

Authorised Version No. 084
Retirement Villages Act 1986

No. 126 of 1986

Authorised Version incorporating amendments as at
1 December 2021

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Retirement Villages Act 1986

No. 126 of 1986

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1 December 2021

The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Purpose

The purpose of this Act is to clarify and protect the rights of persons who live in, or wish to live in, retirement villages.

2 Commencement

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

3 Definitions

(1) In this Act—

annual meeting means—

- (a) in respect of a retirement village where there is no owners corporation, an annual meeting convened under section 33; and
- (b) in respect of a retirement village where there is an owners corporation, the annual meeting of the owners corporation;

S. 3(1) def. of *annual meeting* amended by No. 69/2006 s. 224(Sch. 3 item 7.1(a)).

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S. 3(1) def. of *arbitrator* repealed by No. 4/2005 s. 3(b).

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S. 3(1) def. of
ASIC
inserted by
No. 32/2020
s. 14.

ASIC has the same meaning as *Commission* has
in the **Corporations (Victoria) Act 1990**;

S. 3(1) def. of
body
corporate
substituted by
No. 53/1988
s. 45(Sch. 3
item 61) (as
amended by
No. 47/1989
s. 23(2)),
repealed by
No. 69/2006
s. 224(Sch. 3
item 7.1(b)).

* * * *

by-laws means provisions relating to the control
management administration use and
enjoyment of retirement village land or of
the provision of services to residents which
apply to a resident—

- (a) because they are included in or applied
by a contract made between the resident
and the owner or between the resident
and the manager; or
- (b) because the resident is a member of an
association formed in connexion with a
retirement village;

charge means the charge created under Part 5;

S. 3(1) def. of
close
associate
inserted by
No. 4/2005
s. 3(a).

close associate, in relation to a manager of a
retirement village, means—

- (a) if the manager is a natural person—
 - (i) the spouse, domestic partner,
parent, child or sibling of the
manager; or

- (ii) the parent, child or sibling of the spouse or domestic partner of the manager; or
 - (iii) a body corporate of which the manager (or the manager's spouse, domestic partner, parent, child or sibling, or the parent, child or sibling of the spouse or domestic partner of the manager) is a director or secretary; and
- (b) if the manager is a body corporate—
- (i) a director or secretary of the body corporate or of a related body corporate (within the meaning of the Corporations Act); or
 - (ii) the spouse, domestic partner, parent, child or sibling of such a director or secretary; or
 - (iii) the parent, child or sibling of the spouse or domestic partner of such a director or secretary; or
 - (iv) a related body corporate; and
- (c) in either case, an agent or employee of the manager;

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S. 3(1) def. of *Commissioner for Corporate Affairs* repealed by No. 17/1999 s. 43(1)(a).

committee means—

- (a) in relation to a retirement village in respect of which there is an owners corporation, the owners corporation; and

S. 3(1) def. of *committee* amended by No. 69/2006 s. 224(Sch. 3 item 7.1(c)).

- (b) in relation to a retirement village where there is no owners corporation, the residents committee;

contract includes a lease or other agreement relating to an interest in land;

S. 3(1) def. of *Director* inserted by No. 17/1999 s. 43(1)(b), amended by No. 21/2012 s. 239(Sch. 6 item 38.1).

Director means the Director within the meaning of the **Australian Consumer Law and Fair Trading Act 2012**;

S. 3(1) def. of *disclosure statement* substituted by No. 4/2005 s. 3(c), amended by No. 2/2013 s. 3(a).

disclosure statement, in relation to a retirement village, means a statement, in the form approved by the Director, setting out—

- (a) the day on which the retirement village notice for the retirement village was lodged with the Registrar of Titles under Part 2; and
- (b) particulars of any mortgage, charge or other encumbrances over the retirement village land that take priority to the rights of residents of the retirement village under this Act; and
- (c) particulars of any agreement entered into in relation to the retirement village land relating to the priority of residence rights over earlier encumbrances over the land; and
- (d) the day on which notification of the charge created by Part 5 over the retirement village land was given to the Registrar of Titles; and
- (e) any other prescribed matters;

domestic partner of a person means—

- (a) a person who is in a registered relationship with the person; or
- (b) an adult person to whom the person is not married but with whom the person is in a relationship as a couple where one or each of them provides personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they are living under the same roof, but does not include a person who provides domestic support and personal care to the person—
 - (i) for fee or reward; or
 - (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

S. 3(1) def. of *domestic partner* inserted by No. 27/2001 s. 8(Sch. 6 item 6.1(a)), substituted by No. 12/2008 s. 73(1)(Sch. 1 item 52.1).

exempt organization means an exempt organization under Part 1;

exempt retirement village means a retirement village which is an exempt retirement village or is included in a class of exempt retirement villages under Part 1;

factsheet, in relation to a retirement village, means a summary of information relating to the retirement village prepared in accordance with section 18A(5);

S. 3(1) def. of *factsheet* inserted by No. 2/2013 s. 3(b).

in-going contribution means the payment made—

- (a) by way of donation because of an understanding between a person and an owner or manager to the effect that, on the making of the donation, the person will be entitled to become a resident of the village; or
- (b) in consideration of acquiring shares in a company, if those shares confer on the holder the right to become a resident of a retirement village; or
- (c) in consideration of the right to become a resident—

whether paid by or on behalf of the person who wishes to become a resident and whether in a lump sum or by instalments but does not include rent;

S. 3(1) def. of *legal practitioner* inserted by No. 18/2005 s. 18(Sch. 1 item 93), amended by No. 17/2014 s. 160(Sch. 2 item 86).

legal practitioner means an Australian legal practitioner;

S. 3(1) def. of *maintenance charge* inserted by No. 4/2005 s. 3(a).

maintenance charge means a recurring charge payable by a resident for the provision of goods or services by a manager;

S. 3(1) def. of *management complaint* inserted by No. 4/2005 s. 3(a).

management complaint means any complaint that a resident has against the manager of a retirement village about—

- (a) the control, management or administration of the retirement village by the manager; or

- (b) any action or failure to act by the manager 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 manager to residents of the retirement village;

manager means—

- (a) a person who manages a retirement village; and
- (b) if there is no such person, the owner of retirement village land;

management contract means a contract between a resident and a manager which relates to the provision of services by the manager to the resident;

non-owner resident, in relation to a retirement village, means a person who is a resident of the village, who does not own the land the person occupies as a private residence in the village, and **premises**, in relation to any such resident, means the land so occupied by that resident;

S. 3(1) def. of *non-owner resident* inserted by No. 4/2005 s. 3(a).

owner—

- (a) in relation to land in an identified folio under the **Transfer of Land Act 1958** or land not under the operation of the **Transfer of Land Act 1958**, means a person who alone or with others is the owner of an estate in fee simple, whether the person is the beneficial owner or holds the land on trust or subject to an equity of redemption or other similar right; and

S. 3(1) def. of *owner* amended by No. 85/1998 s. 24(Sch. item 52.1 (a)(b)).

S. 3(1) def. of
*owner
resident*
inserted by
No. 4/2005
s. 3(a).

(b) in relation to land under the operation of the **Transfer of Land Act 1958** (other than land in an identified folio under that Act), means a person who alone or with others is registered as the proprietor of an estate in fee simple;

owner resident, in relation to a retirement village, means a resident of the village who owns the land that the resident occupies as a private residence in the village, and *premises*, in relation to any such resident, means the land so owned and occupied by that resident;

S. 3(1) def. of
*owners
corporation*
inserted by
No. 69/2006
s. 224(Sch. 3
item 7.1(d)).

owners corporation has the same meaning as in the **Owners Corporations Act 2006**;

S. 3(1) def. of
*personal
services*
inserted by
No. 4/2005
s. 3(a).

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

S. 3(1) def. of
police officer
inserted by
No. 37/2014
s. 10(Sch.
item 145.1).

police officer has the same meaning as in the **Victoria Police Act 2013**;

prescribed amount means—

- (a) \$10 000; or
- (b) if a greater amount is prescribed for the purposes of this definition that greater amount;

prescribed period means—

S. 3(1) def. of
*prescribed
period*
amended by
No. 69/2006
s. 224(Sch. 3
item 7.1(e)).

- (a) in respect of a retirement village where there is no owners corporation, the period of 12 months ending 3 months before the date on which the annual meeting is to be held; and
- (b) in respect of a retirement village where there is an owners corporation, the period to which the accounts presented to the annual meeting are required to relate;

refundable in-going contribution means so much of an in-going contribution as is under a residence contract or this Act—

- (a) refundable to the resident if the resident leaves the retirement village; or
- (b) payable to the resident's estate if the resident dies;

register means the register kept and maintained by the Director under section 38J;

S. 3(1) def. of
register
inserted by
No. 4/2005
s. 3(a).

related body corporate has the same meaning as in the Corporations Act;

S. 3(1) def. of
*related body
corporate*
inserted by
No. 4/2005
s. 3(a).

residence contract means a contract between an owner and a resident which creates or gives rise to a residence right;

residence documents means any of the following—

S. 3(1) def. of
*residence
documents*
amended by
Nos 4/2005
s. 3(e)(i)(ii),
50/2014 s. 44.

- (a) a residence contract;
- (b) a management contract;

- (c) a document under which a resident agrees to observe the by-laws, promises to pay an in-going contribution or a recurring charge for the provision of goods or services by a manager;
- (d) a document which is a prescribed document or contains prescribed information;
- (e) a disclosure statement completed and signed by the owner;

* * * * *

- (g) the by-laws;
- (h) any other document that is prescribed for the purposes of this definition;

S. 3(1) def. of
residence
right
amended by
Nos 4/2005
s. 3(f), 23/2016
s. 27.

residence right means a right of a resident to use residential, hostel or hospital accommodation or other services provided for a retirement village (not being a service provided in a residential care facility) which is created or arises by or under a contract whether the right is expressed as an interest in land or a licence or arises because the resident becomes the holder of shares in a company which provides accommodation or services for a retirement village;

S. 3(1) def. of
resident
substituted by
No. 4/2005
s. 3(d).

resident means a retired person who lives or proposes to live in a retirement village and—

- (a) in Part 5 (other than section 32) and in section 34 includes—
 - (i) a person who was a resident of, but has left, a retirement village;
- and

- (ii) if a person, who while a resident of a retirement village, has died, the person's legal personal representative; and
- (b) in section 32 and section 39 includes a person to whom paragraph (a) applies, if that person's entitlements under a residence contract have not yet been paid;

resident dispute means a dispute between residents in a retirement village about any action or failure to act by residents in the retirement village that affects—

S. 3(1) def. of *resident dispute* inserted by No. 4/2005 s. 3(a).

- (a) the use and enjoyment of the retirement village land by other residents in the retirement village; or
- (b) the use of services by other residents in the retirement village, being services provided to residents in the retirement village by the manager;

residential care facility means any premises—

S. 3(1) def. of *residential care facility* inserted by No. 4/2005 s. 3(a).

- (a) in which—
 - (i) a residential care service; or
 - (ii) a multi purpose 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
- (b) in respect of which an allocation of residential care places or flexible care places is in effect under Division 15 of that Act;

residents committee means a residents committee formed under Part 6;

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S. 3(1) def. of
retired person
amended by
No. 27/2001
s. 8(Sch. 6
item 6.1(b)).

retired person means—

- (a) a person who has attained the age of 55 or has retired from full time employment; and
- (b) the spouse or domestic partner of such a person; and
- (c) if the person mentioned in paragraph (a) has died, the person who was the spouse or domestic partner of that deceased person;

