

Retirement Villages Amendment Bill

Exposure Draft

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Victoria

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Part 1—Preliminary

1 Purposes

The purposes of this Act are—

- (a) to amend the **Retirement Villages Act 1986**—
 - (i) to improve the regulation of retirement villages; and
 - (ii) to further provide for the needs of residents of retirement villages; and

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Part 1—Preliminary

- (iii) to provide improved consumer protections and further mechanisms to support the interests of residents of retirement villages; and
 - (iv) to provide for regulation that anticipates future growth and innovation in the retirement village sector; and
- (b) to make minor related amendments to other Acts.

2 Commencement

This Act comes into operation on a day or days to be proclaimed.

3 Principal Act

In this Act, the **Retirement Villages Act 1986** is called the Principal Act.

Part 2—Amendment of Retirement Villages Act 1986

Division 1—Amendment of preliminary provisions

4 Section 1 substituted

For section 1 of the Principal Act **substitute—**

"1 Purposes

The purposes of this Act are—

- (a) to clarify and protect the rights of persons who live in, or propose to live in, retirement villages; and
- (b) to promote consumer protection and fair trading practices in the operation of retirement villages and the supply of retirement village services to residents by—
 - (i) setting out principles to be given effect to in the administration of the Act and the provision of retirement village services; and
 - (ii) providing for disclosure of information to prospective residents of retirement villages; and
 - (iii) providing for residents to be given information on their financial and other entitlements and obligations to support resident decision making; and
 - (iv) providing clear regulation of the operation of retirement villages; and

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Part 2—Amendment of Retirement Villages Act 1986

- (v) providing for participation by residents, who want to do so, in the operation of retirement villages; and
- (vi) setting out principles to support the provision of safe and secure housing for older Victorians; and
- (vii) providing processes for resolving disputes between residents, operators and proprietors of retirement villages; and
- (viii) promoting best practice management standards in the retirement village industry."

5 New section 1A inserted

After section 1 of the Principal Act **insert**—

"1A Principles

- (1) In providing retirement village services and in the operation and occupation of retirement villages, proprietors, operators and residents of retirement villages should give effect to the principles set out in subsection (2).
- (2) The following principles apply to the provision of retirement village services, and the operation and occupation of retirement villages—
 - (a) a resident's preference to remain in a retirement village should be respected;
 - (b) all residents should be treated with dignity and respect;
 - (c) decisions about a resident's personal life, financial affairs and property, should be made consistently with the will of the resident or, if the resident

has appointed a person as an attorney or appointed a person to make decisions on the resident's behalf, that person;

- (d) the retirement village should be kept safe and maintained in a reasonable state of repair;
- (e) residents should have quiet enjoyment of their premises in the retirement village."

6 Definitions

- (1) In section 3(1) of the Principal Act **insert** the following definitions—

"*administrator* has the same meaning as it has in section 3(1) of the **Guardianship and Administration Act 2019**;

aged care payment means—

- (a) a daily accommodation payment; or
- (b) any other prescribed payment that may be required for the provision of aged care under the Aged Care Act 1997 of the Commonwealth;

alternative accommodation payment, in relation to a person who has been a resident of a retirement village, means any payment that is—

- (a) made to meet the reasonable costs of caring for the person in a place that is not the retirement village or a residential care facility; and
- (b) made in the prescribed circumstances;

authorised deposit-taking institution has the same meaning as in the Banking Act 1959 of the Commonwealth;

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Part 2—Amendment of Retirement Villages Act 1986

business day means a day other than a Saturday, Sunday or public holiday;

capital gain has the meaning given by section 3B(2);

capital loss has the meaning given by section 3B(2);

capital maintenance has the meaning given by section 38BG;

capital maintenance fund means a fund established under section 38BL;

capital maintenance plan means the plan prepared under section 38BN;

chief dispute resolution officer means the chief dispute resolution officer appointed under section 38M;

common property has the same meaning as it has in the **Owners Corporations Act 2006**;

contract check means a check described in section 26K;

contracting party, in relation to a residence contract for premises in a retirement village or in relation to any other retirement village contract for a retirement village means whoever of the following persons has entered into the contract with the resident of the premises—

- (a) the proprietor of the retirement village;
- (b) the operator of the retirement village;

CPA Australia means CPA Australia A.C.N. 008 392 452;

daily accommodation payment has the same meaning as in the Aged Care Act 1997 of the Commonwealth;

deferred management fee means an amount payable under a residence contract, management contract or other retirement village contract by a vacating resident of a retirement village as a contribution for the cost of services provided in the village to the resident but does not include any amount payable as a maintenance charge, a charge for an optional service, and any other prescribed payment, unless the retirement village contract entered into by the vacating resident provides that the payment be included in the fee;

dishonesty offence means an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of more than 3 months, whether the conviction is in or outside Victoria;

Division 7 order means an order of the chief dispute resolution officer made under section 38ZL or an order made in place of another order under section 38ZP, and if such an order is amended or extended under section 38ZP, the order as so amended or extended;

eligible management dispute means a management dispute that either—

- (a) does not involve a claim for any payment; or
- (b) if there is a claim for payment, the claim is not more than \$100 000;

eligible resident dispute means a resident dispute that either—

- (a) does not involve a claim for any payment; or

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Part 2—Amendment of Retirement Villages Act 1986

- (b) if there is a claim for payment, the claim is not more than \$100 000;

entry payment has the meaning given by section 3A;

exit entitlement has the meaning given by section 3D;

fair wear and tear means deterioration of the condition of premises or a fixture or fitting caused by—

- (a) the reasonable use of the premises or the fixture or fitting; or
(b) natural environmental forces;

guardian has the same meaning as it has in section 3(1) of the **Guardianship and Administration Act 2019**;

information statement means a statement to which section 17 applies, and if such a statement is updated under Division 1 of Part 4, the statement as so updated;

key safety information means—

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

management dispute has the meaning given by section 3E;

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Part 2—Amendment of Retirement Villages Act 1986

meeting of residents means a meeting of residents of a retirement village convened under section 33, and includes an annual meeting;

monetary order means a Division 7 order requiring the payment of money;

non-monetary order means a Division 7 order other than a monetary order;

no resolution certificate means a certificate issued by the chief dispute resolution officer under section 38ZG;

operator, in relation to a retirement village, means the person who is responsible for the daily operation of the retirement village, whether or not that person is also the proprietor of the village;

optional services, in relation to services provided by the operator of a retirement village, means those services provided by the operator that a resident of the village may choose to use but which it is not necessary that the operator provide for the purposes of the maintenance of the village;

ordinary resolution means a resolution other than a special resolution;

premises—

- (a) in relation to an owner resident in a retirement village, means—
 - (i) for the strata title land in the retirement village, the strata title land that the owner resident owns and occupies; or
 - (ii) the premises for which the owner resident's right to occupy arises because the owner resident holds

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Part 2—Amendment of Retirement Villages Act 1986

shares in a company or units in a unit trust; or

- (b) in relation to a non-owner resident in a retirement village, means the premises the resident occupies in the village under their right to occupy premises;

proprietor, in relation to a retirement village, means the person, if any, who is the owner of that retirement village land in the village that is not strata title village land;

recorded agreement means an agreement that is the subject of a record of agreement between the parties to a management dispute or resident dispute made under section 38ZH(1);

repayable entry payment means any entry payment or any part of an entry payment that is, in accordance with the retirement village contracts entered into by the resident who pays the entry payment—

- (a) repayable to the resident if the resident permanently vacates the village; or
(b) payable to the executor or administrator of the resident, as part of the estate of the resident, if the resident dies;

retirement village contract, means any contract entered into by a resident of a retirement village with either or both the proprietor and the operator of the village which provides for all or any of the following—

- (a) a right to occupy premises in the village and any related right;
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- (b) a right to access and use any land in the village and services provided for residents of the village and any related right;
- (c) modification of premises occupied by the resident or reinstatement or renovation work on those premises and any related work;
- (d) any other related matter;

Note

This includes residence contracts and management contracts.

retirement village principles means the principles set out in section 1A;

right to occupy premises, in relation to a retirement village, means a right of a resident to occupy residential premises in a retirement village which is created or arises by or under a contract whether the right—

- (a) is an interest in land; or

Note

This includes freehold titles and leases.

- (b) is a licence to occupy land; or
- (c) arises because the resident holds shares in a company or units in a unit trust which provides residential premises and services for a retirement village; or
- (d) is of any other kind prescribed by the regulations;

settling in period, in relation to any contract to which section 26G(1) applies, means the specified period, referred to in that subsection;

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Part 2—Amendment of Retirement Villages Act 1986

strata title owner resident means an owner resident to whom paragraph (a) of the definition of owner resident applies;

strata title village land means—

- (a) any strata title lot of retirement village land in a retirement village of which a resident of the retirement village is the owner; and
- (b) any strata title lot of retirement village land that is common property of which the owners corporation is the owner;

vacating non-owner resident means a non-owner resident of premises in a retirement village who has or is about to permanently vacate those premises and the village;

vacating owner resident means an owner resident in a retirement village who has or is about to permanently vacate those premises and the village;

vacating resident means either a vacating non-owner resident or a vacating owner resident."

(2) In section 3(1) of the Principal Act—

- (a) the definition of ***committee*** is **repealed**;
 - (b) the definition of ***disclosure statement*** is **repealed**;
 - (c) the definition of ***exempt organization*** is **repealed**;
 - (d) the definition of ***in-going contribution*** is **repealed**;
 - (e) the definition of ***management complaint*** is **repealed**;
 - (f) the definition of ***manager*** is **repealed**;
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- (g) the definition of *personal services* is **repealed**;
 - (h) the definition of *prescribed period* is **repealed**;
 - (i) the definition of *refundable in-going contribution* is **repealed**;
 - (j) the definition of *residence right* is **repealed**.
- (3) In section 3(1) of the Principal Act—
- (a) for the definition of *annual meeting* **substitute**—
"*annual meeting* means an annual meeting of residents convened under section 33Q;"
 - (b) for the definition of *by-laws* **substitute**—
"*by-laws* means the by-laws of a retirement village made under section 37(4);"
 - (c) at the foot of paragraph (a) of the definition of *domestic partner* **insert**—
"Note
See also subsection (3).";
 - (d) for the definition of *exempt retirement village* **substitute**—
"*exempt retirement village* means a retirement village in respect of which the proprietor or operator or both (as the case requires) have been exempted from the operation of all or any of the provisions of this Act in an exemption granted under section 7A;"
 - (e) for the definition of *maintenance charge* **substitute**—
"*maintenance charge* has the meaning given by section 3C;"
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- (f) in the definition of *management contract*—
- (i) for "a manager" **substitute** "an operator";
 - (ii) for "the manager" **substitute** "the operator";
- (g) for the definition of *non-owner resident substitute*—
- non-owner resident*, in relation to a retirement village, means a resident of the village who is not an owner resident of the village;"
- (h) for the definition *owner resident substitute*—
- owner resident*, in relation to a retirement village, means a resident of the village—
- (a) who owns strata title village land that the resident occupies; or
 - (b) whose right to occupy premises arises because the resident holds shares in a company or units in a unit trust which provides residential premises and services for the retirement village;"
- (i) for the definition of *residence contract substitute*—
- residence contract* means a contract which creates or gives rise to a right to occupy premises;"
- (j) in the definition of *residence documents*—
- (i) in paragraph (c), for "a manager" **substitute** "the operator";
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Part 2—Amendment of Retirement Villages Act 1986

(ii) for paragraph (e) **substitute**—

"(e) an information statement;"

(k) for the definition of *resident dispute*
substitute—

"resident dispute means—

- (a) a dispute between residents in a retirement village about any action or failure to act by a resident in the retirement village that affects—
 - (i) the use and enjoyment of the retirement village land by other residents in the retirement village; or
 - (ii) the use of services by other residents in the retirement village, being services provided to the residents in the retirement village by the operator; or
 - (b) a dispute between the operator of a retirement village and a resident in the retirement village about—
 - (i) any action or failure to act by the resident that endangers the health or safety of another resident, the operator, the proprietor or any employee or contractor of the operator or the proprietor; or
 - (ii) persistent harassment or bullying by the resident of another resident, the operator, the proprietor or
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any employee or contractor
of the operator or
proprietor;"

- (l) in the definition of *residential care facility*,
for paragraph (a) **substitute**—

"(a) in which a residential care service
within the meaning of the Aged Care
Act 1997 of the Commonwealth, is
operated by an approved provider
within the meaning of that Act; and";

- (m) in the definition of *residents committee*,
after "under" **insert** "Division 2 of";

- (n) for the definition of *retirement village*
substitute—

"retirement village means a place—

- (a) at which accommodation and
services are provided or are to be
provided for the care and benefit
of retired persons, one or more of
whom have made entry payments;
and

- (b) which is not a residential care
facility;"

- (o) for the definition of *retirement village land*
substitute—

"retirement village land means the land used
or to be used for the purposes of a
retirement village, and does not include
any land on which a residential care
facility is situated;"

- (p) in the definition of *services*, after
paragraph (i) **insert**—

"(j) any other service that is prescribed;"

(q) for the definition of *special resolution substitute*—

"special resolution means a resolution passed in accordance with section 33J;"

(4) Section 3(2) of the Principal Act is **repealed**.

7 New sections 3A to 3F inserted

After section 3 of the Principal Act **insert**—

"3A Meaning of entry payment

(1) In this Act—

entry payment means a payment made in respect of the conferment of a right to occupy premises in a retirement village on a person, whether the payment is made—

- (a) as consideration for the purchase of a unit in the village; or
 - (b) in consideration of the right being conferred on the person; or
 - (c) as a donation, on the making of which the right is conferred on the person; or
 - (d) in consideration of—
 - (i) acquiring shares in a company that confers the right on the holder of the shares; or
 - (ii) acquiring units in a unit trust that confers the right on the holder of the units; or
 - (e) under any other prescribed class of legal arrangement.
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Part 2—Amendment of Retirement Villages Act 1986

- (2) The definition of *entry payment* in subsection (1) applies to a payment, whether the payment is made—
- (a) by—
 - (i) the person on whom the right to occupy premises is conferred; or
 - (ii) another person on behalf of the person on whom the right to occupy premises is conferred; and
 - (b) as—
 - (i) a lump sum; or
 - (ii) by installments, if the total amount payable is expressed as one fixed amount in the contract.
- (3) The definition of *entry payment* in subsection (1) does not apply to the following payments—
- (a) maintenance charges, charges for an optional service, and any other prescribed payments;
 - (b) rent.

3B Meaning of *capital gain* and *capital loss*

- (1) A capital gain or capital loss on the sale of premises or the granting of a new right to occupy premises is to be determined as follows—
- (a) calculate the difference between—
 - (i) the amount that the resident originally paid for the premises or the right to occupy premises; and
 - (ii) the amount that the next resident pays for the same premises or the right to occupy premises;
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- (b) deduct any costs associated with the sale of the premises or the right to occupy premises, other than any fees or charges payable under the residence contract which creates or gives rise to the right to occupy premises.
- (2) For the purposes of this Act—
- capital gain* means any positive value determined under subsection (1);
- capital loss* means any negative value determined under subsection (1).

3C Meaning of *maintenance charge*

- (1) In this Act, *maintenance charge* means a recurring charge payable by a resident of a retirement village under a residence contract, management contract or other retirement village contract—
- (a) for the provision of goods or services (other than optional services) by the operator of the retirement village; or
 - (b) to contribute to the costs of managing the retirement village, including—
 - (i) the costs of employing or engaging persons in relation to the retirement village; and
 - (ii) the costs of maintaining facilities in the retirement village and capital maintenance in the retirement village.
- (2) A *maintenance charge* does not include any amount paid to an owners corporation under Division 1 of Part 3 of the **Owners Corporations Act 2006**.

3D Meaning of *exit entitlement*

- (1) In this Act *exit entitlement* means—
- (a) for a resident who has paid a repayable entry payment, the amount payable to the resident on the resident permanently vacating the village, being the repayable entry payment adjusted in accordance with subsection (2); or
 - (b) for an owner resident who has entered into a contract for the sale of the resident's premises to the proprietor or the operator of the village, the sale price of the resident's premises adjusted in accordance with subsection (3).
- (2) For the purposes of subsection (1)(a), adjust the amount as follows—
- (a) add to the amount (if so required by a retirement village contract entered into by the resident)—
 - (i) any other amount payable by the operator to the resident under the retirement village contracts; and
 - (ii) any amount that is prescribed for the purposes of this paragraph;
 - (b) subtract from the amount (if so required by a retirement village contract entered into by the resident)—
 - (i) any deferred management fee payable by the vacating resident under the retirement village contracts on vacating the premises; and
 - (ii) any outstanding management charge, fee for optional services or other fees, costs or charges
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- payable by the resident under the retirement village contracts; and
- (iii) any amount required to be payable by the resident under a retirement village contract in respect of renovation, repairs or restoration of premises; and
 - (iv) any other amount that is prescribed for the purposes of this paragraph.
- (3) For the purposes of subsection (1)(b), adjust the amount as follows—
- (a) add to the amount (if so required by a retirement village contract entered into by the resident)—
 - (i) any other amount payable to the resident by the operator under the retirement village contracts; and
 - (iv) any amount that is prescribed for the purposes of this paragraph;
 - (b) subtract from the amount (if so required by a retirement village contract entered into by the resident)—
 - (i) any deferred management fee payable by the resident under the retirement village contracts on vacating the premises; and
 - (ii) any outstanding management charge, fee for optional services or other fees, costs or charges payable by the resident under the retirement village contracts; and
 - (iii) any amount required to be payable by the resident under a retirement village contract in respect of
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renovation, repairs or restoration
of premises; and

- (iv) any estate agent's commission and
any costs payable by the resident
to the operator or proprietor who
acts on behalf of the resident; and
- (v) any other amount payable by the
resident to the operator or
proprietor in respect of the
liabilities of the resident as to the
sale; and
- (vi) any other amount that is
prescribed for the purposes of this
paragraph.

3E Meaning of *management dispute*

- (1) For the purposes of this Act, ***management dispute*** means a dispute between a resident of a retirement village and the operator or the proprietor of the village that is about—
 - (a) the control, management or
administration of the retirement village
by the operator or the proprietor; or
 - (b) any action or failure to act by the
operator or the proprietor that affects
residents' use or enjoyment of the
retirement village land; or
 - (c) the provision of services or a failure to
provide services by the operator to
residents of the retirement village.
- (2) A ***management dispute*** includes a dispute between a resident of a retirement village and the operator or the proprietor of the village that is about—

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- (a) an operator's failure to give permission to a person to live in the village under section 6; or
- (b) a breach notice or a termination notice served on a resident under Part 3A; or
- (c) a termination of residence contract under Part 3A; or
- (d) a decision by the operator to refuse consent to an addition, removal or alteration of a fixture or fitting under section 37C that the resident considers to be unreasonable; or
- (e) whether a non-owner resident complied with section 37D, whether works specified in a reinstatement notice given to the resident under section 37E are required or whether the cost of works specified in such a notice is excessive; or
- (f) the completion of a renovation specified in a reinstatement notice given under section 37E; or
- (g) the cost or completion of a renovation under an agreement referred to in section 37H(2); or
- (h) a failure by the operator to provide a condition report to the resident under section 37J; or
- (i) whether a statement in a condition report is inaccurate or incomplete, where there has been a failure to amend the condition report under section 37K; or

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- (j) a decision at a meeting of residents not to approve by special resolution the payment of a maintenance charge that is greater than the adjusted maintenance charge in circumstances where the operator considers a greater maintenance charge is necessary to fund the maintenance of the retirement village; or
 - (k) the abatement of maintenance charges under section 38BB; or
 - (l) a refusal or failure of the operator to reimburse the resident for the cost of capital maintenance or capital replacement of an item of capital under section 38BJ; or
 - (m) a variation of a service or facility by the operator otherwise than in accordance with Division 1C of Part 6A; or
 - (n) the compliance by the operator with the requirements set out in Division 3 of Part 6A in relation to emergency plans, safety inspections, key safety information and evacuation exercises; or
 - (o) the apportionment of capital losses as compared with capital gains; or
 - (p) any calculation of the amount the resident is entitled to be paid if the resident vacates premises during a settling in period or the time within which such an amount should be paid; or
 - (q) compliance with Division 4 of Part 4; or
-

- (r) any limitations imposed by the operator or proprietor on the provision of services to a resident by a person other than the operator, proprietor or any employee or contractor of the operator or the proprietor.
- (3) A *management dispute* does not include a dispute in respect of which an application may be made to VCAT under section 26, 32F, 32N(1), 32O(1), 32P(1) or 32Y(1).
- (4) A *management dispute* also does not include a resident dispute.

3F Non application of Parts 3 and 3A to strata title village land

Parts 3 and 3A do not apply to any right to occupy premises of an owner resident."

8 Act not to apply to certain retirement villages

In section 5(2) of the Principal Act—

- (a) for "instrument of exemption under section 6" **substitute** "exemption granted under section 7A";
- (b) paragraph (a) is **repealed**.

9 Section 6 substituted

For section 6 of the Principal Act **substitute**—

"6 Persons who may live in a retirement village

- (1) On application under subsection (2), an operator may give permission for a person other than a retired person to live in the retirement village with a resident.

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- (2) A resident may apply to the operator for permission under subsection (1) for a person of or under the age of 55 years to live in the retirement village.
- (3) An operator must provide the resident with a written decision on an application under subsection (2) within 14 days of receiving the application.
- (4) The operator must not unreasonably withhold permission from an applicant under subsection (2).

6A Rights of persons living in a retirement village with a resident

- (1) In this section—
 - legal occupant*, in relation to a retirement village, means a person who lives in the village—
 - (a) with permission under section 6;
or
 - (b) in accordance with a recorded agreement.
- (2) A legal occupant of a retirement village may continue to occupy the premises for a period of three months following the death of the resident occupying the same premises."

Division 2—New Part 1A inserted (Exemptions)

10 New Part 1A inserted

After Part 1 of the Principal Act insert—

"Part 1A—Exemptions

Division 1—Exemptions

7A Exemptions

- (1) On receiving an application under Division 2, the Director may grant an exemption that exempts the proprietor or operator or both of the retirement village (as the case requires) (*the applicant*) from the operation of all or any of the provisions of this Act in relation to that retirement village.
- (2) If an exemption is granted under subsection (1), the Director may impose any conditions on the exemption which the Director considers appropriate.
- (3) The Director must not grant an exemption under subsection (1) before the expiry of the time within which residents of the retirement village that is the subject of the application can make submissions under section 7F(2).

7B Form and content of exemptions

If the Director grants the exemption under section 7A(1), as soon as practicable after doing so the Director must give written notice to the applicant of—

- (a) the exemption granted; and
- (b) the conditions imposed on the exemption under section 7A(2) (if any);
and

- (c) the period for which the exemption remains in force.

7C Exemption period

An exemption granted under section 7A(1) has effect until whichever is the earlier of—

- (a) the revocation of the exemption; or
- (b) the period determined by the Director and specified in the exemption; or
- (c) the expiry of a period of 5 years from the granting of the exemption.

7D Considerations

In determining whether to grant an exemption under section 7A(1), the Director must consider the following—

- (a) the reasons for the applicant seeking the exemption as set out in the application;
 - (b) any submissions made under section 7F within the time specified in section 7F(2) by the residents of the retirement village that is the subject of the application;
 - (c) the impact that the granting of the exemption would have for residents;
 - (d) how retirement village disputes will be managed if the exemption is granted;
 - (e) whether the residents of the retirement village will be disadvantaged if the retirement village is exempt from the operation of all or any of the provisions in this Act;
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- (f) the fees charged by the operator of the retirement village the subject of the application;
- (g) whether the retirement village is owned or operated—
 - (i) by a not-for-profit organisation; or
 - (ii) by volunteers; or
 - (iii) by residents; or
 - (iv) by a religious organisation; or
 - (v) as a cooperative;
- (h) whether the retirement village or part of the retirement village occupied by residents is strata title village land;
- (i) whether effect will be given to the principles if the exemption is granted;
- (j) if an exemption has previously been granted in respect of a retirement village, the reasons for and the terms of that exemption;
- (k) any other prescribed criteria.

7E Exemption must be published

If the Director grants an exemption under section 7A(1), the Director must publish notice of the granting of the exemption as soon as practicable after it is made—

- (a) on the Internet site of the Director or any other prescribed place; and
- (b) as part of the register of retirement villages maintained under this Act.

7F Submissions by residents

- (1) A resident of the retirement village that is the subject of an application under Division 2 may make written submissions to the Director about the application.

Note

Section 42D applies to the making of a submission under subsection (1).

- (2) Any submissions made by a resident under subsection (1) must be made within 60 days from service of the notice under section 7L.

7G Review of exemption granted

- (1) The Director may review an exemption granted under section 7A(1) at any time.
- (2) Before commencing a review under subsection (1), the Director must give written notice that the Director proposes to review the exemption—
- (a) to the person to whom the exemption has been granted; and
 - (b) to the residents of the retirement village.
- (3) In a notice under subsection (2) the Director may require the person to whom the exemption has been granted to give the Director the documents or information specified in the notice.
- (4) Within 14 days of receiving notice under subsection (2), the person to whom the exemption has been granted must give the documents or information specified in the notice to the Director.

