

Western Australia

Fair Trading Act 1987

Fair Trading (Retirement Villages Code) Regulations 1998

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Fair Trading Act 1987

Fair Trading (Retirement Villages Code) Regulations 1998

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Fair Trading (Retirement Villages Code) Regulations 1998*.

2. Commencement

These regulations come into operation on 1 October 1998.

3. Code of Practice prescribed

The Code of Practice set out in Schedule 1 and cited as the *Code of Fair Practice for Retirement Villages 1998* is prescribed under section 43(1) of the *Fair Trading Act 1987* as a code of practice that applies in relation to retirement villages as defined in the *Retirement Villages Act 1992*.

4. Interpretation

- (1) Except where the contrary intention appears, words and expressions used in the Code set out in the Schedule have the same meaning as are given to them in the *Retirement Villages Act 1992*.
- (2) Boxed and shaded paragraphs in the Code set out in the Schedule are not part of the Code and are included only to assist readers of the Code.

5. *Fair Trading (Retirement Villages Code) Regulations 1993* repealed

The *Fair Trading (Retirement Villages Code) Regulations 1993* are repealed.

Schedule 1 — Code of Fair Practice for Retirement Villages 1998

[r. 3]

Foreword

An increasing number of retired people are finding the concept of retirement villages attractive. These villages exist in a number of forms with a range of tenures and accommodation types. Different financial arrangements and forms of contract include lease, licence, a right conferred by shares, strata title, or freehold title. Retirement villages also differ widely with regard to the nature of care facilities available.

The Code has been prescribed under the *Fair Trading Act 1987* and has been prepared after extensive consultation with relevant industry and consumer groups and the Office of Seniors Interests. The Code will be reviewed periodically in consultation with interested parties and changed where required.

The Code, the *Retirement Villages Act 1992* and *Retirement Villages Regulations 1992* provide a package for the regulation of the retirement village industry that safeguards residents' rights and provide clear guidelines for the industry. The Code sets out the practices that apply to the promotion, sale and operation of retirement villages. The Code must be complied with and is enforceable under sections 45-47 of the *Fair Trading Act 1987*.

Part 1 of the Code deals with general matters such as the meaning of terms used in the Code, its application, general principles and objectives, the basic rights of residents and the Code's relationship to other relevant legislation.

Part 2 sets out the disclosure requirements for information about advertising and promotional material.

Part 3 sets out the requirements for disclosures before entering into residence and other related contracts.

Part 4 specifies the information required to be included in the residence contract.

Part 5 specifies the rights and obligations of administering bodies and residents in relation to village management.

Parts 6 and 7 recognize that disputes may occur in a retirement village and outline the structures that may be utilized to resolve them.

Appendix 1 is a copy of the information statement for prospective residents required to be provided under the *Retirement Village Regulations 1992*. The statement sets out certain questions which must be answered by the owner of the retirement village. It is important that a prospective resident read the questions and answers to those questions provided by the owner.

Appendix 2 provides a list of questions which a prospective resident should carefully read and consider before deciding to enter any retirement village.

Part 1 — Preliminary

1.1 Citation

This Code may be cited as the *Code of Fair Practice for Retirement Villages 1998*.

Definitions

The following definitions from the *Retirement Villages Act 1992* have application to this Code:

“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;

“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;

“referee” means a retirement villages referee appointed under section 23 of the *Retirement Villages Act 1992*;

“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 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 of such a person;

“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;

“spouse” includes a person living with another person of the opposite sex as a husband or wife of that person on a bona fide domestic basis, although not legally married to that person;

“Tribunal” means the Retirement Villages Disputes Tribunal established under section 27 of the *Retirement Villages Act 1992*;

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

1.2 Application

- (1) This Code applies to administering bodies and residents of retirement villages (whether existing or new).
- (2) Except as provided in subclause (3), Part 2 does not apply to any contract, agreement or arrangement made or entered into prior to this Code becoming effective.
- (3) If a contract, agreement or arrangement made or entered into prior to this Code becoming effective is silent on a matter with which the Code deals, the provisions of the Code apply.

