirement village that may be made available as a personal amenity for the exclusive use of the resident and the conditions on which those amenities would be made available to the resident.</li> </ul> <p>Examples:</p> <ul style="list-style-type: none"> <li>(a) garage or carport;</li> <li>(b) storage areas;</li> <li>(c) gardening areas.</li> </ul>
2.	<p>A provision setting out the charges that will apply to the resident's access to, or use of, any personal amenity including —</p> <ul style="list-style-type: none"> <li>(a) the basis for the determination of current and future additional charges for providing the personal amenity or making the personal amenity available; and</li> <li>(b) any additional charges that may be payable by the resident for a variation in the provision or the availability of the personal amenity.</li> </ul>

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<b>Item</b>	<b>Provision or matter relating to personal amenity</b>
3.	A provision setting out the period of notice that the resident must give to the administering body to vary the provision or the availability of the personal amenity.
4.	A provision that the administering body will not, without the consent of the resident, vary the provision or availability of a personal amenity to the resident except in circumstances specified in the contract.
5.	A provision setting out — (a) the circumstances in which the provision or availability of a specified personal amenity may be withdrawn by the administering body, which must be reasonable having regard to the nature of the amenity and the circumstances in which the amenity is provided or made available; and (b) the period of notice to be provided to the resident of the intention to withdraw the amenity, which must not be less than 30 days.
6.	Plans that show the location, size and features of each personal amenity to be provided or made available under the contract.

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<b>Item</b>	<b>Provision or matter relating to personal amenity</b>
7.	<p>If an amenity referred to in item 1 is to be provided or made available as a personal amenity after the resident has entered into occupation of the residential premises —</p> <p>(a) a statement of the latest date by which the amenity is to be provided or made available; or</p> <p>(b) if the provision or availability of an amenity is dependent on the happening of an event, a description of the event.</p>
8.	A reference to Note 1.

**7C. Matters relating to communal amenities to be included in residence contract**

A residence contract must include the provisions or matters listed in the Table relating to communal amenities to be provided or made available under the contract.

**Retirement Villages Amendment Regulations 2015****r. 8****Table**

<b>Item</b>	<b>Provision or matter relating to communal amenity</b>
1.	<p>A list of the communal amenities that are part of, or will be part of, the retirement village.</p> <p>Examples:</p> <ul style="list-style-type: none"> <li>(a) club or meeting room;</li> <li>(b) swimming pool;</li> <li>(c) bowling green;</li> <li>(d) men's shed.</li> </ul>
2.	<p>If a communal amenity is to be provided or made available after the resident has entered into occupation of the residential premises —</p> <ul style="list-style-type: none"> <li>(a) a statement of the latest date by which the communal amenity is to be provided or made available; or</li> <li>(b) if the provision or availability of a communal amenity is dependent on an event, a description of the event.</li> </ul>
3.	<p>Plans that identify all the buildings and grounds that form, or will form, the communal amenities available for the use of the resident.</p>
4.	<p>A provision that the administering body will not vary the provision or availability of any communal amenity unless the residents of the village, by a special resolution, consent to the variation.</p>
5.	<p>A reference to Note 1.</p>

**Retirement Villages Amendment Regulations 2015****r. 8****7D. Matters relating to personal services to be included in residence contract**

A residence contract under which personal services are to be provided or made available to the resident must include the provisions or matters listed in the Table in relation to the personal services.

**Table**

<b>Item</b>	<b>Provision or matter relating to personal services</b>
1.	A list of — <ul style="list-style-type: none"> <li data-bbox="619 1010 1230 1122">(a) the personal services that will be provided or made available for the use of the resident; and</li> <li data-bbox="619 1137 1230 1395">(b) the services the administering body provides or makes available in the retirement village that may be made available as a personal service for the use of the resident and the conditions on which those services would be made available to the resident.</li> </ul>
2.	A provision setting out the charges that will apply to the resident's access to, or use of, any personal service including — <ul style="list-style-type: none"> <li data-bbox="619 1552 1230 1697">(a) the basis for the determination of current and future additional charges for providing the personal service or making the personal service available; and</li> <li data-bbox="619 1713 1230 1859">(b) any additional charges that may be payable by the resident for a variation in the provision or the availability of the personal service.</li> </ul>

