

South Australia

Retirement Villages (Miscellaneous) Amendment Act 2024

An Act to amend the *Retirement Villages Act 2016*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Retirement Villages (Miscellaneous) Amendment Act 2024*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

Part 2—Amendment of *Retirement Villages Act 2016*

3—Amendment of section 4—Interpretation

- (1) Section 4(1), definition of *authorised officer*—delete the definition and substitute:
authorised officer—see section 14;
- (2) Section 4(1)—after the definition of *community retirement village* insert:
Consumer Price Index, or *CPI*, means the Consumer Price Index (All groups index for Adelaide) published by the Australian Bureau of Statistics;
- (3) Section 4(1)—after the definition of *eligible person* insert:
enforceable voluntary undertaking—see section 64A(1);
- (4) Section 4(1), definition of *ingoing contribution*—delete "but does not include" and substitute:
which includes any deposit paid but does not include
- (5) Section 4(1)—after the definition of *register* insert:
Registrar means the person for the time being holding or acting in the office of Registrar under section 6;
- (6) Section 4(1)—after the definition of *related body corporate* insert:
remarketing, in relation to a residence in a retirement village, means the activity undertaken by or on behalf of the operator in advertising or otherwise marketing the sale of a right of occupation of the residence;
- (7) Section 4(1)—after the definition of *retirement village* insert:
retirement village dispute means a dispute between an operator of a retirement village and a resident of the retirement village about the parties' rights and obligations under this Act or the resident's residence contract (which includes, for the avoidance of doubt, a dispute arising in connection with the application of a residence rule);
- (8) Section 4(1), definition of *special levy*—delete "21(2)(b)" and substitute:
21(1)(a)(iii)

- (9) Section 4(1), definition of *special resolution*, (b)—delete "a majority of not less than three-quarters of the number of residents who were entitled to vote at the meeting" and substitute:

at least 75% of residents who vote at the meeting

4—Amendment of section 5—Application of Act

- (1) Section 5(3)—after "unconditional" insert:

and may be varied or revoked by subsequent notice in the Gazette

- (2) Section 5(4)—after the penalty provision insert:

Expiation fee: \$500.

5—Amendment of section 7—Registrar's functions

Section 7(1)—delete subsection (1) and substitute:

- (1) The Registrar's functions are—
- (a) to provide guidance and advice to operators of retirement villages in relation to the operation of, and matters arising under, this Act, in particular the obligations of operators under the Act; and
 - (b) to provide guidance and advice to residents and prospective residents of retirement villages in relation to the operation of this Act, in particular the obligations, rights and liabilities of residents and prospective residents under a residence contract and any code of conduct to be observed by residents; and
 - (c) to gather and maintain current information about retirement villages and retirement village schemes in South Australia, including but not limited to information about the operations of retirement villages such as information relating to occupation and vacancy rates, ingoing contributions, recurrent charges, exit entitlements, dispute resolution, terminations of residence contracts, enforceable voluntary undertakings and prosecutions for offences against the Act; and
 - (d) to advise the Minister on the administration and operation of this Act; and
 - (e) to perform any other function assigned to the Registrar under this Act or by the Minister.

6—Amendment of section 8—Registrar's power to require information

Section 8(1)—delete subsection (1) and substitute:

- (1) The Registrar may, by written notice, require a person to provide specified information, or information of a specified kind, that is in the person's possession and that the Registrar reasonably requires for the performance of the Registrar's functions under this Act (including any function assigned to the Registrar by the Minister under section 7(1)(e)).
- (1a) A person required to provide information to the Registrar by a notice under this section must—
 - (a) provide the information to the Registrar within the period, and in the manner and form, stated in the notice (which must be reasonable); and
 - (b) if required to do so by the notice, or by a subsequent written notice given by the Registrar, verify the information by statutory declaration.

Maximum penalty: \$2 500.

Expiation fee: \$210.

7—Substitution of section 9

Section 9—delete the section and substitute:

9—Confidential information

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

8—Amendment of section 11—Annual report

Section 11(1)—delete "30 September" and substitute:

31 October

9—Amendment of section 12—Register

- (1) Section 12(1)(a)(ii)—after "name and address of" insert:
each site comprising
- (2) Section 12—after subsection (1) insert:
 - (1a) Without limiting the information that the Registrar may include on the register under subsection (1)(b), the Registrar may include information relating to any of the following matters on the register:
 - (a) enforceable voluntary undertakings accepted by the Minister and notified to the Registrar under section 64A;
 - (b) findings of guilt for offences against this Act.

- (3) Section 12(2)—delete subsection (2) and substitute:
 - (2) The register is to be available for public inspection, without fee—
 - (a) during ordinary office hours at a public office, or public offices, determined by the Minister; and
 - (b) on a website determined by the Minister.

10—Amendment of section 13—Notification of information required for register

Section 13(1)(b)—after "name and address of" insert:
each site comprising

11—Amendment of section 14—Appointment of authorised officers

- (1) Section 14, heading—delete "Appointment of authorised" and substitute:
Authorised
- (2) Section 14(1)—delete subsection (1) and substitute:
 - (1) The following persons are authorised officers for the purposes of this Act:
 - (a) the Registrar;
 - (b) a person appointed by the Minister to be an authorised officer.
- (3) Section 14(2)—after "An appointment" insert:
under subsection (1)(b)
- (4) Section 14(3)—after "authorised officer" insert:
appointed under subsection (1)(b)

12—Amendment of section 15—Identification of authorised officers

- (1) Section 15(1)—after "authorised officer" insert:
appointed under section 14(1)(b)
- (2) Section 15(3)—delete "his or her identity card" and substitute:
the officer's identity card or other evidence of their authority

13—Amendment of section 16—General powers of authorised officers

- (1) Section 16(2)(b)—delete "justice" and substitute:
magistrate
- (2) Section 16(3)—delete subsection (3) and substitute:
 - (3) A magistrate must not issue a warrant under this section unless satisfied on information given on oath, personally or by affidavit, that there are reasonable grounds for the issue of a warrant.
- (3) Section 16(5)—delete subsection (5)

14—Substitution of sections 20 and 21

Sections 20 and 21—delete the sections and substitute:

20—Residence contracts

- (1) The operator of a retirement village must ensure that each residence contract is in writing, complies with the requirements prescribed by the regulations (if any) and includes the following information:
 - (a) details about the residence in respect of which the person is entering the contract;
 - (b) the name and contact details of the operator of the retirement village (and the manner in which the resident will be notified if the operator changes);
 - (c) details about the resident's rights and obligations created by or under the contract, including—
 - (i) the right to cool-off (that is, to rescind the contract and not proceed with becoming a resident in the retirement village); and
 - (ii) the right to occupation of the residence; and
 - (iii) recurrent charges for which the resident is liable; and
 - (iv) additional services and facilities available to residents of the retirement village and the costs of those services and facilities; and
 - (v) whether the resident may make alterations to the residence (including details of any necessary approval process that may apply) and any obligations applying at the end of the resident's right to occupation of the residence in relation to alterations made by the resident; and
 - (vi) any fee or charge payable in relation to the remarketing of the residence at the end of the resident's period of occupation, including the manner of calculation of such fees or charges; and
 - (vii) the right to terminate the right of occupation of the residence and to receive an exit entitlement; and
 - (viii) the amount of, or manner of calculation of, the exit fees that will be payable on the exercise of a right to terminate the right of occupation of the residence; and
 - (ix) the operator's dispute resolution policy;
 - (d) information about—