7H Outcome of review

- (1) On completing a review under section 7G, the Director may revoke, amend or vary the reviewed exemption.
- (2) On completing a review under section 7G the Director must give notice of the outcome of the review, including any decision to revoke, amend or vary the exemption under subsection (1) to—
 - (a) the person to whom the exemption has been granted; and
 - (b) the residents of the retirement village.

7I Offence to contravene conditions of an exemption

A person to whom an exemption has been granted must not contravene any conditions of the exemption.

Penalty: 200 penalty units.

Division 2—Applications for exemptions

7J Application

- (1) The proprietor or operator (or both) of a retirement village may apply for an exemption under section 7A in relation to that retirement village.
- (2) An application for an exemption must include the following—
 - (a) the name of the retirement village;
 - (b) the reason for seeking the exemption;
 - (c) whether the exemption applied for relates to—
 - (i) all of the provisions of this Act; or

- (ii) some of the provisions of this Act, and if so, a list of the specific provisions;
 - (d) a copy of the notice served on residents under section 7L and the date on which the notice was served on the residents;
 - (e) if applicable, a copy of the current instrument of exemption, including any conditions imposed by the Director on the exemption;
 - (f) the appropriate prescribed fee.
- (3) If the material grounds for an application change, the applicant must notify the Director of these changes.
- (4) The Director must pay any fee received in respect of an application into the Victorian Property Fund in accordance with section 73(ha) of the **Estate Agents Act 1980**.

7K Director may request additional information from applicant

- (1) If the Director requires additional information in respect of an application under section 7J, the Director may request additional information from the applicant.
- (2) If the Director requests additional information under subsection (1), the applicant must provide the requested information to the Director within 14 days of the request being made.

7L Applicant must serve written notice on residents

Before a person makes an application under section 7J, the person must serve written notice on each resident of the retirement village informing that resident of—

- (a) the person's intention to apply for an exemption under this Act; and
- (b) an explanation of the exemption applied for; and
- (c) the consequences of the Director granting the exemption; and
- (d) a statement that a resident has the right, under section 7F, to make submissions within 60 days from the service of the notice.

Note

Section 42D applies to the serving of a notice under this section."

Division 3—Amendment of Part 2 (Notices)

11 Section 8 substituted

For section 8 of the Principal Act **substitute—**

"8 Offence to operate retirement village unless notice lodged

- (1) A person must not operate a retirement village in respect of which a retirement village notice has not been lodged under section 9.

Penalty: 200 penalty units.

- (2) A person who is a resident in a retirement village in respect of which the operator has contravened subsection (1) may rescind any contract relating to the person's residence in the village.
 - (3) A person who has entered into a contract relating to residence in a retirement village in respect of which the operator has contravened subsection (1), may rescind that contract."
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12 New sections 11A and 11B inserted

After section 11 of the Principal Act **insert**—

"11A Requirement to notify Director

- (1) Immediately on the lodgement of a retirement village notice under section 9—
 - (a) the operator of the retirement village must give a notice to the Director that sets out—
 - (i) the name and address of the operator of the retirement village; and
 - (ii) the particulars that are required to enable the Director to record the information required under section 38J(2); and
 - (iii) any other prescribed particulars; or
 - (b) if there is no operator of the retirement village, the proprietor of the retirement village must give a notice to the Director that sets out—
 - (i) the name and address of the proprietor of the retirement village; and
 - (ii) the particulars that are required to enable the Director to record the information required under section 38J(2); and
 - (iii) any other prescribed particulars.

Penalty: 10 penalty units.

Note

See section 38ZZP for payment that must be made with the giving of the notice to the Director under this subsection.

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- (2) If there is a change in any particular relating to a retirement village that is specified in subsection (1), within 14 days after the change is made—
- (a) the operator of the retirement village must give notice of the change to the Director; or
 - (b) if there is no operator of the retirement village, the proprietor must give notice of the change to the Director.

Penalty: 10 penalty units.

11B Operator to give annual notice as to register information

- (1) For each 12 month period for which a retirement village is operating, the operator of the retirement village must give a written notice to the Director—
- (a) as to whether or not any change is required to the particulars referred to in section 11A(1)(b); or
 - (b) as to whether or not the particulars that are on the register are correct and, if the particulars are not correct, of any change that is required to the particulars.

Penalty: 10 penalty units.

Note

See section 38ZZP for payment that must be made with the giving of the notice to the Director under this subsection.

- (2) The notice under subsection (1) must be given—
- (a) on or before the end of 12 months after the giving of the notice under section 11A(1); and
 - (b) after that, on or before the anniversary of the day on which the previous notice was given."

Division 4—Amendment of Part 3 (Termination of residence contracts and related matters)

13 Amendment of heading to Part 3

In the heading to Part 3 of the Principal Act, for "**Residence rights**" substitute "**Rights to occupy premises**".

14 Repeal of section 12

Section 12 of the Principal Act is **repealed**.

15 Rights to occupy premises

- (1) **Insert** the following heading to section 13 of the Principal Act—

"Right to occupy premises".

- (2) In section 13(1) of the Principal Act, for "residence right" (where twice occurring) **substitute** "right to occupy premises".

16 Enforcement of right to occupy premises

- (1) **Insert** the following heading to section 14 of the Principal Act—

"Enforcement of right to occupy premises".

- (2) In section 14(1) of the Principal Act, for "residence right" **substitute** "right to occupy premises".

- (3) In section 14(4) of the Principal Act, for "residence right" **substitute** "right to occupy premises".
- (4) In section 14(5) of the Principal Act—
- (a) for "residence right" **substitute** "right to occupy premises";
 - (b) for "residence rights" **substitute** "rights to occupy premises".

17 Residential Tenancies Act 1997 not to apply

In section 15 of the Principal Act, for "residence right" **substitute** "right to occupy premises".

18 Section 16 substituted

For section 16 of the Principal Act **substitute**—

**"Part 3A—Termination of
residence contracts**

Division 1—Preliminary

16 Definitions

In this Part—

breach notice means a notice served under section 16C(1);

notice of termination of contract for breach means a notice served under section 16D(1);

substantial breach, in relation to a residence contract, means a breach of the residence contract by a resident who is a party to the contract that is constituted by any of the following—

- (a) the resident, by act or omission, intentionally or recklessly causing serious damage to any part of
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premises in the retirement village,
including common areas or
facilities;

- (b) the resident, by act or omission,
posing a serious threat to the life,
health, safety or welfare of any
other resident of the retirement
village, the operator of the
retirement village or any
employee or contractor of the
operator;
- (c) a breach of the contract, that is
one of many breaches by the
resident that are persistent and, in
the circumstances justify the
termination of the contract;

termination notice means—

- (a) a notice of termination of contract
for breach; or
- (b) a notice served under
section 16M.

16A Termination considerations and effect of termination

A contracting party with whom a resident of
a retirement village has entered into a
residence contract must not serve a
termination notice on the resident unless the
service of the notice is reasonable and
proportionate in the circumstances having
regard to the following—

- (a) the retirement village principles;
- (b) the effect the notice will have on the
health, safety or wellbeing of the
resident;

- (c) whether any other course of action is reasonably available;
- (d) in the case of a notice of termination of contract for breach, the risk to any of the following persons if the contract is not terminated—
 - (i) another resident;
 - (ii) the operator;
 - (iii) an employee or contractor of the operator;
 - (iv) a visitor or other person lawfully on the premises;
- (e) any other prescribed matters.

16B Effect of termination

This Part is in addition to and does not derogate from any other rights that a party to a residence contract, a management contract or any other retirement village contract has to rescind or terminate the contract, whether under this Act, the contract or otherwise, to the extent that those rights are consistent with this Part.

Division 2—Termination for breach of the residence contract

16C Breach notice

- (1) If a contracting party reasonably believes that a resident of a retirement village, with whom the contracting party has entered into a residence contract, is in breach of the contract the contracting party may serve a notice on the resident to that effect.

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- (2) In a notice under subsection (1) the contracting party—
- (a) must specify the breach; and
 - (b) must specify that the notice is served under this section; and
 - (c) must set out the effect of this Division; and
 - (d) be in the prescribed form (if any).

Penalty: 50 penalty units.

- (3) In a notice under subsection (1), the contracting party—
- (a) must specify what the resident is required to do to remedy the breach; or
 - (b) if the breach is not capable of being remedied, must state that the resident is required to cease committing the breach—
 - (i) no later than 28 days after the date of service of the notice; or
 - (ii) if the period has been extended under subsection (4), no later than the end of the extended period.

Penalty: 50 penalty units.

- (4) The contracting party may extend the 28 day period required by subsection (3)(b)(i) for a further 28 days if—
- (a) the resident has asked the contracting party in writing to do so; and
 - (b) the resident is not able to comply with the requirement within the first 28 day period.

16D Notice of termination of contract for breach

- (1) A contracting party may serve a notice on a resident of a retirement village, with whom the contracting party has entered into a residence contract, terminating the contract and requiring the resident to leave the retirement village.
- (2) A contracting party must not serve a notice under subsection (1) unless—
 - (a) the contracting party has served a breach notice on the resident; and
 - (b) the breach in respect of which the notice under subsection (1) is served is a substantial breach that has not been remedied as far as is practicable; and
 - (c) the resident has not complied with the breach notice, within the period required under section 16C.

Penalty: 50 penalty units.

16E Contents of notice of termination of contract for breach

In a notice under section 16D the contracting party—

- (a) must specify the breach to which the notice applies; and
- (b) must state a date on or before which the resident must leave the retirement village which must not be earlier than 60 days after the date of service of the notice.

Penalty: 50 penalty units.

Division 3—Termination for health and safety reasons

16F Power to terminate residence contract for health and safety reasons

- (1) A contracting party who has entered into a residence contract with a resident of a retirement village may terminate the residence contract if—
 - (a) the resident has care needs which cannot be met in the village by any one of the following—
 - (i) the operator of the retirement village;
 - (ii) an approved provider of home care services within the meaning of the Aged Care Act 1997 of the Commonwealth;
 - (iii) an NDIS provider within the meaning of the National Disability Insurance Scheme Act 2013 of the Commonwealth; and
 - (b) the resident would pose a substantial risk to the health and safety of any person, including the resident, if the resident were to remain in the retirement village.
- (2) A contracting party must not terminate a contract under subsection (1) unless the contracting party has first been given approval to do so under this Division by the chief dispute resolution officer.

Penalty: 50 penalty units.

16G Application for approval to terminate

- (1) A contracting party who proposes to terminate a residence contract under section 16F may apply to the chief dispute resolution officer for approval to do so.
- (2) An application under subsection (1) must—
 - (a) be in the form approved by the chief dispute resolution officer; and
 - (b) set out the grounds on which the contracting party proposes to terminate the residence contract.

16H Service of notice of application for approval on certain persons

- (1) Within 10 business days after making an application under section 16G, the contracting party must serve a copy of the application on—
 - (a) the resident; and
 - (b) the operator (if the operator is not the contracting party); and
 - (c) the following (if any)—
 - (i) the emergency contact person for the resident;
 - (ii) the spouse or domestic partner of the resident;
 - (iii) any person who resides with the resident in the village with the permission of the operator under section 6.
 - (2) Within 10 business days after making an application under section 16G, the contracting party must serve on the resident and any person referred to in subsection
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- (1)(c)(iii), a notice informing the resident of—
- (a) the resident's right to obtain a report of a medical practitioner and right to submit that report to the chief dispute resolution officer under section 16I; and
 - (b) the process set out in section 16J.
- (3) A notice under subsection (2) must be in the form approved by the chief dispute resolution officer.

16I Right to obtain report of medical practitioner

A resident who has received a notice under section 16H may obtain a report from a medical practitioner on the proposal and may submit that report to the chief dispute resolution officer.

16J Processes before giving approval

- (1) Before making a decision on an application under section 16G, the chief dispute resolution officer—
- (a) must allow the resident and the contracting party to make written or oral submissions on the proposal and may provide for a hearing of the application, whether in person or by audio visual link; and
 - (b) with the resident's consent, may arrange for a medical practitioner or any other person to report to the chief dispute resolution officer on the physical and mental capacity of the resident and their care needs; and

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- (c) may ask the resident or the contracting party to produce any relevant documents in the care, custody or control of the resident or contracting party; and
 - (d) must consider any medical report submitted by the resident under section 16I.
- (2) The chief dispute resolution officer must ensure that copies of any report given or any document produced under subsection (1) are made available to both the resident and the contracting party.
 - (3) The chief dispute resolution officer may refuse to make a decision under section 16K if the contracting party has not complied with a request under subsection (1)(c).

16K Decision of chief dispute resolution officer on application for approval

- (1) The chief dispute resolution officer may decide to approve the termination of a residence contract by the contracting party under section 16F(1) if the chief dispute resolution officer is satisfied that there are grounds for terminating the contract under that subsection.
- (2) In giving an approval under subsection (1), the chief dispute resolution officer may recommend a date on which the resident should vacate the premises.

16L Notice of decision

The chief dispute resolution officer must serve notice of a decision under section 16K on—

- (a) the resident; and
- (b) the operator (if the operator is not the contracting party); and
- (c) the following (if any)—
 - (i) the emergency contact person for the resident;
 - (ii) the spouse or domestic partner of the resident;
 - (iii) any person who resides with the resident in the village with the permission of the operator under section 6.

16M Notice of termination on health and safety grounds

- (1) On receiving approval of the chief dispute resolution officer under section 16K to terminate the residence contract, the contracting party may serve a notice on the resident that the contract is terminated under section 16F and that the resident must leave the retirement village.
- (2) The contracting party, in a notice served under subsection (1), must state—
 - (a) that the residence contract is terminated under section 16F; and

- (b) a date on or before which the resident must permanently vacate the village which must not be earlier than—
 - (i) the date of service of the notice; and
 - (ii) the time recommended by the chief dispute resolution officer under section 16K(2).

Penalty: 50 penalty units.

16N Division to apply irrespective of residence contract

This Division has effect despite any term to the contrary in—

- (a) the residence contract; or
- (b) any other retirement village contract to which the contracting party and the resident are parties.

Division 4—General

16O Consequences of termination notice

On the date that a resident permanently vacates premises in a retirement village after being served with a termination notice—

- (a) the residence contract, the management contract and any other retirement village contract entered into by the resident are terminated; and
- (b) despite anything to the contrary in Part 5B, the resident becomes immediately entitled to be paid the resident's exit entitlement (if any)."

Division 5—Part 4 substituted (Contracts and related matters)

19 Part 4 substituted

For Part 4 of the Principal Act **substitute—**

"Part 4—Contracts and related matters

Division 1—Disclosure of information

17 Information statements

For the purpose of this Act and the regulations, an information statement is a statement which—

- (a) sets out the matters specified in section 18; and
- (b) sets out any other prescribed matter or thing; and
- (c) which complies with section 19(1).

18 Contents of information statement

An information statement must set out the following information—

- (a) the name of the retirement village;
- (b) the address of the retirement village;
- (c) the name and address of the proprietor of the retirement village;
- (d) if there is any common property in the retirement village that is vested in an owners corporation, the name and address of the owners corporation;

- (e) the name, address, telephone number and ABN of the operator and the date that person commenced being the operator of the retirement village;
- (f) the name of any person located at the retirement village as the representative of the operator of the retirement village, the place in the retirement village at which the person is located and the times at which the person is located at that place;
- (g) the prescribed information about—
 - (i) the contracts that have to be entered into to become a resident of the retirement village; and
 - (ii) financial matters, entitlements and obligations of a person on entering, living in and leaving the retirement village; and
 - (iii) any other matters.

19 Form, content and certification of information statement

- (1) The information statement for a retirement village must—
 - (a) be in a form approved by the Director; and
 - (b) contain the prescribed information; and
 - (c) present that information clearly and concisely, including any information included as an attachment.
 - (2) Before publication of an information statement for a retirement village under section 20(1), the operator of the retirement village must sign the information statement
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and attest to whether the contents of the information statement are correct to the best of the operator's knowledge.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (3) If there is a proprietor of a retirement village who is not the operator, before publication of an information statement for the retirement village under section 20(1), the proprietor must sign the information statement and attest to whether the contents of the information statement are correct to the best of the proprietor's knowledge.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (4) Before publication of an updated information statement under section 20(2), the operator of the retirement village must sign the updated information statement and attest to whether the contents are correct to the best of the operator's knowledge.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (5) If there is a proprietor of a retirement village who is not the operator, before publication of an updated information statement under section 20(2), the proprietor must sign the updated information statement and attest to

whether the contents are correct to the best of the proprietor's knowledge.

Penalty: 60 penalty units for a natural person;

300 penalty units for a body corporate.

20 Publication of information statement

- (1) On and from the day on which a retirement village notice for a retirement village is lodged with the Registrar of Titles under Part 2, the operator of the retirement village must publish the information statement for the village as certified under section 19(1) and (2) and keep that information statement published on the Internet site of the operator.

Penalty: 60 penalty units for a natural person;

300 penalty units for a body corporate.

- (2) If an information statement is updated under section 21, the operator of the retirement village must publish the updated information statement for the village as certified under section 19(3) and (4) and keep that information statement published on the Internet site of the operator.

Penalty: 60 penalty units for a natural person;

300 penalty units for a body corporate.

21 Obligation to update information statement

- (1) The operator of a retirement village must update the information statement at the end of every 12 month period, with the first period beginning with the day on which the information statement is first published.

Penalty: 60 penalty units for a natural person;

300 penalty units for a body corporate.

- (2) If there is a change to a material fact or particular in an information statement for a retirement village, the operator of the retirement village must update the information statement as soon as possible after the change occurs.

Penalty: 60 penalty units for a natural person;

300 penalty units for a body corporate.

- (3) The proprietor of a retirement village must take all reasonable steps to notify the operator of the village of any change to a material fact or particular in an information statement of which the proprietor is aware.

Penalty: 60 penalty units for a natural person;

300 penalty units for a body corporate.

22 Provision of information statement

- (1) A person who is proposing to become a resident of a retirement village may ask the operator of the village, or a representative of
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the operator of the village for the information statement for the village.

- (2) The person to whom a request is made under subsection (1) must give the information statement to the person who made the request—
- (a) not later than 7 days after the request is made; and
 - (b) in a manner agreed to by the person making the request; and
 - (c) without asking for any payment for doing so.

Penalty: 120 penalty units.

- (3) Subsection (2) applies regardless of whether the request under subsection (1) is made orally or in writing.
- (4) If the proprietor or operator of a retirement village, or an agent of the proprietor or operator, gives or sends targeted promotional material to a person, the person giving or sending the material, must ensure that a copy of the information statement relating to the retirement village is included with the material.

Penalty: 50 penalty units.

- (5) A person is not required to comply with subsection (2) or (4) if—
- (a) the person making the request under subsection (1) has previously been given an information statement; and
 - (b) the information in the information statement has not changed in any material particular since it was given.

(6) In this section—

targeted promotional material means material given or addressed personally to a person, or their representative, that is intended to promote a particular retirement village as a place in which to live but does not include marketing material distributed generally to the public.

23 Inspection of residence documents

- (1) A person who is proposing to become a resident of a retirement village may make a request to the operator of the retirement village or a representative of the operator to inspect one or more residence documents relating to the retirement village.
- (2) A person who receives a request under subsection (1) must make any of the requested documents in their possession or control available for inspection—
 - (a) not later than 7 days after the request is made; and
 - (b) in the manner agreed to by the person making the request; and
 - (c) without asking for any payment for doing so.

Penalty: 120 penalty units.

- (3) Subsection (2) applies regardless of whether the request under subsection (1) is made orally or in writing.

- (4) A person is excepted from complying with subsection (2) if—
- (a) the person making the request under subsection (1) has previously inspected the document or documents; and
 - (b) the document or documents have not changed in any material particular since that inspection.

24 Resident to be given certain documents

- (1) At least 21 days before a resident enters into a residence contract for premises in a retirement village, the operator of the retirement village must give a copy of the residence contract to the resident.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) At least 21 days before a resident enters into any management contract with the operator of a retirement village, the operator must give to the resident the following documents—

- (a) a copy of the management contract;
- (b) the information statement;
- (c) the by-laws of the village;
- (d) all other documents referred to in the definition of residence documents.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

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- (3) The operator is excepted from giving the information statement to the resident under subsection (2) if—
- (a) the resident has previously been provided with a copy of the information statement; and
 - (b) the information in the information statement has not changed in a material particular since it was provided.
- (4) At least 21 days before a resident enters into any management contract with the operator of a retirement village, if the resident has not previously inspected any of the residence documents requested under section 23(1), the operator must advise the resident that the resident has a right to do so.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

25 Offences relating to giving information

- (1) A person who includes in an information statement or a residence document a statement which the person knows to be false or misleading in a material particular is guilty of an offence and liable to a penalty of not more than—
- (a) 60 penalty units for a natural person; or
 - (b) 300 penalty units for a body corporate.

- (2) If asked by a resident of a retirement village, the operator or the representative of the operator must give the resident information concerning the retirement village which the resident reasonably requires and the operator or representative is able to give.

Penalty: 60 penalty units for a natural person;

300 penalty units for a body corporate.

- (3) A person who under subsection (2) gives information to a resident which the person knows to be false or misleading in a material particular is guilty of an offence.

Penalty: 60 penalty units for a natural person;

300 penalty units for a body corporate.

26 Effect of contravention of this Division

- (1) If there is contravention of this Division in respect of a resident, the resident may rescind any residence contract entered into by the resident relating to the retirement village, in accordance with section 42.
- (2) On application by a proprietor who is a party to a residence contract, VCAT may declare that a resident who is a party to that contract does not have a right to rescind the contract under subsection (1).
- (3) VCAT must not make a declaration under subsection (2) unless VCAT is satisfied that—
- (a) the proprietor and any agent of the proprietor have acted honestly and reasonably and ought fairly to be
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excused for the contravention of this Division; and

- (b) the resident is in substantially as good a position as if this Division had been complied with.

26A Inspection of documents

- (1) At the request of a resident of a retirement village, the operator or the operator's agent must make available for inspection by the resident all residence documents which apply to the resident and are in the possession or under the control of the operator or agent.

Penalty: 120 penalty units.

- (2) A resident may inspect and take copies of documents made available to the resident under subsection (1).

Division 2—Requirements for contracts

26B Offences for contracts that are not in the prescribed form

- (1) A contracting party must not enter into a residence contract for a retirement village with a resident that—
 - (a) is not in the prescribed form, if any, for the type of residence contract; or
 - (b) does not contain the prescribed provisions, if any, for the type of residence contract.

Penalty: 60 penalty units for a natural person;

300 penalty units for a body corporate.

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- (2) A failure of a contracting party to comply with subsection (1) in entering into a residence contract does not affect the validity of the residence contract entered into.
- (3) The operator of a retirement village must not enter into a management contract with a resident of the village that—
- (a) is not in the prescribed form, if any, for the type of management contract; or
 - (b) does not contain the prescribed provisions, if any, for the type of management contract.

Penalty: 60 penalty units for a natural person.

300 penalty units for a body corporate.

- (4) A failure of an operator to comply with subsection (3) in entering into a management contract does not affect the validity of the management contract entered into.
- (5) A contracting party must not enter into any other retirement village contract for the retirement village that relates to the conferral of or giving rise to the right to occupy premises in the village that is not in the prescribed form (if any).

Penalty: 60 penalty units for a natural person;

300 penalty units for a body corporate.

- (6) A failure of a contracting party to comply with subsection (5) in entering into a retirement village contract does not affect the validity of the contract entered into.

26C Offence to fail to give copy of residence contract to resident

The contracting party for a residence contract for premises in a retirement village must give a person who signs the contract as a resident a copy of the contract as soon as the person signs the contract.

Penalty: 60 penalty units for a natural person;

300 penalty units for a body corporate.

26D Offences for contracts that include prohibited terms

- (1) A contracting party must not enter into a residence contract with an owner resident that provides for the alteration or reinstatement of the premises of the owner resident.

Penalty: 60 penalty units for a natural person;

300 penalty units for a body corporate.

- (2) A contracting party must not enter into a residence contract with a resident—
- (a) that provides for a requirement to pay a fee, cost, charge or liability that was not disclosed in the information statement; or

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(b) that contains any other provision that is prohibited by the regulations from being included in a retirement village contract.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

(3) The operator of a retirement village must not enter into a contract with an owner resident that provides for the alteration or reinstatement of the premises owned by the resident.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

(4) The operator of a retirement village must not enter into a contract with a resident of the village—

(a) that provides for a requirement to pay a fee, cost, charge or liability that was not disclosed in the information statement;
or

(b) that contains any other provision that is prohibited by the regulations from being included in a retirement village contract.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (5) If a contract contains a provision in contravention of this section, the provision is void.

Division 3—Particular contract provisions

26E Additional provisions in contracts

- (1) A residence contract or management contract may include a provision that is in addition to the provisions set out in the prescribed form for the contract, if the provision complies with subsection (2).
- (2) The provision—
- (a) must be consistent with this Act and the regulations; and
 - (b) must not—
 - (i) exclude, restrict or modify any provision of the contract that is in the prescribed form; or
 - (ii) purport to exclude, restrict or modify any provision of the contract that is in the prescribed form; and
 - (c) must not be a provision to which section 26D applies.