Note that under section 3 of the *Fair Trading Act 1987* this Code binds the Crown.

1.3 General principals

The general principles guiding all those involved in the provision of retirement villages and related services are that —

- (a) the wellbeing and interests of residents, together with the rights of administering bodies, must be given due consideration;
- (b) the freedom of decision and action of each resident must be restricted as little as possible and must be recognized in the relationship between a resident and the administering body of a retirement village;
- (c) the relationship of residents with their family and past and present communities is important and must be recognized, taking into account the cultural, religious and linguistic background of each resident; and
- (d) residents must be treated fairly and not subject to abuse and exploitation.

1.4 Objectives of the Code

The objectives of the Code are to —

- (a) promote fair trading practices in the provision of retirement villages and related services by setting out the rights and obligations of residents and administering bodies in retirement villages;
- (b) encourage fairness in the promotion, sale and operation of retirement villages;
- (c) require the disclosure of all relevant information to a person who is considering entering a particular retirement village;
- (d) require contract documents for retirement village accommodation to contain full details of the obligations and entitlements of the resident and administering body;
- (e) facilitate resident input into the management of a retirement village; and
- (f) establish appropriate mechanisms for the resolution of any disputes between residents and administering bodies or between residents.

1.5 Resident's basic rights

- (1) The administering body of a retirement village must respect a resident's basic right to privacy in his or her personal accommodation, subject to the right of an administering body to inspect the premises as set out in the residence rules and the residence contract.
- (2) The administering body must respect a resident's basic right to quiet enjoyment of his or her personal accommodation and any communal amenities.

- (3) The administering body must respect a resident's basic right to complete autonomy over his or her property and personal and financial affairs.

Other relevant legislation

The provisions of this Code should be read in conjunction with other relevant legislation. The *Retirement Villages Act 1992* and the *Retirement Villages Regulations 1992* set out rights and obligations relating to retirement villages. The *Fair Trading Act 1987* is applicable to residence contracts and other contracts concerning retirement villages. Where accommodation in a retirement village is secured by strata title, the provisions of the *Strata Titles Act 1985* also apply. The *Aged Care Act 1997* of the Commonwealth has application to Commonwealth funded residential care services (as defined in the *Aged Care Act 1997* of the Commonwealth).

Part 2 — Advertising and promotion of retirement villages**2.1 General**

All promotional or sales material provided by the administering body of a retirement village about the village, whether in written or oral form, is to be truthful, accurate, unambiguous and entirely consistent with the provisions of this Code, the *Retirement Villages Act 1992* and the *Fair Trading Act 1987*.

2.2 Retirement village developments

- (1) All necessary consents to develop must be obtained from the relevant authorities before any sales promotion of a retirement village is undertaken.
- (2) Subclause (1) does not preclude the carrying out of a market survey prior to any sales promotion.
- (3) Where the consent to develop includes a requirement that the developer provide certain services for the life of the development, that requirement must be included in any promotional or sales material provided to the prospective resident under this Code.

2.3 Proposed facilities and services

Proposed facilities and services which are referred to in promotional or sales material must state the date of implementation and any conditions upon which the proposed facilities and services depend.

2.4 Approvals for facilities that provide a high level of residential care

Any relevant licences or approvals from the Health Department of Western Australia or the Commonwealth Department of Health and Family Services to operate facilities providing a high level of residential care as defined in the *Aged Care Act 1997* of the Commonwealth must be obtained before such facilities are promoted as being available to, or associated with, a retirement village.

2.5 Entry to Commonwealth funded residential care services

Where any reference is made to Commonwealth funded residential care services (as defined in the *Aged Care Act 1997* of the Commonwealth) in any promotional or sales material provided by the administering body of a retirement village, the following statement on the terms of entry to such services printed in 16 point type and boxed must be included:

You should be aware that current Commonwealth policy guidelines on admission to Commonwealth funded residential care services require places to be allocated on a “needs” basis. It is not possible for an organization providing services for older people to guarantee admission to Commonwealth funded residential care services.