- (i) who will be responsible for repairing or replacing the fixtures, fittings and furnishings provided in the residence and how the cost of repairing or replacing such fixtures, fittings and furnishings is to be funded; and
 - (ii) who will be responsible at the end of the contract for reinstating the residence to the same condition as when the resident first entered into occupation (allowing for fair wear and tear such as deterioration of the condition of the premises or a fixture or fitting caused by reasonable or natural environmental forces); and
 - (iii) who will be responsible at the end of the contract for any work to improve the residence in excess of that required to reinstate the premises to the condition it was when the resident first entered into occupation;
 - (e) any other information prescribed by the regulations.
- Maximum penalty: \$35 000.
- (2) A residence contract will be taken to include a warranty on the part of the operator of the correctness of the information contained in the documents provided under section 22 (subject to any written alteration made by the operator with the consent of the resident on or before the signing of the contract by the operator), and that warranty prevails over any inconsistent contractual term unless the resident elects to rely on the contractual term (and then the contractual term will prevail to the extent of any inconsistency).
 - (3) For the purposes of subsection (1)(c)(ii), if the right to occupation under a residence contract is conferred pursuant to a lease or licence or by ownership of shares, the residence contract must clearly state at the front of the contract that—
 - (a) the right to occupation under the contract is conferred pursuant to a lease or licence or by ownership of shares (as the case requires); and
 - (b) the person entering into the contract as a prospective resident is not purchasing the residence.

21—Disclosure statements

- (1) The operator of a retirement village must ensure that each disclosure statement is in writing, complies with the requirements prescribed by the regulations (if any) and includes—
 - (a) information about the financial arrangements relating to residents of the retirement village including—
 - (i) information about—

- (A) all fees and charges that the person would be responsible for under the residence contract (whether as an ingoing contribution, as a recurrent or other fee or charge payable by a resident or as an exit fee) including a description of each fee or charge and the amount of the fee or charge or manner in which the fee or charge will be calculated; and
 - (B) what the operator does with the fees and charges; and
 - (C) any utilities, services or facilities provided or available to residents of the village (such as electricity, telephone or Internet provided by a third party) that the operator has an interest in or would obtain any fee or reward in relation to; and
 - (D) the manner in which the resident's exit entitlement will be calculated and the effect of section 30; and
 - (E) the insurance arrangements that are in place in relation to the village; and
- (ii) a statement of—
- (A) estimated exit entitlements and exit fees payable under the residence contract in the event that the right to occupation of the residence under the contract is terminated at 2 years, 5 years and 10 years after the contract is entered into; and
 - (B) the manner of calculation of the estimated entitlements and fees referred to in subparagraph (A) and any inbuilt assumptions used in such a calculation; and
 - (C) when an exit entitlement is payable; and
- (iii) a statement advising that a resident may be required to pay a fee, charge or other amount to the operator to enable the operator to recover an unforeseen expense of the retirement village (a *special levy*); and
- (b) information about—
- (i) the number of persons residing at the retirement village, and the percentages of residents—
 - (A) occupying a residence pursuant to a lease or licence; and

- (B) occupying a residence pursuant to a right to occupation conferred by ownership of shares; and
 - (C) occupying a residence that they have purchased; and
 - (D) occupying land within the village pursuant to a lease or licence under section 57; and
 - (ii) any limitation or requirement that applies, or is known to apply at a future time, in relation to a resident's choice of provider for utilities, services and facilities that are provided or available to residents of the village (such as electricity, telephone or Internet services); and
 - (iii) any special levy in place and payable by residents of the retirement village, including the purpose of the special levy, the amount and frequency of payments and the proposed date of final payment; and
 - (iv) any major capital item expenditure project in place or planned for the next 2 years, including the cost of the project and how it will be funded; and
 - (c) a statement advising that—
 - (i) the disclosure statement is not a replacement for the residence contract but is intended only as a summary of certain information contained in the contract; and
 - (ii) the prospective resident must ensure that they understand the terms of the residence contract; and
 - (iii) the estimated exit entitlements and exit fees included under paragraph (a)(ii) are estimates only and are subject to change depending on circumstances prevailing at the relevant time in the future, such as the amount of a new ingoing contribution; and
 - (iv) it is recommended that the prospective resident seeks legal and financial advice about the residence contract; and
 - (d) any other information or statement prescribed by the regulations.
- Maximum penalty: \$35 000.
- (2) For the purposes of subsection (1)(a)(ii), estimates of exit entitlements and exit fees, including the manner of calculation of the entitlements and fees and any inbuilt assumptions used in such a calculation, must be reasonable in the circumstances.

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

Maximum penalty: \$10 000.

Expiation fee: \$500.

15—Amendment of section 22—Information to be provided before residence contract entered into

- (1) Section 22—delete "The operator" and substitute:

Subject to subsection (2), the operator

- (2) Section 22—after paragraph (d) insert:

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

- (3) Section 22(f)—after "operator" insert:

, village manager, senior manager, person employed or engaged to work at the retirement village

- (4) Section 22—after paragraph (g) insert:

Maximum penalty: \$35 000.

- (5) Section 22—after its present contents as amended by this section (now to be designated as subsection (1)) insert:

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

- (a) the person has received the documents referred to in subsection (1); and
- (b) the person's legal representative has confirmed, by notice in writing, the provision of legal advice to the person in relation to the documents and the proposal to enter into the residence contract; and
- (c) the person has given notice in writing that they wish to enter into the contract before the 10 business day period referred to in subsection (1) has expired.

16—Substitution of section 23

Section 23—delete the section and substitute:

23—Premises condition report

- (1) The operator of a retirement village must, before a person enters into occupation of a residence in a retirement village, complete and provide to the person a report (a *premises condition report*) providing detailed information about—
 - (a) the condition of the fixtures, fittings and furnishings provided in the residence; and
 - (b) who has responsibility under the residence contract for the maintenance, repair and replacement of fixtures, fittings and furnishings provided in the residence and, if the operator is responsible for the maintenance, repair and replacement, how the maintenance, repair and replacement will be funded; and
 - (c) any other information prescribed by the regulations.

Maximum penalty: \$35 000.

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

Maximum penalty: \$10 000.

Expiation fee: \$500.