26F Requirements for exit entitlement provisions and capital gain or loss provisions

- (1) A residence contract must address the method of calculating any repayable exit entitlement that the contracting party is liable to pay to the resident on the resident vacating their premises in the village.
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- (2) Subject to subsections (4), (5) and (6), the amount of exit entitlement that a resident is entitled to when the resident vacates the village or dies must be calculated in the prescribed manner.
- (3) A provision in a contract or document that relates to a retirement village that has the effect or purports to have the effect of overriding or negating this section is void.
- (4) A residence contract must not provide for a method of apportioning the capital gains and losses when calculating the exit entitlement that apportions a higher proportion of capital loss to the resident than the proportion of capital gain apportioned to the resident.
- (5) A residence contract must provide that any capital gain or capital loss to be apportioned when calculating the exit entitlement must be apportioned after deducting from the entry payment—
 - (a) any deferred management fee that is to be deducted from the entry payment; and
 - (b) any outstanding annual maintenance charge or any outstanding owners corporation annual fee.
- (6) A provision in a contract or document that relates to a retirement village that has the effect or purports to have the effect of overriding or negating this section is void.

26G Contractual requirements for settling in period

- (1) The following subsections apply to a retirement village contract entered into by a non-owner resident of a retirement village—
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- (a) that provides that the resident may leave the village at any time during a period, specified in the contract, that immediately follows whichever of the following first occurs—
 - (i) the day after the day the resident becomes entitled to occupy premises in the village;
 - (ii) the day after the day the resident occupies premises in the village; and
 - (b) that provides that the resident is not required to pay any fee for leaving the village during the period specified under subsection (1) that might be payable for leaving the village outside that specified period.
- (2) The contract must set out the day on which the settling in period commences and the day on which it ends.
 - (3) The day on which a settling period commences must not be before the expiration of whichever of the following applies—
 - (a) the period during which the contract can be rescinded under section 26X;
 - (b) the period during which the contract can be terminated under section 31 of the **Sale of Land Act 1962**.
 - (4) The contract must provide that, if the resident proposes to leave the village during the settling in period, the resident must give the operator of the village written notice of that proposal before the resident leaves the village.
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- (5) The contract may provide that, if the resident leaves the village during the settling in period, the resident is required to make any one or more of the following payments—
- (a) fair market rent, determined as prescribed, from the day the period commences until the resident gives vacant possession;
 - (b) the cost of repairing any damage other than fair wear and tear;
 - (c) a reasonable administration fee, determined as prescribed;
 - (d) any other prescribed costs.
- (6) A retirement village contract that provides for a settling in period is taken to include a condition that, if the resident vacates the village during the settling in period, the resident is not required to make any payments other than those specified in subsection (5).
- (7) A retirement village contract that provides for a settling in period is taken to include a condition that, if the resident permanently vacates the village during the settling in period, the contracting party must pay the resident's exit entitlement within 14 days of the resident vacating the village.

26H When does settling in period not apply?

If a retirement village contract entered into by a resident of a retirement village provides for a settling in period, the provisions in the contract relating to that period do not apply if the resident—

- (a) dies during the period; or

- (b) moves to a residential care facility during the period.

26I Sale of owner resident premises conditional on operator entering into management contract

A contract for the sale of premises of an owner resident in a retirement village is taken to include a condition that the contract is conditional on the operator of the retirement village entering into a management contract with the purchaser on or before completion of the purchase.

26J Contracting out prohibited

If a residence contract, management contract or other retirement village contract contains a provision in contravention of this Division, the provision is void.

Division 4—Contract checks

26K Contract checks

A contract check is a check of the retirement village contracts entered into by a resident of a retirement village that relate to the village that consists of the operator of the village providing—

- (a) the information described in section 26L or in section 26M to the resident, as the case requires; and
- (b) an opportunity for the resident to ask questions about the contracts, either orally or in writing, as the resident decides.

26L Information that must be given to an owner resident in a contract check

- (1) In a contract check for an owner resident in a retirement village, the operator of the village must give the resident the information required by subsection (2), calculated—
- (a) by reference to the date stated in the check which must be the date on which the check is given or no later than 30 days after that; and
 - (b) as if the resident's right to occupy premises in the village had ceased on that date.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) For the purpose of subsection (1), the following information must be provided in the check—
- (a) any requirements of this Act, the regulations and the retirement village contracts that the resident must comply with when doing either of the following—
 - (i) terminating the residence contract;
 - (ii) selling the premises occupied by the resident under their residence contract;
 - (b) any other requirements of this Act or the regulations that the resident must comply with when vacating the retirement village;

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- (c) a reasonable estimate of those of the following payments that the resident must make on permanently vacating the village—
 - (i) any fees, costs, charges and liabilities, including any deferred management fee;
 - (ii) any payments relating to the sharing of capital gains or losses;
 - (iii) any payments relating to the sale of the premises occupied by the resident;
 - (iv) any payments relating to any renovation of the premises carried out with the agreement of the resident and proprietor;
- (d) a reasonable estimated sale price for the premises;
- (e) a reasonable estimate of the amount that must be paid to the resident on the sale of the premises;
- (f) any other prescribed information.

26M Information that must be given to a non-owner resident in a contract check

- (1) In a contract check for a non-owner resident in a retirement village, the operator of the village must give the resident the information required by subsection (2), calculated—
 - (a) by reference to the date stated in the contract check which must be the date on which the contract check is given or no later than 30 days after that date; and

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(b) as if the resident's right to occupy premises in the village had ceased on that date.

Penalty: 60 penalty units for a natural person;

300 penalty units for a body corporate.

(2) For the purpose of subsection (1) the following information must be provided in the contract check—

(a) any requirements of this Act, the regulations and the retirement village contracts that the resident must comply with when doing either of the following—

(i) terminating the residence contract;

(ii) permanently vacating the retirement village;

(b) a reasonable estimate of the amount of the exit entitlement that must be paid to the resident;

(c) any other prescribed information.

26N Operator to provide yearly contract check

(1) The operator of a retirement village must provide a written contract check to each resident—

(a) in each calendar year; and

- (b) no later than 14 days after the day on which the contract check was provided for the previous calendar year.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) A contract check under this section must be provided in a document in a form approved by the Director.

260 Contract check on application by resident

- (1) On the application of a resident under subsection (4), the operator of a retirement village must provide a contract check to the resident.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) If the resident has not requested a meeting in the application under subsection (4), the operator must provide a written contract check to the resident—

- (a) in a document in the form approved by the Director; and

- (b) no later than 30 days after the operator has received the request.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

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- (3) If the resident has requested a meeting in the application under subsection (4), the operator must—
- (a) respond to the application in writing within 7 days of receiving it; and
 - (b) hold the meeting within 30 days of receiving the application.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (4) A resident of a retirement village may apply to the operator of the village for a contract check at any time.
- (5) In an application under subsection (4), the resident may request that the contract check be provided in a meeting with the operator.
- (6) The operator of a retirement village must provide any reasonable assistance to any resident of the village to make an application under subsection (4).

26P Restrictions on charges for contract checks

- (1) An operator of a retirement village who provides a contract check under section 26N(1) must not charge the resident for providing the contract check.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) An operator of a retirement village who provides a contract check under section 26O(1) must not charge the resident
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for providing the contract check, if, on or before making the application for the contract check, the resident has given the operator 28 days or more written notice that the resident intends to leave the village.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

26Q Processes relating to contract check meetings

- (1) If the operator provides a contract check in a meeting, the operator must provide the resident with a written summary of the information provided in the meeting—
 - (a) in the form approved by the Director;
and
 - (b) no later than 7 days after the meeting.

Penalty: 20 penalty units.

- (2) If the contract check is to be provided in a meeting, the resident, in writing, may nominate a person or persons to represent the resident or attend the meeting with the resident.

Division 5—Entry payments

26R Definition

In this Division—

agent, in relation to a proprietor of a retirement village, means an estate agent or legal practitioner who acts for the proprietor in relation to the retirement village.

26S Application to deposit money

This Division does not apply to so much of an entry payment as is deposit money to which sections 24 and 25 of the **Sale of Land Act 1962** apply.

26T Agent for contracting party to hold entry payments as stakeholder

- (1) An agent for a contracting party in a transaction relating to a residence contract must hold the entry payment received in connection with the transaction as a stakeholder until all the following events have happened—
 - (a) all conditions precedent to the creation of a right to occupy premises in favour of a person by whom or on whose behalf the entry payment was made are fulfilled;
 - (b) the person by whom or on whose behalf the entry payment was made becomes immediately entitled to enter the retirement village as a resident;
 - (c) an occupancy permit under the **Building Act 1993** is issued in respect of each building or part of a building that the transaction relates to, including, but not limited to—
 - (i) any building or part of a building that the resident is to occupy in the village; and
 - (ii) any building or part of a building that is common property or a common facility for the village, if an occupancy permit is required for the building or part of the building;
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- (d) in the case of a transaction that relates to premises previously occupied by a vacating resident who is entitled to payment of an exit entitlement on another person occupying or becoming entitled to occupy the premises, the contracting party—
 - (i) pays the whole amount of the exit entitlement out of the entry payment held by the agent; or
 - (ii) directs that the whole amount of the exit entitlement be paid out of the entry payment held by the agent.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) On the happening of the last of the events listed in subsection (1), the person holding the entry payment may pay the entry payment to the contracting party in the contracting party's own right or as the contracting party directs.
- (3) Subsection (1) does not apply to a transfer of an entry payment—
 - (a) between one agent of the contracting party and another agent of the contracting party; or
 - (b) from the contracting party to an agent of the contracting party.

26U Requirements for entry payment received by contracting party

- (1) If, in the course of a transaction relating to a residence contract, the contracting party receives all or any part of an entry payment, the contracting party must, within 7 days after receiving it, pay it—
- (a) to an agent of the contracting party; or
 - (b) into a special purpose account established at an authorised deposit-taking institution in Victoria to be nominated by the contracting party in the joint names of the contracting party and the resident by whom or on whose behalf the entry payment was made.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) If an entry payment is paid into a special purpose account under subsection (1)(b), the contracting party must ensure that the entry payment is held in that account until—
- (a) the events listed in section 26T(1)(a), (b) and (c) have occurred; and
 - (b) in the case of a transaction that relates to premises previously occupied by a vacating resident who is entitled to payment of an exit entitlement on another person occupying or becoming entitled to occupy the premises, the contracting party—

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- (i) pays the whole amount of the exit entitlement out of the entry payment held in the special purpose account; or
- (ii) directs that the whole amount of exit entitlement is to be paid out of the entry payment held in the special purpose account.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (3) On the happening of the last of the events listed in subsection (2), any money remaining in the special purpose account may be paid to the contracting party in the contracting party's own right or as the contracting party directs.
 - (4) An account established under subsection (1)(b) may be drawn on only with the consent of both the resident and the contracting party or, if either of those persons has died, the person's legal personal representative.
 - (5) This section does not impose an additional liability on an authorised deposit-taking institution in respect of any payment deposited under subsection (2).
 - (6) If under subsection (1)(b) a contracting party nominates an interest bearing account into which an entry payment must be paid, a person, who is entitled to payments from the account under this Division, is also entitled to the interest.
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26V Deficiency in amount of entry payment

- (1) If at any time there is a deficiency in the amount of any entry payment held by an agent for a contracting party under section 26T(1) the agent is guilty of an indictable offence and liable to a penalty of—
 - (a) not more than 120 penalty units or 2 years' imprisonment, or both, for a natural person; or
 - (b) not more than 600 penalty units for a body corporate.
- (2) Subsection (1) does not apply if the person required to hold the entry payment gives a sufficient and satisfactory explanation of the deficiency.
- (3) Subsection (1) does not apply if—
 - (a) the deficiency was caused solely by an error by an authorised deposit-taking institution or by inadvertence; and
 - (b) the deficiency is rectified within 2 business days of its discovery.
- (4) A prosecution under this section must not be commenced without the written consent of the Director of Public Prosecutions.

26W Wrongful conversion and false accounts

- (1) An agent who receives all or any part of an entry payment in connection with a transaction relating to a residence contract must not fraudulently convert the payment or the part of the payment to the agent's own use.

Penalty: 500 penalty units or 10 years' imprisonment or both, for a natural person.

2000 penalty units, for a body corporate.

- (2) An agent must not fraudulently convert to the agent's own use all or any part of an entry payment held by the agent as a stakeholder under section 26T(1).

Penalty: 500 penalty units or 10 years' imprisonment or both, for a natural person.

2000 penalty units, for a body corporate.

- (3) An agent who receives all or any part of an entry payment in connection with a transaction relating to a residence contract on behalf of another person must not fraudulently omit to account for, deliver or pay the payment or the part of the payment to that person.

Penalty: 500 penalty units or 10 years' imprisonment or both, for a natural person.

2000 penalty units, for a body corporate.

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- (4) An agent who holds all or any part of an entry payment as stakeholder under 26T(1) must not fraudulently omit to account for, deliver or pay the payment or the part of the payment to the person entitled to it.

Penalty: 500 penalty units or 10 years' imprisonment or both, for a natural person.

2000 penalty units, for a body corporate.

- (5) An agent who receives all or any part of an entry payment in connection with a transaction relating to a residence contract on behalf of another person must not fraudulently render an account of the payment or the part of the payment, knowing the account to be false in any material particular.

Penalty: 500 penalty units or 10 years' imprisonment or both, for a natural person.

2000 penalty units, for a body corporate.

- (6) An agent who holds all or any part of an entry payment as stakeholder under section 26T(1) must not fraudulently render an account of the payment or the part of the payment, knowing the account to be false in any material particular.

Penalty: 500 penalty units or 10 years' imprisonment or both, for a natural person.

2000 penalty units, for a body corporate.

- (7) An offence under this section is an indictable offence.
- (8) This section has effect in addition to and not in derogation of Division Two of Part I of the **Crimes Act 1958**.

Division 6—Miscellaneous matters

26X Cooling-off period

- (1) A resident who signs a residence contract (that is not a residence contract to which section 31 of the **Sale of Land Act 1962** applies) may at any time before the end of the period of 3 business days after signing the contract rescind the contract in accordance with this Act.
- (2) If a resident rescinds a contract under this section the resident is entitled to the return of all moneys paid by the resident under the contract, except for the prescribed administration fee, if any, which may be retained by the contracting party.
- (3) A contract to which this section applies must contain a conspicuous notice advising the resident that the resident may before the end of 3 clear business days after the resident signs the contract give notice that the resident wishes to terminate the contract.
- (4) If a contract to which this section applies does not contain the notice required by subsection (3), a resident who is a party to the contract may rescind the contract.

26Y Deferred management fee

- (1) A person must not charge a resident of a retirement village for a deferred management fee in respect of the resident's occupation of the retirement village, unless the deferred management fee is calculated—
- (a) as a percentage of the resident's entry payment; and
 - (b) by reference to the length of time the resident lives in the village which is taken to cease on the date the resident gives vacant possession of the premises occupied by the resident; and
 - (c) in accordance with any prescribed requirements.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) A person must not charge a resident of a retirement village for a deferred management fee in respect of the resident's occupation of residential premises in the retirement village if the resident moves to a different premises in the retirement village that is managed by the operator of the village.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (3) A person must not charge a resident of a retirement village for a deferred management fee in respect of the resident's occupation of residential premises in the retirement village,

if the resident leaves the village within the settling in period.

Penalty: 60 penalty units for a natural person;

300 penalty units for a body corporate."

Division 6—Amendment of Part 5 (Charges over land)

20 This Part not to apply to residents with freehold title

In section 27 of the Principal Act, for "residence rights" **substitute** "rights to occupy premises".

21 Section 28 substituted

For section 28 of the Principal Act **substitute**—

"28 Application of Part

In this Part—

applicable entry payment, in relation to a retirement village, means a repayable entry payment or that part of a repayable entry payment—

- (a) that is paid by or on behalf of a resident in relation to the village; and
- (b) that exceeds the prescribed amount;

first applicable entry payment, in relation to a retirement village, means the first applicable entry payment paid by or on behalf of a resident in relation to the village;

application date, in relation to a retirement village, means the date on which the first applicable entry payment is made in relation to the retirement village."

22 Creation of charges

- (1) In section 29(1) of the Principal Act—
 - (a) for "a refundable in-going contribution" **substitute** "the first applicable entry payment";
 - (b) for "residence right" **substitute** "right to occupy premises";
 - (c) for "refundable in-going contributions" **substitute** "applicable entry payments".
 - (2) After section 29(2) of the Principal Act **insert**—

"(2A) Subsection (1) does not apply if a charge has otherwise already been created."
 - (3) In section 29(3) of the Principal Act, for "residence right" **substitute** "right to occupy premises".
 - (4) Section 29(4) of the Principal Act is **repealed**.
 - (5) In section 29(5) of the Principal Act, for "owner" (where twice occurring) **substitute** "proprietor".
 - (6) For section 29(6) of the Principal Act **substitute**—

"(6) On any date on which it is necessary to determine the amount of a charge in respect of a premises on retirement village land, the amount of the charge is the amount of the entry payment or that part of the entry payment paid by or on behalf of the resident of the premises that is repayable to the resident under the retirement village contracts, less any amount that has been repaid to the resident.
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- (6A) A reference in subsection (6) to a resident includes a reference to a resident who has vacated the premises."
- (7) In section 29(7) of the Principal Act—
- (a) for "an owner" **substitute** "a proprietor";
 - (b) for "the owner's agent" **substitute** "the proprietor's agent".
- (8) In section 29(8) of the Principal Act, for "an owner or owner's agent" **substitute** "an owner of land charged under this section or the owner's agent".
- (9) In section 29(14) of the Principal Act, for "residence right" **substitute** "right to occupy premises".

23 Refunds

- (1) In section 30(1) of the Principal Act—
- (a) for "refundable in-going contribution" **substitute** "repayable entry payment";
 - (b) for "that contribution" **substitute** "that payment";
 - (c) for "owner" **substitute** "proprietor".
- (2) For section 30(2) of the Principal Act **substitute**—
- "(2) If a proprietor of a retirement village enters into a contract with a resident and the contract creates in the resident a right to recover from the proprietor a repayable entry payment, the contract is to be regarded as having been entered into by all the persons who subsequently become proprietors of the land."

24 Application for enforcement of charge

In section 31 of the Principal Act—

- (a) for "refundable in-going contribution" (where twice occurring) **substitute** "repayable entry payment";
- (b) for "residence right" (where twice occurring) **substitute** "right to occupy premises".

25 Order enforcing charge

(1) In section 31A(1) of the Principal Act—

- (a) in paragraph (a), for "owner or owners" **substitute** "proprietor or proprietors";
- (b) in paragraph (b)—
 - (i) for "owner" **substitute** "proprietor";
 - (ii) for "owners" (where twice occurring) **substitute** "proprietors".

(2) In section 31A(2)(d) of the Principal Act—

- (a) for "refundable in-going contribution" **substitute** "repayable entry payment";
- (b) for "refundable in-going contributions" **substitute** "repayable entry payments".

26 Application of the proceeds of the sale

In section 31C(c) of the Principal Act—

- (a) for "refundable in-going contribution" **substitute** "repayable entry payment";
- (b) for "refundable in-going contributions" **substitute** "repayable entry payments".

27 Extinguishment of charge

- (1) In section 32(1)(a) of the Principal Act, for "refundable in-going contributions" **substitute** "repayable entry payments".
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- (2) In section 32(2) of the Principal Act, for "owner" **substitute** "proprietor".
- (3) In section 32(3) of the Principal Act—
- (a) in paragraph (b)—
- (i) for "owner" (where first occurring) **substitute** "proprietor";
- (ii) for subparagraphs (ii) and (iii) **substitute**—
- "(ii) the proprietor has served on all the residents and on any former residents who have not received their exit entitlements or repayable entry payment (as the case requires), and if any of those former residents have died, upon their legal personal representatives, notice in writing informing them that the owner has applied for a declaration under this section, explaining the consequences of the making of the declaration and stating that they have the right to make submissions to the Director within 60 days after service of the notice; and
- (iii) the proprietor has no knowledge of any proceedings by a resident to obtain payment of a repayable entry payment or to enforce the charge; and";
- (b) in paragraph (c), **omit** "served on residents and".
- (4) In section 32(6)(b) of the Principal Act, for "owner" **substitute** "proprietor".
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- (5) In section 32(7)(b) of the Principal Act for "refundable in-going contributions" **substitute** "repayable entry payments".

Division 7—Amendment of Part 5A (Sale of premises by certain residents)

28 Sale of premises

- (1) In section 32B(1)(b) of the Principal Act, for "the manager" (where twice occurring) **substitute** "the operator".
- (2) In section 32B(2) of the Principal Act, for "the manager" (where twice occurring) **substitute** "the operator".
- (3) In section 32B(3) of the Principal Act—
- (a) for "the manager" (where twice occurring) **substitute** "the operator";
 - (b) for "being an appointment made as part of the consideration for the owner resident entering the village, or otherwise at the manager's request, is void" **substitute** "is void if the appointment is made as part of the consideration for the owner resident entering the village, or otherwise, at the operator's request".
- (4) For section 32B(4) of the Principal Act **substitute**—
- "(4) Subsections (4A) and (4B) apply if an owner resident has appointed either one of the following persons as the selling agent for that owner resident's premises in a retirement village—
- (a) the operator of the retirement village;
 - (b) a person chosen by the operator of the retirement village.
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(4A) If so requested by the owner resident, the selling agent must give the owner resident a report as to the sale of the premises that sets out the information specified in subsection (4B) at the end of each month specified in the request.

Penalty: 60 penalty units.

(4B) The report must set out the following information for the month to which the report relates—

- (a) the details of the marketing program (including details of all advertising of the premises or the village);
- (b) a list of all inquiries about the sale;
- (c) the names and telephone numbers (or other contact details) of the persons who made the inquiries (so far as these are known to the operator);
- (d) the details (including the asking price) of all other residential premises for sale in the village."

(5) In section 32B(5) of the Principal Act, for "the manager" (where twice occurring) **substitute** "the operator".

29 Operator not to interfere in sale

(1) In the heading to section 32C of the Principal Act, for "**Manager**" **substitute** "**Operator**".

(2) In section 32C(1) of the Principal Act—

- (a) for "A manager" **substitute** "An operator";

- (b) for the penalty at the foot of the subsection
substitute—

"Penalty: 60 penalty units for a natural
person;

300 penalty units for a body
corporate."

- (3) In section 32C(2) of the Principal Act—
(a) for "a manager" **substitute** "an operator";
(b) for "the manager" **substitute** "the operator".

30 Costs of sale

In section 32D of the Principal Act, for
"the manager" (wherever occurring) **substitute**
"the operator".

31 Purchaser and operator to enter into contract

- (1) In the heading to section 32E of the Principal Act,
for "**manager**" **substitute** "**operator**".
- (2) In section 32E(1) of the Principal Act—
(a) for "an owner resident" **substitute** "a strata
title owner resident";
(b) for "the owner resident" **substitute**
"the strata title owner resident";
(c) for "the manager" (where twice occurring)
substitute "the operator".
- (3) In section 32E(2) of the Principal Act—
(a) for "an owner resident" **substitute** "a strata
title owner resident";
(b) for "the manager" **substitute** "the operator".
- (4) In section 32E(3) of the Principal Act—
(a) for "owner resident" **substitute** "strata title
owner resident";
(b) for "the manager" **substitute** "the operator".
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- (5) In section 32E(4) of the Principal Act—
- (a) for "the manager" (wherever occurring) **substitute** "the operator";
 - (b) for "owner resident" **substitute** "strata title owner resident";
 - (c) for "the Tribunal" **substitute** "VCAT".

32 Application by owner resident to VCAT

- (1) In the heading to section 32F of the Principal Act, for "**owner resident to Tribunal**" **substitute** "**strata title owner resident to VCAT**".
- (2) In section 32F of the Principal Act—
- (a) for "the manager" (where twice occurring) **substitute** "the operator";
 - (b) for "the Tribunal" (where twice occurring) **substitute** "VCAT";
 - (c) for "owner resident" **substitute** "strata title owner resident".

33 VCAT's determinations on application of operator or owner resident

- (1) In the heading to section 32G of the Principal Act—
- (a) for "**Tribunal's**" **substitute** "VCAT's";
 - (b) for "**manager or owner resident**" **substitute** "**operator or strata title owner resident**".
- (2) In section 32G(1) of the Principal Act—
- (a) for "the Tribunal" (where twice occurring) **substitute** "VCAT";
 - (b) for "the manager" **substitute** "the operator".
- (3) In section 32G(3) of the Principal Act, for "the Tribunal" **substitute** "VCAT".
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- (4) In section 32G(4) of the Principal Act, for "the Tribunal" **substitute** "VCAT".
- (5) In section 32G(5) of the Principal Act—
 - (a) for "the Tribunal" (where twice occurring) **substitute** "VCAT";
 - (b) for "the manager" **substitute** "the operator";
 - (c) for "owner resident" **substitute** "strata title owner resident".