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<b>Item</b>	<b>Provision or matter relating to personal services</b>
3.	A provision setting out — (a) the circumstances in which a specified personal service may be withdrawn or varied by the administering body, which must be reasonable having regard to the nature of the service and the circumstances in which it is provided or made available; and (b) the period of notice to be provided to the resident of the intention to withdraw or vary the service, which must not be less than 30 days.
4.	A provision setting out the period of notice that the resident must give to the administering body to vary the provision of a personal service.
5.	A provision that the administering body will not vary the provision of any personal service unless — (a) the variation is in circumstances set out in accordance with item 3 and after the period of notice provided for in that item has ended; or (b) the resident has consented to the variation.

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<b>Item</b>	<b>Provision or matter relating to personal services</b>
6.	<p>A provision that the resident will not be liable to pay for a personal service that the resident does not use if —</p> <p>(a) the residence contract has been terminated; or</p> <p>(b) the resident has permanently vacated the residential premises; or</p> <p>(c) the resident has temporarily ceased to reside in the residential premises.</p>
7.	A reference to Note 1.

**7E. Matters relating to communal services to be included in residence contract**

A residence contract under which communal services are to be provided or made available to the resident must include the provisions or matters listed in the Table in relation to the communal services.

**Table**

<b>Item</b>	<b>Provision or matter relating to communal services</b>
1.	A description of each communal service that is or is to be provided or made available to the resident.

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<b>Item</b>	<b>Provision or matter relating to communal services</b>
2.	<p>If a specified communal service is to be provided or made available after the resident has entered into occupation of the residential premises —</p> <p>(a) a statement of the latest date by which the service is to be provided or made available; or</p> <p>(b) a description of an event, the happening of which the provision or availability of the service depends on.</p>
3.	<p>A provision that the administering body will not vary the availability of communal services, including by providing a new communal service, unless the residents of the village, by a special resolution, consent to the variation.</p>
4.	<p>A reference to Note 1.</p>

**7F. Financial matters to be included in residence contract**

A residence contract must include the financial provisions or matters listed in the Table.

**Retirement Villages Amendment Regulations 2015****r. 8****Table**

<b>Item</b>	<b>Financial provision or matter</b>
1.	A provision setting out any premium payable by the resident in relation to a right to occupy residential premises in the retirement village including a description of any amenities forming part of, or provided or made available with, the residential premises that are covered by the premium.
2.	<p>A provision setting out the right of the resident to repayment of any premium on the termination of the residence contract including —</p> <ul style="list-style-type: none"> <li>(a) the method of calculation used to determine the repayment; and</li> <li>(b) when and how the repayment is to be made; and</li> <li>(c) any exit fee, commission or other charges for which the resident may be liable before the premium is repaid and if relevant, the method of calculation used to determine the amount of the exit fee, commission or charge; and</li> <li>(d) an explanation of the purpose of each exit fee, commission or charge referred to in paragraph (c) including a description of any services or amenities to which the exit fee, commission or charge relates; and</li> <li>(e) when and how the exit fee, commission or charge is payable by the resident; and</li> <li>(f) a reference to Note 3.</li> </ul>

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<b>Item</b>	<b>Financial provision or matter</b>
3.	<p>A provision setting out payments to be made by the resident on a recurrent basis towards the operating costs or expenses of the village including —</p> <ul style="list-style-type: none"><li data-bbox="619 792 1219 898">(a) a description of any amenities or services to which the operating costs or expenses relate; and</li><li data-bbox="619 920 1155 1025">(b) the basis for the determination of the current and future amounts of any payments; and</li><li data-bbox="619 1048 1177 1115">(c) details of when the payments are to be made; and</li><li data-bbox="619 1137 1230 1429">(d) whether the resident will be liable for any of the payments if the resident permanently vacates the residential premises and another person has not been admitted to occupation of the premises under the retirement village scheme and if so, how long the resident will be liable for the payment; and</li><li data-bbox="619 1451 959 1473">(e) a reference to Note 2.</li></ul>
4.	<p>A provision setting out any payments to be made by the resident on a recurrent basis that are not payments referred to in item 3 including —</p> <ul style="list-style-type: none"><li data-bbox="619 1675 1123 1742">(a) a description of the purpose of the payments; and</li><li data-bbox="619 1765 1155 1870">(b) the basis for the determination of the current and future amounts of the payments; and</li></ul>