S. 3(1) def. of
*retirement
village*
amended by
No. 4/2005
s. 3(g).

retirement village means a community—

- (a) the majority of which is retired persons who are provided with accommodation and services other than services that are provided in a residential care facility; and
- (b) at least one of whom, before or upon becoming a member of the community, pays or is required to pay an in-going contribution;

S. 3(1) def. of
*retirement
village land*
amended by
No. 4/2005
s. 3(h).

retirement village land means land used or to be used for the purposes of a retirement village, other than any part of any such land on which a residential care facility is situated;

S. 3(1) def. of
*retirement
village notice*
substituted by
No. 4/2005
s. 3(i).

retirement village notice means a notice lodged with the Registrar of Titles under section 9(1);

services means any of the following—

- (a) management and administrative services;
- (b) gardening, repair and maintenance services;

- (c) hospital, nursing or medical services including accommodation;
- (d) shops and other services for the provision of goods to residents;
- (e) hostel accommodation;
- (f) laundry services;
- (g) the provision of meals;
- (h) services or facilities for the recreation or entertainment of residents;
- (i) other services for the care or benefit of residents;

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S. 3(1) def. of *society* inserted by No. 35/1996 s. 453(Sch. 1 item 72.1), repealed by No. 11/2001 s. 3(Sch. item 64.1).

special resolution means a resolution which—

- (a) is passed at a meeting of which at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been given to all residents; and
- (b) is passed at a meeting held in accordance with paragraph (a) by a majority of not less than three quarters of the residents living at the retirement village and voting at that meeting;

spouse of a person means a person to whom the person is married;

S. 3(1) def. of *spouse* inserted by No. 27/2001 s. 8(Sch. 6 item 6.1(a)).

S. 3(1) def. of
Tribunal
inserted by
No. 4/2005
s. 3(a).

Tribunal means the Victorian Civil and Administrative Tribunal established under the **Victorian Civil and Administrative Tribunal Act 1998**.

(2) If—

- (a) under Part 6 a resident may vote at an annual meeting; and
- (b) that resident and another resident or other residents are jointly entitled (whether as joint tenants or tenants in common) to share accommodation at a retirement village—

the right to vote conferred by that Part may be exercised by one only of those residents and, if those residents 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 residence right may exercise the right to vote.

S. 3(3)
inserted by
No. 27/2001
s. 8(Sch. 6
item 6.2),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 52.2).

(3) For the purposes of the definition of ***domestic partner*** in subsection (1)—

- (a) ***registered relationship*** has the same meaning as in the **Relationships Act 2008**; and
- (b) in determining whether persons who are not in a registered relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and
- (c) a person is not a domestic partner of another person only because they are co-tenants.

4 Act to apply to existing and new retirement villages

This Act applies to a retirement village whether existing before or after the commencement of this section.

5 Act not to apply to certain retirement villages

* * * * *

S. 5(1)
repealed by
No. 53/1990
s. 30.

(2) To the extent stated in an instrument of exemption under section 6, the provisions of this Act do not apply to—

- (a) a retirement village established or conducted by an exempt organization; or
- (b) an exempt retirement village; or
- (c) a retirement village included in a class of exempt retirement villages.

6 Exemptions

(1) Any religious or charitable organization may apply to the Director to have the organization declared an exempt organization for the purposes of all or any of the provisions of this Act.

S. 6(1)
amended by
No. 17/1999
s. 43(2)(a).

(2) The owner of retirement village land or a manager may apply to the Director to have a retirement village on that land declared to be an exempt retirement village for the purposes of all or any provisions of this Act.

S. 6(2)
amended by
No. 17/1999
s. 43(2)(a).

(3) An application under subsection (1) or subsection (2) must state why the exemption is sought and whether the exemption applied for is to relate to all or some only of the provisions of this Act and, if it is to relate to some of the provisions only, to which provisions it is to relate and must be accompanied by the appropriate prescribed fee.

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S. 6(4)
amended by
No. 17/1999
s. 43(2)(a).

- (4) The Director may require an applicant for exemption to give more information about the application.

S. 6(5)
amended by
No. 17/1999
s. 43(2)(a).

- (5) The Director may make recommendations to the Minister concerning—

S. 6(5)(a)
amended by
No. 17/1999
s. 43(2)(b).

- (a) applications received by the Director under this section; and

S. 6(5)(b)
amended by
No. 17/1999
s. 43(2)(a).

- (b) exemptions which the Director considers should be granted under this section, although no application has been received; and

- (c) the conditions to which particular exemptions ought to be subject.

- (6) The Governor in Council on the recommendation of the Minister may, by order published in the Government Gazette—

- (a) declare an organization to be an exempt organization; or

- (b) declare a retirement village to be an exempt village; or

- (c) declare a class of retirement villages to be exempt retirement villages—

whether or not an application for the exemption has been made under this section.

- (7) An exemption under subsection (6)—

- (a) is subject to such conditions as the Governor in Council on the recommendation of the Minister determines and states in the instrument of exemption; and

- (b) may be expressed to apply to this Act or to any of its provisions stated in the instrument of exemption; and
 - (c) lasts either until revoked or for such period (if any) as the Governor in Council on the recommendation of the Minister determines and states in the instrument of exemption.
- (8) An organization which or an owner or a manager who is granted an exemption under this section must comply with any conditions to which the exemption is subject.

Penalty: 200 penalty units.

7 Contracting out

- (1) A provision in a contract or document concerning a retirement village which purports to exclude, modify or restrict the operation of this Act is void.
- (2) If a contract or document includes a provision which is void under subsection (1), that subsection does not affect the validity or enforceability of other provisions of the contract or document, in so far as they are severable from the void provision.

Part 2—Retirement village notices

8 Residence right not to be created unless retirement village notice is lodged

- (1) A person who after the commencement of this section—
- (a) enters into a contract; or
 - (b) invites other persons to make applications, offers or proposals to enter into a contract—

which has or would have the effect of creating or giving rise to a residence right in a retirement village in respect of which a retirement village notice has not been lodged under section 9 is guilty of an offence.

Penalty: 200 penalty units.

- (2) A person who is a resident and has entered into a contract in respect of which there has been a contravention of subsection (1) may rescind the contract.

9 Owner to lodge retirement village notice

- (1) If after the commencement of this section land is used or proposed to be used as retirement village land the owner must before entering into a contract which creates or gives rise to a residence right in the land or inviting other persons to make applications, offers or proposals to enter into such a contract lodge a notice with the Registrar of Titles.

* * * * *

Penalty: 200 penalty units.

S. 9(1)
amended by
Nos 85/1998
s. 24(Sch.
item 52.2),
4/2005 s. 4(a).

S. 9(1)(a)(b)
repealed by
No. 85/1998
s. 24(Sch.
item 52.2).

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| | | | | | S. 9(2)
repealed by
No. 85/1998
s. 24(Sch.
item 52.3). |
| (3) | A notice under subsection (1)— | | | | S. 9(3)
amended by
No. 4/2005
s. 4(b)(i). |
| (a) | must contain the prescribed information; | | | | S. 9(3)(a)
substituted by
No. 4/2005
s. 4(b)(ii). |
| (b) | must contain— | | | | |
| | (i) a description of the land to which the
notice relates; and | | | | |
| | (ii) a statement that this Act applies to that
land; | | | | |
| (c) | if it relates to land in an identified folio
under the Transfer of Land Act 1958 or
land not under the operation of the Transfer
of Land Act 1958 , must also contain the
name and description of the owner of the
land appearing from an instrument affecting
the land last registered under the Property
Law Act 1958 . | | | | S. 9(3)(c)
amended by
No. 85/1998
s. 24(Sch.
item 52.4). |
| (4) | Before lodging a retirement village notice with the
Registrar of Titles the owner of retirement village
land to which the notice relates must— | | | | S. 9(4)
amended by
No. 85/1998
s. 24(Sch.
item 52.5). |
| | (a) obtain release from or discharge of, all
encumbrances which would take priority
to any residence right which the owner
may subsequently create, except those
encumbrances mentioned in section 42(2)
of the Transfer of Land Act 1958 ; or | | | | |

- (b) enter into an agreement with the holders of all encumbrances which would otherwise take priority to any residence right which the owner might subsequently create to the effect that the residence right will have first priority.

Penalty: 50 penalty units.

- (5) Subsection (4) does not apply to a retirement village in respect of which an owner entered into a contract before the commencement of this section which created or gave rise to a residence right.

S. 10
repealed by
No. 85/1998
s. 24(Sch.
item 52.6).

* * * * *

S. 11
amended by
No. 18/1989
s. 13(Sch. 2
item 72(a)),
substituted by
No. 85/1998
s. 24(Sch.
item 52.7).

11 Retirement village notice to be noted on title

On receiving a retirement village notice in relation to land, the Registrar of Titles must make a recording of the retirement village notice in the Register.

Part 3—Residence rights

12 Part not to apply to strata and cluster subdivisions

This Part does not apply to retirement village land which is land in respect of which the residence rights are—

- (a) estates in fee simple held as registered proprietors under the **Transfer of Land Act 1958**; or

S. 12
amended by
No. 85/1998
s. 24(Sch.
item 52.8).

S. 12(a)
amended by
No. 53/1988
s. 45(Sch. 3
item 62) (as
amended by
No. 47/1989
s. 23(2)),
substituted by
No. 85/1998
s. 24(Sch.
item 52.8).

- (b) in any other case, legal estates in fee simple.

S. 12(b)
substituted by
No. 85/1998
s. 24(Sch.
item 52.8).

13 Residence right

- (1) A person who (whether the owner of retirement village land or not) enters into a contract with a resident which—

- (a) purports to create or give rise to a residence right; and
(b) is not entered into by all the owners for the time being of the retirement village land to which the residence right relates—

is guilty of an offence.

Penalty: 200 penalty units.

- (2) A resident who has entered into a contract in respect of which there has been a contravention of subsection (1) may rescind the contract.
(3) This section does not apply to a contract entered into before the commencement of this section.

14 Enforcement of residence right

- (1) A contract which is entered into after the commencement of this section between a resident and an owner of retirement village land and which creates or gives rise to a residence right binds the successors in title of the owners while the contract remains in force as if the successors had also entered into the contract.
- (2) A contract which was entered into before the commencement of this section between the resident and an owner of retirement village land and which created or gave rise to a residence right binds the successors in title of the owners from the date on which a retirement village notice is registered in respect of the land until the contract ceases to be in force.
- (3) In this section *successor in title* includes a person who acquires any interest in or right affecting land or has a mortgage, charge or other encumbrance over land.
- (4) Subject to section 7 and to this section a residence right is subject to the terms of the contract which created or gave rise to it.
- (5) If in respect of retirement village land—
 - (a) a retirement notice was registered under the **Property Law Act 1958** before the commencement of section 22 of the **Transfer of Land (Single Register) Act 1998**; or
 - (b) a recording of a retirement village notice is made in the Register under the **Transfer of Land Act 1958**—

S. 14(5)
amended by
No. 18/1989
s. 13(Sch. 2
item 72(b)
(i)(ii)),
substituted by
No. 85/1998
s. 24(Sch.
item 52.9).

the rights of a person who, after the notice is registered or recorded but before the residence right is created, becomes the holder of a mortgage, charge or encumbrance over the land are subject

to any residence rights subsequently created over the land.

15 Residential Tenancies Act 1997 not to apply

The **Residential Tenancies Act 1997** does not apply to a tenancy agreement which creates or gives rise to a residence right.