Division 8—New Part 5B inserted (Payment of exit entitlement on vacating premises)

34 New Part 5B inserted

After Part 5A of the Principal Act **insert**—

"Part 5B—Payment of exit entitlement on vacating premises

Division 1—Preliminary

32H Interpretation

- (1) In this Part—

appointed valuer means a valuer appointed under section 32K.
- (2) In this Part, a reference to a person liable to pay an exit entitlement or a part of an exit entitlement is a reference to—
 - (a) the operator of the retirement village, for any exit entitlement or that part of any exit entitlement that the operator is liable to pay to a vacating resident of the village under the retirement village contracts of the resident; and

- (b) the proprietor of the retirement village, for any exit entitlement or that part of any exit entitlement that the proprietor is liable to pay to a vacating resident of the retirement village under the retirement village contracts of the resident.

Division 2—Payment of exit entitlement

32I Timing for payment of exit entitlement on resident vacating premises

If a person is liable to pay an exit entitlement or any part of an exit entitlement to a vacating resident of a retirement village, the person must pay the entitlement or part to the vacating resident no later than whichever is the earlier of the following—

- (a) the day determined in accordance with those retirement village contracts;
- (b) a day agreed between the person and the resident;
- (c) 12 months after the day on which the resident gives vacant possession of the premises to the person.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

32J Payment statement to be given to vacating resident

At the same time as a person makes a payment to which section 32I applies, the person must give a statement to the vacating resident that—

- (a) sets out the exit entitlement or part payable to the vacating resident; and
- (b) shows how the exit entitlement or part is calculated; and
- (c) includes any prescribed particulars.

Penalty: 20 penalty units.

Division 3—Valuation of premises

32K Appointment of valuer to determine value of premises

- (1) If a person is liable to pay an exit entitlement or any part of an exit entitlement to a vacating resident of a retirement village, the vacating resident and the person, in accordance with this section, may appoint a valuer to value the premises or right to occupy the premises.
 - (2) An appointment under this section may be made—
 - (a) in the case of an owner resident, only if the resident and the person cannot agree on the value of the owner resident's premises; or
 - (b) in the case of a non-owner resident, only if the non-owner resident and the person cannot agree on the value of the right to occupy premises.
 - (3) The valuer must be appointed either—
 - (a) by agreement between the person liable to pay the exit entitlement or part and the resident; or
 - (b) by the President of the Australian Property Institute Valuers Limited, A.C.N. 143 638975.
-

- (4) A valuer appointed under this section must—
- (a) be a member of the Australian Property Institute Valuers Limited, A.C.N. 143 638975 and—
 - (i) be certified by that organisation as a certified practising valuer; or
 - (ii) be certified by that organisation as a residential property valuer; or
 - (iii) be employed as a valuer by a corporate member of that organisation; and
 - (b) have sufficient experience and expertise to make the valuation; and
 - (c) must not have a pecuniary or other interest that would reasonably affect the valuer acting in good faith in determining the value of the premises.

32L Requirements for valuation

- (1) A valuer appointed under section 32K—
- (a) must give a valuation of the premises or the right; and
 - (b) must include in the valuation an estimate of any capital loss or capital gain on the proposed sale of the premises or conferral of the right.
- (2) A valuation under subsection (1) must—
- (a) be in writing; and
 - (b) set out detailed reasons for the valuation; and
 - (c) specify the matters to which the valuer had regard when determining the valuation.
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- (3) A valuer who has given a valuation under subsection (1) must give a written copy of the valuation to both the person liable to pay the exit entitlement or part and the resident as soon as possible after making the valuation.

Note

See section 42D for the giving of notice electronically.

32M Cost of valuation

If a valuer has given a valuation under section 32L(1), the person liable to pay the exit entitlement or part and the resident must pay the amount charged by the valuer for the valuation in equal shares.

Division 4—VCAT orders as to payment of exit entitlements

32N VCAT order for failure to pay exit entitlement

- (1) If a person does not pay an exit entitlement or part of an exit entitlement within the time required by section 32I, the vacating resident may apply to VCAT for an order under subsection (2).
- (2) On application under subsection (1), VCAT—
- (a) may order that the person pay the exit entitlement or part; and
 - (b) may order that the person pay interest on the unpaid amount, calculated—
 - (i) as from the time at which the amount was required to be paid under section 32I; and

(ii) as at the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983**; and

(c) may make any other necessary ancillary orders.

320 VCAT order as to amount of exit entitlement for certain claims

(1) A vacating resident of premises in a retirement village may apply to VCAT for an order under subsection (2)—

(a) if the resident believes that—

(i) the person liable to pay the exit entitlement or part has not correctly calculated the amount of the exit entitlement or part to which the resident is entitled; or

(ii) that the conduct of the person liable to pay the exit entitlement or part has had an unfair negative financial impact on the amount of the exit entitlement to which the resident is entitled; and

(b) the amount in dispute exceeds \$100 000.

(2) On application under subsection (1), VCAT—

(a) may order that the person recalculate the payment to the vacating resident in accordance with the directions of VCAT and make any additional payment required as a result of the recalculation; and

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- (b) may order that the person pay interest on the amount to be paid under paragraph (a), calculated—
 - (i) as from the time at which the amount was required to be paid under section 32I; and
 - (ii) as at the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983**; and
 - (c) may make any other necessary ancillary orders.
- (3) Conduct to which subsection (1)(b) applies, includes but is not limited to the following—
- (a) a failure by the person liable to pay the exit entitlement or part to enter into a residence contract with a new resident as soon as practicable after the new resident indicated their intention to sign the contract;
 - (b) a failure by the person liable to pay the exit entitlement or part to enter into a management contract with the new resident as soon as practicable after—
 - (i) in the case of premises that is strata title village land, the vacating resident enters into the contract for the sale of the premises to the purchaser; or
 - (ii) in the case of premises that is not strata title village land, a new resident indicates their intention to enter into a residence contract.
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32P VCAT order for extension of time for person to pay exit entitlement

- (1) If a person liable to pay an exit entitlement or any part of an exit entitlement is of the opinion that the person is unable to pay the exit entitlement or a part of the exit entitlement within the time required by section 32I, the person may apply to VCAT for an order under subsection (2).
- (2) On application under subsection (1), VCAT—
 - (a) may order—
 - (i) that the period of 12 months specified in section 32I be extended by the period specified in the order; or
 - (ii) that the exit entitlement or part may be paid in instalments; and
 - (b) may order that the person pay interest on the exit entitlement or part not paid in the 12 month period, calculated—
 - (i) from the time at which the entitlement or part was required to be paid under section 32I; and
 - (ii) as at the rate for the time being fixed under section 2 of the **Penalty Interest Rates Act 1983**; and
 - (c) may make any other necessary ancillary orders.

- (3) In making an order under subsection (2) VCAT—
- (a) must be satisfied that the person liable to pay the exit entitlement or part has not unreasonably delayed the sale or entering into of a new residence contract for the premises; and
 - (b) must have regard to any hardship that would be caused to the vacating resident if the order were made.

Division 5—Daily accommodation payments and alternative accommodation payments

32Q Obligation to make aged care payments for vacating non-owner residents

A person liable to pay an exit entitlement or a part of an exit entitlement to a vacating non-owner resident must make aged care payments on behalf of the resident from the resident's exit entitlement or part if—

- (a) the resident has requested the payments be made under section 32S; and
- (b) the resident has been accepted into the aged care facility to which the payments are to be made; and
- (c) the payments are specified in the request under section 32S; and
- (d) liability to commence making the payments has arisen; and
- (e) payment of the resident's exit entitlement or part has not been made before liability to commence making the aged care payments arises; and

- (f) the requirement to make the payments has not ceased under section 32W.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

32R Obligation to make alternative accommodation payments for vacating residents

A person liable to pay an exit entitlement or a part of an exit entitlement to a vacating resident must make alternative accommodation payments on behalf of the resident from the resident's exit entitlement or part in the following circumstances—

- (a) the resident has requested the payments be made under section 32T; and
- (b) the resident has given vacant possession of their premises in the village and entered into other accommodation that is not a residential care facility; and
- (c) in the case of a vacating owner resident, their premises in the village has not been sold; and
- (d) the payments are specified in the request under section 32T; and
- (e) liability to commence making the payments has arisen; and
- (f) payment of the resident's exit entitlement or part has not been made before liability to commence making the alternative accommodation payments arises; and

- (g) the requirement to make the payments has not ceased under section 32W.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

32S Request for aged care payments to be paid

- (1) A vacating non-owner resident of a retirement village may request the person liable to pay the exit entitlement or a part of the exit entitlement of the vacating non-owner resident to make aged care payments to the approved provider of a residential care facility for the provision of aged care to the resident.

Note

Section 42D applies to the making of a request under this section.

- (2) A request under subsection (1)—
 - (a) must be in the form approved by the Director; and
 - (b) must set out the following—
 - (i) the name of the residential care facility;
 - (ii) the date on which the person making the request has entered or proposes to enter the facility;
 - (iii) the amount of any aged care payment that the resident is requesting be paid;
 - (iv) any other prescribed information.

32T Request for alternative accommodation payments to be paid

- (1) A vacating resident of a retirement village may request the person liable to pay the exit entitlement or a part of the exit entitlement of the vacating resident to make alternative accommodation payments for the provision of alternative accommodation to the resident.

Note

Section 42D applies to the making of a request under this section.

- (2) A request under subsection (1)—
- (a) must be in the form approved by the Director; and
 - (b) must set out the following—
 - (i) the prescribed details of the alternative accommodation arrangements that the person making the request has entered into or proposes to enter into;
 - (ii) the date on which the person making the request has entered into or proposes to enter into the arrangements;
 - (iii) the amount of each alternative accommodation payment;
 - (iv) the date on which the first alternative accommodation payment becomes payable;
 - (v) any other prescribed information.
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32U Time at which first aged care payment must be made

- (1) If the vacating resident who makes the payment request under section 32S has not entered the residential care facility, the first payment that must be made under section 32Q must be made—
- (a) at least 28 days before the date on which the vacating resident proposes to enter the facility; or
 - (b) if the application is not made at least 28 days before the resident proposes to enter the facility, as soon as practicable before the date on which the vacating resident proposes to enter the facility.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) If the person making the payment request under section 32S has entered or is about to enter a residential care facility, the first payment that must be made under section 32Q must be made—
- (a) no later than 28 days after the resident makes the payment request; or
 - (b) on the date specified in the request.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (3) This section is in addition to and does not derogate from any requirement as to the time for the making of payments for the provision

of accommodation in a residential care facility that is in a contract for the provision of the service.

32V Time at which first alternative accommodation payment must be made

- (1) If the vacating resident making the payment request under section 32T has not commenced receiving alternative accommodation services, the first payment that must be made under section 32R must be made no later than—
- (a) at least 28 days before the date on which the vacating resident proposes to commence receiving the services; or
 - (b) if the request is not made at least 28 days before the resident proposes to commence receiving the services, as soon as practicable before the date on which the vacating resident proposes to commence receiving the services.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) If the person making the payment request under section 32T has entered or is about to enter an alternative accommodation arrangement, the first payment that must be made under section 32R must be made—
- (a) no later than 28 days after the resident makes the payment request; or

(b) on the date specified in the request.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

(3) This section is in addition to and does not derogate from any requirement as to the time for the making of payments for the provision of alternative accommodation that is in a contract for the provision of the service.

32W Cessation of requirement to make payment

- (1) The requirement for an operator to make payments under section 32Q or 32R ceases to apply on whichever of the following first occurs—
- (a) in the case of a vacating owner resident, the owner's premises is sold;
 - (b) the vacating resident gives a written request to the person liable to make the payments to stop making the payments;
 - (c) the vacating resident dies;
 - (d) if the person liable to make the payments has paid the prescribed percentage of the vacating resident's exit entitlement or part;
 - (e) in the case of a vacating non-owner resident who proposes to live in a residential care facility, the resident does not take up residence in the facility;
 - (f) in the case of a vacating resident who proposes to enter into alternative accommodation arrangements, the
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resident does not enter into the arrangements;

- (g) any other prescribed circumstance.
- (2) If the requirement to make payments ceases under subsection (1), the operator, when ceasing to make the payments must give notice that the payments are ceasing—
- (a) to the vacating resident; and
 - (b) if any payment has been made to the provider of residential care or alternative accommodation, to that person.

Note

Section 42D applies to the giving of a notice under this section.

Division 6—VCAT orders

32X VCAT order as to payments under this Part

- (1) On application under section 32Y(1), VCAT may make an order—
- (a) to exempt a person from the obligation to make a payment under section 32Q or 32R; or
 - (b) to extend the time within which—
 - (i) a person who is liable to make aged care payments is required to make the first payment under section 32U; or
 - (ii) a person who is liable to make alternative accommodation payments is required to make the first payment under section 32V.

- (2) VCAT must not make an order under subsection (1) unless VCAT is satisfied that, there are exceptional circumstances that apply to the person liable to make the aged care payments or alternative care payments.

32Y Application for VCAT order as to payments under this Part

- (1) An operator of a retirement village who has received a request under section 32S or 32T may apply to VCAT for an order under section 32X(1).
- (2) An application under subsection (1) must be made no later than 28 days after the request to which it relates was received by the operator."

**Division 9—Amendment of Part 6
(Resident participation)**

35 New Division 1 heading inserted in Part 6

Before section 33 of the Principal Act **insert—**

"Division 1—Meetings of residents".

36 Section 33 substituted and new sections 33A to 33Q inserted

For section 33 of the Principal Act **substitute—**

"33 Who may convene a meeting of residents?

Subject to section 33A, the operator or residents committee of a retirement village may convene a meeting of the residents of the retirement village.

33A Meeting of residents must not be convened in certain circumstances unless technology used

- (1) The operator or residents committee of a retirement village must not convene a meeting of residents of the retirement village in the circumstances set out in subsection (2) unless the meeting is conducted exclusively by using technology referred to in section 33G(1).

Note

Section 33C sets out additional information that must be included in notice of a meeting conducted using technology referred to in section 33G(1).

- (2) For the purposes of subsection (1), the circumstances are that, on the date of the meeting specified in the notice given under section 33B—
- (a) there is an emergency declaration in force; and
 - (b) it is not reasonably practicable for the meeting of residents to take place in person because of a fact or circumstance arising out of the emergency or serious risk to public health in respect of which the declaration has been made.
- (3) Without limiting section 33B, an operator or a residents committee that is prohibited from convening a meeting of residents under subsection (1) must reconvene the meeting of residents as soon as practicable after the emergency declaration is no longer in force.

(4) In this section—

emergency declaration means—

- (a) a declaration of a state of disaster under section 23 of the **Emergency Management Act 1986**; or
- (b) a pandemic declaration under section 165AB of the **Public Health and Wellbeing Act 2008**; or
- (c) a declaration of a state of emergency under section 198 of the **Public Health and Wellbeing Act 2008**.

33B Notice of meeting of residents must be given

- (1) An operator or residents committee of a retirement village must not convene a meeting of the residents of the retirement village unless each resident who is entitled to vote at the meeting has been given notice in writing of the meeting—
 - (a) in the case of a meeting at which a special resolution is to be moved, at least 21 days before the meeting; and
 - (b) in any other case, at least 14 days before the meeting.

Note

See section 42D for the giving of notice electronically.

- (2) The notice must include the following—
 - (a) the date, time and place of the meeting;
 - (b) the purpose of the meeting;
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- (c) a statement that the resident may appoint another resident as proxy for the meeting;
 - (d) if a special resolution is to be moved at the meeting, a statement that the special resolution will be moved at the meeting;
 - (e) the text of any special resolution to be moved at the meeting.
- (3) The operator or residents committee of a retirement village that gives notice under this section must post a copy of the notice in a prominent position in a common area of the retirement village—
- (a) in the case of a meeting at which a special resolution is to be moved, at least 21 days before the meeting; and
 - (b) in any other case, at least 14 days before the meeting.

33C Notice of meeting—meetings to be conducted using technology

If a meeting of residents will be conducted using technology referred to in section 33G(1), the notice of the meeting must also—

- (a) if the meeting is to be conducted exclusively by using the technology referred to in section 33G(1), include a statement to this effect; and
 - (b) if residents may either attend the meeting in person or participate using the technology referred to in section 33G(1), include a statement to this effect; and
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- (c) include details of the technology to be used at the meeting, including its name; and
- (d) state the name, telephone number and email address of a person who will assist any resident with using the technology if required; and
- (e) include any prescribed information.

33D Notice of meeting—special resolution about maintenance charge

If a special resolution for the approval of an increase of the maintenance charge to an amount that is greater than the adjusted maintenance charge is to be moved at a meeting of residents, the notice under section 33B must—

- (a) also state—
 - (i) that a special resolution is proposed to increase the maintenance charge to an amount that is greater than the adjusted maintenance charge; and
 - (ii) the amount of the proposed maintenance charge; and
 - (iii) the reasons for the proposed increase; and
 - (iv) whether the reasons for the proposed increase include funding an increase in the salary or wages payable to the operator of the retirement village; and
 - (b) be in the prescribed form (if any).
-

33E Notice of meeting—special resolution about variation of services or facilities

If a special resolution for the approval of a variation of a service or facility is to be moved at a meeting of residents, a notice under section 33B must also state—

- (a) that a special resolution is proposed to approve the variation of a service or facility; and
- (b) details of the proposed variation; and
- (c) an estimate of the costs (if any) of the proposed variation; and
- (d) whether the payment of a special levy or an increase of the maintenance charge to an amount that is greater than the adjusted maintenance charge will be required to give effect to the proposed variation.

33F Rights of residents to attend and vote at meeting of residents

- (1) A resident of a retirement village may attend a meeting of residents of the retirement village.
- (2) Subject to subsection (3), a resident of a retirement village may vote at a meeting of residents of the retirement village.

Note

A resident is not entitled to vote on a special resolution about the variation of a service or facility unless the service or facility concerned is (or is proposed to be) available to the resident—see section 38BS(3).

- (3) If a resident and another resident or other residents are jointly entitled to share accommodation at the retirement village

(whether as joint tenants or tenants in common), the right to vote may be exercised by only one of those residents.

- (4) If the residents referred to in subsection (3) disagree as to which of them is to exercise the right to vote, the resident whose name appears first on the residence contract conferring the joint right to occupy premises may exercise the right to vote.

33G Use of technology at meetings of residents

- (1) The operator or residents committee of a retirement village may hold a meeting of residents, or permit residents to take part in a meeting of residents, by using any technology that allows the residents to clearly and simultaneously communicate with the operator and each other participating resident.
- (2) If the operator of a retirement village convenes a meeting of residents, the operator and each resident of the retirement village who participates in a manner permitted under subsection (1) is taken to be present at the meeting of residents and, if the resident votes at the meeting, is taken to have voted in person.
- (3) If the residents committee of a retirement village convenes a meeting of residents, each resident of the retirement village who participates in a manner permitted under subsection (1) is taken to be present at the meeting of residents and, if the resident votes at the meeting, is taken to have voted in person.

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- (4) Without limiting this section, a meeting of residents may be held in which some residents attend in person and some participate in the manner permitted under subsection (1).
- (5) If the operator or residents committee of a retirement village gives notice under section 33C that a meeting of residents will be conducted using technology referred to in subsection (1), a resident of a retirement village may request the operator or residents committee to assist the resident to obtain and use the technology.
- (6) On receiving a request under subsection (5), the operator or residents committee must provide the resident with assistance to obtain and use the technology in accordance with any guidelines issued under subsection (7).
- (7) The Director may issue guidelines in relation to the assistance that an operator or residents committee must provide to residents to obtain and use technology referred to in subsection (1).

33H Quorum for meeting of residents

- (1) No business may be conducted at a meeting of residents unless a quorum of members is present.
- (2) The quorum for a meeting of residents is at least half of the total number of residents in the retirement village who are entitled to vote at the meeting.
- (3) If a quorum is not present within 30 minutes after the time specified in the notice of the meeting of residents—

- (a) the meeting must be adjourned to a date not more than 21 days after the adjournment; and
- (b) at the meeting, the operator of the retirement village must state the date, time and place to which the meeting is adjourned; and
- (c) the operator of the retirement village must confirm the date, time and place to which the meeting is adjourned by giving written notice to all residents in the retirement village as soon as practicable after the meeting.

Note

See section 42D for the giving of notice electronically.

33I Ordinary resolutions

An ordinary resolution may be passed at a meeting of residents if more than half of the residents voting at the meeting of residents, whether in person or by proxy, vote in favour of the resolution.

33J Special resolutions

- (1) A special resolution may be passed at a meeting of residents in accordance with this section.
- (2) Each resident of the retirement village who is entitled to vote at a meeting of residents must be given at least 21 days' notice of resolution under section 33B.
- (3) The special resolution is passed if not less than three quarters of the residents voting at the meeting, whether in person or by proxy, vote in favour of the resolution.

33K Determining whether resolution passed

- (1) Subject to subsection (2), at any meeting of residents at which a resolution is proposed, the chair of the meeting may declare, on the basis of a show of hands or on the voices of those present, that the resolution has been—
 - (a) carried; or
 - (b) carried unanimously; or
 - (c) carried by a particular majority; or
 - (d) lost.
- (2) If any resident present at the meeting demands that the vote of each resident entitled to vote at the meeting (including any vote permitted to be made by proxy) be counted, the chair of the meeting may not make a declaration under subsection (1) unless those votes are counted.
- (3) An entry in the minutes of the meeting to the effect of a declaration made under subsection (1) is conclusive proof of that fact.

33L Who chairs meetings of residents?

- (1) If the operator of a retirement village convenes a meeting of residents, the operator must chair the meeting.
 - (2) If the residents committee of a retirement village convenes a meeting of residents, the chair of the meeting must be a resident who is—
 - (a) entitled to vote at the meeting; and
 - (b) elected by the residents present who are entitled to vote at the meeting.
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- (3) Despite subsection (2)(a), the chair of a meeting of residents is not entitled to vote at the meeting.

33M Minutes

- (1) The chair of a meeting of residents must ensure that minutes are taken and kept of each meeting of residents.
- (2) The minutes must record—
- (a) the business considered; and
 - (b) the text of any resolution on which a vote is taken and the result of the vote.
- (3) The chair of a meeting of residents must ensure that a copy of the minutes for each meeting of residents is made available for inspection by residents of the retirement village.
- (4) A resident of a retirement village may make a copy of the minutes of any meeting of residents of that retirement village.

Note

See section 34 in relation to the requirements for minutes of annual meetings in relation to capital maintenance plans.

33N Proxies

- (1) A resident of a retirement village (*first resident*) may authorise another resident of the village as the first resident's proxy to vote and speak on the first resident's behalf at a meeting of residents.
- (2) An authorisation must—
- (a) be in writing; and
 - (b) signed by the resident making the authorisation; and
 - (c) authorise an individual; and
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- (d) state the name of the individual.
- (3) An authorisation may set out how a person who is authorised as a proxy is to vote on particular matters.
- (4) If an authorisation does not set out how a person who is authorised as a proxy is to vote on a particular matter, the person may vote on any matter as the person sees fit.
- (5) A person who is authorised as a proxy must act honestly, in good faith and exercise due care and diligence.
- (6) An authorisation must not be transferred by a person who is authorised as a proxy to another person.
- (7) An authorisation lapses—
 - (a) 12 months after it is given by the first resident; or
 - (b) if an earlier date is specified in the authorisation, on that date.

330 Revocation of a proxy

- (1) A resident of a retirement village may, at any time—
 - (a) revoke an authorisation of a proxy by written notice given to the person who was authorised as the proxy; and
 - (b) vote at a meeting instead of the proxy.
- (2) A notice of revocation under subsection (1) takes effect on the date that it is given to the person whose authorisation is revoked.

33P Person must not require or demand that a resident give authorisation to vote under proxy

A person must not require or demand that a resident authorise that person or another person to vote on behalf of the resident at a meeting of residents as a proxy.

Penalty: 60 penalty units.

33Q Annual meeting

In each year the operator of a retirement village must convene an annual meeting of the residents of the retirement village, unless the operator is prohibited from convening a meeting of residents under section 33A.

Penalty: 50 penalty units."

37 Proceedings at annual meetings

(1) For section 34(1) of the Principal Act **substitute—**

"(1) The proprietor of a retirement village must prepare and present to the annual meeting a statement in writing, signed by the proprietor and setting out the following—

- (a) whether all repayable entry payments and exit entitlements which were required to be paid to residents of the village during the previous financial year have been paid, and if any have not, the amount which has not been paid, details of the delay and the reasons for the delay;
 - (b) whether the proprietor is aware of any material matter which may prevent the proprietor from meeting debts as and when they will fall due in the period of 12 months from the end of the previous
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financial year, and if the proprietor is aware of any such matter, details of the matter.

Penalty: 100 penalty units."

(2) Section 34(2) of the Principal Act is **repealed**.