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<b>Item</b>	<b>Financial provision or matter</b>
	<p>(c) details of when the payments are to be made; and</p> <p>(d) whether the resident will be liable for any of the payments if the resident permanently vacates the residential premises and another person has not been admitted to occupation of the premises under the retirement village scheme and if so, how long the resident will be liable for the payment; and</p> <p>(e) a reference to Note 2.</p>
5.	<p>A provision setting out the details of any reserve fund operating in respect of the retirement village, including the following —</p> <p>(a) the purpose of the fund;</p> <p>(b) any payment the resident is required to make to the fund in the form of —</p> <p>(i) recurrent charges; or</p> <p>(ii) an amount to be deducted from the premium repayable to the resident after the resident permanently vacates the premises;</p> <p>(c) any payment the administering body is required to make to the reserve fund under section 23(5) of the Act;</p> <p>(d) the amount and source of any other income used to meet expenditure from the reserve fund;</p>

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<b>Item</b>	<b>Financial provision or matter</b>
	<p>(e) the method of calculation used to determine the payments or amounts referred to in paragraphs (b) to (d);</p> <p>(f) a reference to Note 2.</p>
6.	<p>If the costs of carrying out maintenance, repair, renovation or replacement work in respect of buildings, structures, fixtures, chattels and other capital items in the village are not paid out of a reserve fund operating in respect of the retirement village, a provision setting out —</p> <p>(a) the contributions to be made by the resident and by the administering body to those costs; and</p> <p>(b) the method of calculation used to determine the contributions to the costs; and</p> <p>(c) how any contribution to the costs by the resident is to be paid.</p>
7.	<p>A provision setting out —</p> <p>(a) who is responsible for the cost of any independent audit of the annual financial statements of the retirement village carried out in accordance with the Code; and</p> <p>(b) if the cost is to be shared between the administering body and the residents, how such costs are to be apportioned between the administering body and the residents.</p>

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A residence contract must include the provisions or matters listed in the Table relating to the condition of the residential premises and village infrastructure covered by the contract.

**Table**

<b>Item</b>	<b>Provision or matter relating to condition of premises</b>
1.	<p>A provision setting out —</p> <ul style="list-style-type: none"> <li data-bbox="619 1025 1235 1317">(a) who is responsible for arranging to carry out maintenance, repair or replacement work to ensure that the residential premises and any fixtures, chattels and capital items included in, or attached or connected to, the residential premises are maintained in a reasonable condition during the occupation of the premises; and</li> <li data-bbox="619 1339 1235 1480">(b) the contributions to be made by the resident and by the administering body to the costs of carrying out the work referred to in paragraph (a); and</li> <li data-bbox="619 1503 1235 1711">(c) if the resident is required to make a contribution to the costs of carrying out the work, the procedures to be followed in obtaining the consent of the resident to the carrying out of the work and the cost of the work; and</li> </ul>

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<b>Item</b>	<b>Provision or matter relating to condition of premises</b>
	<p>(d) if the resident does not agree with the cost of work that is to be arranged by the administering body and paid for by the resident, a provision that the resident may instead arrange for the work to be carried out at the expense of the resident; and</p> <p>(e) how any contribution to the costs by the resident is to be paid; and</p> <p>(f) a reference to Note 3.</p>
2.	<p>A provision setting out —</p> <p>(a) who is responsible for arranging to refurbish the residential premises in accordance with the Code if the resident permanently vacates the premises; and</p> <p>(b) the contributions to be made by the resident and by the administering body to the costs of carrying out the work referred to in paragraph (a); and</p> <p>(c) how any contribution to the costs by or on behalf of the resident is to be paid; and</p> <p>(d) a reference to Note 3.</p>
3.	<p>A provision setting out —</p> <p>(a) who is responsible for arranging to carry out maintenance, repair, renovation or replacement work in respect of buildings, structures, fixtures, chattels and other capital items in the village, other than those referred to in item 1; and</p> <p>(b) a reference to Note 3.</p>