S. 15
substituted by
No. 109/1997
s. 533(Sch. 2
item 11.1).

16 Termination of residence contract

(1) In this section—

owner means owner for the time being of retirement village land.

(2) If a resident is in breach of a provision of a residence contract the owner may serve on the resident a notice specifying the breach and—

- (a) requiring the breach to be remedied; or
- (b) if the breach is not capable of being remedied, requiring the resident to cease committing the breach—

within 28 days after the date of service of the notice.

(3) If—

- (a) an owner has served on a resident a notice under subsection (2); and
- (b) the resident has not complied with the notice at the end of 28 days after the date of service of the notice; and
- (c) the breach specified in the notice is substantial—

the owner may serve on the resident a notice specifying the breach and requiring the resident to leave the retirement village on or before a date stated in the notice, which is not earlier than 60 days after the date of service of the notice.

- (4) If a resident has a residence right by virtue of a contract which creates a periodic tenancy the owner may serve on the resident notice requiring the resident to leave the retirement village on a date which is not earlier than—
- (a) six months after the date of service of the notice; or
 - (b) the end of the period of the tenancy—
- whichever last happens.
- (5) An owner may serve on a resident a notice requiring the resident to leave a retirement village within 14 days after the service of the notice if—
- (a) the residence contract authorizes the giving of the notice and, if the contract includes conditions which must be complied with before the notice can be given, those conditions have been complied with; and
 - (b) the notice includes a copy of a certificate signed by 2 persons registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student), one of whom is nominated or agreed to by the resident and stating to the effect that the resident needs care of a kind which is not available at the retirement village.
- (6) A notice under this section may be served on a resident personally or by post addressed to the resident at the resident's address in the retirement village or at the resident's last known address.
- (7) An owner who—
- (a) serves on a resident a notice requiring the resident to remedy, or cease committing, a breach of a residence contract which does not comply with subsection (2); or

S. 16(5)(b)
amended by
Nos 23/1994
s. 118(Sch. 1
item 49),
97/2005
s. 182(Sch. 4
item 43),
13/2010
s. 51(Sch.
item 47).

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(b) serves on a resident a notice requiring the resident to leave a retirement village which is not a notice in accordance with the provisions of subsections (3), (4) or (5)—

is guilty of an offence.

Penalty: 50 penalty units.

Part 4—Dealings

17 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 residence rights or be in any way (whether directly or indirectly) concerned in, or take part in, the management of a retirement village.

Penalty: 50 penalty units.

- (2) A person who, whether before or after the commencement of this section, has been convicted, within or outside Victoria, of an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than 3 months must not within a period of 5 years after being convicted or if the person was sentenced to imprisonment after the expiration of the sentence, be involved in the promotion or sale of residence rights, or be in any way (whether directly or indirectly) concerned in, or take part in, the management of a retirement village.

Penalty: 50 penalty units.

S. 17(3)
amended by
No. 44/2001
s. 3(Sch.
item 99),
repealed by
No. 4/2008
s. 32(Sch.
item 29).

* * * * *

18 Application of Australian Consumer Law and Fair Trading Act 2012

- (1) The **Australian Consumer Law and Fair Trading Act 2012** and the Australian Consumer Law (Victoria) apply to services or goods provided under a residence contract, even though the goods or services are provided under a contract of service.

S. 18(1)
amended by
Nos 17/1999
s. 43(3)(a),
72/2010
s. 48(Sch.
item 20(1)),
21/2012
s. 239(Sch. 6
item 38.2).

* * * * *

S. 18(2)
repealed by
No. 17/1999
s. 43(3)(b).

- (3) A reference in the **Australian Consumer Law and Fair Trading Act 2012** or the Australian Consumer Law (Victoria) to the price of goods or services includes in relation to a residence right an in-going contribution.

S. 18(3)
amended by
Nos 17/1999
s. 43(3)(a),
72/2010
s. 48(Sch.
item 20(2)),
21/2012
s. 239(Sch. 6
item 38.2).

18A Provision of factsheet

- (1) A retired person, or a person acting on behalf of a retired person, may make a request to the owner or manager of a retirement village, or to an agent of the owner or manager, for the factsheet relating to the retirement village.
- (2) Subject to subsection (6), if the owner or manager of a retirement village, or his or her agent, receives a request under subsection (1), the owner or manager, as the case may be, must provide to the person who made the request a copy of the factsheet, free of charge, not later than 7 days after the request is made.

S. 18A
inserted by
No. 2/2013
s. 4.

Penalty: 120 penalty units.

- (3) Subsection (2) applies regardless of whether the request under subsection (1) is made orally or in writing.
- (4) Subject to subsection (6), if the owner or manager of a retirement village, or his or her agent, gives or sends targeted promotional material to a retired person, or to a person acting on behalf of a retired person, the owner or manager, as the case may be, must ensure that a copy of the factsheet relating to the retirement village is included with the material.
Penalty: 50 penalty units.
- (5) The factsheet relating to a retirement village must—
 - (a) be in the form approved by the Director; and
 - (b) contain the prescribed information; and
 - (c) present in a clear, concise and effective manner that information, including any information included as an attachment.
- (6) The owner or manager of a retirement village is not required to provide a copy of the factsheet in response to a request under subsection (1) or include a copy of the factsheet with the targeted promotional material referred to in subsection (4) if—
 - (a) the retired person, or a person acting on behalf of the retired person, has previously been provided with a copy of the factsheet; and
 - (b) the information in the factsheet has not changed in a material particular since it was provided.

(7) In this section—

targeted promotional material means material given or addressed personally to a retired person, or to a person acting on behalf of a retired person, that is intended to promote a particular retirement village as a place in which to live but does not include marketing material distributed generally in a mail-out or letter-box drop.

18B Inspection of documents relating to retirement village

S. 18B
inserted by
No. 2/2013
s. 4.

- (1) A retired person, or a person acting on behalf of a retired person, may make a request to the owner or manager of a retirement village, or to an agent of the owner or manager, to inspect one or more prescribed documents relating to the retirement village.
- (2) Subject to subsection (4), if the owner or manager of a retirement village, or his or her agent, receives a request under subsection (1), the owner or manager, as the case may be, must make any of the requested documents that are in his or her possession or control available for inspection, free of charge, not later than 7 days after the request is made.

Penalty: 120 penalty units.

- (3) Subsection (2) applies regardless of whether the request under subsection (1) is made orally or in writing.
- (4) The owner or manager of a retirement village is not required to make a document available for inspection if—
 - (a) the retired person, or a person acting on behalf of the retired person, has previously inspected the document; and

- (b) the document has not changed in a material particular since that inspection.

S. 19
substituted by
No. 4/2005
s. 5.

19 Resident to be given certain documents

- (1) At least 21 days before a resident enters into any residence contract, the owner or the owner's agent must give a copy of the contract to the resident.

Penalty: 200 penalty units.

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

- (a) a copy of the management contract;
- (b) the disclosure statement;
- (c) the by-laws of the village;

S. 19(2)(ca)
inserted by
No. 2/2013
s. 5(1).

- (ca) subject to subsection (3), a copy of the factsheet relating to the retirement village;

- (d) all other documents referred to in the definition of residence documents.

Penalty: 200 penalty units.

S. 19(3)
inserted by
No. 2/2013
s. 5(2).

- (3) The manager of the retirement village is not required to provide a copy of the factsheet to the resident if—
- (a) the retired person, or a person acting on behalf of the retired person, has previously been provided with a copy of the factsheet; and
 - (b) the information in the factsheet 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 manager of a retirement village, if the resident has not previously inspected any of the documents relating to the retirement village prescribed for the purposes of section 18B(1), the manager must advise the resident that he or she has a right to do so.

S. 19(4)
inserted by
No. 2/2013
s. 5(2).

Penalty: 200 penalty units.

20 Resident to be given certain information

- (1) A person who includes in a disclosure statement, a factsheet or a document relating to the retirement village prescribed for the purposes of section 18B(1) a statement which the person knows to be false or misleading in a material particular is guilty of an offence.

S. 20(1)
amended by
No. 2/2013
s. 6.

Penalty: 50 penalty units.

* * * * *

S. 20(2)
amended by
No. 4/2005
s. 6(1),
repealed by
No. 50/2014
s. 45.

- (3) If asked by a resident, an owner or owner's agent of a retirement village must give to a resident information concerning the retirement village which the resident reasonably requires and the owner or agent is able to give.

Penalty: 50 penalty units.

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

Penalty: 50 penalty units.

S. 20(5)
amended by
No. 4/2005
s. 6(2).

- (5) In this section and in sections 21, 21A and 23
owner includes manager.

21 Inspection of documents

- (1) At a resident's request, an owner or an owner'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 owner or agent.

Penalty: 50 penalty units.

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

S. 21A
inserted by
No. 4/2005
s. 7.

21A Offence not to use a contract that complies with the regulations

An owner must not enter into a contract with a resident, which is required by the regulations to comply with the regulations, unless the contract so complies.

Penalty: 60 penalty units.

S. 21B
inserted by
No. 4/2005
s. 7.

21B Further matters relating to contracts

- (1) If a matter is required by the regulations to be excluded from a particular class of contract and a contract of that class is entered into that includes such a matter, that contract is void to the extent of that matter.
- (2) If a term is required by the regulations to be in a class of contract, that term is deemed to be in any contract of that class that is entered into.

- (3) If a contract that is of a particular class is required by the regulations to be in a prescribed form and a contract of that class is entered into that is not in the prescribed form, the contract is not enforceable against a resident who has entered into it to the extent that it is not in the prescribed form.
- (4) If a contract is of a class to which the regulations apply and the contract is varied and the effect of the variation is such that the contract does not comply with the regulations, the contract is not enforceable against a resident who has entered into it to the extent of that variation.

22 Rescission

If in respect of a resident there is a contravention of sections 19 or 20 the resident may rescind all residence contracts relating to the retirement village and entered into by the resident.

23 Court may excuse inadvertent contraventions

- (1) On application by an owner, a court of competent jurisdiction may by order declare that a resident does not have a right to rescind a residence contract relating to retirement village land of the owner if the Court is satisfied that the owner and an owner's agent have acted honestly and reasonably and ought fairly be excused for the contravention of section 19 or 20 which gave rise to the right of rescission, and that the resident is in substantially as good a position as if all the provisions of those sections have been complied with.
- (2) Subsection (1) applies despite anything to the contrary in section 22.

24 Cooling-off period

- (1) This section applies to a residence contract, except a residence contract to which section 31 of the **Sale of Land Act 1962** applies.
- (2) A resident who signs a residence contract may at any time before the end of the period of 3 business days after signing the contract give notice to the owner of the retirement village land to which the residence contract relates that the resident wishes to rescind the contract and, where the resident has signed the notice and given it in accordance with this section, the contract is rescinded.
- (3) A notice under this section must be given to the owner or the owner's agent or left at the address for service of the owner specified in the residence contract or the address of the owner's agent within 3 clear business days after the resident signs the contract.
- (4) 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 sum of \$100 or 0.2 per centum of the in-going contribution paid by the resident (whichever is the greater), which may be retained by the owner.
- (5) 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.
- (6) If a contract to which this section applies does not contain the notice required by subsection (5) a resident may rescind the contract.

- (7) In this section *business day* means a day which is not a holiday within the meaning of section 44(3) of the **Interpretation of Legislation Act 1984**.

25 In-going contributions to be held in trust

- (1) This section does not apply to so much of an in-going contribution as is deposit money to which sections 24 and 25 of the **Sale of Land Act 1962** apply.