(3) In section 34(3) of the Principal Act—

- (a) for "The manager" **substitute** "The operator of a retirement village";
- (b) for "prescribed period" (where first occurring) **substitute** "previous financial year";
- (c) in paragraph (a), for "the manager" **substitute** "the operator";
- (d) after paragraph (a) **insert**—
"(ab) details of payments into and payments out of the capital maintenance fund for the retirement village (if any); and";
- (e) in paragraph (b), for "the manager" **substitute** "the operator";
- (f) for "period of 12 months beginning immediately after the prescribed period ends" **substitute** "current financial year".

(4) For section 34(4) and (5) of the Principal Act **substitute**—

"(4) The operator of a retirement village must also—

- (a) table a copy of the capital maintenance plan for the village at the annual meeting; and
 - (b) prepare and present to the annual meeting a report on the implementation of the capital maintenance plan during the previous financial year.
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- (5) The operator of the retirement village must ensure that the minutes for the annual meeting incorporate a copy of the capital maintenance plan for the village tabled under subsection (4).
- (6) Subsections (4) and (5) do not apply if, under section 38BO, the operator of a retirement village is not required to prepare a capital maintenance plan."

38 New section 34A inserted

After section 34 of the Principal Act **insert**—

"34A Audits of financial statements

- (1) The operator of a retirement village, after the end of each financial year and before the next annual meeting, must cause a financial statement referred to in section 34(3) to be reviewed by an independent person who is a member of, and who holds a current practising certificate from—
 - (a) CPA Australia; or
 - (b) the Institute of Public Accountants; or
 - (c) Chartered Accountants Australia and New Zealand.
- (2) At a meeting of residents, the residents may resolve, by special resolution, that a financial statement referred to in section 34(3) must be audited by—
 - (a) a registered company auditor within the meaning of the Corporations Act; or
 - (b) a firm of registered company auditors;
or

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- (c) a person who is—
 - (i) a member of, and who holds a current practising certificate from, CPA Australia, the Institute of Public Accountants or Chartered Accountants Australia and New Zealand; and
 - (ii) authorised to conduct the audit by CPA Australia, the Institute of Public Accountants or Chartered Accounts Australia and New Zealand; or
 - (d) a person approved by the Director to audit the financial statements.
- (3) The residents may resolve under subsection (2) that a financial statement must be audited whether or not it has been reviewed under subsection (1).
 - (4) A person who audits or reviews a financial statement must provide the operator with a written report of the audit or review.
 - (5) Despite subsection (1), if a financial statement is audited in accordance with a resolution referred to in subsection (2), the retirement village operator is not required to cause it to be reviewed.
 - (6) If the residents resolve under subsection (2) that a financial statement must be audited, the operator must—
 - (a) convene a meeting of the residents as soon as practicable after the operator is provided a written report of the audit; and
 - (b) present the report and the statements to the meeting of residents."
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39 New Division 2 heading inserted in Part 6

Before section 36 of the Principal Act **insert**—

"Division 2—Residents committees".

40 Residents committee

(1) After section 36(4) of the Principal Act **insert**—

"(4A) Without limiting subsection (4), the residents committee may adopt any of the model rules, with or without modification."

(2) Section 36(6), (7) and (7A) of the Principal Act are **repealed**.

41 Section 36A substituted and new sections 36B and 36C inserted

For section 36A of the Principal Act **substitute**—

"36A Model rules for residents committees

- (1) The Director may make, amend or revoke model rules for residents committees.
 - (2) Without limiting subsection (1), model rules may provide for any of the following matters—
 - (a) the functions of residents committees;
 - (b) the eligibility for membership of residents committees;
 - (c) the requirements and procedures for the election of committee members;
 - (d) the number of committee members;
 - (e) voting and meeting procedures;
 - (f) consultation about and approval of budgets;
 - (g) the reporting of the deliberations of residents committees to residents.
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- (3) The Director must cause a copy of any model rules or amendment of model rules to be published—
- (a) in the Government Gazette; and
 - (b) on the Internet site of the Director.

36B Operators and proprietors must not attend residents committee meetings unless invited

- (1) Subject to this section, the operator of a retirement village, the proprietor of a retirement village or a person who represents the operator or proprietor must not attend a meeting of the residents committee of the retirement village.
- (2) A residents committee of a retirement village may invite the operator of the retirement village or the owner of the retirement village land to attend a meeting of the residents committee.
- (3) The operator, proprietor or a person who represents the operator or proprietor may attend a meeting of the residents committee if invited under subsection (2).

36C Resident's right to act through representative at residents committee meetings

Despite any resolution or decision at a meeting of the residents committee that is to the contrary, a resident may appoint another person to act in the place of the resident at any meeting of the residents committee."

42 New Division 3 heading inserted in Part 6

Before section 37 of the Principal Act **insert**—

"Division 3—By-laws".

43 By-laws

- (1) In section 37(2) of the Principal Act, for "by-laws relating to a retirement village" **substitute** "the by-laws of a retirement village".
 - (2) Section 37(3) of the Principal Act is **repealed**.
 - (3) For section 37(4), (5) and (6) of the Principal Act **substitute**—
 - "(4) By special resolution at a meeting of residents of a retirement village, the residents may make, amend or revoke by-laws of the retirement village in respect of the prescribed matters.
 - (5) By-laws may apply to a retirement village or to a class of residents at a retirement village.
 - (6) A by-law of a retirement village must not—
 - (a) be inconsistent with this Act or the regulations; or
 - (b) include any matter that is prescribed as a matter not to be included in a by-law; or
 - (c) be inconsistent with any rules made under the **Owners Corporations Act 2006** by an owners corporation incorporated in respect of the retirement village land; or
 - (d) have the effect of discriminating against any person on the basis of an attribute referred to in section 6 of the **Equal Opportunity Act 2010**.
 - (7) A by-law is of no effect to the extent that it is inconsistent with—
 - (a) this Act or the regulations; or
 - (b) any other Act or regulation.
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- (8) The by-laws of a retirement village are—
- (a) binding on the residents of the retirement village; and
 - (b) not binding on the operator or proprietor of the retirement village."

Division 10—New Part 6AA inserted (Modification and reinstatement of works and renovations)

44 New Part 6AA inserted

After Part 6 of the Principal Act insert—

**"Part 6AA—Modifications,
reinstatement works and
renovations**

Division 1—Preliminary

37A Definitions

In this Part—

reinstatement disagreement notice means a notice given under section 37F;

reinstatement notice means a notice given under section 37E.

Division 2—Modification of fixtures and fittings by non-owner resident

37B When a non-owner resident may modify fixtures and fittings

A non-owner resident of a retirement village must not add, remove or alter any fixtures or fittings on the non-owner resident's premises unless—

- (a) the non-owner resident has made a request under section 37C and the operator of the retirement village has consented to the addition, removal or alteration; or
- (b) the addition, removal or alteration is a prescribed addition, removal or alteration.

37C Consent of operator to modification of fixtures and fittings

- (1) A non-owner resident of a retirement village may request the consent of the operator of the retirement village to add, remove or alter any fixtures or fittings on the non-owner resident's premises.
- (2) A request under subsection (1) must be—
 - (a) made in writing; and
 - (b) given to the operator.
- (3) The operator must give the non-owner resident written notice of its decision to consent or refuse to consent within 14 days after being given the request.
- (4) The operator must not unreasonably refuse to consent to the addition, removal or alteration.
- (5) The operator may grant consent to the addition, removal or alteration subject to reasonable conditions.

Division 3—Reinstatement of premises of non-owner resident

37D Non-owner resident must leave premises in same condition

- (1) Before a non-owner resident of a retirement village permanently ceases to occupy premises in the retirement village, the non-owner resident must comply with this section.
- (2) The non-owner resident must leave the premises, as far as practicable, reasonably clean.
- (3) Subject to subsections (4) and (5), the non-owner resident must leave the premises, as far as practicable, in the same condition as when the non-owner resident commenced occupation, taking into account fair wear and tear to the premises.
- (4) If a fixture or fitting was added or altered under Division 2, the non-owner resident must ensure, as far as practicable, that the fixture or fitting is in the same condition as it was immediately after it was added or altered, taking into account fair wear and tear to the fixture or fitting.
- (5) If a fixture or fitting was removed under Division 2, the non-owner resident is not required to reinstate that fixture or fitting.
- (6) Subsections (3), (4) and (5) do not apply if the non-owner resident enters into an agreement to renovate the premises with the operator of the retirement village under section 37H(2).

37E Reinstatement notice

- (1) This section applies if—
 - (a) a non-owner resident of a retirement village fails to comply with section 37D; and
 - (b) works (other than prescribed works) are required—
 - (i) to restore a fixture or fitting added or altered under Division 2 to the same condition as it was in immediately after it was added or altered, taking into account fair wear and tear to the fitting or fixture; or
 - (ii) to otherwise reinstate the premises to the same condition as when the non-owner resident commenced occupation (other than a fixture or fitting that was removed under Division 2), taking into account fair wear and tear to the premises; and
 - (c) the non-owner resident has not entered into an agreement to renovate the premises with the operator of the retirement village under section 37H.
 - (2) The operator of the retirement village must give the non-owner resident, or if the non-owner resident has died, the non-owner resident's legal personal representative, written notice that works are required to restore a fixture or fitting on the premises or to reinstate the premises.
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- (3) Notice under this section must specify—
 - (a) that the non-owner resident did not comply with section 37D; and
 - (b) the works required to restore a fixture or fitting on the premises or to reinstate the premises; and
 - (c) the estimated cost of the works.
- (4) The operator must give notice under this section within 21 days of the date on which the non-owner resident ceased occupation of the premises.

37F Reinstatement disagreement notice

- (1) A non-owner resident of a retirement village or the legal personal representative who is given a reinstatement notice may give written notice to the operator of the retirement village of any of the following—
 - (a) that the non-owner resident complied with section 37D;
 - (b) that the works specified in the notice are not required to restore a fixture or fitting on the premises or to reinstate the premises;
 - (c) that the cost of the works specified in the notice is excessive.
- (2) A non-owner resident or legal personal representative must give notice under this section within 21 days of the date on which the non-owner resident or legal personal representative was given the reinstatement notice.

37G Reinstatement works by retirement village operator

- (1) The operator of a retirement village may carry out the works specified in a reinstatement notice if the operator is not given a notice of disagreement within 21 days after the operator gave the reinstatement notice.
- (2) The works must be completed within—
 - (a) 90 days after the non-owner resident ceased occupation of the premises; or
 - (b) if the operator and the non-owner resident or legal personal representative agree to an extension of time, within the agreed time.
- (3) The non-owner resident or the legal personal representative must pay the operator the reasonable costs of the works.

Division 4—Renovations when resident permanently ceases to occupy premises

37H Payment for renovations upon vacating premises

- (1) A resident of a retirement village who permanently ceases to occupy premises in the retirement village is not required to—
 - (a) renovate the premises; or
 - (b) pay for the cost of renovation of the premises.
- (2) Subsection (1) does not apply if the resident, or if the resident has died, the resident's legal personal representative, enters into an agreement with the operator of the retirement village that—

- (a) specifies that the resident, or the resident's legal personal representative, will share, in the same proportion—
 - (i) the costs of the renovation of the premises; and
 - (ii) any capital gain or capital loss on the sale of the premises or the granting of a right to occupy premises; and
- (b) the date by which the renovation will be completed.

Example

Resident A is going to vacate premises at a retirement village. Resident A and the operator of the retirement village agree to share the cost of renovating the premises. They agree that Resident A will pay 50% of the costs and receive 50% of any capital gain on the sale of the premises and be liable for 50% of any capital loss on the sale of the premises. They also agree on a date by which the renovation will be completed.

37I When renovations must be completed by

The operator of a retirement village who has entered into an agreement referred to in section 37H(2) must ensure that the renovation is completed by—

- (a) the agreed completion date; or
- (b) if another date is ordered under a Division 7 order or an order of VCAT, that other date.

Division 5—Condition reports

37J Condition report

- (1) Before a non-owner resident of a retirement village enters into occupation of premises, the operator of the retirement village must
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give the non-owner resident 2 copies of a condition report signed by the operator specifying the state of repair and general condition of the premises on the day specified in the report.

Penalty: 25 penalty units.

- (2) For the purposes of subsection (1), the operator is deemed to give 2 copies of a condition report to the non-owner resident if the operator gives the non-owner resident an electronic copy of the condition report.
- (3) A condition report must be in the prescribed form.

Note

See section 42D for the giving and returning of a condition report notice electronically.

- (4) Within 5 business days after entering into occupation of the premises, the non-owner resident must return one copy of the condition report to the operator—
 - (a) signed by the non-owner resident; or
 - (b) with an endorsement so signed to the effect that the non-owner resident agrees or disagrees with the whole or any specified part of the report.
 - (5) A non-owner resident of a retirement village who is not given a condition report before the non-owner resident enters into occupation of the premises may complete a condition report and give it to the operator of the retirement village during the period between inspecting the premises and 5 business days after entering into occupation of the premises.
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- (6) A copy of the condition report that is completed under subsection (1) or (5) must be retained by the operator and the non-owner resident.
- (7) Within 10 business days after a non-owner resident of a retirement village permanently ceases occupation of premises, the operator of the retirement village must complete the copy of the condition report retained by the operator or the non-owner resident under this section—
- (a) in the presence of—
 - (i) the non-owner resident; or
 - (ii) the non-owner resident's legal representative; or
 - (iii) a legal personal representative of the non-owner resident, if the non-owner resident has died; or
 - (iv) the non-owner resident's guardian, if a guardian has been appointed under the **Guardianship and Administration Act 2019**; or
 - (v) the non-owner resident's administrator, if an administrator has been appointed under the **Guardianship and Administration Act 2019**; or
 - (b) in the absence of a person referred to in paragraph (a), if the operator has given that person a reasonable opportunity to be present when the condition report is completed.
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37K Amendment of inaccurate or incomplete condition report

- (1) Within 30 days after a non-owner resident of a retirement village enters into occupation of the premises, the non-owner resident and the operator may amend a condition report if they agree that a statement in the condition report is inaccurate or incomplete.
- (2) The non-owner resident and the operator must sign the amended condition report, with an endorsement to the effect that the non-owner resident and the operator agree with the amendment.
- (3) A copy of the amended condition report must be retained by the operator and the non-owner resident.

37L Condition report is evidence of state of repair

- (1) A statement in a condition report is conclusive evidence, for the purposes of this Act, of the state of repair or general condition of the premises on the day specified in the report if the condition report is signed by the operator of a retirement village and a non-owner resident of the retirement village or another person referred to in section 37J(7)(a).
 - (2) A condition report that is given to the operator of a retirement village is taken to be notice given to the operator of any defects or outstanding repairs stated in the report.
 - (3) Subsection (1) does not apply to—
 - (a) a state of repair or general condition that could not reasonably have been discovered on a reasonable inspection of the premises; or
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- (b) any statement in the report about which the non-owner resident or another person referred to in section 37J(7)(a) records a written comment disagreeing with that statement on the copy of the report completed by the non-owner resident or that person; or
- (c) a statement that the operator has disagreed with in writing on the condition report, if the report was completed by the non-owner resident before it was completed by the operator."

Division 11—Amendment of Part 6A (Operation and management of retirement villages)

45 Increases in maintenance charges

- (1) In section 38(1) of the Principal Act, in the definition of *special levy*, for "owner or manager" **substitute** "proprietor or operator of a retirement village".
- (2) For section 38(2) of the Principal Act **substitute**—
 - "(2) The operator of a retirement village must not request or require a resident to pay a maintenance charge that is greater than the adjusted maintenance charge or give a notice under section 38B that specifies an amount that is greater than the adjusted maintenance charge, unless—
 - (a) the maintenance charge has been approved in accordance with subsection (4); or

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- (b) the amount by which the maintenance charge is greater than the adjusted maintenance charge represents the matters referred to in subsection (5)."
- (3) In section 38(3) of the Principal Act—
- (a) for "A manager" **substitute** "An operator of a retirement village";
 - (b) for "manager's" **substitute** "operator's";
 - (c) in paragraph (b), for "manager" **substitute** "operator".
- (4) For section 38(4) of the Principal Act **substitute**—
- "(4) The payment of a maintenance charge that is greater than the adjusted maintenance charge may be approved by a special resolution passed at a meeting of the residents of the retirement village.

Notes

- 1 The operator of a retirement village may convene a meeting of residents—see section 33.
 - 2 Residents must be given notice of a meeting at which a special resolution is to be moved at least 21 days before the meeting—see section 33B(1).
 - 3 If the special resolution is for a proposal to increase a maintenance charge to an amount that is greater than the adjusted maintenance charge, the notice of the meeting must contain certain information—see section 33D."
- (5) In section 38(5) of the Principal Act—
- (a) for "Subsection (2) does not apply to" **substitute** "The operator of a retirement village may require";
 - (b) for "a manager" **substitute** "an operator of a retirement village".

- (6) In section 38(6) of the Principal Act—
- (a) for "Despite anything to the contrary in a residence contract, a management contract or the by-laws, a resident" **substitute** "A resident";
 - (b) in paragraph (b)(i), for "owner" **substitute** "proprietor".
- (7) After section 38(6) of the Principal Act **insert**—
- "(7) This section applies despite anything to the contrary in a residence contract, a management contract or the by-laws of a retirement village."

46 Section 38A substituted

For section 38A of the Principal Act **substitute**—

"38A Former residents not liable for maintenance charges

- (1) A former resident of premises in a retirement village is not liable for a maintenance charge that arises on or after the time at which the former resident delivers up vacant possession of the premises.
- (2) The proprietor or operator of a retirement village must not purport to charge a former resident a maintenance charge that arises on or after the time at which the former resident delivers up vacant possession of the premises.

Penalty: 60 penalty units for a natural person;
120 penalty units for a body corporate.

(3) In this section—

former resident, in relation to a retirement village, means a person who was an owner resident or a non-owner resident of the retirement village who has left the village or died."

47 Section 38B substituted

For section 38B of the Principal Act **substitute—**

"38B Maintenance charge notice

(1) If the operator of a retirement village determines the maintenance charge in respect of a year, the operator must give notice of the charge to each resident of the retirement village who is required to pay the charge.

Note

See section 42D for the giving of notice electronically.

(2) The notice must specify—

- (a) the amount of the maintenance charge; and
- (b) the goods or services to be provided by the operator of the retirement village that are to be funded by the maintenance charge; and
- (c) the amount of the maintenance charge that is to contribute to the operator's costs of managing the retirement village, including—
 - (i) the costs of employing or engaging persons in relation to the retirement village; and

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- (ii) the costs of maintaining facilities in the retirement village, common areas and capital items in the retirement village; and
 - (d) that the maintenance charge does not include goods and services that are optional services.
 - (3) Despite subsection (1), an operator is not required to give notice of a maintenance charge if—
 - (a) there is an owners corporation incorporated in respect of retirement village land; and
 - (b) the amount of the maintenance charge that a resident is required to pay is clearly and separately specified in a fee notice or final notice given to the resident under section 31 or 32 of the **Owners Corporations Act 2006**.
 - (4) An operator may give a notice of a maintenance charge under subsection (1) and a fee notice or a final notice under section 31 or 32 of the **Owners Corporations Act 2006** if—
 - (a) the notice under subsection (1) specifies that the resident is required to pay the maintenance charge under the residence contract or management contract (as the case requires); and
 - (b) the fee notice or final notice—
 - (i) specifies that it is issued under the **Owners Corporations Act 2006**; and
 - (ii) does not include the amount of the maintenance charge."
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48 New sections 38BA to 38BC inserted

After section 38B of the Principal Act **insert—**

"38BA Receipt for payment of maintenance charge

- (1) If the payment of a maintenance charge for a retirement village is made in person, any person who receives the payment must, without delay, give the person making the payment a receipt for the payment that contains the information specified in subsection (3).

Penalty: 10 penalty units.

Note

See section 42D for the giving of a receipt electronically.

- (2) If the payment of a maintenance charge for a retirement village is not made in person, the operator of the retirement village must, as soon as practical after the payment is received—
- (a) prepare or cause to be prepared a receipt for the payment that contains the information specified in subsection (3); and
 - (b) either—
 - (i) give the resident who paid the maintenance charge, or in respect of whom the maintenance charge was paid, the receipt; or

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- (ii) make the receipt available to the resident who paid the maintenance charge or in respect of whom the maintenance charge was paid.

Penalty: 10 penalty units.

Note

See section 42D for the giving of a receipt electronically.

- (3) For the purposes of subsections (1) and (2), the specified information is—
 - (a) the name of the operator of the retirement village; and
 - (b) the name of the resident who paid the maintenance charge or in respect of whom the maintenance charge was paid; and
 - (c) the address of the premises concerned; and
 - (d) the period in respect of which the maintenance charge is paid; and
 - (e) the amount of the payment.
- (4) This section does not apply to the payment of a maintenance charge that is made in accordance with an agreement between the operator of a retirement village and a resident of the retirement village into an account at an authorised deposit-taking institution nominated by the operator.

38BB Abatement of maintenance charges

If premises in a retirement village are, otherwise than as a result of a breach of the residence contract, destroyed or rendered wholly or partly uninhabitable or cease to be lawfully usable for the purpose of a

residence or are appropriated or acquired by an authority by compulsory process, the maintenance charges payable by the resident of the premises abate accordingly.

38BC Charges for optional services

- (1) The proprietor or operator of a retirement village must not levy a charge for optional services against a person who has ceased to be a resident of a retirement village for any period after the time at which the person ceases to be a resident of the retirement village.

Penalty: 60 penalty units for a natural person;
120 penalty units for a body corporate.

- (2) Any provision of a management contract or a residence contract that is inconsistent with subsection (1) is void to the extent of the inconsistency."

49 New Divisions 1A, 1B and 1C inserted in Part 6A

After Division 1 of Part 6A of the Principal Act
insert—

"Division 1A—Accounts

38BD Definitions

In this Division—

deficit means a deficit in the accounts for a financial year of a retirement village;

surplus means a surplus in the accounts for a financial year of a retirement village.

38BE Any surplus in accounts to be carried over

Any surplus in the accounts for a financial year of a retirement village must be carried forward to the accounts for the next financial year.

38BF Making good of deficit

- (1) A deficit must be made good by the operator of a retirement village.
 - (2) Except in the circumstances prescribed by the regulations, the operator of a retirement village must not—
 - (a) carry forward a deficit to a subsequent financial year; or
 - (b) request from a resident of the retirement village any special additional payment for the purpose of making good a deficit; or
 - (c) increase, or purport to increase, maintenance charges payable by the residents of the retirement village in any financial year for the purpose of making good a deficit; or
 - (d) use the whole or any part of the maintenance charges collected by the operator in a financial year to make good a deficit; or
 - (e) use the whole or any part of the capital maintenance fund for the retirement village to make good a deficit.
 - (3) The operator of a retirement village must not charge the residents of the retirement village interest in respect of a deficit.
-

Division 1B—Capital replacement and maintenance

38BG Interpretation

(1) In this Division—

capital maintenance—

- (a) means works carried out for the purpose of repairing or maintaining an item of capital and includes works prescribed as being capital maintenance; and
- (b) does not include works that are prescribed as not being capital maintenance;

capital replacement means works carried out for the purpose of replacing an item of capital, but does not include capital maintenance;

item of capital—

- (a) means—
 - (i) a building or structure in a retirement village; or
 - (ii) plant, machinery or equipment used in the operation of a retirement village; or
 - (iii) a part of the infrastructure of a retirement village; or
 - (iv) any other thing that is prescribed for the purposes of this subparagraph; and
 - (b) does not include a thing that is prescribed for the purposes of this paragraph.
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- (2) In this Division, an item of capital for which the operator of a retirement village is responsible means any item of capital within the retirement village other than an item of capital—
- (a) that is owned by a resident of the retirement village; or
 - (b) that is in or on common property in relation to the retirement village land; or
 - (c) that is of a prescribed class.
- (3) For the purposes of this Division, maintenance or replacement of an item of capital is urgent if it is for the purpose of rectifying any of the following—
- (a) a burst water service;
 - (b) a blocked or broken lavatory service;
 - (c) a serious roof leak;
 - (d) a gas leak;
 - (e) a dangerous electrical fault;
 - (f) flooding or serious flood damage;
 - (g) serious storm or fire damage;
 - (h) a failure or breakdown of the gas, electricity or water supply to premises within the retirement village;
 - (i) a failure or breakdown of any essential service on the premises for hot water, cooking, heating or laundering;
 - (j) any fault or damage that causes the retirement village to be unsafe or insecure;
 - (k) any other prescribed matter.
-

38BH Obligations of operator

- (1) The operator of a retirement village must maintain each item of capital for which the operator is responsible in a reasonable condition having regard to the following—
 - (a) the age of the item;
 - (b) the prospective life of the item;
 - (c) the maintenance charges paid to the operator by the residents of the retirement village.
- (2) If it is not practical to maintain an item of capital in accordance with this section, the operator may replace the item.
- (3) The operator of a retirement village must carry out the maintenance of, or replace, an item of capital for which the operator is responsible within a reasonable time after becoming aware of the need for the maintenance or replacement of the item.