- (3) A person who enters into occupation of a residence in a retirement village must complete the premises condition report provided to the person by the operator and return the completed report to the operator within 10 business days of entering into occupation of the residence.
- (4) A resident who fails to return a completed report in accordance with subsection (3) is taken to have agreed to the premises condition report as provided to the resident by the operator.

17—Amendment of section 24—Rights in relation to contract etc

- (1) Section 24(1)—after subsection (1) insert:

Maximum penalty: \$35 000.

- (2) Section 24—after subsection (5) insert:

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

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

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

Maximum penalty: \$10 000.

Expiation fee: \$500.

Example—

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

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

18—Amendment of section 25—Offences

Section 25(1)—delete subsection (1) and substitute:

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

Maximum penalty: \$35 000.

19—Insertion of section 25A

Before section 26 insert:

25A—Residence contract holding deposits

- (1) The operator of a retirement village must not seek or accept a deposit from a person in contemplation of the person becoming a resident in the retirement village that exceeds—
- (a) \$5 000; or
 - (b) if an amount is prescribed by the regulations for the purposes of this paragraph, that amount.

Maximum penalty: \$10 000.

Expiation fee: \$500.

- (2) If the operator of a retirement village accepts a deposit from a prospective resident in contemplation of the person entering into occupation of a particular residence under a residence contract, the operator must not, during the deposit holding period—
- (a) increase a fee or charge under the residence contract that the person would be responsible for; or

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

Maximum penalty: \$10 000.

- (3) If an operator contravenes a provision of subsection (2), the prospective resident who had paid a deposit in contemplation of entering into occupation of the residence may apply to the Tribunal for an order that an increase in a fee or charge contrary to subsection (2)(a), or a residence contract entered into by the operator with another person contrary to subsection (2)(b) (as the case requires) is void and of no effect.
- (4) The Tribunal may, on application under subsection (3) make any of the following orders:
 - (a) in the case of a contravention of subsection (2)(a), order that the increase to a fee or charge is void and of no effect;
 - (b) in the case of a contravention of subsection (2)(b), order that the residence contract entered into in contravention of that subsection is void and of no effect;
 - (c) any ancillary or incidental orders as the Tribunal sees fit.
- (5) If the operator of a retirement village accepts payment of a deposit from a person in contemplation of the person entering into occupation of a residence in the retirement village but the person does not enter into a residence contract, the operator must, within 10 business days of any of the following occurring, take all reasonable steps to refund the deposit in full to the person:
 - (a) the person gives the operator notice that they do not intend to sign the residence contract;
 - (b) the operator enters into a residence contract with another person for the residence or otherwise determines to no longer hold the residence for the person.

Maximum penalty: \$10 000.

Expiation fee: \$500.

Example—

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

(6) In this section—

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

- (a) the person gives the operator notice that they do not intend to sign the residence contract;
- (b) the 12th business day following the day on which the prospective resident received the documents required to be given to the prospective resident under section 22(1);
- (c) the day agreed between the operator and the prospective resident for the purposes of this paragraph at the time the deposit was paid.

20—Amendment of section 27—Exit entitlements

(1) Section 27(2)(b)—delete paragraph (b) and substitute:

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

(2) Section 27(3) and (4)—delete subsections (3) and (4)

(3) Section 27(7)—delete "of 18 months"

(4) Section 27(8)—delete subsection (8)

(5) Section 27(15)—delete subsection (15) and substitute:

- (15) An operator is guilty of an offence if the operator fails to take all reasonable steps to pay the whole or any part of an exit entitlement within 10 business days after—
 - (a) if the operator requests the resident to provide the operator with the resident's payee details under subsection (18)—the payee details are provided to the operator; or
 - (b) in any other case—the resident becomes entitled to recover the amount as a debt in accordance with this section.

Maximum penalty: \$10 000.

Expiation fee: \$500.

Example—

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

(6) Section 27—after subsection (17) insert:

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

(19) In this section—

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

21—Amendment of section 28—Payment of capital fund contributions deducted from exit entitlement

(1) Section 28(1)—after the penalty provision insert:

Expiation fee: \$315.

(2) Section 28—after subsection (2) insert:

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

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

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

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

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

Note—

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

- (4) If an operator deducts an amount from an exit entitlement in contravention of subsection (3) the operator is guilty of an offence.
Maximum penalty: \$ 35 000.
- (5) For the purposes of subsection (3), the *current market value* of a residence to which an exit entitlement relates is—
 - (a) if the right to reside in the retirement village has been sold—the amount paid by the new purchaser as an ingoing contribution; or
 - (b) in any other case—calculated in the manner provided in the residence contract but as if the consideration paid on sale of the right to reside in the retirement village was the current market value of that right.

22—Amendment of section 29—Arrangements if resident is absent or leaves

- (1) Section 29(2)(b)—after "recurrent" insert:

or other

- (2) Section 29(2)—after paragraph (b) insert:

Note—

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

- (3) Section 29(3)—after "recurrent" wherever occurring insert in each case:

or other

- (4) Section 29(7)—delete subsection (7)

- (5) Section 29(8)—after the penalty provision insert:

Expiation fee: \$315.

23—Amendment of section 30—Arrangements if resident leaves to enter residential aged care facility

- (1) Section 30(1)(b)—after "refundable accommodation deposit" insert:

or a refundable accommodation contribution

- (2) Section 30(5)—delete the penalty provision and expiation fee and substitute:

Maximum penalty: \$10 000.

Expiation fee: \$500.

24—Amendment of section 31—Certain taxes, costs and charges must not be charged to residents

Section 31—after subsection (4) insert:

- (5) A person must not charge an amount as a fee or charge to a resident in relation to the remarketing of a residence under a residence contract unless—
 - (a) the amount is as specified in, or calculated in accordance with, the residence contract; or
 - (b) if the residence contract was entered into before the commencement of this paragraph and does not specify the fee or charge or the manner of its calculation—the amount represents the reasonable costs incurred by the operator in relation to the remarketing of the residence (which may include a reasonable portion of the costs of the general marketing strategy of the retirement village).

Maximum penalty: \$10 000.

Expiation fee: \$500.

25—Insertion of section 31A

After section 31 insert:

31A—Recurrent charges

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

Maximum penalty: \$10 000.

Expiation fee: \$500.

- (2) A resident of a retirement village is not required to pay any increase in a recurrent charge unless notice of the increase is given as required under subsection (1).
- (3) The operator of a retirement village must not increase recurrent charges payable under a residence contract by an amount that is greater than—
 - (a) if the residence contract provides for the recurrent charges to be varied by specified amounts—the specified amounts; or
 - (b) if the residence contract provides for the recurrent charges to be varied according to a fixed formula—the amount calculated under the fixed formula; or
 - (c) in any other case—an amount that is the CPI percentage increase,

unless—

- (d) a majority of the residents whose recurrent charges will be affected by the increase agree to the increase by resolution passed at a meeting of those residents; or
- (e) the increase is allowed under subsection (4); or
- (f) the Tribunal makes an order under subsection (6) that the increase is to take effect.