- (2) An estate agent or legal practitioner who acts for an owner in a transaction relating to a residence contract must hold as a stakeholder moneys comprising all or any part of the in-going contribution received in connexion with the transaction until all the following events have happened—

S. 25(2)
amended by
No. 35/1996
s. 453(Sch. 1
item 72.2(a)).

- (a) all conditions precedent to the creation of a resident's right in favour of a person by whom or on whose behalf the in-going contribution was paid are fulfilled;
- (b) the person by whom or on whose behalf the in-going contribution was paid becomes immediately entitled to enter the retirement village as a resident;
- (c) if the transaction relates to a building or part of a building which is not yet constructed or is under construction, an occupancy permit is issued in respect of that building or part of the building under the **Building Act 1993**;
- (d) If the transaction relates to accommodation occupied by a resident who is entitled to a refund of all or part of an in-going contribution on another person taking up or becoming entitled to take up the accommodation, the owner pays the whole amount of the refund or directs the refund to

S. 25(2)(c)
substituted by
No. 126/1993
s. 264(Sch. 5
item 18).

S. 25(2)(d)
amended by
No. 35/1996
s. 453(Sch. 1
item 72.2(a)).

be paid out of the moneys held by the estate agent or legal practitioner—

and on the happening of the last of those events, the in-going contribution may be paid to the owner in the owner's own right or as the owner directs.

- (3) Subsection (2) does not stop the transfer of moneys comprising all or any part of an in-going contribution—

S. 25(3)(a)
amended by
No. 35/1996
s. 453(Sch. 1
item 72.2(a)).

(a) from one legal practitioner to another legal practitioner acting for the owner; or

(b) from one estate agent to another estate agent acting for the owner; or

S. 25(3)(c)
amended by
No. 35/1996
s. 453(Sch. 1
item 72.2(a)).

(c) from an estate agent to a legal practitioner acting for the owner; or

S. 25(3)(d)
amended by
No. 35/1996
s. 453(Sch. 1
item 72.2(a)).

(d) from an owner to an estate agent or legal practitioner acting for the owner—

but the person who receives the moneys so transferred must continue to hold them in accordance with subsection (2).

S. 25(4)
repealed by
No. 35/1996
s. 453(Sch. 1
item 72.2(b)).

* * * * *

- (5) If in the course of a transaction relating to a residence contract an owner receives moneys comprising all or any part of an in-going contribution, the owner must within 7 days after receiving it pay it—

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- | | |
|---|---|
| (a) to an estate agent or a legal practitioner acting for the owner; or | S. 25(5)(a) amended by No. 35/1996 s. 453(Sch. 1 item 72.2(a)). |
| (b) into a special purpose account established at an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth in Victoria to be nominated by the owner in the joint names of the owner and the resident by whom or on whose behalf the contribution was paid. | S. 25(5)(b) amended by Nos 35/1996 s. 453(Sch. 1 item 72.2(c)), 11/2001 s. 3(Sch. item 64.2). |
| (6) An account established under subsection (5) may be drawn on only with the consent of both the resident and the owner or, if either of those persons has died, the person's legal personal representative. | |
| (7) This section does not impose an additional liability on an authorised deposit-taking institution within the meaning of the Banking Act 1959 of the Commonwealth in respect of moneys deposited under subsection (5). | S. 25(7) amended by Nos 35/1996 s. 453(Sch. 1 item 72.2(d)), 11/2001 s. 3(Sch. item 64.2). |
| (8) An owner legal practitioner or agent who contravenes this section is guilty of an offence.

Penalty: 50 penalty units. | S. 25(8) amended by No. 35/1996 s. 453(Sch. 1 item 72.2(a)). |
| (9) This section does not affect the court's power to order relief against the forfeiture of moneys paid. | |
| (10) If under this section an owner nominates an interest bearing account into which an in-going contribution must be paid, a person who under this section is entitled to payments from the account is also entitled to the interest. | |

26 Refund of in-going contribution

- (1) If during the negotiations which lead to the signing of a residence contract by a resident an owner or manager, or a person acting on behalf of or with the knowledge of an owner or manager makes a statement to the resident to the effect that—
- (a) all or part of the resident's in-going contribution will be refunded to the resident if the resident leaves the retirement village; or
 - (b) all or part of the resident's in-going contribution will be paid to the resident's estate if the resident dies—

this subsection entitles the resident or the resident's legal personal representative to recover the amount of the in-going contribution to which the statement relates on the happening of the event specified in the statement as a debt due by the owner.

S. 26(2)
substituted by
No. 4/2005
s. 8.

- (2) If there is included in a statement mentioned in subsection (1)(a) or (1)(b) a condition which must be fulfilled before an amount becomes refundable under subsection (1), the condition is deemed to be void unless the condition is—
- (a) in the case of a resident who is an owner resident, in or to the effect that the resident or the resident's legal personal representative becomes entitled to recover the amount—
 - (i) on a day not more than 14 days after the day on which the purchase of the premises from the owner resident is completed; or

- (ii) if a person takes up residence in the premises in accordance with the contract for the purchase of the premises from the owner resident before the purchase is completed, on a day not more than 14 days after the day on which the person so takes up residence; or
- (b) in the case of a resident who is a non-owner resident, in or to the effect that the resident or the resident's legal personal representative is only entitled to recover the amount—
 - (i) if payment is made by another person under a residence contract in respect of the premises of the non-owner resident, that is at least the equivalent of the amount owed to the non-owner resident after the non-owner resident has delivered up vacant possession of the premises, on a day not more than 14 days after the day on which the payment is so made; or
 - (ii) on a day not more than 14 days after the day on which another person takes up residence in the premises of the non-owner resident after the non-owner resident has delivered up vacant possession of the premises; or
 - (iii) on a day which is not more than 6 months after the non-owner resident has delivered up vacant possession—whichever is the earlier; or
- (c) in accordance with the regulations.

S. 26(2)(b)(i)
amended by
No. 2/2013
s. 7.

S. 26(2)(c)
amended by
No. 28/2007
s. 3(Sch.
item 59).

- (3) Subsection (1) applies to a statement—
- (a) whether oral or in writing; or
 - (b) whether or not the statement was included in a residence contract or in any collateral contract; or
 - (c) whether or not the resident signed a residence contract in reliance on the statement; or
 - (d) despite a provision in a residence contract to the effect that the in-going contribution is a donation or is not refundable or any other provision inconsistent with the statement.

Part 5—Charges

27AA Definition

In this Part—

appointed person means a person appointed by an order under section 31A to execute the order.

S. 27AA
inserted by
No. 32/2020
s. 15.

27 This Part not to apply to residents with freehold title

This Part does not apply to retirement village land which is land in respect of which the residence rights are—

S. 27
amended by
No. 85/1998
s. 24(Sch.
item 52.10).

- (a) estates in fee simple held as registered proprietors under the **Transfer of Land Act 1958**; or

S. 27(a)
amended by
No. 53/1988
s. 45(Sch. 3
item 63) (as
amended by
No. 47/1989
s. 23(2)),
substituted by
No. 85/1998
s. 24(Sch.
item 52.10).

- (b) in any other case, legal estates in fee simple.

S. 27(b)
substituted by
No. 85/1998
s. 24(Sch.
item 52.10).

28 Application of Part

- (1) This Part applies to a retirement village if there has been paid by or on behalf of a resident an in-going contribution which exceeds the prescribed amount, and includes a refundable in-going contribution.
- (2) This Part applies whether a refundable in-going contribution is paid after, or was paid before the commencement of this section.

S. 28(3)(a)
substituted by
No. 85/1998
s. 24(Sch.
item 52.11).

- (3) In this Part a reference to the application date is a reference—
- (a) if before the commencement of this section a resident paid an in-going contribution which exceeds the prescribed amount, to the date on which—
 - (i) a memorial of a retirement village notice was registered under Part 1 of the **Property Law Act 1958** before the commencement of section 22 of the **Transfer of Land (Single Register) Act 1998**; or
 - (ii) a retirement village notice is lodged for registration in the Register under the **Transfer of Land Act 1958**.
 - (b) if after the commencement of this section there is paid in respect of a retirement village an in-going contribution which exceeds the prescribed amount and a charge has not already been created, to the date on which the in-going contribution is paid.

29 Creation of charges

S. 29(3)
amended by
No. 18/1989
s. 13(Sch. 2
item 72(c)).

- (1) If a refundable in-going contribution has been paid for a residence right in a retirement village, there is created on the application date a charge to secure, refundable in-going contributions (whenever paid) on all retirement village land used for the purposes of that retirement village.
- (2) Subsection (1) has effect whether or not the charge is registered.
- (3) If the first residence right in a retirement village is created after the commencement of this section the charge is a first charge on the retirement village land, and has priority over all encumbrances created or arising after the creation of the charge, or created or arising before

the creation of the charge but after the retirement village notice in respect of the village is registered or recorded on the Register.

- (4) If a residence right in a retirement village was created or arose before the commencement of this section, the charge on the retirement village land has priority over all encumbrances created or arising in relation to that land on or after the application date.
- (5) Retirement village land which is charged under this section continues to be liable to the charge despite any change in ownership, and the charge is enforceable against any owner for the time being of the land, whether or not that owner has notice of the charge.
- (6) On any date on which it is necessary to determine the amount of the charge, the amount of the charge is the amount of refundable in-going contributions paid by or on behalf of a resident of the retirement village to which the charge relates, less any amount which has before that date been refunded to residents.
- (7) A certificate signed by an owner of retirement village land charged under this section or the owner's agent stating that at a particular date the amount of the charge is the amount specified in the certificate is prima facie evidence that on the date the amount of the charge is the amount so specified.
- (8) If asked by a resident an owner or owner's agent must give to the resident a certificate under subsection (7).

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S. 29(9)(10)
repealed by
No. 85/1998
s. 24(Sch.
item 52.12).

S. 29(11)
amended by
No. 18/1989
s. 13(Sch. 2
item 72(d)),
substituted by
No. 85/1998
s. 24(Sch.
item 52.13).

S. 29(12)
substituted by
No. 18/1989
s. 13(Sch. 2
item 72(e)),
amended by
No. 85/1998
s. 24(Sch.
item 52.14).

- (11) Within 14 days after land becomes subject to a charge under this Part, the owner of the land charged must lodge with the Registrar of Titles notification in a form approved by the Registrar of Titles of that charge and the land to be charged.

Penalty: 50 penalty units.

- (12) The Registrar of Titles may make a recording of the charge in the Register.

- (13) The interests and rights listed in section 42(2) of the **Transfer of Land Act 1958** have priority over a charge.

- (14) An owner must not enter into a contract which creates or gives rise to a residence right in respect of which a charge would be created under this Part unless—

- (a) the owner has been released from or has discharged all encumbrances which would take priority to the charge, except those mentioned in section 42(2) of the **Transfer of Land Act 1958**; or
- (b) the holders of all encumbrances which would otherwise take priority to the charge have agreed with the owner that the charge will have first priority.

Penalty: 50 penalty units.

- (15) Subsection (14) does not apply to a retirement village in respect of which an owner entered into a contract before the commencement of this section which created or gave rise to a residence right.

- (16) In subsection (14) a reference to an encumbrance does not include a reference to a retirement village notice.

30 Refunds

- (1) A person who enters into a contract with a resident which purports to create in the resident a right to recover a refundable in-going contribution but which does not provide for the recovery of that contribution from the owner is guilty of an offence.

Penalty: 50 penalty units.