38BI Obligations of residents in respect of capital maintenance and replacement

- (1) A resident of a retirement village must notify the operator of the retirement village of the need for maintenance to be carried out on, or the replacement of, an item of capital for which the operator is responsible and that is located within the resident's premises.
- (2) A resident of a retirement village must notify the operator of the retirement village under subsection (1) as soon as the resident becomes aware of the need for the maintenance or replacement of the item of capital.

- (3) A resident of a retirement village must reimburse the operator of the village in respect of any damage (other than fair wear and tear) caused by the resident to an item of capital for which the operator is responsible.
- (4) A resident of a retirement village must not hinder or obstruct the operator of the retirement village or a person authorised by the operator from carrying out capital maintenance or capital replacement in respect of an item of capital for which the operator is responsible.

38BJ Resident may carry out urgent capital maintenance or replacement

- (1) A resident of a retirement village may arrange for capital maintenance or capital replacement in respect of an item of capital for which the operator of the retirement village is responsible if—
 - (a) the maintenance or replacement of the item is urgent; and
 - (b) the resident has taken reasonable steps to arrange for the operator to immediately carry out the maintenance or replace the item; and
 - (c) the resident is unable to get the operator to carry out the maintenance or replace the item.
 - (2) If the resident carries out capital maintenance or capital replacement under subsection (1)—
 - (a) the resident must give the operator 7 days written notice of the maintenance or replacement of the item and the cost; and
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- (b) the operator is liable to reimburse the resident for the reasonable cost of the maintenance or replacement or, if a greater amount is prescribed for the purposes of this section, that prescribed amount (which includes any amount in respect of any GST payable on the supply to which the maintenance or replacement relate), whichever is less; and
- (c) the operator must reimburse the resident for the reasonable cost of repairs within 7 days after receiving written notice of—
 - (i) the maintenance or replacement; and
 - (ii) the cost of maintenance or replacement.

38BK Funding of certain capital maintenance and capital replacement

- (1) The operator of a retirement village may fund the cost of capital maintenance in respect of which the operator is responsible from the following sources—
 - (a) the capital maintenance fund for the retirement village (if any);
 - (b) maintenance charges.
 - (2) The operator of a retirement village must bear the cost of capital replacement in respect of an item of capital for which the operator is responsible.
 - (3) The operator of a retirement village must not fund the cost of any of the following from the capital maintenance fund or maintenance charges for the retirement village—
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- (a) the construction of a new building or a new stage of the retirement village;
- (b) depreciation of items of capital;
- (c) the renovation of vacant premises within the retirement village;
- (d) any other matter or thing that is prescribed.

38BL Capital maintenance fund

- (1) Subject to section 38BO, the operator of a retirement village must establish and maintain a capital maintenance fund if the operator sets aside any maintenance charges paid by residents of the retirement village for the purpose of funding the capital maintenance of items of capital for which the operator is responsible after the end of the financial year in which the maintenance charges were paid.
 - (2) The operator must pay into the capital maintenance fund—
 - (a) such portion of the maintenance charges as may be required for the capital maintenance of items of capital for which the operator is responsible; and
 - (b) any amounts received by the operator under an insurance policy in respect of damage or destruction of property covered by the capital maintenance plan; and
 - (c) any interest received from the investment of the whole, or any part of, the capital maintenance fund; and
 - (d) any other prescribed amounts.
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- (3) Subject to subsection (4), the operator may pay money out of the capital maintenance fund at any time to fund the cost of capital maintenance in accordance with the capital maintenance plan.
- (4) The operator must not pay money out of the capital maintenance fund—
 - (a) in the prescribed circumstances; or
 - (b) to fund any matter or thing that is prescribed.

38BM Extraordinary payments from maintenance fund

- (1) Subject to this section, the operator of a retirement village may also pay money out of the capital maintenance fund other than under section 38BL for an urgent matter.
- (2) For the purposes of subsection (1), an urgent matter includes the following where payments are required—
 - (a) to comply with an order of a court or VCAT;
 - (b) to undertake capital maintenance of a capital item for which the operator is responsible where there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage to persons or property;
 - (c) to repair any part of a capital item for which the operator is responsible where the need for the repairs could not have been reasonably foreseen in preparing the capital maintenance plan;

- (d) to enable the operator to obtain adequate insurance for the retirement village that the operator is required to insure.
- (3) Expenditure under this section must not exceed the amount necessary for the purposes for which it is expended.
- (4) The operator must report to the residents on any expenditure under this section at the next annual meeting of residents.

38BN Capital maintenance plan

- (1) Subject to section 38BO, the operator of a retirement village must prepare a capital maintenance plan for the capital maintenance of items of capital for which the operator is responsible.
 - (2) The capital maintenance plan must set out—
 - (a) the items of capital for which the operator is responsible that are anticipated to require capital maintenance or capital replacement within the next 10 years; and
 - (b) the present conditions or state of repair of those items of capital; and
 - (c) when those items of capital or components of those items of capital will need to be repaired or replaced; and
 - (d) the estimate cost of the repair or replacement of those items of capital or components; and
 - (e) the expected life of those items of capital once repaired or replaced; and
 - (f) any other prescribed information.
-

38BO When a capital maintenance fund and capital maintenance plan is not required

The operator of a retirement village is not required to establish a capital maintenance fund or prepare a capital maintenance plan if—

- (a) there is an owners corporation incorporated in respect of retirement village land; and
- (b) the owners corporation has—
 - (i) a maintenance plan under Division 3 of Part 3 of the **Owners Corporations Act 2006**; and
 - (ii) established a maintenance fund under Division 4 of Part 3 of that Act.

Division 1C—Variation of services and facilities

38BP Definitions

In this Division—

facilities means the facilities provided by or on behalf of the operator of a retirement village under a management contract;

services means services provided by or on behalf of the operator of a retirement village under a management contract;

variation, of a service or facility, includes the following—

- (a) a reduction in the service or facility;
 - (b) the withdrawal of a service or facility;
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- (c) an increase in a service or facility;
- (d) any other change in a service or facility;
- (e) the provision of a new service or facility.

38BQ No variation of services or facilities without special resolution at meeting of residents

The operator of a retirement village must not vary the services and facilities provided at the retirement village unless—

- (a) the variation has been approved by a special resolution passed at a meeting of the residents of the retirement village; and
- (b) if an increase in the maintenance charge is required to give effect to the variation, the increase has been approved by a special resolution passed at a meeting of the residents of the retirement village; and
- (c) if a special levy is required to give effect to the variation, the making of the special levy has been authorized by special resolution passed at a meeting of the residents of the retirement village.

38BR When variation of services or facilities to be proposed

- (1) The operator of a retirement village must propose a variation in the services and facilities provided at the retirement village if—

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- (a) in the case of a retirement village that has 10 or more occupied premises, 5 residents or 10% of the residents (whichever is the greater), request the operator in writing to do so; or
 - (b) in the case of a retirement village that has fewer than 10 occupied premises, residents from a majority of the occupied premises request the operator in writing to do so.
- (2) The operator of a retirement village must also propose a variation in the services and facilities provided at the retirement village if the residents committee of the retirement village requests the operator in writing to do so.
 - (3) The operator of a retirement village may also propose a variation in the services and facilities provided at the village at any time on the operator's own initiative.

38BS Proposal of variation made by convening meeting of residents to consider special resolution

- (1) A variation of a service or facility in a retirement village must be proposed by convening a meeting of the residents of the retirement village.

Notes

- 1 The operator of a retirement village may convene a meeting of residents—see section 33.
- 2 Residents must be given notice of a meeting at which a special resolution is to be moved at least 21 days before the meeting—see section 33B(1).
- 3 If the special resolution is for a variation of a service or facility, the notice of the meeting must contain certain information—see section 33E."

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- (2) Subject to section 33A, the operator of a retirement village who receives a request in accordance with section 30BR(1) or (2) must convene a meeting of the residents of the retirement village to consider a special resolution about the proposed variation within 28 days after the operator receives the request.
- (3) A resident is not entitled to vote on the special resolution unless the service or facility concerned is (or is proposed to be) available to the resident.
- (4) If the operator considers that an increase in the maintenance charge to an amount that is greater than the adjusted maintenance charge is required to give effect to the variation, the operator must also convene the meeting of the residents to consider a special resolution to approve the increase.
- (5) If the operator considers that the implementation of a special levy is required to give effect to the variation, the operator must convene a meeting of the residents to consider a special resolution to authorize the making of the special levy.

38BT Variation of services or facilities

- (1) The operator of a retirement village may vary a service or facility in accordance with a special resolution passed at a meeting of the residents of the retirement village—
 - (a) as soon as possible after the passing of that resolution; or
 - (b) if the resolution specifies a date on which the variation is to take effect, on that specified date.
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- (2) Despite anything to the contrary in the terms of any residence contract or management contract, the operator does not breach the contract if the operator varies services or facilities in accordance with this Division.

38BU Operator not to reduce or withdraw certain services and facilities

If a permit under the **Planning and Environment Act 1987** has been granted subject to a condition that a particular service or facility must be provided in relation to residents of a retirement village or retirement village land while a use of the land authorised by the permit continues, the operator of the retirement village must not reduce or withdraw that service or facility (despite any special resolution) while that use of the land continues unless the permit is amended to omit or vary that condition."

50 Manager not to demand power of attorney

- (1) In the heading to section 38C of the Principal Act, for "**Manager**" substitute "**Operator**".
- (2) In section 38C(1) of the Principal Act, for "Manager" (wherever occurring) substitute "operator".
- (3) In section 38C(2) of the Principal Act, for "manager" (wherever occurring) substitute "operator".
- (4) In section 38C(3) of the Principal Act—
- (a) in paragraph (a), for "manager" substitute "operator";
 - (b) in paragraph (b), for "a manager" substitute "an operator".
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- (5) In section 38(4) of the Principal Act—
 - (a) for "a manager" **substitute** "an operator";
 - (b) for "manager" (where secondly and thirdly occurring) **substitute** "operator".
- (6) In section 38(5) of the Principal Act, for "manager" **substitute** "operator".

51 Section 38D amended

- (1) In the heading to section 38D of the Principal Act, for "**Manager**" **substitute** "**Operator**".
- (2) For section 38D(1) of the Principal Act **substitute**—
 - "(1) The operator of a retirement village must not accept an appointment to act as the proxy of a resident of the retirement village.
Penalty: 60 penalty units."
- (3) Section 38D(2) of the Principal Act is **repealed**.
- (4) In section 38D(3)(a) and (b) of the Principal Act, for "manager" **substitute** "operator".
- (5) In section 38D(4) of the Principal Act, for "manager" (wherever occurring) **substitute** "operator".
- (6) In section 38D(5) of the Principal Act, for "manager" **substitute** "operator".

52 Division 3 of Part 6A substituted

For Division 3 of Part 6A of the Principal Act
substitute—

**"Division 3—Emergency planning and
access for services**

38E Emergency plan for retirement village

- (1) The operator of a retirement village must ensure that an emergency plan is prepared for the retirement village.

Penalty: 120 penalty units.

- (2) The operator of a retirement village must ensure that the emergency plan is maintained so that it remains effective.
- (3) The operator of a retirement village must take reasonable steps to ensure that all residents and staff are familiar with the emergency plan.
- (4) An emergency plan must provide for emergency procedures, including—
- (a) an effective response to an emergency; and
 - (b) evacuation procedures; and
 - (c) notifying emergency service organisations at the earliest opportunity; and
 - (d) medical treatment and assistance; and
 - (e) effective communication between the operator (or other person authorised by the operator to coordinate the emergency response) and all residents in the village.
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- (5) In preparing and maintaining an emergency plan, the operator of a retirement village must have regard to all relevant matters, including the following—
- (a) the nature of the hazards in the village;
 - (b) the size, location and layout of the village;
 - (c) the number of residents in the village;
 - (d) the evacuation arrangements required for residents with mobility, hearing, visual or other impairments.
- (6) An emergency plan must be in the prescribed form (if any).

38F Safety inspections

- (1) The operator of a retirement village must—
- (a) undertake a safety inspection of the village at least once each calendar year; and
 - (b) make a safety inspection report on the findings of the safety inspection; and
 - (c) ensure that residents are—
 - (i) notified in writing when a safety inspection is undertaken; and
 - (ii) given access to the safety inspection report if they request it; and
 - (d) take any other action to ensure that the village generally is reasonably safe that is prescribed.
- (2) For the purposes of subsection (1)—
- (a) a safety inspection must be conducted in the prescribed manner (if any); and
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- (b) the safety inspection report must be made in the prescribed manner and form (if any).

38G Annual emergency evacuation exercises and key safety information display

- (1) The operator of a retirement village must ensure that an evacuation exercise for residents is carried out at least once each calendar year.

Penalty: 120 penalty units.

- (2) The operator of a retirement village must ensure that key safety information is clearly displayed in communal areas in the retirement village.

Penalty: 120 penalty units.

- (3) The operator of a retirement village must ensure that key safety information is provided to residents in relation to their premises in the retirement village.

Penalty: 120 penalty units.

38H Access for emergency and home care services

- (1) The retirement village operator must take reasonable steps to ensure that vehicular access to premises in the retirement village is available at any time to any person belonging to any of the following classes—

- (a) emergency workers who are on duty;
- (b) approved providers who are providing home care at premises in the retirement village;

(c) NDIS providers who are providing supports or services under the National Disability Insurance Scheme at premises in the retirement village.

Penalty: 20 penalty units.

(2) For the purposes of this section, emergency workers are *on duty* if they are on duty for the purposes of section 10AA(9) of the **Sentencing Act 1991**.

(3) In this section—

approved provider has the same meaning as it has in the Aged Care Quality and Safety Commission Act 2018 of the Commonwealth;

emergency worker has the same meaning as it has in section 10AA(8) of the **Sentencing Act 1991**;

home care has the same meaning as in the Aged Care Act 1997 of the Commonwealth;

National Disability Insurance Scheme has the same meaning as it has in the National Disability Insurance Scheme Act 2013 of the Commonwealth;

NDIS provider has the same meaning as it has in the National Disability Insurance Scheme Act 2013 of the Commonwealth."

Division 12—Miscellaneous matters

53 Part 6B repealed

Part 6B of the Principal Act is **repealed**.

54 New section 38JA inserted

After section 38J of the Principal Act **insert—**

"38JA Publication of the register

The Director must publish the register kept under section 38J on the Internet site of the Department."

55 Section 38L repealed

Section 38L of the Principal Act is **repealed**.

Division 13—New Parts 6D (Disputes) and 6E (Annual payments) inserted

56 New Parts 6D and 6E inserted

After Part 6C of the Principal Act **insert—**

"Part 6D—Disputes

Division 1—Chief dispute resolution officer

38M Appointment of chief dispute resolution officer

The Director must appoint a person employed under Part 3 of the **Public Administration Act 2004** as the chief dispute resolution officer.

38N Functions of chief dispute resolution officer

The functions of the chief dispute resolution officer are—

- (a) administering the scheme for settling disputes under Division 3; and
- (b) any other function conferred on the chief dispute resolution officer by or under this Act.

38O Delegation by chief dispute resolution officer

- (1) The chief dispute resolution officer, by instrument, may delegate to any person specified in subsection (2) any duty, function or power of the chief dispute resolution officer under this Act, other than—
 - (a) the power under section 16K to approve the termination of a residence contract; or
 - (b) the power under section 38Y(1) to make a decision on an application; or
 - (c) the power under section 38ZL to make an order.
 - (2) For the purposes of subsection (1) the following persons are specified—
 - (a) a person employed under Part 3 of the **Public Administration Act 2004**;
 - (b) a person who is a mediator within the meaning of section 21K of the **Evidence (Miscellaneous Provisions) Act 1958**;
 - (c) a person who is engaged by the chief dispute resolution officer for the purposes of conducting conciliation under this Part;
 - (d) a person who is prescribed or a person who is a member of a class that is prescribed.
 - (3) The chief dispute resolution officer, by instrument, may delegate to a person employed under Part 3 of the **Public Administration Act 2004** the chief dispute resolution officer's power under
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section 38Y(1) to make a decision on an application.

- (4) The chief dispute resolution officer, by instrument, may delegate the chief dispute resolution officer's power under section 38ZL to make an order to a person who—
- (a) is employed under Part 3 of the **Public Administration Act 2004**; and
 - (b) has been an Australian lawyer for not less than 5 years.

38P Conferral of liability on State in relation to alternative dispute resolution

- (1) The chief dispute resolution officer is not personally liable for anything done or omitted to be done in good faith—
- (a) in the exercise of a power or the discharge of a duty under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.
- (2) Any liability resulting from an act or omission that, but for subsection (1), would attach to the chief dispute resolution officer attaches instead to the State.
- (3) A person to whom a power or duty is delegated under section 38O is not personally liable for anything done or omitted to be done—
- (a) in the exercise of that power or the discharge of that duty; or
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- (b) in the reasonable belief that the act or omission was in the exercise of that power or the discharge of that duty.
- (4) Any liability resulting from an act or omission that, but for subsection (3), would attach to a person to whom a power or duty is delegated under section 38O attaches instead to the State.

Division 2—Internal settlement of certain disputes

38Q Procedure for dealing with management disputes

- (1) Subject to section 38W(3)(b), the operator of a retirement village must set out in a document the procedure to be used by the operator for dealing with management disputes and must include the following information in that document—
 - (a) the name, telephone number, postal address and email address of the person who has been nominated under section 38V(1) as the primary contact person;
 - (b) the name, telephone number, postal address and email address of the person who has been nominated under section 38V(2) as the alternative contact person if the dispute is in relation to the primary contact person;
 - (c) despite section 42D, a statement that notice of management disputes may be given by a resident—

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- (i) verbally, by speaking to the primary contact person or the alternative contact person and describing the dispute; or
 - (ii) in writing by—
 - (A) sending a document describing the dispute by post to the address of the primary contact person or the alternative contact person; or
 - (B) giving a document describing the dispute in person to the primary contact person or the alternative contact person; or
 - (C) sending a document describing the dispute to the primary contact person or the alternative contact person by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**;
 - (d) the process the operator is to use to deal with management disputes and advise residents of the outcome of that process, including—
 - (i) the restrictions on the operator's powers under subsection (3); and
 - (ii) the nature of the obligation under subsection (4) of the contact person or alternative contact person who receives notice of a management dispute; and
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(iii) that, if a dispute is in relation to the primary contact person and notice of it is given to the primary contact person, that the primary contact person must give the notice to the alternative contact person;

(e) a statement that if, within 72 hours of being given notice of a management dispute, the operator is unable to settle the dispute to the satisfaction of the resident, the resident may apply to the chief dispute resolution officer for external dispute resolution to settle the dispute;

(f) the name, telephone number, postal address, email address and Internet site of the chief dispute resolution officer.

Penalty: 60 penalty units.

(2) The operator of a retirement village must establish and maintain the procedure for dealing with management disputes that is set out in the document under subsection (1).

Penalty: 60 penalty units.

(3) The operator of a retirement village must not establish or maintain a procedure or set out in the document under subsection (1) a procedure—

(a) that enables the operator to take any action that is—

(i) without the consent of the resident who gives notice of the management dispute; or

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- (ii) duplicates, is inconsistent with or purports to override any other law; or
 - (iii) duplicates, is inconsistent with or purports to override the provisions of any contract between the resident giving notice of the management dispute and the operator; or
 - (b) that requires notice of a management dispute to be in writing; or
 - (c) that prevents a resident who has given notice of a management dispute from being represented by another person when dealing with the management dispute.
- (4) A person nominated under section 38V(1) or (2) who receives notice of a management dispute from a resident, as soon as practicable after receiving the notice—
- (a) must create and maintain a written record of the dispute in accordance with the regulations; and
 - (b) must give a copy of the record to the resident who gave the notice.
- Penalty: 60 penalty units.
- (5) It is an exception to an offence under subsection (4) if the person who received the notice believes on reasonable grounds that the dispute has been settled to the satisfaction of the resident who gave the notice.

- (6) The operator of a retirement village or a person nominated under section 38V(1) or (2) must not take any action that might reasonably be regarded as—
- (a) deterring a person from giving notice of a management dispute; or
 - (b) causing detriment to a resident because that resident or another resident has given or proposes to give notice of a management dispute.

Penalty: 60 penalty units.

38R Procedure for dealing with resident disputes—disputes between residents

- (1) The operator of a retirement village must set out in a document the procedure to be used by the operator for dealing with resident disputes between residents in the retirement village and must include the following information in that document—
- (a) the name, telephone number, postal address and email address of the operator and the primary contact person who has been nominated under section 38V(1);
 - (b) despite section 42D, a statement that notice of resident disputes between residents in the retirement village may be given by a resident—
 - (i) verbally, by speaking to the primary contact person and describing the dispute; or

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- (ii) in writing by—
 - (A) sending a document describing the dispute by post to the address of the operator; or
 - (B) giving a document describing the dispute in person to the operator; or
 - (C) sending a document describing the dispute to the operator by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**;
- (c) the process the operator is to use to deal with resident disputes between residents in the retirement village and advise residents of the outcome of that process, including—
 - (i) the restrictions on the operator's powers under subsection (3); and
 - (ii) the nature of the operator's obligation under subsection (4);
- (d) a statement that if, within 72 hours of being given notice of a resident dispute between residents in the retirement village, the operator is unable to settle the dispute to the satisfaction of the resident, the resident may apply to the chief dispute resolution officer for external dispute resolution to settle the dispute;

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- (e) the name, telephone number, postal address, email address and Internet site of the chief dispute resolution officer.

Penalty: 60 penalty units.

- (2) The operator of a retirement village must establish and maintain the procedure for dealing with resident disputes between residents in the retirement village that is set out in the document under subsection (1).

Penalty: 60 penalty units.

- (3) The operator of a retirement village must not set out in a document under subsection (1) or establish or maintain a procedure—

- (a) that enables the operator to take any action that is—
 - (i) without the consent of a party to a resident dispute; or
 - (ii) duplicates, is inconsistent with or purports to override any other law; or
 - (iii) duplicates, is inconsistent with or purports to override the provisions of any contract between a party to the resident dispute and the operator; or
 - (iv) duplicates, is inconsistent with or purports to override the provisions of any contract between a party to the resident dispute and the proprietor of the retirement village; or

- (b) that requires notification of a resident dispute to be in writing; or

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- (c) that prevents a resident who is a party to a resident dispute from being represented by another person when dealing with the dispute.
- (4) A person nominated under section 38V(1) who receives notice of a resident dispute between residents in the retirement village from a resident, as soon as practicable after receiving the notice—
 - (a) must create and maintain a written record of the dispute in accordance with the regulations; and
 - (b) must give a copy of the record to the resident who gave the notice.

Penalty: 60 penalty units.

- (5) It is an exception to an offence under subsection (4) if the person who received the notice believes on reasonable grounds that the dispute has been settled to the satisfaction of the resident who gave the notice.
- (6) The operator of a retirement village or a person nominated under section 38V(1) must not take any action that might reasonably be regarded as—
 - (a) deterring a resident from giving notice of a resident dispute between residents in the retirement village; or
 - (b) causing detriment to a resident because that resident or another resident has given or proposes to give notice of a resident dispute between residents in the retirement village.

Penalty: 60 penalty units.

38S Procedure for dealing with resident disputes—disputes between operator and resident

- (1) The operator of a retirement village must set out in a document the procedure to be used by the operator for dealing with resident disputes between the operator and a resident in the retirement village and must include the following information in that document—
 - (a) the name, telephone number, postal address and email address of the operator and the primary contact person who has been nominated under section 38V(1);
 - (b) despite section 42D, a statement that notice of a resident dispute between the operator and a resident in the retirement village may be given by the operator—
 - (i) verbally, by speaking to the resident and describing the dispute; or
 - (ii) in writing by—
 - (A) sending a document describing the dispute by post to the address of the resident; or
 - (B) giving a document describing the dispute in person to the resident; or
 - (C) sending a document describing the dispute to the resident by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**;

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- (c) the process the operator is to use to deal with resident disputes between the operator and a resident in the retirement village and advise the resident of the outcome of that process, including—
 - (i) the restrictions on the operator's powers under subsection (2); and
 - (ii) the nature of the operator's obligation under subsection (3);
- (d) a statement that if, within 72 hours of giving notice to a resident of a resident dispute between the operator and a resident, the dispute is unable to be settled to the satisfaction of the operator, the operator may apply to the chief dispute resolution officer for external dispute resolution to settle the dispute;
- (e) the name, telephone number, postal address, email address and Internet site of the chief dispute resolution officer.

Penalty: 60 penalty units.

- (2) The operator of a retirement village must establish and maintain the procedure for dealing with resident disputes between the operator and a resident in the retirement village that is set out in the document under subsection (1).

Penalty: 60 penalty units.

- (3) The operator of a retirement village must not set out in a document under subsection (1) or establish or maintain a procedure—

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- (a) that enables the operator to take any action that is—
 - (i) without the consent of the resident who is a party to a resident dispute; or
 - (ii) duplicates, is inconsistent with or purports to override any other law; or
 - (iii) duplicates, is inconsistent with or purports to override the provisions of any contract between the resident who is a party to the resident dispute and the operator; or
 - (iv) duplicates, is inconsistent with or purports to override the provisions of any contract between the resident who is a party to the resident dispute and the proprietor of the retirement village; or
 - (b) that requires notification of a resident dispute to be in writing; or
 - (c) that prevents the resident who is a party to a resident dispute from being represented by another person when dealing with the dispute.
- (4) As soon as practicable after the operator of a retirement village gives notice of a resident dispute between the operator and a resident, the person nominated under section 38V(1) for the village—
- (a) must create and maintain a written record of the dispute in accordance with the regulations; and
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- (b) must give a copy of the record to the resident who is a party to the dispute.