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<b>Item</b>	<b>Provision or matter relating to condition of premises</b>
4.	<p>A provision that the resident may apply to the administering body for approval to add a fixture or chattel to, or remove a fixture or chattel from, the residential premises (the <i>alteration</i>) and that the administering body must —</p> <ul style="list-style-type: none"><li data-bbox="619 902 1193 969">(a) not unreasonably withhold approval for the alteration; and</li><li data-bbox="619 992 1217 1137">(b) if the alteration is not approved — notify the resident in writing of the decision and the reasons for it no later than 10 days after a decision is made; and</li><li data-bbox="619 1160 1209 1227">(c) if the alteration is approved — notify the resident in writing.</li></ul>
5.	<p>A provision that the administering body must include, in its notification to a resident of the approval of an application for an alteration, a statement of the terms and conditions that apply to the approval, which must include the following matters —</p> <ul style="list-style-type: none"><li data-bbox="619 1496 1193 1563">(a) who is responsible for arranging for the alteration;</li></ul>

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<b>Item</b>	<b>Provision or matter relating to condition of premises</b>
	(b) if the work is to be arranged by the administering body and paid for by the resident, a provision that the work must not commence unless the resident and the administering body have agreed on the cost of the work on the basis of —
	<p>(i) a written quotation for the work provided by the administering body to the resident; or</p> <p>(ii) if the resident does not agree to that quotation — another quotation obtained by the resident;</p> <p>(c) who is responsible for the cost of maintaining or repairing any fixture or chattel the subject of the approval;</p> <p>(d) the circumstances in which the return of the residential premises to the condition they were in before the alteration took place (having regard to the age and character of the premises) may be allowed or required;</p> <p>(e) who is responsible for the costs of any work required to return the residential premises to the condition they were in before the alteration took place;</p> <p>(f) the circumstances in which the resident may be liable to pay for any damage to the residential premises caused by the carrying out of the alteration or the work to return the premises to the condition they were in before the alteration took place.</p>

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**7H. Matters relating to urgent repairs to be included in residence contract**

(1) In this regulation —

*essential service* means each of the following —

- (a) electricity;
- (b) gas;
- (c) refrigeration;
- (d) sewerage, septic tank or other waste water management treatment;
- (e) water, including the supply of hot water;

*urgent repair* means a repair that is necessary —

- (a) for the supply or restoration of an essential service; or
- (b) to avoid —
  - (i) risk of injury to a resident; or
  - (ii) damage to the residential premises; or
  - (iii) the residential premises being or becoming unsafe or insecure; or
  - (iv) undue hardship to a resident.

(2) A residence contract must include the following provisions in relation to urgent repairs to the residential premises —

- (a) a provision that the resident is entitled to arrange for urgent repairs that are the responsibility of the administering body to be carried out on any fixtures, chattels or capital items included in, or attached or connected to, the residential premises on behalf of the administering body if —
  - (i) the resident has made all reasonable attempts to notify the administering

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- body of the need for the urgent repairs;  
and
- (ii) the administering body has failed to carry out the urgent repairs in a timely manner having regard to the nature of the repairs and any process established by the administering body for the carrying out of urgent repairs; and
  - (iii) the resident arranges for the urgent repair work to be carried out in accordance with any process established by the administering body for the carrying out of urgent repairs; and
  - (iv) the resident arranges for the urgent repair work to be carried out by a repairer who is on a list of repairers approved by the administering body and displayed at a prominent place in the village, or if no such list is displayed, by a repairer qualified to undertake repairs of that nature;
- (b) a provision that if a resident arranges for urgent repairs to be carried out in accordance with paragraph (a), the administering body will be responsible for payment for the repairs including reimbursement to the resident of any amount paid by the resident in respect of the repairs.
- (3) Subregulation (2) does not apply if the residence contract provides for the resident, as the occupier of residential premises in a retirement village, to have an interest in the retirement village as an owner of the lot on which the retirement village is located under the *Strata Titles Act 1985*.