Part 3 — What you should know before you enter into a contract

3.1 Before you enter into a residence contract

The owner of a retirement village must make the following information available, in writing, to a prospective resident of the retirement village at least 5 working days before the prospective resident enters into a residence contract:

- (a) upon request, a copy of the following financial documents for the village (or villages where more than one village is controlled by the same organization and separate financial statements are not maintained) prepared in accordance with Statements of Accounting Concepts and Accounting Standards published by the Australian Accounting Research Foundation:
 - (i) if the village is already operating, the previous year’s accounts and the maintenance fee for the current year;

- (ii) if the village is under construction a projected budget;
- (iii) if the financial information extends to projects other than the village, details of those projects;
- (b) a copy of every contract required to be entered into in order to reside in the retirement village and details of any costs associated with entering into every such contract;
- (c) a copy of any by-laws of the body corporate under the *Strata Titles Act 1985*.

Note that under section 13(2)(c) of the *Retirement Villages Act 1992* the owner of a retirement village is obliged to provide a prospective resident with a copy of the residence rules of that retirement village. A full statement of the rights conferred under sections 13 and 14 of that Act is set out in Form 2 of Schedule 1 of the *Retirement Villages Regulations 1992*.

Appendix 1 — Information statement by owner

Note that under section 13(2)(a) of the *Retirement Villages Act 1992*, an owner is required to provide to a prospective resident with written answers to the questions set out in Form 1 of Schedule 1 to the *Retirement Villages Regulations 1992*. A copy of those questions is attached as Appendix 1 to this Code. The questions require the owner to disclose such things as —

- costs payable to enter the village;
- all recurrent charges or fees payable and the method of determining any variation;
- any additional or optional services provided and their respective cost;
- details of costs associated with moving to and living in alternative accommodation within the village; and
- a clear explanation of the refund entitlement.

Appendix 2 — Checklist for residents

A prospective resident should carefully read and consider the list of questions provided in Appendix 2 to this Code before deciding to enter any retirement village.

3.2 Before you enter into a service contract

An administering body must ensure that the following information is given, in writing, to a resident proposing to enter into a service contract, or any other contract for the provision of facilities, with the administering body at least 5 working days before that person enters into the contract:

- (a) the costs payable under the contract, including all recurrent charges and fees;

- (b) details of the services or facilities to be provided under the contract;
- (c) details of the notice and costs involved in terminating the provisions of the services or facilities.

Part 4 — The Contract

4.1 Legibility and presentation requirements

- (1) The residence contract and any other contract between an administering body and a resident of a retirement village must —
 - (a) be written in clear, concise and plain language; and
 - (b) be printed in a size not less than 12 point type.
- (2) The following statement must appear in 16 point type and be included in the contract:

I acknowledge that I have been given the opportunity to take a copy of the contract away and obtain independent advice.

Cooling-off period

Under section 14 of the *Retirement Villages Act 1992*, all residence contracts entered into after the commencement of the Act must provide for a cooling-off period of not less than 5 working days after the date of the contract (i.e. the day on which the contract was signed by the last party to sign it). If the information referred to in section 13(2) of that Act is not provided at least 5 days before a residence contract is entered into, the cooling-off period for that contract is 10 days after the day on which the information is provided.

During the cooling-off period, a person may withdraw from a residence contract by giving notice in writing to all other parties to the contract (unless the person has entered into residence in the retirement village during the cooling-off period). On withdrawing from a residence contract a person is entitled, subject to the provisions of sections 14(2) and 75 of the *Retirement Villages Act 1992*, to full repayment of all monies paid.

If a facility providing a low level of residential care (as defined in the *Classification Principles 1997* made under the *Aged Care Act 1997* of the Commonwealth) is subject to regulations under section 57-21 of the *Aged Care Act 1997*, those regulations apply in relation to the payment of refunds.