Maximum penalty: \$10 000.

Expiation fee: \$500.

- (4) For the purposes of subsection (3)(e), an increase in a recurrent charge relating to a retirement village is allowed to the extent that the charge is attributable to—
 - (a) an increase in rates, taxes or charges levied under an Act in relation to the retirement village land or its use; or
 - (b) an increase in the salary or wages of a person engaged in the operations of the retirement village and payable under an award, certified agreement or other industrial instrument made, approved, certified or continued in force under the *Fair Work Act 1994* or an Act of the Commonwealth; or
 - (c) an increase in insurance premiums, or insurance excesses paid, in relation to the retirement village or its use; or
 - (d) subject to subsection (5), an increase in charges applying under prescribed maintenance contracts relating to the operations of the retirement village; or
 - (e) an increase in the rates applying to utilities supplied to the retirement village.
- (5) Before increasing the amount included in a recurrent charge that applies under a prescribed maintenance contract, the operator must consider whether there is a more cost-effective alternative to the maintenance service.
- (6) The Tribunal may, on application by an operator for an order that an increase to recurrent charges payable by residents take effect—
 - (a) order that the proposed variation is to take effect, with or without modification; or
 - (b) order that the proposed variation is not to take effect.
- (7) An operator may only apply to the Tribunal under subsection (6) if a meeting of the residents whose recurrent charges will be affected by the increase has been convened and the residents resolved to not agree to the increase in the recurrent charges.
- (8) In determining an application made under this section, the Tribunal may have regard to the following:
 - (a) the level and cost of services and facilities provided for in the proposed annual budget;

- (b) any proposed variations (including additions) to those services and facilities, being variations to which the residents have agreed;
 - (c) the cost of general services required to be provided by the operator;
 - (d) the frequency and amount of past variations of the recurrent charges;
 - (e) any other relevant matter.
- (9) For the purposes of this section, the *CPI percentage increase*, in relation to a proposed increase in a recurrent charge under a residence contract, is the increase (rounded to the nearest dollar) that would result from the recurrent charge being increased in proportion to the difference between—
- (a) the CPI published most recently before 30 June in the financial year that precedes the financial year in which the increase is to take effect; and
 - (b) the corresponding CPI published 12 months before the Consumer Price Index referred to in paragraph (a).
- (10) In this section—
- prescribed maintenance contract* means a contract for the provision of maintenance services for—
- (a) security infrastructure and systems; or
 - (b) lift infrastructure and systems; or
 - (c) waste management infrastructure and systems; or
 - (d) any other infrastructure or system of a kind prescribed by the regulations.

26—Repeal of section 32

Section 32—delete the section

27—Amendment of section 33—Convening meetings of residents

- (1) Section 33(6)—delete subsection (6) and substitute:
- (6) A notice for an annual meeting of residents of a retirement village (whether or not given in compliance with subsection (5)) must be accompanied by—
- (a) information that enables a comparison to be made between the previous financial year's income and expenditure and the estimates of income and expenditure for the current financial year including—

- (i) an audited statement of accounts in respect of the previous financial year showing income and expenditure for that financial year and separately detailing the income and expenditure in respect of any capital fund; and
 - (ii) estimates of income and expenditure for the current financial year, separately detailing—
 - (A) estimates of income and expenditure in respect of any capital fund (including a description of each general category of proposed expenditure from the fund and the estimated amount of expenditure for each such category); and
 - (B) expenditure items covered, or proposed to be covered, by the recurrent charges (including a description of each general category of item and the amount of expenditure for each such category); and
 - (C) estimates of any management expenditure (including an explanation of each expenditure item and, if the expenditure is apportioned between more than 1 retirement village or other businesses, the manner in which such apportionment is calculated); and
 - (b) an invitation to residents to submit written questions to the operator at least 5 business days before the date of the meeting and other questions at the meeting; and
 - (c) any other information required by the regulations.
- (2) Section 33(7)—delete "subsection (6)(a)" and substitute:
subsection (6)

28—Amendment of section 34—Proceedings at meetings

- (1) Section 34(4)—delete "The minutes of a meeting must" and substitute:
The convener of a meeting must ensure that the minutes of the meeting,
- (2) Section 34(7)—delete subsection (7)

29—Amendment of section 36—Consultation with new operator

- (1) Section 36(1)—delete "person who is to be the new operator will convene a meeting of residents under this section at which the person" and substitute:
operator will convene a meeting of residents under this section at which the person who is to be the new operator
- (2) Section 36(3)—delete "the person who is the new operator is" and substitute:
the former operator and the person who is the new operator are each

- (3) Section 36(3)—after the penalty provision insert:

Expiation fee: \$500.

30—Amendment of section 38—Residents' committees

Section 38(14)—after "residents' committee" insert:

, or a sub-committee appointed by a residents' committee,

31—Amendment of section 39—Mandatory consultation with residents' committee in relation to annual budget

- (1) Section 39—after subsection (3) insert:

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

- (2) Section 39(7)—after the penalty provision insert:

Expiation fee: \$500.

32—Substitution of section 41

Section 41—delete the section and substitute:

41—Residence rules

- (1) If a residence rule, or a provision of a residence rule, is harsh, oppressive, unconscionable or unjust, the rule or provision is void.
- (2) On application by a resident to whom a residence rule applies, the Tribunal may, if satisfied that the residence rule, or a provision of the residence rule, is harsh, oppressive, unconscionable or unjust—
 - (a) order that the residence rule, or provision of the residence rule, is void and of no effect; or
 - (b) order that the residence rule, or provision of the residence rule, is to apply in modified form as specified in the order, and the Tribunal may make any ancillary or incidental orders as the Tribunal sees fit.
- (3) The operator of a retirement village may only make an alteration to the residence rules applying in relation to the village in accordance with the requirements prescribed by the regulations.
Maximum penalty: \$10 000.
Expiation fee: \$500.
- (4) In this section, an *alteration* to residence rules includes the following:
 - (a) the variation of a residence rule;
 - (b) the addition of a new rule to the residence rules;
 - (c) the omission of a residence rule that is in force.

33—Amendment of section 42—Documents to be supplied to residents

- (1) Section 42(1)—after "free of charge" insert:
and within 10 business days of the request
- (2) Section 42(1)—after paragraph (c) insert:
and
 - (d) details of all current policies of insurance that are in place in relation to the village (such as a copy of the relevant certificates of insurance).