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**Division 4 — Matters not to be included in residence contract****7I. Provisions relating to certain powers of attorney not be included in residence contract**

(1) In this regulation —

***administering body***, in relation to a retirement village, includes an agent or employee of the administering body or any person concerned with the administration of the retirement village;

***close associate***, in relation to an administering body, means any of the following —

- (a) if the administering body is a natural person —
  - (i) the spouse, de facto partner, parent, child or sibling of the administering body;
  - (ii) the parent, child or sibling of the spouse or de facto partner of the administering body;
  - (iii) a body corporate, if a person referred to in subparagraph (i) or (ii) is a director or secretary of the body corporate or a person involved in the management of the body corporate;
- (b) if the administering body is a body corporate —
  - (i) a director or secretary of the body corporate or of a related body corporate;
  - (ii) a person involved in the management of the body corporate or of a related body corporate;
  - (iii) the spouse, de facto partner, parent, child or sibling of a person referred to in subparagraph (i) or (ii);

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- (iv) the parent, child or sibling of the spouse or de facto partner of a person referred to in subparagraph (i) or (ii);
- (v) a related body corporate;

**power of attorney** includes an enduring power of attorney as defined in the *Guardianship and Administration Act 1990* section 102;

**related body corporate** has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9.

- (2) A residence contract must not include a provision that requires a resident to give a power of attorney to another person —
  - (a) as a condition of the resident being admitted to occupation of the residential premises; or
  - (b) during the resident's occupation of the residential premises; or
  - (c) after the resident has permanently vacated the residential premises.
- (3) Subregulation (2) does not apply if the requirement to give a power of attorney is a requirement to give a power of attorney created under the *Guardianship and Administration Act 1990* by an instrument referred to in section 104(1)(b)(ii) of that Act to a person who is not —
  - (a) the administering body of the retirement village; or
  - (b) a close associate of the administering body; or
  - (c) a person nominated by the administering body.

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- (4) A residence contract must not include a provision under which the administering body —
- (a) can accept a power of attorney given by the resident unless —
    - (i) the power of attorney is a limited power of attorney given to the administering body for the purpose of granting an exclusive right of occupation of particular residential premises to a new resident who is a tenant in common in a purple title scheme that applies to the village; or
    - (ii) the administering body is a natural person who is a relative of the resident;
  - or
  - (b) can nominate a person to be the donee of a power of attorney given by the resident unless —
    - (i) the nomination is in respect of a power of attorney that is a limited power of attorney given to the administering body for the purpose of granting an exclusive right of occupation of particular residential premises to a new resident who is a tenant in common in a purple title scheme that applies to the village; or
    - (ii) the resident is a relative of the person nominated.

**7J. Matters relating to variation and notice not to be included in residence contract**

- (1) A residence contract must not include a provision that allows for the contract to be varied without the consent

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**r. 8**

of the resident unless the variation is required for the purposes of compliance with a written law.

- (2) A residence contract must not include a provision that requires a resident to give a period of notice of more than 30 days of the resident's intention —
  - (a) to vary the provision or availability of a personal amenity or personal service; or
  - (b) to terminate the contract; or
  - (c) to permanently vacate the residential premises occupied by the resident.
- (3) A residence contract must not include a provision that provides for residential premises to be permanently vacated other than in the circumstances set out in the definition of *permanently vacated* in section 23(1) of the Act.

**7K. Financial matters not to be included in residence contract**

- (1) A residence contract must not include a provision that requires a resident, while the resident occupies the residential premises or on the resident's permanent vacation of the residential premises, to contribute to the costs of all or part of any maintenance, repair, replacement or renovation of the residential premises that would exceed or be inconsistent with the requirements in relation to refurbishment work set out in the Code.
- (2) A residence contract must not include a provision that requires a resident, either while the resident occupies the residential premises or on the resident's permanent vacation of the residential premises, to pay for any damages to the residential premises caused by the carrying out of an alteration arranged by the administering body.