4.2 Title and tenure

The residence contract must fully disclose —

- (a) the legal basis of occupancy (e.g. whether the resident is purchasing or leasing the property or occupying the property under licence);
- (b) the type of occupancy (e.g. self-care or serviced unit); and
- (c) the length of time the resident is entitled to reside in the village in return for payment under the contract.

4.3 Accommodation unit

- (1) All residence contracts must contain a description of the fixtures, fittings and furnishings which are intended to be or are provided in the accommodation unit.
- (2) The residence contract documents for a retirement village under construction must contain —
 - (a) plans that show the location, floor plan and significant dimensions of the accommodation unit; and
 - (b) plans showing the location, size and other features of any separate carport, garage, storage or other area allocated to the resident.
- (3) The residence contract documents for an existing retirement village must identify —
 - (a) the specific address of the residence to permit easy identification; and
 - (b) facilities such as carport, garage, storage or other area allocated to the resident.
- (4) Upon request, a map showing all buildings and grounds forming common property is to be made available to the resident by the administering body.

4.4 Services and facilities

Contracts between an administering body and a resident relating to a retirement village must state —

- (a) all services and facilities that are provided by the administering body and any separate charge for their use; and
- (b) where a service is provided by an independent agency, any potential restrictions on access to that service (e.g. some services may have eligibility criteria or waiting lists).

4.5 Accommodation charges, entry contributions and refund provisions

- (1) All accommodation charges (i.e. any payment that is required to secure an accommodation unit in a retirement village) must be

specified in the residence contract together with a resident's right to a refund, if any, on termination of the contract.

- (2) The contract must state clearly the method of calculation of the refund and when it is to be paid.
- (3) The contract must state clearly any fees or commissions charged by the administering body on termination of the contract and detail the method used to make the determination.
- (4) If there is no provision for a full refund (less fair and reasonable administration and sales, and refurbishment costs) within the first 6 months, the following words must appear in the contract and be printed in not less than 16 point type and boxed:

IMPORTANT NOTICE

This contract does not provide a full refund
within the first 6 months.

4.6 Regular maintenance and service charges

The residence contract and any other contract between an administering body and a resident of a retirement village must state —

- (a) when maintenance fees are to be paid and what will be provided for those fees;
- (b) the recurrent charges for the village's current financial year and the basis for the future determination of those charges;
- (c) any regular maintenance or ongoing charges for which the resident will still be responsible if the resident leaves and the accommodation unit is not resold, re-leased or reoccupied; and
- (d) who is responsible for the cost of replacement and maintenance of fixtures and fittings related to the accommodation unit.

4.7 Relocation

The residence contract must contain the following information regarding relocation or transfer of residents from self-care units to other accommodation units within the village:

- (a) the circumstances under which the resident can transfer or be relocated;
- (b) the financial arrangements which would apply in the event of such a transfer; and
- (c) who is responsible for any regular maintenance or ongoing charges levied against the accommodation unit from which the resident will have moved.

4.8 Termination of residence contract and fees payable on termination

- (1) The manner in which a resident may terminate a residence contract after the expiration of the cooling-off period (including who is to be responsible for regular maintenance and other charges during a period of vacancy) and all fees that are payable by a resident on the termination of the residence contract must be clearly set out in the residence contract.

Note that the conditions under which a residence contract can be terminated and the cost of the termination must also be specified in the answers to the questions in Appendix 1.

- (2) The residence contract must contain a statement of the powers of the Retirement Village Disputes Tribunal to terminate a residence contract and a statement that the administering body cannot terminate the contract without the agreement of the resident or Tribunal.

The legal responsibilities of the administering body and resident in relation to the termination of a residence contract are set out in the *Retirement Villages Act 1992* (see also Part 7 of this Code).