Note—

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

34—Insertion of sections 43A and 43B

After section 43 insert:

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

- (1) The operator of a retirement village must ensure that the common areas of the village are reasonably safe.
- (2) In particular, the operator of a retirement village must—
 - (a) ensure that an effective emergency plan is prepared and maintained for the retirement village; and
 - (b) take reasonable steps to ensure that all residents and staff are familiar with the emergency plan and prescribed safety information; and
 - (c) undertake a safety inspection of communal areas (if any) within the retirement village at least once each calendar year, and make a safety inspection report on the findings of each inspection available to residents; and
 - (d) ensure that prescribed safety information is clearly displayed in communal areas (if any) within the retirement village and is provided to residents in accordance with any requirements specified in the regulations; and
 - (e) take such other action as the regulations may require to ensure that the communal areas of the village are reasonably safe.

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

Maximum penalty: \$20 000.

Expiation fee: \$500.

- (4) Without limiting subsection (2)(e), the regulations may make provision for, or with respect to, the following:
 - (a) emergency procedures in retirement villages or any class of retirement villages;
 - (b) the form and content of the emergency plan under subsection (2)(a);
 - (c) the conduct of safety inspections required under subsection (2)(c);
 - (d) the manner and form of a safety inspection report under subsection (2)(c);
 - (e) the display and provision of prescribed safety information.
- (5) The obligations imposed on an operator under this section are in addition to and do not derogate from any other obligation or duty of an operator under any other Act or law.
- (6) In this section—

prescribed safety information means—

 - (a) a map indicating the location of assembly areas, exits and fire extinguishers and other emergency equipment for the communal areas and residences concerned; and
 - (b) instructions concerning the evacuation of residents and staff from the communal areas and residences concerned in the event of a fire or other emergency; and
 - (c) any other information of a kind prescribed by the regulations.

43B—Prescribed alterations

- (1) A resident of a retirement village may, by notice in writing to the operator, request approval to make an alteration of a prescribed kind to the resident's residence.
- (2) An operator must, within 10 business days of receiving a request under subsection (1)—
 - (a) decide whether to approve or refuse the alteration; and
 - (b) give the resident notice in writing of the decision (which, in the case of a refusal, must include the grounds for the refusal).
- (3) An operator may only refuse a request to approve an alteration of a prescribed kind to a residence if reasonable grounds exist for the refusal.
- (4) An approval of an operator for the purposes of this section may be subject to reasonable conditions (which may include, without limitation, a condition that the resident is responsible for reinstating the residence to the same condition as before the alteration was made).

- (5) This section prevails over any inconsistent term of a residence contract to the extent of the inconsistency unless the resident elects to rely on the contractual term (and then the contractual term will prevail to the extent of any inconsistency).
- (6) For the purposes of this section, an alteration to a residence is of a *prescribed kind* if the alteration—
 - (a) involves the installation of a functional aid, equipment or infrastructure recommended as necessary for the resident by a registered health practitioner; or
 - (b) is of a kind prescribed by the regulations for the purposes of this subsection.

35—Amendment of section 44—Termination of residents' rights

- (1) Section 44(5)—delete "(even if he or she then continues to reside in the retirement village after the end of that period), the resident is" and substitute:
 - , the resident is only
- (2) Section 44(5)(a)—after "assessment of fair market rent" insert:
 - (for example, the recurrent charges paid by the resident)
- (3) Section 44(5)(b)—delete paragraph (b) and substitute:
 - (b) remarketing fees; and
 - (c) subject to subsection (5a), refurbishment fees; and
 - (d) subject to subsection (5b), the costs to reinstate the residence to the condition it was before an alteration was made by the resident (or to some other agreed condition).
- (4) Section 44—after subsection (5) insert:
 - (5a) A resident is only liable to pay a refurbishment fee under subsection (5)(c) in circumstances where refurbishment of the residence is reasonably necessary due to damage to, or degradation of, the residence caused by an act or omission of the resident during resident's period of occupation of the residence.
 - (5b) A resident is only liable to pay reinstatement costs under subsection (5)(d) if the resident, having made alterations to the residence, is bound under an agreement made with the operator to reinstate the residence to the same condition as before the alteration was made (or to some other agreed condition), but has failed to do so.
- (5) Section 44—after subsection (8) insert:
 - (8a) An application to the Tribunal under subsection (8) in relation to a decision to terminate a resident's right of occupation may only be made by an operator if the operator has given the resident notice of the application in writing at least 5 business days before the making of the application.

- (6) Section 44(12), penalty provision—delete "\$10 000" and substitute:

\$20 000

36—Amendment of section 45—Dispute resolution policy

- (1) Section 45—after subsection (3) insert:

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

- (a) the resident, at the time of the dispute, agrees to take steps to resolve the dispute otherwise than in accordance with the dispute resolution policy; or
- (b) exceptional circumstances exist in relation to which the Tribunal has granted permission to apply to the Tribunal under section 46.

- (2) Section 45(4)—after the penalty provision insert:

Expiation fee: \$500.

37—Amendment of section 46—Application to Tribunal

- (1) Section 46, heading—after "Tribunal" insert:

for resolution of retirement village dispute

- (2) Section 46(1)—delete subsection (1) and substitute:

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

- (3) Section 46(2)(a)—delete paragraph (a) and substitute:

- (a) an application should not be made to the Tribunal unless—
 - (i) the parties have made reasonable attempts to resolve the dispute in accordance with the operator's dispute resolution policy, or in accordance with an agreement under section 45(3a), and such attempts have failed to resolve the dispute; or
 - (ii) the Tribunal has granted permission to apply, and permission is only to be granted in relation to exceptional circumstances in which an urgent application is warranted; and

- (4) Section 46(3)—delete subsection (3) and substitute:

- (3) If, on application under subsection (1), the Tribunal finds that—
 - (a) a party to the dispute has breached, or failed to comply with, a provision of this Act, a residence contract or a residence rule; or
 - (b) an operator has acted in a harsh or unconscionable manner, the Tribunal may—

- (c) restrain the breach or failure to comply with this Act, a residence contract or residence rule; or
 - (d) require action to comply with this Act or action in performance of a residence contract or residence rule; or
 - (e) order the payment of an amount determined by the Tribunal as an amount payable under this Act, a residence contract or residence rule; or
 - (f) order the payment of compensation for loss or injury (other than personal injury) caused by a breach of this Act, a residence contract or rule or a failure to comply with this Act, a residence contract or rule; or
 - (g) require an operator to vary or reverse a decision or the effect of an act of the operator; or
 - (h) order that a residence rule, or a provision of a residence rule, is void or modified as specified in the order; or
 - (i) order a party to the dispute to refrain from future action of a kind specified in the order; or
 - (j) avoid *ab initio*, or modify, terms or conditions of an agreement between an operator and a resident; or
 - (k) require an operator to repay to a resident any amount paid by the resident pursuant to a term or condition of an agreement (that has been avoided or modified by the Tribunal); or
 - (l) make any other order the Tribunal considers appropriate in the circumstances (including consequential or ancillary orders).
- (5) Section 46(4)—delete subsection (4)
- (6) Section 46—after subsection (8) insert:
- (8a) Without derogating from any other provision of this section, the Tribunal may, in connection with an application to the Tribunal under this section, make an order (a ***restraining order***) restraining a person from engaging in conduct of a kind described in the order if the Tribunal is satisfied that—
 - (a) there is a risk that the person will engage in the conduct; and
 - (b) the conduct, if engaged in, will result in a breach of this Act, a residence contract or a residence rule.
 - (8b) If a restraining order is made against a person without giving them a reasonable opportunity to respond to the proposed order, the Tribunal must allow the person a reasonable opportunity to satisfy it that the order should not continue in operation.
 - (8c) A person must not contravene a restraining order.
Maximum penalty: \$50 000 or imprisonment for 2 years.