Penalty: 60 penalty units.

- (5) It is an exception to an offence under subsection (4) if the person nominated under section 38V(1) believes on reasonable grounds that the dispute has been settled to the satisfaction of the operator.

Penalty: 60 penalty units.

38T Information about procedure for disputes must be given to residents on request

- (1) A resident of a retirement village may request, in the manner specified in subsection (2), the operator to give the resident a copy of the document referred to in any of the following sections—
 - (a) section 38Q(1);
 - (b) section 38R(1);
 - (c) section 38S(1).
- (2) For the purposes of subsection (1) and despite section 42D, the manner of making a request is—
 - (a) verbally, by speaking to the operator, a person nominated under section 38V(1) or (2); or
 - (b) in writing by—
 - (i) sending the request by post to the address of the contact person or the alternative contact person; or
 - (ii) giving the request in person to the primary contact person or the alternative contact person; or

(iii) sending the request by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**.

(3) An operator who receives a request from a resident under subsection (1) must give the resident a copy of the requested document within 2 business days after the request is made.

Penalty: 60 penalty units.

(4) An operator who receives a verbal request from a resident under subsection (1) must—

(a) make a written record of that request;
and

(b) give a copy of the record to the resident who made the request.

38U Operators must publish information about procedure on their Internet sites

The operator of a retirement village must publish the documents referred to in section 38Q(1), 38R(1) and 38S(1) on the Internet site of the operator.

Penalty: 60 penalty units for a natural person;

300 penalty units for a body corporate.

38V Nomination of persons to whom notice of management disputes may be given

(1) The operator of a retirement village or, if the operator is a body corporate, an officer of the operator, must nominate a person to be the primary contact person for a retirement village to whom residents of the retirement

village may give notice of a management dispute or resident dispute.

- (2) The operator of a retirement village or, if the operator is a body corporate, an officer of the operator, must nominate a person as an alternative contact person to whom residents of the retirement village may give notice of a management dispute who—
 - (a) is not the operator or the officer; and
 - (b) is not the person nominated under subsection (1); and
 - (c) is not a relative of the person nominated under subsection (1).

38W Exemption from nominating alternative contact person

- (1) The operator of a retirement village may apply to the Director for an exemption from the requirement to nominate a person under section 38V(2).
- (2) The Director may grant the operator an exemption from the requirement to nominate a person under section 38V(2) if the Director is satisfied that is reasonable to do so.
- (3) If the Director has granted the operator an exemption under this section—
 - (a) the operator or, if the operator is a body corporate, an officer of the operator, is not required to nominate a person under section 38V(2); and
 - (b) in the document of the procedure to be used for dealing with management disputes referred to in section 38Q—

- (i) the information referred to in section 38Q(1)(b) and (d)(iii) does not need to be included; and
- (ii) the statement referred to in section 38Q(1)(c) does not need to refer to an alternative contact person.

Division 3—External conciliation of certain disputes, application and assessment of application

38X Application for dispute to be conciliated

- (1) If a resident and an operator or a proprietor of a retirement village are in an eligible management dispute, either person may apply to the chief dispute resolution officer for the dispute to be conciliated under this Part.
- (2) If any residents in a retirement village are in an eligible resident dispute, any of the residents may apply to the chief dispute resolution officer for the dispute to be conciliated under this Part.
- (3) If a resident and an operator or a proprietor of a retirement village are in an eligible resident dispute, either person may apply to the chief dispute resolution officer for the dispute to be conciliated under this Part.
- (4) An application under this section must be in the form approved by the chief dispute resolution officer.

Note

See section 42D for the making of applications electronically.

- (5) A person who was a resident of a retirement village may make an application under subsection (1), if the application is made no later than 6 months after payment of all or any part of the resident's exit entitlement.
- (6) In this Division and Divisions 4 to 7, a reference to a resident includes a reference to a person who makes an application under this section because of the operation of subsection (5).

38Y Initial assessment of application

- (1) The chief dispute resolution officer must make an initial assessment of an application under section 38X and may decide whether to—
 - (a) conciliate the dispute under this Part; or
 - (b) if the chief dispute resolution officer assesses that the dispute is not suitable for conciliation, reject the application.
- (2) The chief dispute resolution officer must give written notice of a decision under subsection (1) to the applicant and to any other party to the dispute within 10 business days after making the decision.
- (3) If the chief dispute resolution officer decides to conciliate the dispute, the notice must—
 - (a) include an outline of the applicant's stated reasons for the dispute; and
 - (b) state that the dispute has been accepted for conciliation.

Note

See section 42D for the giving of notice electronically.

38Z Applications not suitable for conciliation

The chief dispute resolution officer may assess that a dispute, that is the subject of an application under section 38X, is not suitable for conciliation if—

- (a) the applicant has not—
 - (i) provided any information, documents or evidence requested or required under section 38ZA; or
 - (ii) has not provided information or documents within the time required by the chief dispute resolution officer; or
- (b) the chief dispute resolution officer considers the dispute should be dealt with under Division 2 or by VCAT under Division 9; or
- (c) the chief dispute resolution officer does not have jurisdiction to deal with the dispute; or
- (d) there is a reasonable likelihood that the dispute will not be settled by conciliation, other than if the dispute is not reasonably likely to be settled because no other party is willing to engage in the conciliation; or
- (e) the application—
 - (i) is frivolous or otherwise lacking in substance; or
 - (ii) is vexatious; or
 - (iii) was not made in good faith; or
- (f) the dispute has been resolved; or

- (g) the dispute involves federal subject matter and the exercise of judicial power or there is some doubt that the dispute involves federal subject matter and the exercise of judicial power.

38ZA Powers of chief dispute resolution officer in making assessment

- (1) For the purpose of making an initial assessment and decision under section 38Y, the chief dispute resolution officer may—
 - (a) make any inquiries or obtain any information the chief dispute resolution officer considers necessary; and
 - (b) ask the applicant to provide further information or documents relating to the dispute; and
 - (c) require the applicant to provide evidence that the applicant has taken reasonable steps to resolve the dispute with the other parties to the dispute.
- (2) The chief dispute resolution officer may fix a time for compliance with a request or requirement under subsection (1) and may extend that time at the request of the applicant.

38ZB Withdrawal of application

- (1) A person who has made an application under section 38X may withdraw the application by giving written notice to the chief dispute resolution officer at any time before the chief dispute resolution officer makes a decision under section 38Y.
 - (2) The chief dispute resolution officer may refuse to allow the withdrawal of the matter if the chief dispute resolution officer
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considers that the application has disclosed evidence of a contravention of the Act or the regulations.

- (3) The chief dispute resolution officer must—
- (a) give written notice to any party to a dispute of a withdrawal of an application under subsection (1); or
 - (b) give written notice to the applicant and any other party to the dispute of a refusal to allow withdrawal of an application under subsection (2).

Note

See section 42D for the giving of notice electronically.

38ZC Where more than one matter in an application

- (1) If an application under section 38X relates to more than one matter in dispute, the chief dispute resolution officer may sever from the dispute any matter that the chief dispute resolution officer assesses as not suitable for conciliation under section 38Y.
- (2) If an application under section 38X relates to more than one matter in a dispute or the matter relates to more than one circumstance, the chief dispute resolution officer may separate the matter into 2 or more matters if—
 - (a) the chief dispute resolution officer's inquiries into some of the matters have not been completed and it is convenient to separate them; or
 - (b) it is in the public interest to do so.

- (3) If more than one application under section 38X is made in respect of the same dispute, the chief dispute resolution officer may decide to deal with the applications together as if they were one dispute.
- (4) The chief dispute resolution officer must give written notice of a decision under this section to the applicant and to any other party to the dispute within 10 business days after making the decision.
- (5) If the chief dispute resolution officer decides to sever any matter from a dispute or to separate or combine matters in a dispute, the notice under subsection (4) must include the reasons for the decision.

Note

See section 42D for the giving of notice electronically.

Division 4—Conciliation of disputes by chief dispute resolution officer

38ZD Power to conciliate disputes

If, under Division 3, the chief dispute resolution officer decides to conciliate a dispute, the chief dispute resolution officer must conduct a conciliation conference under section 38ZF.

38ZE Power to make inquiries and require information

- (1) For the purpose of conducting conciliation in a matter, the chief dispute resolution officer—

- (a) may make any inquiries or obtain any information that the chief dispute resolution officer considers necessary; and
 - (b) may ask any party to the matter to provide further information or documents relating to the matter.
- (2) The chief dispute resolution officer—
- (a) may fix a time for compliance with a request under subsection (1)(b); and
 - (b) may extend that time at the request of the party.

38ZF Process for conciliation conference

- (1) A conciliation conference may be conducted—
- (a) by attendance of the parties to the matter in person at a place that is reasonably convenient for the parties; or
 - (b) by using any technology that allows the parties to clearly and simultaneously communicate with the chief dispute resolution officer and each other; or
 - (c) by a combination of the methods in paragraphs (a) and (b).
- (2) The chief dispute resolution officer must give written notice of the conciliation conference to each party to the matter.
- (3) The notice must specify—
- (a) the date and time of the conciliation conference, which must not be earlier than 28 days from the day on which the notice is given; and
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- (b) if the conference is to be conducted at a particular place, that place; and
 - (c) if the conference is to be held by other technology, the method by which participation in the conference is to be effected.
- (4) The notice must also include a statement advising the parties to the dispute that, if the parties do not participate in the conciliation conference at the date, time and place and in the manner specified in the notice, the chief dispute resolution officer may consider the dispute as no longer suitable for conciliation and issue a no resolution certificate.
- (5) In conducting a conciliation conference, the chief dispute resolution officer is bound by the rules of natural justice.
- (6) Without limiting subsection (5), in conducting a conciliation conference the chief dispute resolution officer must ensure that each party to the matter is given a reasonable opportunity—
 - (a) to give information to the chief dispute resolution officer about the facts and issues in dispute in the matter; and
 - (b) to make submissions to the chief dispute resolution officer about the matter.

Division 5—No resolution certificate

38ZG Certificate that matter not resolved

- (1) The chief dispute resolution officer must issue a certificate to the parties to a matter that is the subject of conciliation under this
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Part that the matter has not been resolved
if—

- (a) the chief dispute resolution officer is not satisfied that it is appropriate to make a Division 7 order in the matter; and
 - (b) the chief dispute resolution officer is satisfied that—
 - (i) the matter cannot be resolved by conciliation, including because the chief dispute resolution officer is satisfied that a party to the matter—
 - (A) did not participate in conciliation under this Part; or
 - (B) did not participate in conciliation under this Part in good faith; or
 - (ii) a recorded agreement in the matter has not been complied with.
- (2) A certificate under subsection (1)—
- (a) must be issued to every party to the matter; and
 - (b) must state that—
 - (i) an application was made in the matter under Division 3; and
 - (ii) the chief dispute resolution officer decided under section 38Y(1)(a) to accept the matter for conciliation under this Part; and

- (c) must specify one or the other of the following (as the case requires)—
 - (i) that the matter has not been resolved by conciliation under this Part;
 - (ii) that a recorded agreement in the matter has not been complied with.
- (3) A certificate under subsection (1) may include a statement as to whether the chief dispute resolution officer is satisfied that subsection (1)(b)(i)(A) or (B) applies to the matter.
- (4) The chief dispute resolution officer must—
 - (a) give a copy of the certificate to every party to the matter within 5 business days of deciding to issue the certificate; and
 - (b) advise the parties that VCAT is not prevented from considering an application in relation to the matter.

Note

See section 42D for the giving of notice electronically.

Division 6—Recorded agreements

38ZH Agreement to settle matter

- (1) If, in the course of a conciliation conference in a matter, the parties agree to a settlement of the matter, the chief dispute resolution officer must prepare a written record of the agreement stating—
 - (a) that the parties have agreed to a settlement of the matter; and
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- (b) the action, if any, to be taken by each party to the matter (including any payment that is to be made); and
 - (c) if relevant, the time within which the action is to be taken.
- (2) The chief dispute resolution officer must—
 - (a) keep a copy of the record of agreement; and
 - (b) give a copy of the record of agreement to each party to the matter within 5 business days of the making of the agreement.

Note

See section 42D for the giving of documents electronically.

- (3) The chief dispute resolution officer, at the request of a party to the agreement or at the initiative of the chief dispute resolution officer, may make any corrections to the record of agreement that the chief dispute resolution officer considers appropriate to rectify an error or omission.
- (4) If the chief dispute resolution officer makes corrections under subsection (3), the chief dispute resolution officer must give written notice to each party to the agreement of each correction within 5 business days after making the correction.

38ZI Notice of alleged failure to comply with terms of agreement

- (1) A party to a recorded agreement may give written notice to the chief dispute resolution officer if the party considers that the agreement has not been complied with.

- (2) A notice under subsection (1) must state the extent (if any) to which the party considers that there has been partial compliance with the agreement.

38ZJ Chief dispute resolution officer's powers in relation to notice under section 38ZI

- (1) If, after receiving a notice under section 38ZI, the chief dispute resolution officer is satisfied that all or part of a recorded agreement has not been complied with, the chief dispute resolution officer may—
- (a) amend the agreement or part; or
 - (b) extend the time for compliance with the agreement or part.
- (2) If the chief dispute resolution officer considers that amending the agreement or the part of the agreement or extending the time for compliance with the agreement or the part of the agreement is not appropriate, the chief dispute resolution officer may—
- (a) make a Division 7 order in relation to the matter; or
 - (b) consider the dispute as no longer suitable for conciliation and issue a no resolution certificate.
- (3) The chief dispute resolution officer must give written notice of a decision under subsection (1) or (2) to each party to the agreement within 5 business days after making the decision.

38ZK Termination of recorded agreement

A recorded agreement or a part of a recorded agreement terminates if—

- (a) a Division 7 order is made in respect of the agreement or part; or
- (b) a no resolution certificate is issued in respect of the agreement or part.

Division 7—Orders of the chief dispute resolution officer

38ZL Order of chief dispute resolution officer

- (1) The chief dispute resolution officer may make an order as to a matter that is or has been the subject of conciliation in the following circumstances—
 - (a) if—
 - (i) the matter is not settled by agreement during the conciliation; or
 - (ii) the parties to the conciliation agree to the chief dispute resolution officer making the order;
 - (b) if the chief dispute resolution officer decides to do so under section 38ZJ(2)(a).
 - (2) An order made by the chief dispute resolution officer under subsection (1) may provide for any one or more of the following—
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- (a) that any party to the matter comply with—
 - (i) a provision of a residence contract, management contract or other retirement village contract that binds that party; or
 - (ii) a provision of the Act or the regulations that applies to that party;
- (b) that any party to the matter make a payment for either or both of the following—
 - (i) compensation to another party to the matter;
 - (ii) an amount (not being more than \$100 000) the party is required to pay under the residence contract, management contract or other retirement village contract;
- (c) any other determinations that are ancillary or incidental to give effect to provisions made under paragraph (a) or (b).

38ZM Process for making order

- (1) Before making an order under section 38ZL(1)(a), the chief dispute resolution officer must give written notice to the parties to the dispute that the chief dispute resolution officer is proposing to make such an order.

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- (2) A notice under subsection (1)—
- (a) must set out—
 - (i) the matters that the chief dispute resolution officer considers relevant to making the order and any information related to those matters that the chief dispute resolution officer considers to be credible, relevant and significant; and
 - (ii) the requirements of subsection (3) for making submissions about the proposal; and
 - (b) may include a draft proposed order and any other information the chief dispute resolution officer considers appropriate.
- (3) The parties to a matter in respect of which a notice has been given under subsection (1) may make submissions to the chief dispute resolution officer about the proposal which—
- (a) may be written, or, if the chief dispute resolution officer so specifies in the notice, oral; and
 - (b) must be—
 - (i) if written, made within the time specified by the chief dispute resolution officer in the notice; or

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- (ii) if oral, made at any time and place or in any manner specified by the chief dispute resolution officer in the notice.

Note

Oral submissions may be made by electronic communication, if so specified by the chief dispute resolution officer.

- (4) Without limiting subsection (3), when making a decision to make an order under section 38ZL, the chief dispute resolution officer must ensure that each party to the matter is given a reasonable opportunity—
 - (a) to give information to the chief dispute resolution officer about the facts and issues in dispute in the matter; and
 - (b) to make submissions to the chief dispute resolution officer about the matter.
- (5) When making a decision to make an order under section 38ZL, the chief dispute resolution officer is bound by the rules of natural justice.

38ZN Considerations for making order

- (1) The chief dispute resolution officer must not make a Division 7 order unless the chief dispute resolution officer is satisfied that it is fair and reasonable in all the circumstances to do so.
- (2) When deciding whether to make a Division 7 order, the chief dispute resolution officer—
 - (a) may have regard to any record of agreement made under section 38ZH; and

- (b) must consider any submissions made in accordance with section 38ZM(3); and
- (c) must give reasons for the decision, whether it is to make or not make the order.

38ZO Form and content of orders

- (1) A Division 7 order must be in writing and must state—
 - (a) that agreement to settle the matter has not been reached by conciliation, or that section 38ZJ(2)(a) applies, as the case requires; and
 - (b) the action, if any, that must be taken by each party to the matter or that must cease (including any payment that is to be made); and
 - (c) if relevant, the time within which the action is to be taken or the action must cease; and
 - (d) the reasons for making the order, which may include, but are not limited to, whether the chief dispute resolution officer is satisfied that a party to the matter—
 - (i) did not participate in conciliation; or
 - (ii) did not participate in conciliation in good faith.
 - (2) If the chief dispute resolution officer makes a Division 7 order, the chief dispute resolution officer must—
 - (a) keep a copy of the order; and
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- (b) give a copy of the order to each party to the matter within 5 business days of making the order.

Note

See section 42D for the giving of the determination electronically.

- (3) A Division 7 order comes into effect immediately after it is made, or at any later time specified in the order.

38ZP Amendment, cancellation or extension orders

- (1) The chief dispute resolution officer, on the application of one or more parties to a matter that is the subject of a Division 7 order, may decide to—
 - (a) amend the order; or
 - (b) cancel the order; or
 - (c) extend the period for compliance with the order; or
 - (d) make another order in place of the original order.
 - (2) The chief dispute resolution officer may make a decision under subsection (1)—
 - (a) on the ground that there has been a substantial change in the nature of the matter to which the order relates, or to the circumstances of the parties since the order was made; or
 - (b) the chief dispute resolution officer is satisfied that there has been a failure or inability to comply with the order because of factors outside the control of the party required to comply with the order.
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- (3) An application under subsection (1) must be made—
 - (a) no later than 28 days after the order was given to the party; or
 - (b) if the chief dispute resolution officer is satisfied a longer period is appropriate because of special circumstances, within a longer period specified by the chief dispute resolution officer.
- (4) An application under subsection (1) must not be made in respect of a Division 7 order that is being enforced by the Magistrates' Court under this Division and the **Magistrates' Court Act 1989**.
- (5) No later than 2 business days after making an application under subsection (1), the party who made the application must give written notice of the application to each other party to the matter, other than a party to the matter who has also made the application.
- (6) A party who has made an application under subsection (1) must not make more than one such application, unless the party has leave of the chief dispute resolution officer to do so.

38ZQ Powers when amending, cancelling or extending an order or making another order

- (1) For the purpose of making a decision under section 38ZP(1), the chief dispute resolution officer may—
 - (a) make any inquiries or obtain any information the chief dispute resolution officer considers necessary; and
-

- (b) ask any party to the matter to which the order relates to provide any information or documents the chief dispute resolution officer considers necessary.
- (2) The chief dispute resolution officer—
 - (a) may specify a period for compliance with a request or requirement under subsection (1); and
 - (b) may extend that period at the request of any party.

38ZR Notice of decision of chief dispute resolution officer as to amendment, cancellation or extension of order or making another order

If the chief dispute resolution officer—

- (a) amends an order under section 38ZP(1)(a), the chief dispute resolution officer must give a copy of the amended order to each party no later than 5 business days after amending the order; or
- (b) cancels an order under section 38ZP(1)(b), the chief dispute resolution officer must give written notice of the cancellation to the parties no later than 5 business days after cancelling the order; or
- (c) extends a period for compliance with an order under section 38ZP(1)(c), the chief dispute resolution officer must give written notice of the extension to the parties no later than 5 business days after extending the period of compliance; or

- (d) makes another order under section 38ZP(1)(d), the chief dispute resolution officer must give written notice of the making of the other order to the parties no later than 5 business days after that making.

Note

See section 42D for the giving of notice electronically.

38ZS Correction of errors or omissions in orders

- (1) The chief dispute resolution officer may at any time, at their initiative or at the request of a party, amend a Division 7 order to the extent set out in subsection (2).
- (2) In making a decision under subsection (1), the chief dispute resolution officer may make an amendment under subsection (1) if the chief dispute resolution officer considers the order contains—
 - (a) a clerical mistake; or
 - (b) an error arising from an accidental slip or omission; or
 - (c) a material miscalculation of figures; or
 - (d) a material mistake in the description of a person, thing or matter referred to in the order, or
 - (e) a defect of form.
- (3) If the chief dispute resolution officer amends an order under subsection (1), the chief dispute resolution officer must give a copy of the amended order to each party no later than 5 business days after amending the order.

38ZT Enforcement of orders

- (1) A person in whose favour a monetary order is made may enforce the order in the Magistrates' Court.
- (2) For the purpose of the enforcement of a monetary order under subsection (1), the order is taken to be an order of the Magistrates' Court.
- (3) A person in whose favour a Division 7 order is made that requires a party to the dispute to which the order applies to do or refrain from doing something, may enforce the order in the Magistrates' Court.
- (4) For the purpose of the enforcement of a Division 7 order under subsection (3), the order is taken to be an order of the Magistrates' Court.

**Division 8—Miscellaneous matters
related to conciliation**

**38ZU Admissibility of materials or statements
made during conciliation**

- (1) Evidence of anything said or done by a party to a dispute or the chief dispute resolution officer before or during conciliation of a dispute under this Part is not admissible in any proceeding before any court or VCAT, unless all the parties agree in writing to the giving of the evidence.
- (2) Subsection (1) does not apply to the following—
 - (a) a document given by the chief dispute resolution officer to any party in the conciliation;

- (b) a document or report obtained by the chief dispute resolution officer under section 38ZE;
- (c) a Division 7 order.

Division 9—VCAT determination of disputes

38ZV Application for VCAT determination regarding certain disputes

- (1) If a resident and a proprietor or an operator of a retirement village are in a management dispute, either person may apply to VCAT for a determination under this Division in relation to the dispute.
- (2) A resident in a retirement village or an operator of a retirement village may apply to VCAT for a determination under this Division in relation to a resident dispute that the resident or operator is in with—
 - (a) another resident or residents of the village; or
 - (b) the operator of the village.

38ZW Application by resident who has vacated the retirement village

- (1) A person who was a resident of a retirement village may make an application under section 38ZV, if the application is made no later than 6 months after payment of all of the resident's exit entitlement.
- (2) In this Division a reference to a resident includes a reference to a person who makes an application under section 38ZV because of the operation of subsection (1).

38ZX Application for VCAT determination regarding dispute dealt with under Division 3

- (1) If the chief dispute resolution officer has issued a no resolution certificate to the parties to a dispute, a party to the dispute may apply to VCAT for a determination of the dispute under section 38ZY.
- (2) An application under subsection (1) must be made no later than 20 days after the day on which the certificate is issued.
- (3) A party to a dispute in respect of which a Division 7 order is in force may apply to VCAT for a determination under section 38ZY if the party believes that—
 - (a) a requirement of the order is unreasonable; or
 - (b) a time specified in the order within which action must be taken is unreasonable.
- (4) An application under subsection (3) must be made no later than 20 days after—
 - (a) the day on which notice of the order was given, or if the order has been amended, the day on which notice of the amendment was given; or
 - (b) if the order has been cancelled or extended, the day on which notice of the cancellation or extension of the order was given.

38ZY VCAT determination

- (1) On receiving an application under this Division, VCAT may determine the dispute that is the subject of the application unless—
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- (a) for an application under section 38ZV regarding an eligible management dispute or eligible residents dispute, VCAT decides—
 - (i) to refer the dispute to the chief dispute resolution officer to be dealt with by conciliation under this Part; or
 - (ii) to refer the dispute to be dealt with under Division 2; or
 - (b) VCAT decides to dismiss the application.
- (2) VCAT may dismiss an application under subsection (1)(b) if—
- (a) all issues related to the dispute have already been determined by a court or VCAT or otherwise resolved; or
 - (b) VCAT is satisfied that the application is frivolous, vexatious or not made in good faith; or
 - (c) the applicant has not complied with a requirement of this Act or the **Victorian Civil and Administrative Tribunal Act 1998** in relation to the provision of information, documents or evidence related to the application; or
 - (d) the dispute is currently being dealt with under Division 2 or by conciliation under this Part.
- (3) No later than 5 days after making a decision under subsection (1)(b) to dismiss an application, VCAT must give written notice to the parties—
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- (a) advising the parties that the application has been dismissed; and

Note

See section 42D for the giving of notice electronically.