- (2) If an owner enters into a contract with a resident and the contract creates in the resident a right to recover from the owner a refundable in-going contribution the contract is to be regarded as having been entered into by all the persons who thereafter become owners of the land.
- (3) If a resident has entered into a contract in respect of which there has been a contravention of subsection (1) the resident may rescind all residence contracts entered into by the resident and relating to the retirement village.

31 Application for enforcement of charge

Any of the following persons may apply to the Supreme Court for an order enforcing a charge securing a refundable in-going contribution for a residence right in a retirement village—

- (a) a resident, in respect of the resident's refundable in-going contribution for a residence right in the retirement village;
- (b) the Director.

S. 31
amended by
Nos 85/1998
s. 24(Sch.
items 52.15,
52.16),
17/1999
s. 43(4),
substituted by
No. 32/2020
s. 16.

S. 31A
inserted by
No. 32/2020
s. 16.

31A Order enforcing charge

- (1) On an application under section 31, the Supreme Court may make an order enforcing the charge, if it is in the interests of the majority of the residents of the retirement village to make the order, and if—
 - (a) the owner or owners of the retirement village land are insolvent; or
 - (b) the Court is satisfied that it is just and equitable to do so where there is more than one owner of the retirement village land, and one or more of the owners of the land are insolvent and one or more of the owners of the land are not insolvent; or
 - (c) ownership of all or part of the retirement village land is vested in ASIC or the Commonwealth because that ownership was previously vested in a company that has been deregistered under the Corporations Act.
- (2) An order under subsection (1) may provide for the following matters—
 - (a) the sale of the land charged, including the sale of the land by the person appointed under paragraph (f);
 - (b) a declaration that the charge is extinguished on the completion of the sale of the land charged;
 - (c) a determination of the amount of the charge;
 - (d) a determination of the entitlements of one or more residents to payments out of the proceeds of the sale of the land charged, having regard to the amount of each resident's refundable in-going contribution and the proportion which it bears to the total

amount of refundable in-going contributions secured by the charge;

- (e) the order of application of the proceeds of the sale determined in accordance with section 31C;
 - (f) the appointment of a person to execute the order, and may provide for the following—
 - (i) the vesting of the estate in fee simple in the land in that person as trustee;
 - (ii) the ability of that person to do any other thing necessary to give effect to the order and to the sale of the land, including signing any contract for the sale of the land and any instrument of transfer of the land or other instrument under the **Transfer of Land Act 1958**;
 - (g) any incidental and consequential matters.
- (3) If the Court makes an order concerning land not under the **Transfer of Land Act 1958**, the land must be brought under that Act before it is sold.

31B Powers of appointed person

An appointed person—

- (a) has all the powers necessary to ensure the execution of the order; and
- (b) may act as agent of the residents on whose behalf the order is made.

S. 31B
inserted by
No. 32/2020
s. 16.

31C Application of the proceeds of the sale

Proceeds of the sale of the land charged are to be applied in the following order—

- (a) first, in payment of the costs incurred in—
 - (i) applying for and obtaining the order for enforcing the charge; and

S. 31C
inserted by
No. 32/2020
s. 16.

- (ii) selling the land charged; and
- (iii) executing the order;
- (b) secondly, in payment of encumbrances which rank before the charge in priority unless the sale is subject to those encumbrances;
- (c) thirdly, in making the payments to the residents that the residents are entitled to be paid out of the proceeds of the sale of the land charged, having regard to the amount of each resident's refundable in-going contribution and the proportion which it bears to the total amount of refundable in-going contributions secured by the charge;
- (d) fourthly, in payment of encumbrances which rank after the charge in priority;
- (e) fifthly, in payments to the person who owned the land charged immediately before an order was applied for.

S. 31D
inserted by
No. 32/2020
s. 16.

31D Director may intervene

The Director may intervene in a proceeding on an application under section 31(a) and may appear personally or by representative.

32 Extinguishment of charge

- (1) A charge cannot be extinguished except—
 - (a) by an agreement in writing signed by all the residents whose refundable in-going contributions are secured by the charge; or
 - (b) by order of the Supreme Court under section 31; or
 - (c) upon the publication in the Government Gazette of a declaration in accordance with this section; or

S. 32(1)(c)
amended by
No. 4/2005
s. 9(1)(a).

- (d) in accordance with section 47. S. 32(1)(d)
inserted by
No. 4/2005
s. 9(1)(b).
- (2) An owner of retirement village land charged under this Part may apply to the Director for a declaration that the charge is extinguished whether as to the whole or as to a part of the land that is the subject of the charge. S. 32(2)
amended by
Nos 17/1999
s. 43(4),
4/2005 s. 9(2).
- (3) An application under subsection (2)—
- (a) must be in writing;
 - (b) must include a statutory declaration signed by the owner and stating that—
 - (i) the land to which the application relates is no longer used as a retirement village; and S. 32(3)(b)(i)
amended by
No. 4/2005
s. 9(3)(a).
 - (ii) the owner has served on all the residents 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 a right to make submissions to the Director within 60 days after service of the notice; and S. 32(3)(b)(ii)
amended by
No. 17/1999
s. 43(5).
 - (iii) the owner has no knowledge of any proceedings by a resident to obtain payment of a refundable in-going contribution or to enforce the charge; and
 - (c) must include a copy of the notice served on residents and mentioned in paragraph (b); S. 32(3)(c)
amended by
No. 4/2005
s. 9(3)(b).
 - (d) if so required by the Director, must include any information that is reasonably necessary to establish the boundaries of the land to S. 32(3)(d)
inserted by
No. 4/2005
s. 9(3)(c).

which the application relates and the use to which that land is put.

S. 32(4)
amended by
No. 17/1999
s. 43(4).

- (4) Before determining whether to grant or refuse an application the Director must consider all submissions lodged by residents within the 60 days.

S. 32(5)
amended by
No. 17/1999
s. 43(4).

- (5) The Director may grant or refuse an application under this section.

S. 32(6)
amended by
No. 17/1999
s. 43(4).

- (6) On an application made in accordance with this section and after considering submissions in accordance with subsection (4) the Director may by instrument published in the Government Gazette declare that a charge to which an application relates is extinguished if the Director is satisfied that—

S. 32(6)(a)
amended by
No. 4/2005
s. 9(4).

- (a) the land to which the application relates is no longer used as a retirement village; and

- (b) the owner has served all the residents notice in accordance with this section.

S. 32(7)
amended by
Nos 18/1989
s. 13(Sch. 2
item 72(f)),
85/1998 s. 24
(Sch. item
52.17(a)(b)),
17/1999
s. 43(4),
substituted by
No. 4/2005
s. 9(5).

- (7) If, in respect of land charged under this Part there is produced to the Registrar of Titles—

- (a) a copy of the Government Gazette in which the Director has published a declaration that the charge is extinguished (to the extent that it applies to the land that is the subject of an application under subsection (2) that has been granted), the Registrar may—

- (i) delete any recordings of the charge (to the extent that the recordings apply to the land that is the subject of an application that has been granted) from the Register; or

- (ii) make a recording in the Register of the extinguishment of the charge (to the extent that the recording applies to the land that is the subject of an application that has been granted)—

as the case requires; or

- (b) an agreement in writing signed by all the residents whose refundable in-going contributions are secured by the charge to the effect that the charge is extinguished, the Registrar may—

- (i) delete any recordings of the charge from the Register; or

- (ii) make a recording in the Register of the extinguishment of the charge—

as the case requires; or

- (c) a copy of the order of the Supreme Court to the effect that the charge is extinguished, the Registrar may—

- (i) delete any recordings of the charge from the Register; or

- (ii) make a recording in the Register of the extinguishment of the charge—

as the case requires.

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**S. 32(8)
repealed by
No. 85/1998
s. 24(Sch.
item 52.18).**

Pt 5A
(Heading and
ss 32A–32G)
inserted by
No. 4/2005
s. 10.

Part 5A—Sale of premises by certain residents

S. 32A
inserted by
No. 4/2005
s. 10.

32A Options

- (1) A person who holds an option to purchase from an owner resident of a retirement village any premises of that owner resident, must decide whether or not to exercise the option, and that person must give the owner resident written notification of that decision not more than 28 days after the owner resident notifies the person, in writing, that the premises are for sale.
- (2) If a person who holds such an option does not give the notification required by subsection (1) within the time required by the subsection, the option lapses.
- (3) This section has effect despite any term in the option.

S. 32B
inserted by
No. 4/2005
s. 10.

32B Sale of premises

- (1) An owner resident of a retirement village may—
 - (a) set the sale price of his or her premises in the village; and
 - (b) appoint a selling agent of the owner resident's choice (who may be the manager of the village if the manager is eligible to be appointed).
- (2) If the manager of a retirement village is appointed to act as the agent of an owner resident of the village in the sale of that owner resident's premises, the owner resident may allow (but is not obliged to allow) the manager to set the sale price of the premises.

- (3) Any appointment of the manager of a retirement village, or a person chosen by the manager of a retirement village—
- (a) to act as the agent of an owner resident of the village in the sale of the owner resident's premises; or
 - (b) as the person who sets the sale price of any such premises—

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.

- (4) A manager, or a person chosen by a manager, who is appointed as an agent for the sale of the premises of an owner resident under subsection (1) must, if the owner resident so requests, provide the owner resident at the end of each named month with a report—
- (a) detailing the marketing program (including details of all advertising of the premises or the village); and
 - (b) listing all inquiries about the sale; and
 - (c) providing the names and telephone numbers (or other contact details) of the persons who made the inquiries (in so far as these are known to the manager); and
 - (d) providing details (including the asking price) of all other residential premises for sale in the village—

during that month.

Penalty: 60 penalty units.

- (5) If a person, other than the manager, is appointed as an agent for the sale of the premises of an owner resident in a retirement village, the owner resident must notify the manager in writing of—
- (a) the name and contact details of the person who is so appointed; and
 - (b) the asking price for the premises; and
 - (c) any changes to—
 - (i) the appointment and contact details; and
 - (ii) the asking price for the premises.

Penalty: 60 penalty units.

S. 32C
inserted by
No. 4/2005
s. 10.

32C Manager not to interfere in sale

- (1) A manager of a retirement village who is not appointed as an agent for the sale of the premises of an owner resident in the village must not interfere with the sale of the premises.
- Penalty: 60 penalty units
- (2) Without limiting subsection (1), a manager interferes with the sale of the premises if the manager interferes with any "For Sale" sign relating to the premises.
- (3) Subsection (2) does not apply if the sign has been erected contrary to the village by-laws or in such a way as to interfere with the peace, comfort and quiet enjoyment of another resident of the village.

32D Costs of sale

An owner resident of a retirement village is not liable to pay commission on the sale of his or her premises to the manager of the village or a person chosen by the manager, if the premises are sold otherwise than as a result of the manager (or person) acting as the agent for the sale of the premises.

S. 32D
inserted by
No. 4/2005
s. 10.

32E Purchaser and manager to enter into contract

- (1) If an owner resident sells his or her premises in a retirement village, the owner resident must give the manager sufficient notice of the proposed sale to enable the manager to comply with section 19.
- Penalty: 60 penalty units.
- (2) Any contract for the sale of the premises of an owner resident in a retirement village is deemed to include a provision to the effect that the contract is conditional on the purchaser entering into a management contract with the manager of the village on or before completion of the purchase.
- (3) As soon as practicable after the contract for the sale of the premises is entered into, the owner resident must notify the manager of the retirement village in writing of that fact.

Penalty: 60 penalty units.