38—Substitution of section 57

Section 57—delete the section and substitute:

57—Lease of land in retirement village for residential purposes

- (1) The operator of a retirement village may lease, or grant a licence to occupy, a residence in the village that is not immediately required for the purposes of the scheme to an eligible person for residential purposes.
- (2) However, the operator must not, under subsection (1), lease, or grant a licence to occupy, a residence in the village that has formerly been occupied pursuant to the scheme unless either the former resident consents (in accordance with any requirements prescribed by the regulations) to the lease or licence or the exit entitlement owing to the former resident in relation to the cessation of such occupation has been paid in full and all amounts deducted from the exit entitlement have been paid to the relevant fund, account or person.
- (3) Subject to this section, a person to whom a lease or licence is granted under this section does not become a resident of the retirement village (and Part 3 does not apply in relation to the person).

Note—

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

- (4) However, a person to whom a lease or licence is granted under this section—
 - (a) may be elected as a member of a residents' committee under section 38 (and that section applies as if the person were a resident); and
 - (b) is entitled to participate in a meeting of the residents of the retirement village and to vote on any issue arising for consideration at the meeting (other than an issue that is directly related to the financial management of the village), as if the person were a resident of the retirement village.

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

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

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

57B—Offences relating to leases etc

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

Maximum penalty: \$10 000.

57C—Duty to insure

- (1) An operator of a retirement village must—
- (a) maintain insurance such that all buildings and building improvements forming part of the village of which the operator is an owner are insured to their replacement value; and
 - (b) take all reasonable steps to ensure that all buildings and building improvements forming part of the village of which the operator is not an owner are insured to their replacement value.

Maximum penalty: \$20 000.

- (2) An operator of a retirement village must be insured against—
- (a) liability in tort (which, if an amount is prescribed by the regulations for the purposes of this paragraph, must be for at least that amount); and
 - (b) any other liability—
 - (i) determined at a meeting of residents by special resolution (where insurance against such liability is reasonable in the circumstances and reasonably able to be obtained from an insurer); or
 - (ii) prescribed by the regulations.

Maximum penalty: \$20 000.

- (3) For the purposes of this section the replacement value of buildings and building improvements is the cost of their complete replacement including the cost of any necessary preliminary demolition work, any necessary surveying, architectural or engineering work and any other associated or incidental costs.
- (4) The insurance under subsection (1) must be against—
- (a) risks of damage caused by events (other than subsidence) declared to be prescribed events in relation to home building insurance under Part 5 of the *Insurance Contracts Act 1984* of the Commonwealth; and
 - (b) risks against which insurance is required by the regulations.

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

57D—Notice of proposal to terminate retirement village scheme

- (1) The operator of a retirement village must not take any step under this Part towards the termination of the retirement village scheme or part of the retirement village scheme unless the operator—
- (a) has given notice of the proposed termination in writing to the Registrar; and
 - (b) after giving the notice referred to in paragraph (a), has given each resident of the village, by notice in writing—
 - (i) notice of the proposed termination and the grounds for the termination; and
 - (ii) a recommendation, and a reasonable period within which, to seek independent legal advice.

Maximum penalty: \$35 000.

- (2) An operator must pay for the reasonable legal costs incurred in obtaining independent legal advice on the proposed termination of the scheme or part of the scheme if—
- (a) the legal advice is provided by a legal practitioner approved by a majority of residents of the village at a meeting of those residents; and
 - (b) a copy of the legal advice has been provided to all residents of the village.
- (3) The obligation under subsection (2) to pay legal costs applies only once in relation to each proposal to terminate a scheme or part of a scheme.
- (4) If the operator fails to comply with subsection (2), the operator is guilty of an offence.

Maximum penalty: \$35 000.

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

- (1) Section 58(1)—after "retirement village scheme" insert:
or part of a retirement village scheme
- (2) Section 58(1)—after "the scheme" insert:
or the relevant part of the scheme
- (3) Section 58(2)—after "retirement village scheme" insert:
or part of a retirement village scheme

- (4) Section 58—after subsection (2) insert:
- (2a) In addition, the following persons are entitled to appear in proceedings before the Supreme Court under this section:
 - (a) a resident of the retirement village the subject of the application;
 - (b) any other any person who, in the opinion of the Court, has a sufficient interest in the proceedings.
 - (2b) Subject to subsection (2c), a person who proposes to apply for the termination of a retirement village scheme or part of a retirement village scheme under this section must, before making the application—
 - (a) give notice in writing of the proposed application and termination to each resident along with any prescribed information relating to the proposed termination; and
 - (b) allow a period of 60 days after giving the notice for residents to make representations to the person in response to the notice; and
 - (c) keep a record of representations made by residents in response to the notice.
 - (2c) The Supreme Court may, on application, dispense with the requirement to comply with subsection (2b) if satisfied that it is appropriate in the circumstances of a particular case.
 - (2d) Notice of an application to the Supreme Court under subsection (2c) must be given to each resident.
 - (2e) An application for the termination of a retirement village scheme or part of a retirement village scheme under this section must include information about the results of consultation undertaken in accordance with subsection (2b) (if any).
 - (2f) In determining whether to approve the termination of a retirement village scheme or part of a retirement village scheme under this section, the Supreme Court must have regard to the following matters (insofar as the matters are relevant to the proposed termination):
 - (a) the views of residents of the retirement village (including the results of any consultation undertaken in accordance with subsection (2b)) and the operator in relation to the proposed termination;
 - (b) whether the proposed termination would be likely to benefit residents of the retirement village or may result in detriment to residents;
 - (c) whether the proposed termination would be likely to affect the capital value of residences in the retirement village;
 - (d) whether the proposed termination would be likely to involve a breach of any residence contracts;

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

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

- (5) Section 58(3)—after "retirement village scheme" insert:

or part of a retirement village scheme

- (6) Section 58—after subsection (4) insert:

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

40—Amendment of section 59—Voluntary termination of retirement village scheme

- (1) Section 59(1) and (2)—delete subsections (1) and (2) and substitute:

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

- (2) Section 59(3)—after "retirement village scheme" insert:

or part of a retirement village scheme

- (3) Section 59(4)—after "retirement village scheme" insert:

or part of a retirement village scheme

41—Insertion of section 59A

After section 59 insert:

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

- (1) On application by the operator of a retirement village the Minister may, by notice in the Gazette, terminate part of the retirement village scheme if satisfied that—
 - (a) at least 90% of residents at the retirement village wish to terminate that part of the scheme; and
 - (b) the termination will not affect the right to occupation of a residence of any resident who wishes to remain in occupation of their residence at the retirement village; and
 - (c) the termination is otherwise appropriate in the circumstances.