- (b) if VCAT has referred the dispute to be dealt with under Division 2, advising the parties that any one of them may apply again under this Division, if the dispute is not resolved within 30 days of the giving of the notice.

38ZZ Substance of VCAT determination or order

- (1) In any retirement villages proceeding, VCAT may make any determination or order that VCAT thinks fit, including any one or more of the following—
 - (a) an order restraining any action—
 - (i) in breach of a residence contract, management contract or other retirement village contract; or
 - (ii) in breach of a provision of this Act or the regulations;
 - (b) an order requiring—
 - (i) performance of a residence contract, management contract or other retirement village contract; or
 - (ii) compliance with a provision of this Act or the regulations;
 - (c) an order requiring payment of compensation to any party to the dispute;
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- (d) an order made under any other provision of this Act or the regulations;
 - (e) any other necessary ancillary or incidental order.
- (2) In this section—

retirement villages proceeding means a proceeding to determine a dispute that is before VCAT because of an application made under this Division.

Division 10—Offences, requirements regarding information recording and reporting and other matters

38ZZA Recording requirements

The operator of a retirement village must keep a record of all management disputes and resident disputes of which notice has been given under section 38Q or 38R in the retirement village, including records of any outcome reached and the action, if any, taken in relation to each dispute.

Penalty: 60 penalty units.

38ZZB Reporting requirements

- (1) At the annual meeting of the residents of the village, the operator of the village must present a report on—
- (a) the number and nature of management disputes or resident disputes of which notice has been given in the previous year; and
 - (b) the outcome of each dispute, including any action taken to resolve the dispute; and
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- (c) any changes made or proposed to be made to address issues arising out of a dispute.

Penalty: 60 penalty units.

- (2) A report under subsection (1) must not identify the parties to a management dispute or resident dispute.
- (3) The operator must give to the Director a copy of the report under subsection (1) within 14 days of the day on which the annual meeting is held.

Penalty: 10 penalty units.

38ZZC Disclosure of information about management disputes and resident disputes

- (1) The operator of a retirement village must not disclose, directly or indirectly, to any person, any information that—
 - (a) relates to—
 - (i) a management dispute of which the operator or person has been given notice; or
 - (ii) a resident dispute of which the operator has given notice or of which the operator or another person has been given notice; and
 - (b) identifies, or is likely to lead to the identification of, a resident to which the dispute relates.
 - (2) Subsection (1) does not prevent the disclosure of information—
 - (a) to the extent that the information is reasonably required in connection with the exercise of a power or the discharge
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of a duty under this Act or any other Act; or

- (b) by the operator of a retirement village to the Director which the operator is required to provide under this Act for the purposes of enabling the Director to perform functions conferred and meet obligations imposed on the Director under this Act.

38ZZD Disclosure of information by chief dispute resolution officer and others

- (1) Subject to this Part, the chief dispute resolution officer must not disclose, directly or indirectly, to any person, any information that the chief dispute resolution officer obtained in the course of the exercise of a power or the discharge of a duty under this Part.

Penalty: 150 penalty units.

- (2) A person to whom a power or duty is delegated under section 38O must not disclose, directly or indirectly, to any other person, any information that the person obtained in the course of the exercise of the power or the discharge of the duty.

Penalty: 150 penalty units.

- (3) The chief dispute resolution officer or a person to whom a duty or power is delegated under section 38O may disclose information obtained in the course of the exercise of a power or the discharge of a duty under this Part if the disclosure is made—

- (a) for the purposes of exercising that power or discharging that duty; or
- (b) to the Director; or

- (c) to VCAT; or
- (d) with the written consent of each person to whom the information relates.

38ZZE Guidelines for the management of issues in retirement villages

- (1) The Director may make guidelines in relation to the management of matters in retirement villages in relation to which the Director considers management disputes and resident disputes commonly arise.
- (2) Before making the guidelines, the Director must consult the chief dispute resolution officer.
- (3) The operator of a retirement village must have regard to the guidelines (if any) in relation to the management of the matters dealt with by the guidelines.
- (4) The Director, as soon as practicable after making the guidelines, must publish the guidelines—
 - (a) in the Government Gazette; and
 - (b) on the Internet site of the Director; and
 - (c) in any other manner that is prescribed.

38ZZF Guidelines in relation to conduct of conciliation

- (1) The chief dispute resolution officer may make guidelines in relation to the conduct of conciliation under this Part.
 - (2) The chief dispute resolution officer, as soon as practicable after making guidelines under subsection (1), must publish the guidelines on the Internet site of Consumer Affairs Victoria.
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38ZZG Director may collect information etc.

- (1) The Director may do the following things in relation to information contained in reports, copies of which are given to the Director under section 38ZZB(3)—
 - (a) collect, collate, analyse and retain the information;
 - (b) conduct research about or on the basis of the information;
 - (c) subject to subsection (2), publish reports about the outcome of—
 - (i) the collection, collation and analysis of the information; and
 - (ii) research conducted about or on the basis of the information.
- (2) The Director must not publish a report that identifies, or is likely to identify, a resident or former resident of a retirement village who was a party to a management dispute or resident dispute.

Division 11—Disputes with federal subject matter, Magistrates' Court powers

38ZZH Definitions

In this Division and Division 12—

designated judicial officer has the same meaning as in the **Courts (Case Transfer) Act 1991**;

federal subject matter means subject matter of a kind referred to in section 75 (other than section 75(v)) or 76 of the Constitution of the Commonwealth;

retirement village proceeding means a management dispute or resident dispute in the Magistrates' Court on an application made under section 38ZZK.

38ZZI Interpretation

A reference to the chief dispute resolution officer in this Act or an enabling enactment includes a reference to the Magistrates' Court in relation to any function or power conferred on the Court because of the operation of section 38ZZJ.

38ZZJ Powers of the Magistrates' Court to determine retirement village disputes

The Magistrates Court has the power to determine a retirement village proceeding by making any appropriate orders, including but not limited to—

- (a) restraining any action in the termination of a residence contract under Part 3A; and
- (b) requiring any action in the performance of a residence contract or management contract or retirement village contract; and
- (c) requiring the payment of compensation to a party in the determination of a retirement village proceeding; and
- (d) orders made under the powers conferred on the Magistrates' Court under the **Magistrates' Court Act 1989**, this Act or regulations; and
- (e) any orders ancillary or incidental to any other orders made by the Court.

38ZZK Applications to Magistrates' Court

- (1) The following persons may apply to the Magistrates' Court under this section—
 - (a) a person who is in an eligible management dispute or residents dispute and who reasonably believes that the dispute involves federal subject matter;
 - (b) a person whose application to the chief dispute resolution officer is assessed as not suitable for conciliation under this Part on the ground set out in section 38Z(g);
 - (c) a person who was a party to an eligible management dispute or eligible residents dispute before the chief dispute resolution officer in which a Division 7 order of the chief dispute resolution officer was set aside by a court, on an appeal or review, on the ground that the chief dispute resolution officer had no jurisdiction to exercise judicial power to resolve controversies involving federal subject matter.
 - (2) The Magistrates' Court may hear and determine an application made under this section if it is satisfied that—
 - (a) the application raises, or there is some doubt as to whether it raises, a controversy involving federal subject matter; and
 - (b) resolution of that controversy would involve, or there is some doubt as to whether it would involve, an exercise of judicial power; and
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- (c) the chief dispute resolution officer would have had the power to conduct a conciliation under this Part involving the same subject matter if the application did not raise a controversy involving federal subject matter the resolution of which would involve an exercise of judicial power.
- (3) Any limitation period that would apply to the making of an application to the chief dispute resolution officer applies to the making of an application to the Magistrates' Court under this section.
- (4) The Magistrates' Court may strike-out, dismiss or reject an application if the Court is not satisfied under subsection (2).

38ZZL Retirement village proceedings in the Magistrates' Court

- (1) If the Magistrates' Court decides to hear and determine an application for determination of a retirement village proceeding made under section 38ZZK—
 - (a) the Court must hear and determine it in accordance with this Division; and
 - (b) the Court may make any orders it considers appropriate to facilitate the hearing and determination of the application.
 - (2) Without limiting any other function or power of the Magistrates' Court but subject to subsection (3), the Magistrates' Court has, and may exercise, all of the functions and powers in relation to a retirement village proceeding that the chief dispute resolution officer would have had if the proceeding were before the chief dispute resolution
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officer and the chief dispute resolution officer had jurisdiction to exercise judicial power to resolve controversies involving federal subject matter.

- (3) For the purposes of a retirement village proceeding under this Part—
- (a) the Magistrates' Court is to be constituted as provided for by or under the **Magistrates' Court Act 1989**; and
 - (b) subject to paragraphs (c) to (i), the practice and procedure of the Magistrates' Court (including in relation to enforcement of orders) applies; and
 - (c) the **Evidence Act 2008** and the rules of evidence do not apply except to the extent that the Court determines otherwise.
- (4) A party to a Magistrates' Court proceeding under this Part may appeal against an order of an interim or interlocutory nature made by the Magistrates' Court in the retirement village proceeding in the same way as a party may appeal against a final order made by the Magistrates' Court.
- (5) A party that appeals under subsection (4) must notify the principal registrar of the Magistrates' Court.

Division 12—Disputes with federal subject matter, Supreme Court powers

38ZZM Transfer to the Supreme Court

- (1) A retirement village proceeding under this Part may be transferred from the Magistrates' Court to the Supreme Court under this section, after it has been referred under
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- subsection (2) to the designated judicial officers of the Magistrates' Court and the Supreme Court.
- (2) A judicial or administrative officer of the Magistrates' Court (which may include the designated judicial officer of that Court) or a party to a retirement village proceeding under this Part may refer the proceeding to the designated judicial officers of the Magistrates' Court and the Supreme Court.
- (3) A retirement village proceeding under this Part may be transferred under this section only if—
- (a) the designated judicial officers of the Magistrates' Court and the Supreme Court are of the opinion that the transfer is appropriate; or
 - (b) in a case of disagreement between the designated judicial officers, the designated judicial officer of the Supreme Court is of the opinion that the transfer is appropriate.
- (4) In forming an opinion for the purposes of subsection (3), the designated judicial officers may consider—
- (a) any amount claimed in the retirement village proceeding under this Part; and
 - (b) the complexity of the retirement village proceeding under this Part; and
 - (c) whether, if the chief dispute resolution officer had jurisdiction to determine the subject matter of the retirement village proceeding under this Part, it is likely that the matter would have been heard; and
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- (d) which court in the circumstances is the most natural form for resolution of the matters in dispute; and
 - (e) anything else that the designated judicial officers consider relevant.
 - (5) If the designated judicial officer or officers form the opinion referred to in subsection (3), the Magistrates' Court constituted by its designated judicial officer, as soon as practicable, must make an order transferring the retirement village proceeding to the Supreme Court and, on the making of that order—
 - (a) the proceeding is discontinued in the Magistrates' Court; and
 - (b) the Magistrates' Court must cause the record and all documents relating to the proceeding to be sent to the Supreme Court.
 - (6) If the retirement village proceeding is transferred—
 - (a) the Supreme Court has, in addition to its existing jurisdiction, functions and powers, any jurisdiction, functions and powers the Magistrates' Court would have had the proceeding not been transferred; and
 - (b) unless the Supreme Court otherwise orders, the practice and procedure applicable in the Supreme Court applies in relation to the proceeding; and
 - (c) unless the Supreme Court otherwise orders, anything done or omitted to be done in the proceeding under or in accordance with the rules of court that applied to it before the transfer must be
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taken, so far as possible, to have been done or omitted under the rules that apply in the Supreme Court; and

- (d) the Supreme Court must endeavour to ensure the proceeding is heard and determined no later than it would have been if it had not been transferred; and
 - (e) a judgment given or order made by the Supreme Court in the proceeding has effect and may be enforced or appealed against like any other judgment or order of that court; and
 - (f) the Supreme Court may award costs in any manner it sees fit; and
 - (g) the Supreme Court may refer the proceeding to the chief dispute resolution officer if satisfied that the chief dispute resolution officer has jurisdiction to facilitate determination of the subject matter of the proceeding.
- (7) This section is in addition to anything in the **Courts (Case Transfer) Act 1991**.

38ZZO Part prevails

If a provision of this Part is inconsistent with another provision of this Act or a provision of an enabling enactment, the provision of this Part prevails to the extent of the inconsistency.

Part 6E—Annual payments

38ZZP Liability to make annual retirement village payment

- (1) The operator of a retirement village must make a payment of the prescribed amount (if any) to the Director in respect of every
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- 12 month period for which the retirement village is operated.
- (2) The amount of any payment under subsection (1) is the amount—
- (a) prescribed, if any; or
 - (b) determined by the Director in accordance with the prescribed method.
- (3) The first payment under this section must be paid with notice given to the Director under section 11A.
- (4) The payment for each 12 month period after the first payment made under subsection (3) must be paid with the notice given to the Director under section 11B.
- (5) The Director must pay any payment made under this section into the trust account kept in the Trust fund under section 72 of the **Estate Agents Act 1980** and called the Victorian Property Fund."

Division 14—Amendment of Part 7 (General)

57 Cancellation of retirement village notices

- (1) In section 39(2) of the Principal Act, for "An owner" **substitute** "A proprietor".
- (2) In section 39(3) of the Principal Act, for "the owner" (wherever occurring) **substitute** "the proprietor".
- (4) In section 39(6) of the Principal Act, for "the owner" **substitute** "the proprietor".

58 Application of the Australian Consumer Law and Fair Trading Act 2012

(1) Before section 40(1) of the Principal Act **insert—**

"(1AA) Part 6.2 of the **Australian Consumer Law and Fair Trading Act 2012** extends and applies (with any necessary modifications) to this Act as if any reference in that Part to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act."

(2) For section 40(2) of the Principal Act **substitute—**

"(2) Sections 125, 126 and 196 and Part 8.2 (except section 213) of the **Australian Consumer Law and Fair Trading Act 2012** extend and apply (with any necessary modifications) to this Act as if any reference in those provisions to the **Australian Consumer Law and Fair Trading Act 2012** were a reference to this Act."

(3) Before section 40(3)(a) of the Principal Act **insert—**

"(aa) section 126A of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to a consumer contract or small business contract were a reference to a management contract or a residence contract;

(aab) sections 210 and 210A of the **Australian Consumer Law and Fair Trading Act 2012** apply as if a reference in those sections to a contravention of Part 3.1, Part 4.1 or Part 6.3 were a reference to a contravention of a provision of this Act."

59 New section 41AA inserted

After section 41 of the Principal Act **insert—**

"41AA Certain persons not to be involved in management of retirement villages

- (1) A person who is an insolvent under administration must not be involved in the promotion or sale of rights to occupy premises in a retirement village in any way, whether directly or indirectly.

Penalty: 50 penalty units.

- (2) A person who is an insolvent under administration must not be concerned in, or take part in, the management of a retirement village in any way, whether directly or indirectly.

Penalty: 50 penalty units.

- (3) A person who has been convicted of a dishonesty offence must not be involved in the promotion or sale of rights to occupy premises in a retirement village in any way, whether directly or indirectly until on or after—

- (a) the expiry of a period of 5 years after being convicted; or
(b) if the person was sentenced to imprisonment, a period of 5 years from the expiration of the sentence.

Penalty: 50 penalty units.

- (4) A person who has been convicted of a dishonesty offence must not be concerned in, or take part in, the management of a retirement village in any way, whether directly or indirectly until on or after—

- (a) the expiry of a period of 5 years after being convicted; or
- (b) if the person was sentenced to imprisonment, a period of 5 years from the expiration of the sentence.

Penalty: 50 penalty units."

60 Consequences of rescission

- (1) For section 42(1)(b) of the Principal Act **substitute**—

- "(b) the person entitled to rescind the contract serves notice mentioned in paragraph (a)—
- (i) for a right to rescind under section 26X(2), before the end of the period of 3 business days after signing the contract; or
 - (ii) in any other case, not later than 6 months after becoming aware of the contravention that entitles the person to rescind the contract."

- (2) For section 42(3)(b) of the Principal Act **substitute**—

- "(b) the resident—
- (i) for a right to rescind under section 26X(2), has the rights set out in section 26X(4) in connection with the residence contract and no other rights in connection with any other contract; or
 - (ii) in any other case, is entitled to the immediate payment of all moneys paid by the resident or on the resident's behalf in connection with those contracts."

- (3) In section 42(4) of the Principal Act—
- (a) for "a court of competent jurisdiction" **substitute** "VCAT";
 - (b) in paragraph (d)—
 - (i) for "the court" **substitute** "VCAT";
 - (ii) for "in-going contributions" **substitute** "entry payments";
 - (iii) for "in behalf of" **substitute** "on behalf of".

61 New section 42AA inserted

After section 42 of the Principal Act **insert**—

"42AA Service of notice of rescission

A notice under section 42(1)(a) must be served on each other person who is a party to the contract either—

- (a) personally; or
- (b) by leaving it or sending it by post addressed to the person at—
 - (i) the person's business address or address for service specified in the contract; or
 - (ii) the address of the agent for the person."

62 New sections 42C to 42F inserted

After section 42B of the Principal Act **insert**—

"42C Director's guidelines

- (1) The Director may make guidelines as to matters that the chief dispute resolution officer and proprietors and operators must consider when dealing with a dispute under this Act.

- (2) Guidelines made by the Director under subsection (1) must be published on the Internet site of the Department.
- (3) In making a decision under this Act, VCAT may have regard to guidelines made by the Director under subsection (1).

42D Giving or service of documents

A notice or other document to be served or given to a person under this Act must be served or given—

- (a) by delivering the document personally to the person; or
 - (b) by leaving the document at the person's usual or last known place of residence or business with a person apparently over the age of 16 years and apparently residing or employed at that place; or
 - (c) by sending the document to the person by post addressed to the person's usual or last known place of residence or business; or
 - (d) if the person is a corporation—
 - (i) by sending the document by post to the registered office in Victoria of the corporation; or
 - (ii) by giving the document to a person who is an officer of the corporation who is authorised to accept service of notices and who is employed at the registered office of the corporation; or
 - (e) by sending the document by electronic communication in accordance with the **Electronic Transactions (Victoria) Act 2000**; or
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(f) in the manner ordered by VCAT.

42E Application of this Act to partnerships and unincorporated bodies

- (1) If by or under this Act something is required or permitted to be done by a person, in the case of a partnership, the thing may be done by one or more of the partners on behalf of the partnership.
- (2) If by or under this Act something is required or permitted to be done by a person, in the case of an unincorporated body that is not a partnership, the thing may be done by one or more members of the committee of the body on behalf of the body.
- (3) A reference to a person who may be guilty of an offence against a provision of this Act includes—
 - (a) in the case of a partnership—a reference to each member of the partnership who knew of, or knowingly authorised or permitted, the commission of the offence; and
 - (b) in the case of an unincorporated body—a reference to each member of the committee of management of the body who knew of, or knowingly authorised or permitted, the commission of the offence.

42F Review of Act

- (1) The Minister must carry out a review of the operation of this Act, in particular—
 - (a) a review of the effect and operation of the amendments to this Act made by the **Retirement Villages Amendment Act 2022**; and
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- (b) whether any further amendment of this Act is required.
- (2) The review under subsection (1) must commence at a time that is no earlier than 2 years and no later than 5 years after the commencement of the **Retirement Villages Amendment Act 2022**.
- (3) The Minister must table a copy of the review under subsection (2) before each House of the Parliament as soon as practicable after the review is completed.
- (4) The Minister may delegate the Minister's power to carry out a review under this section to a person employed under Part 3 of the **Public Administration Act 2004**, in the administration of this Act."

63 Regulations

For section 43 of the Principal Act **substitute**—

"43 Regulations

- (1) The Governor in Council may make regulations for or with respect to the following—
 - (a) the method for determining and indexing (by reference to a document or otherwise) the adjusted maintenance charge;
 - (b) contracts entered into between residents and either or both proprietors and operators of retirement villages, including—
 - (i) matters that are or are not to be included in any contracts or any contracts in a particular class of contract; and

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- (ii) forms of any contracts or any contracts in a particular class of contract, including methods of setting out the substance of the contracts, other matters relating to the setting out and style of the contracts and the use of words or other symbols in the contracts;
 - (c) records that must be kept by persons liable to make aged care payments or alternative accommodation payments for or with respect to the making of those payments;
 - (d) the form of payment statements to be given to vacating residents under Part 5B and information to be included in those statements;
 - (e) the form of payment requests and information to be included in payment requests;
 - (f) payment of exit entitlements or the payment of other amounts to vacating residents or residents who have died, including conditions that may or may not be included in contracts about the payments and offences relating to the payments;
 - (g) prescribing fees for applications or other matters under the Act for which fees are required to be paid;
 - (h) prescribing forms for the purposes of the Act or the regulations;
 - (i) records that must be kept by operators who make daily accommodation payments or alternative accommodation payments;
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- (j) information that must be given by operators to vacating residents about daily accommodation payments or alternative accommodation payments made by the operators on behalf of the residents;
 - (k) the display of key safety information in retirement villages;
 - (l) renovations of premises;
 - (m) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Regulations under this Act may—
- (a) be of general or limited application;
 - (b) differ according to differences in time, place or circumstance;
 - (c) apply differently to different classes of person;
 - (d) prescribe different infringement penalties for different classes of person;
 - (e) confer a discretionary authority or impose a duty on a specified person or body or specified class of person or body;
 - (f) leave any matter or thing to be from time to time determined or approved by the Director;
 - (g) may confer discretions or powers or impose duties in connection with the regulations on proprietors, operators, residents or other persons;
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- (h) may impose penalties, not exceeding 20 penalty units, for a contravention of the regulations.
- (3) Regulations under this Act in relation to fees imposed under this Act or the regulations may make provision for or with respect to—
- (a) specific fees;
 - (b) maximum and minimum fees;
 - (c) fees that vary according to value or time;
 - (d) fees that vary in respect of different classes of person, organisation or case;
 - (e) the means of collection and payment of fees;
 - (f) the time at which fees are to be paid."

Part 3—Amendment of other Acts

64 Amendment of Criminal Procedure Act 2009

After item 26 of Schedule 2 to the **Criminal Procedure Act 2009** insert—

"26A Retirement Villages Act 1986

26A.1 Indictable offences under the
Retirement Villages Act 1986.".

65 Amendment of the Magistrates' Court Act 1989

After section 114 of the **Magistrates' Court Act 1989** insert—

"115 Enforcement of Division 7 orders under the Retirement Villages Act 1986

- (1) The chief dispute resolution officer may give a written request to a registrar of the Melbourne Magistrates' Court requesting the enforcement of—
 - (a) a Division 7 order that is a monetary order, by payment of the amount required to be paid under the order; or
 - (b) a Division 7 order that is not a monetary order, by requiring the person to whom the order applies to do or refrain from doing the thing specified in the order.
 - (2) A request under subsection (1) must be accompanied by a copy of the order certified as a true copy of the original order by the chief dispute resolution officer.
 - (3) On receiving a request under subsection (2), the registrar must register the Division 7 order in the Magistrates' Court by filing in the Court a certified copy of the order and
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must note the date of registration on the copy.

- (4) On the registration of an order under subsection (3) the order is deemed to be an order of the Magistrates' Court that requires one or other of the following, as the case requires—
 - (a) payment by the person to whom the order applies of the amount referred to in the certified copy of the order as outstanding; or
 - (b) the person to whom the order applies to do or refrain from doing the thing specified in the certified copy of the order.

116 Warrants for registered orders

- (1) If the case so requires, the registrar may issue a warrant to seize property of the person to whom an order registered under section 115 applies for the purpose of recovering the amount referred to in the certified copy of the order as outstanding.
 - (2) If, after a request under subsection 115(1) is made, the registrar receives a notification from the chief dispute resolution officer of payment of the whole or part of the outstanding amount by or on behalf of the person to whom the order that is the subject of the request applies, the registrar must—
 - (a) note the particulars of the payment on the certified copy of the order filed in the Court; and
 - (b) arrange for the return of the warrant issued under subsection (5), if it is unexecuted; and
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Part 3—Amendment of other Acts

- (c) if the amount—
- (i) has been paid in full, withdraw the warrant; or
 - (ii) has not been paid in full, amend the warrant to show the amount still outstanding, and the warrant may be enforced in respect of the altered amount.
- (3) In this section and in section 115—
- chief dispute resolution officer* has the same meaning as in section 3(1) of the **Retirement Villages Act 1986**;
- Division 7 order* has the same meaning as in section 3(1) of the **Retirement Villages Act 1986**;
- monetary order* has the same meaning as in section 3(1) of the **Retirement Villages Act 1986**."

Part 4—Repeal of this Act

66 Repeal of this Act

This Act is **repealed** on the first anniversary of the first day on which all of its provisions are in operation.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.