- (4) If the manager of the retirement village decides not to enter into a management contract with the purchaser, the manager must, not later than 21 days after being notified under subsection (3)—
- (a) advise the owner resident of that decision and of the reasons for it; and
 - (b) apply to the Tribunal for an order declaring that the manager is not obliged to enter into the management contract.

S. 32E
inserted by
No. 4/2005
s. 10.

S. 32F
inserted by
No. 4/2005
s. 10.

32F Application by owner resident to Tribunal

If the manager of the retirement village does not, within 21 days after being given notification under section 32E(3), either—

- (a) enter into a management contract with the purchaser; or
- (b) apply to the Tribunal under section 32E(4)—

the owner resident may apply to the Tribunal for an order directing the manager to enter into a management contract with the purchaser.

S. 32G
inserted by
No. 4/2005
s. 10.

32G Tribunal's determinations on application of manager or owner resident

- (1) On application under section 32E(4) or 32F, the Tribunal may determine whether the decision of the manager not to enter into a management contract is reasonable in the circumstances, having regard to—
 - (a) whether the premises concerned are suitable for occupation by the purchaser (or another person the purchaser intends to allow to live in the premises), having regard to his or her physical and mental capacity; and
 - (b) any other factor that the Tribunal considers relevant.
- (2) For the purposes of subsection (1)(b), the age of the purchaser (or another person whom the purchaser intends to allow to live in the premises) is not relevant if the purchaser (or the other person) is a retired person.
- (3) On making its determination under subsection (1), the Tribunal may make an order of the kind referred to in section 32E(4) or 32F, as appropriate, regardless of whether that is the order sought.

- (4) An order referred to in section 32F may also, if the Tribunal considers it appropriate, set the terms of the management contract to be entered into, having regard to the management contracts in force in the village.
- (5) If the Tribunal makes the order referred to in section 32F, the Tribunal may also order the manager to pay such compensation to the owner resident or the purchaser (or both) for delay and inconvenience as it considers just in the circumstances.

Part 6—Resident participation

33 Annual meeting

In each year the manager of a retirement village must convene an annual meeting of the residents of the retirement village.

Penalty: 50 penalty units.

34 Proceedings at annual meetings

- (1) The owner of retirement village land must prepare and present to the annual meeting a statement in writing, signed by the owner and setting out the following—
 - (a) whether all refundable in-going contributions which fell to be refunded to residents of the village during the prescribed period have been refunded, and if any have not, the amount which has not been refunded, details of the delay and the reasons for the delay;
 - (b) whether the owner is aware of any material matter which may prevent the owner from meeting debts as and when they will fall due in the period of 12 months from the end of the prescribed period, and if the owner is aware of any such matter, details of the matter.

Penalty: 100 penalty units.

- (2) In subsection (1), a reference to retirement village land does not include a reference to retirement village land which is land in respect of which the residence rights are—

S. 34(2)
amended by
No. 85/1998
s. 24(Sch.
item 52.19).

- (a) estates in fee simple held as registered proprietors under the **Transfer of Land Act 1958**; or

S. 34(2)(a) amended by No. 53/1988 s. 45(Sch. 3 item 64) (as amended by No. 47/1989 s. 23(2)), substituted by No. 85/1998 s. 24(Sch. item 52.19).

- (b) in any other case, legal estates in fee simple.

S. 34(2)(b) substituted by No. 85/1998 s. 24(Sch. item 52.19).

- (3) The manager must prepare and present to the annual meeting a financial statement showing in respect of the prescribed period—

- (a) the source of income received by way of charges for the provision of goods and services by the manager; and
(b) details of expenditure on the provision of goods and services for the village by the manager, including the amounts spent and the items to which the expenditure related—

and details of what provision (if any) has been made for future extra ordinary or major works in the village and showing, in respect of the period of 12 months beginning immediately after the prescribed period ends—

- (c) details of anticipated expenditure on goods and services for the village; and
(d) details of any proposed increases in maintenance charges to be paid by residents; and
(e) details of any special levies which it is proposed to ask residents to pay.

Penalty: 100 penalty units.

S. 34(4)
amended by
No. 44/2001
s. 3(Sch.
item 99).

- (4) A statement prepared under subsection (3) must be audited by a registered company auditor within the meaning of the Corporations Act unless at the annual meeting held in the year immediately before the year in which the statement is to be presented, the residents present at the meeting decide by special resolution to dispense with the auditing requirements.

S. 34(5)
amended by
Nos 53/1988
s. 45(Sch. 3
item 65) (as
amended by
No. 47/1989
s. 23(2)),
69/2006 s. 224
(Sch. 3 item
7.2).

- (5) This section is in addition to the provisions of the **Owners Corporations Act 2006**.

S. 35
repealed by
No. 4/2005
s. 11.

* * * * *

36 Residents committee

S. 36(1)
amended by
No. 69/2006
s. 224(Sch. 3
item 7.3(a)),
substituted by
No. 4/2021
s. 86(1).

- (1) The residents of a retirement village may elect a residents committee to represent the interests of the residents of the village.

- (2) Each member of a residents committee holds office for one year from the date of election but is eligible for re-appointment.

S. 36(3)
amended by
No. 23/2016
s. 28(1).

- (3) A member of a residents committee may at any time be removed from office by special resolution passed by a meeting of the residents.
- (4) The residents committee's procedure is in its discretion.

(5) The residents committee may form sub-committees and determine their procedure.

(6) The residents committee may call a meeting of the residents.

S. 36(6)
amended by
No. 23/2016
s. 28(2).

(7) The residents committee or a sub-committee formed for the purpose may act as a mediator in any dispute between residents.

S. 36(7)
amended by
No. 4/2005
s. 12(1).

(7A) The residents committee must not act as a mediator in any dispute between residents when the dispute is being dealt with by the manager under Division 3 of Part 6A.

S. 36(7A)
inserted by
No. 4/2005
s. 12(2).

* * * * *

S. 36(8)
amended by
No. 69/2006
s. 224(Sch. 3
item 7.3(b)),
repealed by
No. 4/2021
s. 86(2).

36A Resident's right to act through representative

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

S. 36A
inserted by
No. 4/2005
s. 13.

37 By-laws

(1) This section does not apply to rules to which the **Owners Corporations Act 2006** or the regulations made under that Act apply.

S. 37(1)
substituted by
No. 53/1988
s. 45(Sch. 3
item 66) (as
amended by
No. 47/1989
s. 23(2)),
amended by
No. 69/2006
s. 224(Sch. 3
item 7.4).

S. 37(4)
amended by
No. 23/2016
s. 29.

- (2) This section applies despite anything to the contrary in a residence contract or in by-laws relating to a retirement village.
- (3) The powers conferred by this section are in addition to any other powers to alter or revoke by-laws.
- (4) By-laws which apply to a retirement village and were made before the commencement of this section may be altered or revoked on or after the commencement of this section by special resolution of the residents living at the retirement village passed at the meeting of the residents.
- (5) The making revocation or alteration on or after the commencement of this section of a by-law which applies to a retirement village is not to take effect unless or until it is approved by a special resolution of the residents living at the village.
- (6) Subsections (4) and (5) and the definition of *special resolution* in section 3 apply to a by-law which relates only to a class of residents as if those provisions referred to residents of that class of residents and not to residents.

Part 6A—Operation and management of retirement villages

Pt 6A
(Heading)
inserted by
No. 4/2005
s. 14.

Division 1—Maintenance and other charges

Pt 6A Div. 1
(Heading)
inserted by
No. 4/2005
s. 14.

38 Increases in maintenance charges

(1) In this section—

adjusted maintenance charge means the adjusted
maintenance charge determined and indexed
in accordance with section 38AA;

S. 38(1) def. of
*adjusted
maintenance
charge*
amended by
No. 23/2016
s. 30(1).

* * * * *

S. 38(1) def. of
*maintenance
charge*
repealed by
No. 4/2005
s. 15.

special levy means a payment which is made by a
resident to the owner or manager and which
is not—

- (a) a maintenance charge; or
 - (b) a payment made in consideration of
residence in the village.
- (2) Despite anything to the contrary in a residence
contract, a management contract or the by-laws a
resident is not required to pay a maintenance
charge to the extent to which it is greater than the
adjusted maintenance charge.

- (3) A manager is not liable in any civil action for breach of contract in respect of the manager's failure to provide goods and services to residents if—
- (a) to cover the cost of the provision of the goods and services it would be necessary to levy a maintenance charge greater than the adjusted maintenance charge; and
 - (b) in all the circumstances the manager acted reasonably; and
 - (c) the residents have not approved the payment of a maintenance charge greater than the adjusted maintenance charge.
- (4) Subsection (2) does not apply if the payment of a maintenance charge that is greater than the adjusted maintenance charge has been approved by resolution of a majority of the residents at a meeting of the residents or is approved by resolution of the residents committee.
- (5) Subsection (2) does not apply to the payment of a maintenance charge which is greater than the adjusted maintenance charge to the extent to which the greater amount represents—
- (a) rates, taxes or charges in respect of retirement village land or the use of a retirement village land levied under an Act or subordinate instrument; or
 - (b) salaries or wages paid in accordance with an award made by a Commission, Tribunal, Board or other body under—
 - (i) an Act other than this Act; or
 - (ii) a Commonwealth Act—
- if the salaries or wages are paid to a manager or a person employed in connexion with the retirement village.

- (6) Despite anything to the contrary in a residence contract, a management contract or the by-laws, a resident is not required to pay a special levy unless—
- (a) the residents have not been required to pay a special levy for the past 12 months; and
 - (b) the special levy has become payable in one of the following ways—
 - (i) the owner or residents must make the expenditure which the levy is intended to cover because of the requirements of an Act, a subordinate instrument or the order of a court;
 - (ii) the residents have authorized the making of the special levy by special resolution passed at a meeting of the residents;
 - (iii) the residence contract, the management contract or the by-laws provided that the residents are responsible for the expenditure or the class of expenditure which the special levy is intended to cover.

S. 38(6)(b)(ii)
amended by
No. 23/2016
s. 30(2).

38AA Formula for calculation of adjusted maintenance charge

S. 38AA
inserted by
No. 23/2016
s. 31.

- (1) The adjusted maintenance charge for a relevant financial year for an existing retirement village or a new retirement village that has been in operation for at least one relevant financial year must be determined in accordance with subsection (2).

- (2) For the purposes of subsection (1), the adjusted maintenance charge must be determined for each relevant financial year for the retirement village in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is—

- (i) subject to subparagraph (ii), the adjusted maintenance charge for the previous relevant financial year for the village; or
- (ii) in the case of a new retirement village that has been in operation for only one relevant financial year, the maintenance charge for that relevant financial year for the village;

B is the sum of the consumer price index numbers for each of the reference periods ending in the previous relevant financial year for the village;

C is the sum of the consumer price index numbers for each of the reference periods ending in the relevant financial year immediately preceding the previous relevant financial year for the village.

- (3) The amount obtained by the application of the formula set out in subsection (2) may be rounded to the nearest multiple of 10 cents.

- (4) In this section—

consumer price index means the all groups consumer price index for Melbourne in original terms published by the Australian Bureau of Statistics;

relevant financial year means, in respect of a retirement village, a period that consists of 12 consecutive months commencing on the date fixed by the manager of the retirement village.

38A Charges for personal services

The manager of a retirement village must not levy a charge for personal services against a person who has ceased to be a resident of a retirement village for any period that is 28 days or more after the time at which the person ceases to be such a resident.

Penalty: 60 penalty units.