- (2) The Minister may, in a notice under subsection (1) terminating part of a retirement village scheme, make such orders as the Minister considers necessary or appropriate on account of the termination and such orders will have effect according to their terms.
- (3) An operator may not make an application under subsection (1) in relation to the proposed termination of part of a retirement village scheme unless—
 - (a) the operator has given to each resident of the village notice in writing of the proposed application along with any prescribed information relating to the proposed termination; and
 - (b) a period of at least 60 days has expired since the notice and information required under paragraph (a) was given to residents; and
 - (c) taking into account any representations made by or on behalf of residents in response to the notice and information, the operator is satisfied that—
 - (i) the proposed termination will not affect the right to occupation of a residence of any resident who wishes to remain in occupation of their residence at the retirement village; and
 - (ii) at least 90% of residents at the retirement village wish to terminate that part of the scheme.

Note—

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

- (4) An application under subsection (1) must—
 - (a) be made in the manner and form determined by the Minister; and
 - (b) be accompanied by the prescribed fee;
 - (c) be accompanied by evidence, in a form approved by the Minister, of the agreement of all residents who agree with the proposed termination; and
 - (d) comply with the requirements (if any) prescribed by the regulations.
- (5) As soon as reasonably practicable after making an application under subsection (1), the operator must give a copy of the application to each resident of the retirement village along with information in a form approved by the Minister setting out how, and the time within which, the resident may make a submission to the Minister in relation to the proposed termination.

- (6) The Minister may, by notice in writing, require an operator to provide the Minister, within the time and in the manner specified in the notice, with such additional information as the Minister may reasonably require for the purposes of determining an application made by the operator under this section.
- (7) The termination of part of a retirement village scheme will take effect from the day specified for the purpose in the notice.
- (8) The Registrar-General must, at the request of the Minister, take any action for or in connection with the issue, alteration, correction or cancellation of certificates of title necessary to give effect to the provisions of this section.
- (9) If the Minister requests the Registrar-General to give effect to a particular determination or action, the Minister will, if so required by the Registrar-General, furnish the Registrar-General with a certificate certifying the determination or action.

42—Substitution of section 60

Section 60—delete the section and substitute:

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

- (1) A disqualified person must not undertake any of the following roles or functions as part of the operations of a retirement village:
 - (a) operator;
 - (b) village manager;
 - (c) senior manager;
 - (d) a role or function prescribed by the regulations.Maximum penalty: \$35 000 or imprisonment for 1 year.
- (2) The operator of a retirement village must not engage a person—
 - (a) as village manager; or
 - (b) as a senior manager; or
 - (c) in a prescribed role or function,unless, in accordance with the requirements prescribed by the regulations (if any), the operator is satisfied that the person is not a disqualified person.
Maximum penalty: \$35 000.
- (3) The operator of a retirement village must not continue to engage a person—
 - (a) as village manager; or
 - (b) as a senior manager; or
 - (c) in a prescribed role or function,

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

Maximum penalty: \$35 000.

- (4) The regulations may prescribe circumstances in which an operator is not required to comply with the requirements of subsection (2) or (3).
- (5) A person who becomes a disqualified person while engaged at a retirement village as a village manager, senior manager or in a role or function referred to in subsection (1)(d) must, as soon as practicable after becoming a disqualified person, notify the operator of the retirement village that they are a disqualified person.
- (6) In this section—

disqualified person means a person—

- (a) who has been found guilty of a prescribed offence; or
- (b) in relation to whom prescribed circumstances exist;

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

- (a) the person is an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth; or
- (b) the person has during the preceding 5 years been convicted of an offence against the person or an offence involving fraud or dishonesty; or
- (c) the person has served a sentence of imprisonment for an offence against the person or an offence involving fraud or dishonesty, being a sentence that ended during the preceding 5 years; or
- (d) any other circumstances prescribed by the regulations for the purposes of this definition exist in relation to the person;

prescribed offence means—

- (a) an offence against section 11 of the *Criminal Law Consolidation Act 1935* (murder); or
- (b) an offence against a provision of Part 3 Division 11 of the *Criminal Law Consolidation Act 1935* (rape and other sexual offences); or
- (c) an offence brought within the ambit of this definition by the regulations.

43—Amendment of section 63—Codes of conduct

- (1) Section 63(1)—delete subsection (1) and substitute:
 - (1) The regulations may prescribe codes of conduct to be observed by—
 - (a) operators of retirement villages;

- (b) village managers and senior managers;
 - (c) persons employed or engaged to work at a retirement village;
 - (d) residents of retirement villages.
- (2) Section 63(2)—after "observe any code of conduct" insert:
applying to them
- (3) Section 63—after subsection (3) insert:
 - (4) A village manager, senior manager or any other person employed or engaged to work at a retirement village who breaches a code of conduct is guilty of an offence.
Maximum penalty: \$2 500.
Expiation fee: \$210.
 - (5) The operator of a retirement village must ensure that the operator, a village manager, a senior manager and any other person employed or engaged to work at the retirement village undertakes training of a kind approved by the Minister in respect of a code of conduct applying to the person under this section—
 - (a) before the person commences duties at the retirement village (or, if the person commenced their duties before the commencement of this section, within the period of 12 months after the commencement of this section); and
 - (b) thereafter, within each 3 year period.
Maximum penalty: \$10 000.
Expiation fee: \$500.
 - (6) Subsections (4) and (5) do not apply in relation to—
 - (a) a person who provides a service or undertakes work at a retirement village under a contract for service where the service or work (as the case requires) does not form part of the ordinary operations of the village or require direct contact with residents of the village; or
 - (b) a volunteer; or
 - (c) any other person of a prescribed class.

44—Insertion of section 63A

After section 63 insert:

63A—Duty of operator to provide staff training

- (1) The operator of a retirement village must ensure that a village manager, a senior manager and any other person employed or engaged to manage, or work at, the retirement village undertakes training on the operational policies and procedures of the village that are relevant to the person's role and responsibilities within the village—
 - (a) before the person commences duties at the retirement village (or, if the person commenced their duties before the commencement of this section, within the period of 12 months after the commencement of this section); and
 - (b) thereafter, within each 3 year period or sooner if there are changes to any of the following that are relevant to the person's role and responsibilities within the village:
 - (i) the operational policies and procedures of the village;
 - (ii) this Act or any other Act or law.

Maximum penalty: \$10 000.