4.9 Residence contract to refer to this Code and the *Retirement Villages Act 1992*

- (1) The residence contract must draw the resident's attention to the existence of this Code and the *Retirement Villages Act 1992*.
- (2) The residence contract must clearly disclose the right of a resident to —
 - (a) rely on the provisions of this Code to have input into the administration of the retirement village (see Part 5 of this Code);
 - (b) have disputes heard by the retirement village's Village Disputes Resolution Committee and to make complaints to the Ministry of Fair Trading for investigation and attempted resolution (see Part 6 of this Code); and
 - (c) in some cases, have access to the Retirement Villages Disputes Tribunal should the dispute remain unresolved (see Part 7 of this Code).

Part 5 — Village management

5.1 Administering body to create procedures for resident input

The administering body must create appropriate procedures to provide residents with access to management information and allow input, where desired by the residents, into the future planning and budgeting of a retirement village.

This is in keeping with the objective of facilitating resident input into the administration and financial arrangements of retirement villages and the principle of restricting as little as possible the freedom of decision and action of residents.

While the administering body must provide the appropriate procedures, every resident may choose the extent to which he or she wishes to participate in the affairs of the retirement village.

5.2 Input into management

Procedures established by the administering body must allow for residents to —

- (a) have input into any change to services or facilities that may involve either increased costs to residents (beyond those agreed to in the retirement village's budget) or loss of amenity by the residents;
- (b) have input into any plans for expansion of the village;
- (c) contribute to the formation of a Village Disputes Resolution Committee; and
- (d) contribute to the establishment, amendment or addition to the residence rules (see clause 5.4).

5.3 Input into financial arrangements

(1) Procedures established by the administering body must allow for residents —

- (a) to be able to have input into the budget for each financial year;
- (b) to be able to have input into proposals for the upgrading of buildings, fixtures or fittings where the residents are financing either the whole or part of the capital or recurrent costs of the work;
- (c) to be able to convene an annual meeting of residents for each village within 5 months after the end of each financial year; and
- (d) to be provided at the annual meeting with a clear written presentation of the financial position of the village (or villages where more than one village is controlled by the same organization and separate financial statements are not maintained) including —
 - (i) accounts of actual expenditure; and
 - (ii) information explaining fee increases, upgrading of facilities and any changes or additions to existing services.

(2) Where specific issues are to be discussed at the meeting of residents under subclause (1)(c), the administering body must, within a reasonable time prior to the meeting, make available to each resident an agenda setting out those issues.

- (3) If the residents, by majority resolution, request that the accounts provided to the residents under subclause (1)(d)(i) be independently audited, the administering body must ensure that as soon as practicable —
 - (a) the accounts are so audited; and
 - (b) the audited accounts are provided to the residents.

5.4 Residence rules

- (1) An administering body must establish a set of residence rules (which may consist of strata scheme by-laws) covering the obligations of residents.
- (2) The rules must be —
 - (a) consistent with this Code and the *Retirement Villages Act 1992*; and
 - (b) in sufficient detail to provide the means to avoid and resolve disputes.
- (3) Each resident of a retirement village must comply with the residence rules of that village.

The rules and procedures established under this Code and the *Retirement Villages Act 1992* help maintain an acceptable quality of life for everyone in the village.

Part 6 — Dispute resolution

It is recognized that in any communal living situation, such as a retirement village where facilities are shared, disputes between residents and the administering body, or between residents, may occur from time to time. This Code places particular emphasis on providing easy access to an informal and inexpensive forum to resolve disputes.

Prevention through open communication and provision of information, and democratic decision making is always preferable.

Many disputes are due to simple misunderstandings or lack of suitable information. Every attempt should be made by those involved in the dispute to resolve it between themselves. It may be useful to discuss the problem with a friend or advocate (for example, the resident's representative on the Village Disputes Resolution Committee), or at the next village meeting of residents and the administering body (if appropriate).

If the dispute is not able to be solved, a meeting of the Village Disputes Resolution Committee may be convened.

If both these steps fail, the Ministry of Fair Trading can provide information and conciliation services to administering bodies and residents to assist in the resolution of disputes.