S. 38A
inserted by
No. 4/2005
s. 16.

38B Maintenance charges—former non-owner residents

(1) The liability of a former non-owner resident of premises in a retirement village for maintenance charges that arise on or after the time at which the former non-owner resident ceased to occupy the premises, ceases on—

- (a) the date on which another person enters into a management contract with the manager for the premises; or
- (b) the date on which a person takes up residence in the premises with the consent of the manager; or
- (c) the date that is 6 months after the date on which the former non-owner resident otherwise delivers up vacant possession of the premises—

whichever date occurs first, or any earlier date that the former non-owner resident and the manager may agree on.

S. 38B
inserted by
No. 4/2005
s. 16.

S. 38B(3)
amended by
No. 23/2016
s. 32.

- (2) Subsection (1) does not apply if the contract under which the non-owner resident pays maintenance charges provides for an earlier cessation of liability for the payment of maintenance charges.
- (3) In this section *former non-owner resident*, in relation to a retirement village, means a person who was a non-owner resident of the village but who has ceased to be such a resident.

Pt 6A Div. 2
(Heading and
ss 38C, 38D)
inserted by
No. 4/2005
s. 16.

Division 2—Powers of attorney and proxies

S. 38C
inserted by
No. 4/2005
s. 16.

38C Manager not to demand power of attorney

- (1) The manager of a retirement village must not—
 - (a) require a resident of the retirement village to give the manager a power of attorney in favour of the manager; or
 - (b) accept a power of attorney given in favour of the manager by a resident of the retirement village.

Penalty: 60 penalty units.

- (2) The manager of a retirement village must not require a resident of the retirement village to give a power of attorney in favour of—
 - (a) a close associate of the manager; or
 - (b) a person nominated by the manager.

Penalty: 60 penalty units

- (3) A person who—
 - (a) is a close associate of the manager of a retirement village; or

(b) is nominated by a manager of a retirement village to accept a power of attorney from a resident of the village—

must not accept a power of attorney given in favour of that person by a resident of the retirement village.

Penalty: 60 penalty units.

- (4) A power of attorney given in favour of a manager of a retirement village (or a close associate of the manager or a person nominated by the manager) by a resident of the retirement village is void.
- (5) Subsections (1)(b), (3) and (4) do not apply if the resident who gives the power of attorney is a relative of the manager, close associate or nominated person (as the case requires).
- (6) This section does not apply to any power of attorney that is of a prescribed class of powers of attorney.
- (7) This section has effect despite any term of the power of attorney.

38D Manager not to demand appointment as proxy

**S. 38D
inserted by
No. 4/2005
s. 16.**

- (1) The manager of a retirement village must not—
 - (a) require a resident of the retirement village to appoint the manager as the proxy of the resident; or
 - (b) accept an appointment to act as the proxy of a resident of the retirement village.

Penalty: 60 penalty units.

- (2) The manager of a retirement village must not require a resident of the retirement village to appoint—

- (a) a close associate of the manager; or
- (b) a person nominated by the manager—
as a proxy of the resident.

Penalty: 60 penalty units.

- (3) A person who—
 - (a) is a close associate of the manager of a retirement village; or
 - (b) is nominated by the manager of a retirement village to be appointed to act as a proxy of a resident of the retirement village—

must not accept an appointment to act as a proxy of a resident of the retirement village.

Penalty: 60 penalty units.

- (4) An appointment of the manager of the retirement village (or a close associate of the manager or a person nominated by the manager) as the proxy of a resident of the retirement village is void.
- (5) Subsections (1)(b), (3) and (4) do not apply if the resident of the retirement village who makes the appointment is a relative of the manager, the close associate or nominated person (as the case requires).
- (6) This section has effect despite any term of the proxy.

Pt 6A Div. 3
(Heading and
ss 38E–38H)
inserted by
No. 4/2005
s. 16.

Division 3—Dispute mediation

S. 38E
inserted by
No. 4/2005
s. 16.

38E Procedure for dealing with management complaints

- (1) The manager of a retirement village must set out in a document the procedure to be used by the manager in addressing management complaints

and must include the following information in that document—

- (a) the name of the person or persons to whom residents may give notice of management complaints; and
- (b) the times and places at which notice of management complaints may be given, which must not unreasonably restrict the ability of residents to give such notices; and
- (c) the process the manager is to use to consider management complaints and advise residents of the outcome of that consideration, including—
 - (i) the restrictions on the manager's powers under subsection (3); and
 - (ii) the nature of the manager's obligation under subsection (4); and
- (d) the fact that residents may seek advice on management complaints from the Director or from the body managed by the Director, the name of the body managed by the Director from which advice may be sought and the public contact telephone number and postal address of that body.

Penalty: 60 penalty units.

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

Penalty: 60 penalty units.

- (3) The manager of a retirement village must not set out in a document under subsection (1) or establish or maintain a procedure—
- (a) that enables the manager to take any action that is—
 - (i) without the consent of the person making the management complaint; or
 - (ii) duplicates, is inconsistent with or overrides any other law; or
 - (iii) duplicates, is inconsistent with or overrides the provisions of any contract between the person making the management complaint and the manager; or
 - (b) that requires notification of a management complaint to be in writing; or
 - (c) that enables a management complaint to be dealt with at the same time as the complaint is being dealt with by the residents committee; or
 - (d) that prevents a resident who has made a management complaint from being represented by another person when dealing with the management complaint.
- (4) If, within 72 hours of being given notice of a management complaint, the manager is unable to resolve the complaint, the manager must create and maintain a written record of the complaint in accordance with the regulations.

Penalty: 60 penalty units.

- (5) The manager of a retirement village must not take any action that might reasonably be regarded as—
- (a) deterring a person from making a management complaint; or
 - (b) causing detriment to a resident because that resident or another resident has made or proposes to make a management complaint.

Penalty: 60 penalty units.

38F Procedure for dealing with resident disputes

S. 38F
inserted by
No. 4/2005
s. 16.

- (1) The manager of a retirement village must set out in a document the procedure to be used by the manager in mediating resident disputes and must include the following information in that document—
- (a) the name of the person or persons to whom residents may give notice of resident disputes; and
 - (b) the times and places at which notice of resident disputes may be given, which must not unreasonably restrict the ability of residents to give such notices; and
 - (c) the process the manager is to use to mediate resident disputes and advise residents of the outcome of that mediation, including—
 - (i) the restrictions on the manager's powers under subsection (3); and
 - (ii) the nature of the manager's obligation under subsection (4); and
 - (d) the fact that residents may seek advice from the Director on resident disputes or from the body managed by the Director, the name of the body managed by the Director from which advice may be sought and the public

contact telephone number and postal address
of that body.

Penalty: 60 penalty units.

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

Penalty: 60 penalty units.

- (3) The manager of a retirement village must not set out in a document under subsection (1) or establish or maintain a procedure—
- (a) that enables the manager to take any action that is—
 - (i) without the consent of a party to a resident dispute; or
 - (ii) duplicates, is inconsistent with or overrides any other law; or
 - (iii) duplicates, is inconsistent with or overrides the provisions of any contract between a party to the resident dispute and the manager; or
 - (b) that requires notification of a resident dispute to be in writing; or
 - (c) that enables a resident dispute to be dealt with at the same time as the dispute is being dealt with by the residents committee; or
 - (d) that prevents a resident who is a party to a resident dispute from being represented by another person when dealing with the dispute.
- (4) If, within 72 hours of being given notice of a resident dispute, the manager is unable to resolve the dispute, the manager must create and maintain

a written record of the dispute in accordance with the regulations.

Penalty: 60 penalty units.

- (5) The manager of a retirement village must not take any action that might reasonably be regarded as—
- (a) deterring a person from giving notice of a resident dispute; or
 - (b) causing detriment to a resident because that resident or another resident has given or proposes to give notice of a resident dispute.

Penalty: 60 penalty units.

38G Residents to be informed of complaints and disputes mechanisms

S. 38G
inserted by
No. 4/2005
s. 16.

The manager of a retirement village must ensure that all residents are—

- (a) informed of the matters contained in the documents required under sections 38E and 38F; and
- (b) ensure that copies of the documents required under sections 38E and 38F are readily available to all residents.

Penalty: 60 penalty units.

38H Recording and reporting requirements

S. 38H
inserted by
No. 4/2005
s. 16.

- (1) The manager of a retirement village must keep a record of all management complaints made and resident disputes of which notice has been given in the retirement village, including records of any outcome reached and the action, if any, taken in relation to each complaint and dispute.

Penalty: 60 penalty units.

- (2) The manager of a retirement village must, at the annual meeting of the residents of the village, without identifying the parties to a management complaint or resident dispute, present a report on—
- (a) the number and nature of management complaints made or resident disputes of which notice has been given in the previous year; and
 - (b) the outcome of each complaint or dispute, including any action taken to resolve the complaint or dispute; and
 - (c) any changes made or proposed to be made to address issues arising out of a complaint or dispute.

Penalty: 60 penalty units.

Part 6B—Matters relating to cessation of occupation of premises

Pt 6B
(Heading and
s. 38I)
inserted by
No. 4/2005
s. 16.

38I Payments to former residents

S. 38I
(Heading)
amended by
No. 23/2016
s. 33.

- (1) A person who is liable to make a payment to—
- (a) a former resident of a retirement village on the former resident leaving the retirement village; or
 - (b) the estate of a former resident on the resident's death—

S. 38I
inserted by
No. 4/2005
s. 16.

being a payment that is consequent on the former resident so leaving or dying, must make that payment—

- (c) within 14 days after the resident so leaves or dies; or
- (d) if the former resident is not entitled to recover the amount until the fulfilment of a condition of a kind to which section 26(2)(a) or (b) applies, on the day on which the payment is required to be made under that condition.

Penalty: 60 penalty units.

- (2) At the same time as the payment is made, the manager of the retirement village must give the former resident a statement setting out all amounts payable to the former resident and all amounts payable by the former resident to discharge the residence contract and showing how the amounts were calculated.

Penalty: 60 penalty units.

- (3) This section does not apply where the amount that is entitled to be recovered is entitled to be recovered in accordance with a condition of a kind to which section 26(2)(c) applies.
- (4) In this section *former resident*, in relation to a retirement village, means a person who was a resident of the village but who has left the village or who has died.

Part 6C—Register of retirement villages

Pt 6C
(Heading and
ss 38J–38L)
inserted by
No. 4/2005
s. 16.

38J Obligation to keep register

S. 38J
inserted by
No. 4/2005
s. 16.

- (1) The Director must keep and maintain a register in accordance with this Part for the purpose of enabling members of the public to have access to information about the application of this Act to particular retirement villages.
- (2) The Director must record in the register the following information in respect of each retirement village of which the Director has received notice under section 38L—
 - (a) the name of the retirement village; and
 - (b) the physical address of the retirement village; and
 - (c) the postal address of the retirement village; and
 - (d) if an order for an exemption has been made in relation to the retirement village under section 6, particulars of that order that are sufficient to enable that order to be identified.

38K Inspection of the register

S. 38K
inserted by
No. 4/2005
s. 16.

A member of the public may inspect the information recorded in the register under section 38J(2).

S. 38L
inserted by
No. 4/2005
s. 16.

38L Requirement to notify Director

- (1) Immediately on the lodgement of a retirement village notice under section 9 of the Act, the manager of the retirement village must give a notice to the Director that sets out—
 - (a) the particulars that are required to enable the Director to record the information required under section 38J(2); and
 - (b) the particulars that are specified in subsection (2).