Expiation fee: \$500.

Note—

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

- (2) Subsection (1) does not apply in relation to—
 - (a) a person who provides a service or undertakes work at a retirement village under a contract for service where the service or work (as the case requires) does not form part of the ordinary operations of the village or require direct contact with residents of the village; or
 - (b) a volunteer; or
 - (c) any other person of a prescribed class.

45—Insertion of section 64A

After section 64 insert:

64A—Enforceable voluntary undertakings

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

- (2) The giving of an undertaking under this section does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates.
- (3) A person must not contravene an undertaking made by the person that is in effect.
Maximum penalty: \$35 000.
- (4) If the Minister considers that a person has contravened an undertaking accepted by the Minister, the Minister may apply to the Magistrates Court for enforcement of the undertaking.
- (5) If the court is satisfied that the person who made the undertaking has contravened the undertaking, the court, in addition to the imposition of any penalty, may make any of the following orders:
 - (a) an order that the person must comply with the undertaking or take specified action to comply with the undertaking;
 - (b) an order discharging the undertaking;
 - (c) an order directing the person to pay to the State—
 - (i) the costs of the proceedings; and
 - (ii) the reasonable costs of the designated entity in monitoring compliance with the undertaking in the future;
 - (d) any other order that the court considers appropriate in the circumstances.
- (6) A person must not fail to comply with an order of the court under subsection (5).
Maximum penalty: \$50 000.
- (7) A person who has made an undertaking may, at any time, with the written agreement of the Minister—
 - (a) vary the undertaking; or
 - (b) withdraw the undertaking.
- (8) However, the provisions of the undertaking cannot be varied to provide for a different alleged contravention of this Act.
- (9) Subject to this section, no proceedings for a contravention or alleged contravention of this Act may be brought against a person if an undertaking is in effect in relation to that contravention.
- (10) The Minister may commence proceedings for a contravention or alleged contravention of this Act despite an undertaking being in effect in relation to that contravention if the Minister, after accepting the undertaking, is in receipt of additional information relating to the contravention which the Minister considers significantly increases the seriousness or extent of the contravention.

- (11) No proceedings may be brought for a contravention or alleged contravention of this Act against a person who has made an undertaking in relation to the contravention and has completely discharged the undertaking.
- (12) The Minister may accept an undertaking in relation to a contravention or alleged contravention before proceedings that have been commenced in relation to the contravention have been finalised.
- (13) If the Minister accepts an undertaking before the proceedings are finalised, the Minister must take all reasonable steps to have the proceedings discontinued as soon as possible.
- (14) If the Minister accepts an undertaking given by a person under this section, the Minister must notify the Registrar of the acceptance of the undertaking and forward to the Registrar—
 - (a) a copy of the undertaking; and
 - (b) details of the contravention or alleged contravention to which the undertaking relates.

46—Amendment of section 65—Offences

Section 65—after subsection (2) insert:

- (3) If the Minister or a person authorised by the Minister commences a prosecution for an offence against this Act, the Minister or the authorised person (as the case requires) must—
 - (a) notify the Registrar of the prosecution and forward to the Registrar a copy of the information and the allegations; and
 - (b) at the conclusion of the prosecution, notify the Registrar of the outcome.

47—Insertions of sections 65A and 65B

After section 65 insert:

65A—Limitation period for prosecutions

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

- (a) the period of 2 years after the offence first comes to the notice of the Minister;
- (b) if an undertaking has been accepted in relation to the offence under section 64A, the period of 6 months after—
 - (i) the undertaking is contravened; or
 - (ii) it comes to the notice of the Minister that the undertaking has been contravened; or
 - (iii) the Minister has agreed to the withdrawal of the undertaking.

65B—Publication in public interest

The Minister may, if of the opinion that it is in the public interest to do so, publish information (in such manner as the Minister thinks fit) relating to any action taken by the Minister in connection with the enforcement of this Act.

48—Amendment of section 68—Review of Act

Section 68(1)—delete subsection (1) and substitute:

- (1) The Minister must, 5 years after the commencement of the *Retirement Villages (Miscellaneous) Amendment Act 2024*, undertake a review of the operation of this Act.

49—Amendment of section 69—Regulations

- (1) Section 69(2)—after paragraph (f) insert:

- (fa) make provision in relation to requirements that will apply to the making of alterations to residence rules;
- (fb) make provision in relation to property (including for the disposal of property) left at a residence by a resident who has ceased to reside in the retirement village;

- (2) Regulation 69(3)—after paragraph (a) insert:

- (ab) make different provision according to the classes of persons, or the matters or circumstances, to which they are expressed to apply; and

- (3) Section 69(3)(b)—after "discretion of the" insert:

Registrar,

Schedule 1—Transitional provisions

1—Interpretation

In this Schedule—

disclosure statement has the same meaning as in the principal Act;

exit entitlement has the same meaning as in the principal Act;

principal Act means the *Retirement Villages Act 2016*;

residence contract means a residence contract under the principal Act.

2—Residence contracts

Section 20 of the principal Act, as inserted by this Act, applies in relation to a residence contract entered into after the commencement of section 14 of this Act except where, before that commencement, the information (including the residence contract) required to be given to a person under section 22 of the principal Act had been given to the person, in which case section 20 of the principal Act as in force before that commencement continues to apply.

3—Disclosure statements

Section 21 of the principal Act, as inserted by this Act, applies only in relation to a disclosure statement given to a person under section 22 of the principal Act after the commencement of section 14 of this Act.

4—Residence contract holding deposits

Section 25A of the principal Act, as inserted by this Act, applies only in relation to a deposit paid after the commencement of section 19 of this Act.

5—Exit entitlements

The amendments made by this Act to section 27 of the principal Act apply in relation to a residence contract irrespective of whether the contract was entered into before or after the commencement of section 20 of this Act except where, before that commencement, the resident had—

- (a) ceased to reside in the retirement village; or
- (b) given notice to the operator in accordance with section 27(2)(b)(ii) of the principal Act,

in which case section 27 of the principal Act as in force before that commencement continues to apply.

6—Recurrent charges

Section 31A of the principal Act, as inserted by this Act, applies in relation to recurrent charges under a residence contract irrespective of whether the contract was entered into before or after the commencement of section 25 of this Act.

7—Application to Tribunal for resolution of retirement village dispute

The amendments made by this Act to section 46 of the principal Act apply in relation to a dispute relating to a residence contract irrespective of whether the contract was entered into before or after the commencement of section 37 of this Act.

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

Subsections (2a) to (2f) of section 58 of the principal Act, as inserted by this Act, apply only in relation to proceedings commenced under section 58 of the principal Act after the commencement of section 39 of this Act.

9—Limitation period for prosecutions

Section 65A of the principal Act, as inserted by this Act, applies only in relation to proceedings for an offence where the conduct constituting the offence was engaged in after the commencement of section 47 of this Act.