6.1 Village Disputes Resolution Committee

- (1) The administering body of a retirement village must establish a Village Disputes Resolution Committee to hear and mediate disputes that arise within the village —
 - (a) if the village was operating before the commencement of this Code, within 90 days of the commencement of this Code;
 - (b) if the village commences operating after the commencement of this Code, within 90 days of the resident entering into occupation of the retirement village; or
 - (c) if a dispute occurs before the time referred to in paragraph (a) or (b), within 10 days of a dispute occurring.
- (2) The Village Disputes Resolution Committee must consist of 3 persons, namely —
 - (a) a person appointed by the residents;
 - (b) a person appointed by the administering body; and
 - (c) an independent person appointed by the persons appointed under paragraphs (a) and (b),none of whom is a party to the dispute.

Under paragraph (a) the residents may appoint a person from the list of persons willing to be so appointed kept by the Ministry of Fair Trading.

Under paragraph (b) the administering body may appoint a person from the list of persons willing to be so appointed kept by the Retirement Villages Association or Aged Care Australia.

Under paragraph (c) the residents' and administering body's appointees may appoint a person from a list of persons willing to be so appointed kept by the Office of Seniors Interests.

- (3) If in a particular dispute a Committee member has a conflict of interest, the member is disqualified from hearing the dispute unless, after the member has made a full disclosure of the conflict of interest, the parties to the dispute consent to that member hearing it.
- (4) Where a Committee member is disqualified from hearing a dispute under subclause (3) a replacement for the member must be appointed as soon as practicable.
- (5) Where residents or the administering body, or the resident and the administering body, as the case requires, fail to appoint a person to a Village Disputes Resolution Committee within 21 days after being required to do so under this Part the Minister may —
 - (a) in the case of the person to be appointed by the residents, appoint a person from a list of persons willing to be so appointed, kept by the Ministry of Fair Trading;

- (b) in the case of the person to be appointed by the administering body, appoint a person from a list of persons willing to be so appointed kept by the Retirement Villages Association or Aged Care Australia; and
- (c) in the case of the independent person, appoint a person from a list of persons willing to be so appointed kept by the Office of Seniors Interests,

and any person so appointed is to be considered as having been nominated in accordance with subclause (2).

6.2 Dispute procedures

- (1) The administering body and residents of a retirement village must determine a charter for the Village Disputes Resolution Committee of that village (i.e. how the Committee is to be established, how applications to the Committee are to be made and the procedures for conducting a hearing before the Committee).
- (2) Where the administering body and residents have not agreed on a charter, the standard charter prepared by the Ministry of Fair Trading is to be considered the charter.
- (3) Where a dispute arises within the charter, either a resident or the administering body may apply to the Committee to have the matter heard.
- (4) The Committee must meet as soon as possible after being notified of a dispute and hear the dispute in accordance with the charter.
- (5) After hearing a dispute, the Committee must advise the parties to the dispute of its decision, in writing, within 10 days of the hearing.
- (6) If a dispute is not resolved by the Committee, either party to the dispute may seek the assistance of the Ministry of Fair Trading whose officers may attempt conciliation or take other appropriate action.
- (7) If the Committee determines that a dispute cannot be resolved by it, the Committee must advise the applicant to apply to the Ministry of Fair Trading or the Retirement Village Disputes Tribunal (see Part 7 of this Code).

Note that following a decision by the Committee, either party may still apply to the Tribunal for a hearing. The details of the Tribunal's powers are contained in the *Retirement Villages Act 1992*.

Part 7 — Termination of residence contracts

Retirement villages are clearly marketed by the industry as permanent accommodation for residents of such villages. Accordingly a residence contract may be terminated only in a limited number of circumstances, as set out in the residence contract or the *Retirement Villages Act 1992*.

Retirement Village Disputes Tribunal

The Retirement Village Disputes Tribunal consists of a referee sitting alone or a referee and two other members chosen from panels established by the Minister for Fair Trading.

An administering body cannot terminate a residence contract on its own, that is, without the agreement of the resident. However, a resident or the administering body may apply to the Retirement Village Disputes Tribunal to terminate a residence contract under circumstances as specified in the *Retirement Villages Act 1992*.