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- (3) A residence contract must not include a provision for an exit fee (including an exit fee that is payable as a contribution to a reserve fund established in relation to the retirement village) that is to be calculated by reference to a period of time to be calculated on any basis other than on a pro-rata daily basis in respect of the applicable period of time.

**7L. Application of section 6(2) of the Act**

Section 6(2) of the Act does not have effect in relation to a provision listed in the Table.

**Table**

r. 7C Table it. 4	r. 7E Table it. 3
r. 7H	r. 7I
r. 7J	r. 7K

**9. Part 3 heading inserted**

Before regulation 7 insert:

**Part 3 — Abandoned goods****10. Part 4 heading inserted**

After regulation 8 insert:

**Part 4 — Other matters**

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**r. 11****11. Regulation 10 amended**

In regulation 10(1) delete the definition of *maximum rate* and insert:

*maximum rate* means the maximum permissible interest rate worked out in accordance with the Fees and Payments Principles made under the *Aged Care Act 1997* (Commonwealth) section 96-1.

**12. Regulation 11 amended**

In regulation 11(3) and (4) delete “costs” (each occurrence) and insert:

expenses

**13. Schedule 1 amended**

In Schedule 1 Form 2 in the 2<sup>nd</sup> item under the heading “**UNDER SECTION 13 —**” after paragraph (d) insert:

(e) the documents set out in the *Retirement Villages Regulations 1992* regulation 6;

**14. Schedule 2 inserted**

At the end of the regulations insert:

**Schedule 2 — Provisions and matters that must be included in residence contracts**

[r. 7A]

*Retirement Villages Amendment Regulations 2015***r. 14****1. Statement on terms of access to aged care services**

The administering body of a retirement village **cannot** guarantee that —

- (a) any proposed residential aged care facility will be constructed, or that any existing residential aged care facility will continue to be available; or
- (b) you will be allocated a place in, or have an automatic right of transfer to, any Commonwealth funded residential aged care facility (which provides accommodation for people who can no longer live independently); or
- (c) you are eligible to receive Commonwealth and/or State funded community care services (which provide support to assist people to continue to live independently).

Your entry to residential aged care facilities and your eligibility to receive aged care support services are subject to availability and to your ability to meet the eligibility and assessment requirements administered by the Commonwealth and/or State Government.

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r. 14

Aged care facilities and services are not regulated by the *Retirement Villages Act 1992* (Western Australia).

**2. Notes**

## NOTES

1. The *Retirement Villages Act 1992* Part 4 sets out circumstances in which an application may be made to the State Administrative Tribunal including in relation to the following matters —
  - (a) a residence contract's compliance with a requirement of the *Retirement Villages Regulations 1992* (s. 55);
  - (b) a dispute about a service contract or the variation or cancellation of the terms of a service contract (s. 56);
  - (c) an increase in recurrent charges or imposition of levy (s. 57A);
  - (d) the transfer of a resident to other accommodation in the retirement village (s. 57);
  - (e) the termination of a resident's occupation of a retirement village (s. 58 and 59);
  - (f) the termination of a residence contract (s. 62 and 63).
2. The *Retirement Villages Act 1992* section 23 and the regulations made under that section set out limits to the liability of certain former residents of a retirement village to pay recurrent charges after permanently vacating residential premises in the village.
3. Regulations made under the *Retirement Villages Act 1992* section 25 set out matters in respect of which the administering body of a retirement village cannot demand or receive payment from a resident or former resident of the retirement village.

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**3. Statement about seeking independent legal and financial advice**

Prior to signing this contract you are strongly advised to obtain independent legal and financial advice about your rights and duties under the contract.

**15. Various references to “shall” amended**

In the provisions listed in the Table delete “shall” and insert:

must

**Table**

r. 4	r. 5(1)
r. 5(2)	r. 7(2)
r. 7(3)	r. 7(6)
r. 7(8)	r. 8

R. KENNEDY, Clerk of the Executive Council.