Termination by a resident

The manner in which a resident may terminate a residence contract after the expiration of the cooling-off period is as set out in the contract or *Retirement Villages Act 1992*.

Application to the Tribunal for termination by the administering body

As set out in the *Retirement Villages Act 1992*, an administering body may apply to the Tribunal to terminate a residence contract on any of the following grounds:

- that the residents' physical or mental health is such as to make the residential premises unsuitable for occupation by the resident;
- that the resident has breached the residence contract or the residence rules and has failed to rectify that breach;
- that the resident has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit serious damage to the residential premises or injury to the administering body, an employee of the administering body or another resident; or
- that the administering body would, in the special circumstances of the case, suffer undue hardship if the contract were not terminated.

Notice of termination

As set out in the *Retirement Villages Act 1992*, where an administering body of a retirement village seeks an order from the Tribunal to terminate a residence contract it must —

- if the termination is being sought due to a breach of the residence contract or residence rules, specify the breach and give the resident an opportunity to rectify that breach within a reasonable and specified time;

- give the resident 14 days written notice of its intention to apply to the Tribunal for an order terminating the contract;
- ensure a notice of termination clearly states that the contract cannot be terminated without an order by the Tribunal; and
- advise the resident of his or her right to occupy the accommodation unit until a termination date is fixed by the Tribunal.

Payments on termination

Where a residence contract has been terminated by the resident in accordance with the residence contract or the *Retirement Villages Act 1992* and where the resident does not have the right to appoint or nominate his or her own agent for the purpose of disposing of his or her interest in the accommodation unit, the administering body must pay the resident any money due under the contract —

- within 7 days of the succeeding resident taking occupation; or
- in any other case within 45 days of the day on which the resident ceases to reside in the accommodation unit,

whichever occurs first.

Where a residence contract has been terminated by the Tribunal, the Tribunal is to fix a date by which the resident must vacate the premises.

This in no way affects the rights of the administering body to set terms and conditions on the disposal of the resident's interest in the accommodation unit pursuant to the contract where the resident has the right to appoint his or her own agent.

Where a residence contract has been terminated by the Tribunal, the Tribunal may make any order for the payment or refund of money by the administering body to the resident or by the resident to the administering body.

If a facility providing a low level of residential care (as defined in the *Classification Principles 1997* made under the *Aged Care Act 1997* of the Commonwealth) is subject to the *Aged Care Act 1997* and in particular section 57-21 of that Act, the period within which the refund is to be paid is determined under the relevant Commonwealth regulations.

Appendix 1 — Copy of information statement for prospective resident

Under section 13(2) of the *Retirement Villages Act 1992* the owner of residential premises in a retirement village is required to provide the following information to a person at least 5 working days before that person enters into a residence contract.

THE OWNER MUST ANSWER EACH OF THE FOLLOWING QUESTIONS IN WRITING BELOW EACH QUESTION:

Costs and charges

1. What costs will be payable to enter the retirement village?
2. What recurrent charges or fees will be payable and what method is used to determine those fees? What are the components of the maintenance fee?
3. By what percentage did the maintenance fee increase during the previous financial year?
4. What are the arrangements and fees for any necessary insurance cover?
5. What provision is there for a sinking fund for major maintenance and replacement?
6. Can the prospective resident be liable for any additional or extraordinary charges? If so, under what circumstances?

Resident input

7. What arrangements exist for a resident to have input into the administration of the village, including the making of residence rules and the setting of fees and charges?

Resident funded capital improvements

8. What are the rights of the prospective resident to compensation for capital improvements made to the accommodation unit at the resident's expense?

Services

9. What services will be provided for the fees payable?
10. What additional or optional services are provided and at what cost?

Existing service contract

11. Is there a service contract already in existence which will bind the resident? How can the service contract be varied or cancelled?

Use of accommodation unit

12. What restrictions will there be on the resident in the use of his/her accommodation unit and the village facilities in regard to:
 - having someone else live with him/her?
 - having visitors, including short stay guests?
 - car parking?
 - pets?

Transport

13. What type of public, private or village transport is available to residents?

Village management

14. What are the qualifications and experience of the retirement village's senior management?

Medical certificate requirements

15. Does the prospective resident have to supply a medical certificate or report to certify his/her ability to live independently?
16. Will the prospective resident have to provide documentation of his/her medical condition and medications? If so, who will have access to it?

Emergency call procedures

17. Is there an emergency call system? If so, when is it monitored? Who is responsible for responding to the calls?
18. In the event of an emergency who will be called and how will they gain access to the unit?
19. If hospitalization is required where will a person normally be taken?

Hospitalization

20. If hospitalization or nursing care is required, how long will the prospective resident's accommodation unit be kept in the name of the resident?
21. In the event that hospitalization or nursing care is required, what ongoing costs would the prospective resident incur with his/her existing unit?

Moving

22. What costs are associated with moving to and living in alternative accommodation within the village?
23. In what circumstances would the prospective resident be required to move to alternative accommodation within the village or be transferred or relocated?

Villages under construction

24. If the accommodation unit is still under construction, can the prospective resident have input into the design, construction or furnishings of his/her unit?

Refund of deposit

25. What entitlement does a resident have to a refund of deposit monies if a village (planned or under construction) is not completed?

Sale of village

26. What protection will the prospective resident have against a loss of rights (including accommodation rights) if the village is sold to another organization?

Restrictions on sale of unit

27. Are there any restrictions on the sale of an accommodation unit (e.g. sole agency)? What happens if there is a dispute over the sale price?

Termination of contract

28. Under what conditions can the residence contract be terminated and at what cost? (The conditions must include the procedures to be followed under the *Retirement Villages Act 1992*.)
29. What fees will be payable by a resident on termination of the residence contract? (This must include who is responsible for regular maintenance and other charges during a period of vacancy.)

Refund entitlement

30. What is the refund entitlement if the residence contract is terminated? (Include any fees or commissions charged by the administering body on termination of the contract and detail the method used to make the determination.)
31. To enable me to compare the financial packages offered by different retirement villages, what would be the final return due after, say, 1, 2, 5 and 10 years?

Signature of owner:

Date:

Appendix 2 — Checklist for prospective resident

It is important for you to carefully read and consider the following questions before deciding to enter any retirement village. If, after reading through the list, you are uncertain as to any aspects of the village, or its suitability for you, seek further advice.

1. Have I fully discussed my decision to enter a retirement village with my family, friends or adviser?
2. If I am considering moving to a retirement village because the housework, gardening and general maintenance has become too much, have I fully considered other options? For example, obtaining home help or handyperson help, or moving to a smaller unit in the same neighbourhood.

3. If I am considering moving to a retirement village because I have recently lost my partner, have I given myself enough time to grieve before I make a major lifestyle change?
4. Have I received adequate information about the retirement village I have chosen? Have I shown the documents to a solicitor? Am I satisfied that I fully understand the contract that I am signing?
5. Am I comfortable that the lifestyle of the village (including social activities and religion) will suit me? Have I spoken to any residents of the village?
6. Will the village and my unit be readily accessible if I become disabled and need a wheelchair or walking aid? What alternatives do I have if I am no longer able to live alone?
7. Does the village provide personal care or nursing care, an emergency call system and other facilities specially designed for the elderly? Do these meet my present and likely future needs?
8. Have I looked at a number of villages to compare the facilities (e.g. recreational, transport, gardens etc.) and financial arrangements?
9. Can I afford to live in the village I have chosen and what are the financial consequences for me if I wish to move out?
10. Is the village I have chosen accessible to my friends and family?
11. Can I take my own furniture to the village and, if so, will it be suitable?
12. Before I sign the contract, have I received and considered all the information required to be given to me under the *Code of Fair Practice for Retirement Villages 1998* and the *Retirement Villages Act 1992*?

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.