Penalty: 10 penalty units.

- (2) For the purposes of subsection (1)(b), the particulars are—
 - (a) the name and address of the manager of the retirement village; and
 - (b) any other prescribed particulars.
- (3) The manager of a retirement village must, within 14 days of any change in any particular, of which he or she is required to notify the Director under this Part, notify the Director of the change in that particular.

Penalty: 10 penalty units.

- (4) The manager of a retirement village must, within 14 days of receiving a request from the Director—
 - (a) as to whether or not any change is required to the particulars specified under section 38J(2) or subsection (2), notify the Director of any change that is required to the particulars on the register; or

- (b) to confirm that the particulars that are on the register are correct, notify the Director—
 - (i) as to whether or not the particulars on the register are correct; or
 - (ii) if the particulars are not correct, notify the Director of any change that is required to the particulars.

Penalty: 10 penalty units.

Part 7—General

39 Cancellation of retirement village notices

- (1) A retirement village notice cannot be cancelled except—
- (a) by an agreement in writing signed by all the residents of the village to which the notice relates; or
 - (b) upon the publication in the Government Gazette of a declaration in accordance with this section; or
 - (c) in accordance with section 48.

S. 39(1)(b)
amended by
No. 4/2005
s. 17(1)(a).

S. 39(1)(c)
inserted by
No. 4/2005
s. 17(1)(b).

- (2) An owner of retirement village land in respect of which there is registered or recorded on the Register a retirement village notice may apply to the Director for a declaration that the notice is cancelled as to the whole or any part of the land that is the subject of the notice.

S. 39(2)
amended by
Nos 18/1989
s. 13(Sch. 2
item 72(g)),
17/1999
s. 43(4),
4/2005
s. 17(2).

- (3) An application under subsection (2)—

- (a) must be in writing; and
- (b) must include a statutory declaration signed by the owner to the effect—
 - (i) the land to which the application relates is no longer used as a retirement village; and
 - (ii) the owner has served on all the residents and former residents, and if 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

S. 39(3)(b)(i)
amended by
No. 4/2005
s. 17(3)(a).

S. 39(3)(b)(ii)
amended by
No. 17/1999
s. 43(5).

- the making of the declaration and stating that they have a right to make submissions to the Director within 60 days after service of the notice; and
- (c) must include a copy of the notice served on residents mentioned in paragraph (b); S. 39(3)(c) amended by No. 4/2005 s. 17(3)(b).
- (d) if so required by the Director, must include any information that is reasonably necessary to establish the boundaries of the land to which the application relates and the use to which the land is put. S. 39(3)(d) inserted by No. 4/2005 s. 17(3)(c).
- (4) Before determining whether to grant or refuse an application the Director must consider all submissions lodged within 60 days after service of the notice mentioned in subsection (3). S. 39(4) amended by No. 17/1999 s. 43(4).
- (5) The Director may grant or refuse an application under this section. S. 39(5) amended by No. 17/1999 s. 43(4).
- (6) On an application in accordance with this section and after considering submissions in accordance with subsection (4) the Director may by instrument published in the Government Gazette declare that the retirement village notice to which the application relates is cancelled to the extent that it applies to land that is the subject of an application that has been granted, if the Director is satisfied that— S. 39(6) amended by Nos 17/1999 s. 43(4), 4/2005 s. 17(4)(a).
- (a) the land to which the application relates is no longer used as a retirement village; and S. 39(6)(a) amended by No. 4/2005 s. 17(4)(b).
- (b) the owner has served on all residents, former residents and their legal personal representatives notice in accordance with this section.

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S. 39(7)
amended by
Nos 18/1989
s. 13(Sch. 2
item 72(h)) (as
amended by
No. 48/1991
s. 70(c)(vi)),
85/1998
s. 24(Sch.
item 52.20),
17/1999
s. 43(4),
substituted by
No. 4/2005
s. 17(5).

- (7) If there is produced to the Registrar of Titles—
- (a) an agreement signed by all residents to the effect that a retirement village notice is cancelled, the Registrar may—
 - (i) delete any recordings of the notice from the Register; or
 - (ii) make a recording in the Register of the cancellation of the notice—as the case requires; or
 - (b) a copy of the Government Gazette in which the Director has published a declaration that a retirement village notice (to the extent that it applies to land that is the subject of an application under subsection (2) that has been granted) is cancelled, the Registrar may—
 - (i) delete any recordings of the notice (to the extent that the notice applies to land that is the subject of the application under subsection (2) that has been granted) from the Register; or
 - (ii) make a recording in the Register of the cancellation of the notice (to the extent that the notice applies to land that is the subject of the application under subsection (2) that has been granted)—as the case requires.

S. 39(8)
repealed by
No. 85/1998
s. 24(Sch.
item 52.21).

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40 Application of Australian Consumer Law and Fair Trading Act 2012

- (1) Part 6.4 of the **Australian Consumer Law and Fair Trading Act 2012** (except sections 152, 153 and 175) 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) Sections 125, 195 and 196 and Part 8.2 (except sections 205, 206, 207, 210, 211 and 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) For the purposes of subsection (2)—
 - (a) section 209 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference in that section to any section of that Act were a reference to that section as applied by subsection (1) or (2);
 - (b) section 212 of the **Australian Consumer Law and Fair Trading Act 2012** applies as if a reference to prescribed proceedings were a reference to—
 - (i) proceedings for an offence against a provision of this Act (except an offence applied by subsection (1)); or
 - (ii) proceedings on an application for an injunction under section 201, 202 or 203 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2)) against a person alleged to have contravened a

S. 40
amended by
No. 17/1999
s. 43(4),
substituted by
No. 4/2005
s. 18,
amended by
Nos 2/2008
s. 60(Sch.
item 11),
19/2009 s. 29,
substituted by
No. 21/2012
s. 239(Sch. 6
item 38.3).

provision of this Act (except an offence applied by subsection (1)); or

- (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2)).

S. 40(4)
inserted by
No. 12/2015
s. 21(Sch. 1
item 8).

- (4) In this section—

this Act includes the regulations.

S. 41
substituted by
No. 4/2005
s. 18.

41 Who may bring proceedings for offences?

- (1) Proceedings for an offence against this Act or the regulations may only be brought by—
- (a) the Director; or
- (b) a person authorised by the Director for the purposes of this section.
- (2) In proceedings for an offence against this Act or the regulations it must be presumed, in the absence of evidence to the contrary, that the person bringing the proceedings was authorised to bring the proceedings.
- (3) Subsection (1) does not apply to proceedings for an indictable offence.

S. 41A
inserted by
No. 4/2005
s. 18.

41A Offence to supply false or misleading information

A person who is required under this Act to supply any information or particulars to the Director must not supply any information or particulars that are false or misleading.

Penalty: 60 penalty units.

42 Consequences of rescission

- (1) A right of rescission conferred by this Act may be exercised if and only if—
 - (a) the person entitled to rescind the contract serves notice in writing on all other parties to the contract that the contract is rescinded;
 - (b) the person entitled to rescind the contract serves notice mentioned in paragraph (a) not later than 6 months after becoming aware of the contravention which entitles the person to rescind the contract.
- (2) If a person entitled to rescind a contract under this Act complies with subsection (1), the rescission takes effect on the date of service of the notice and the contract is to be regarded as being void from its beginning.
- (3) If a contract is rescinded in accordance with this section—
 - (a) the rescission notice is to be regarded as applying to the management contract, the residence contract and all collateral contracts entered into by the resident; and
 - (b) the resident becomes entitled to the immediate payment of all moneys paid by the resident or on the resident's behalf in connexion with those contracts.
- (4) On application by a resident or an owner, a court of competent jurisdiction if satisfied that—
 - (a) there has been a contravention of this Act which gives rise to a right in the resident to rescind the contract; and

(b) the resident has complied with subsection (1)—

may—

- (c) make an order declaring that a residence contract entered into by that resident has been rescinded in accordance with this section; and
- (d) make such other vesting orders and consequential orders as the court considers just and equitable, including orders requiring repayment of in-going contributions or other moneys paid by or in behalf of the resident.

S. 42A
inserted by
No. 4/2005
s. 19.

42A Certain contractual provisions relating to arbitration void

Any provision in a residence contract or a management contract that provides for a process of dealing with management complaints or resident disputes through arbitration is void.

S. 42B
inserted by
No. 63/2010
s. 65.

42B Infringement notices

- (1) An authorised officer may serve an infringement notice on any person who the officer has reason to believe has committed an offence against this Act or the regulations that is prescribed for the purposes of this subsection.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) The infringement penalty for an offence prescribed for the purposes of subsection (1) is the prescribed infringement penalty.

(4) In this section *authorised officer* means—

(a) a person appointed under section 142 of the **Australian Consumer Law and Fair Trading Act 2012**;

S. 42B(4)(a)
amended by
No. 38/2017
s. 92.

(b) a police officer;

S. 42B(4)(b)
substituted by
No. 37/2014
s. 10(Sch.
item 145.2).

(c) a person authorised in writing by the Director.

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;

(ab) contracts entered into between owners and residents of retirement villages or managers and residents of retirement villages, including—

S. 43(1)(ab)
inserted by
No. 4/2005
s. 20(1).

(i) matters that are or are not to be included in such contracts; and

(ii) forms of such contracts, 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;

(ac) payment of amounts to residents who have left retirement villages or died, including conditions that may or may not be included in contracts as to such payments and offences relating to such payments;

S. 43(1)(ac)
inserted by
No. 4/2005
s. 20(1).

(b) Prescribing fees;

S. 43(1)(ca)
inserted by
No. 2/2013
s. 8.

- (c) Prescribing forms;
- (ca) prescribing the information that must be contained in a factsheet;

S. 43(1)(cb)
inserted by
No. 2/2013
s. 8.

- (cb) prescribing documents for the purposes of section 18B(1);

- (d) Generally prescribing any other matter or thing required or penalties for this Act to be prescribed or necessary to be prescribed to give effect to this Act.

(2) The Regulations—

S. 43(2)(ba)
inserted by
No. 48/2018
s. 65.

- (a) may be of general or limited application; and
- (b) may differ according to differences in time, place or circumstances; and
- (ba) may apply to different classes of persons; and

S. 43(2)(bb)
inserted by
No. 48/2018
s. 65.

- (bb) may prescribe different infringement penalties for different classes of persons; and
- (c) may—
 - (i) provide for the collection of prescribed fees; and
 - (ii) prescribe different fees in respect of different classes of persons organizations or cases; and
- (d) may confer discretions or powers or impose duties in connexion with the regulations on an owner, manager, resident or other person; and

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(e) may impose penalties not exceeding
20 penalty units for contravention of the
regulations.

S. 43(2)(e)
amended by
No. 4/2005
s. 20(2).

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S. 44
inserted by
No. 17/1999
s. 44,
repealed by
No. 1/2010
s. 99.

Pt 8 (Heading
and ss 45–54)
inserted by
No. 4/2005
s. 21.

Part 8—Transitional

S. 45
inserted by
No. 4/2005
s. 21.

45 Definitions

In this Part, *2005 Amendment Act* means the
Retirement Villages (Amendment) Act 2005.

S. 46
inserted by
No. 4/2005
s. 21.

46 Transitional provision—residential care facilities— 2005 Amendment Act

Despite the commencement of section 3 of the
2005 Amendment Act, this Act continues to apply
to any premises that are part of retirement village
land in a retirement village, being—

- (a) a retirement village that is in existence at the
commencement of that section; and
- (b) being premises that fall within the definition
of *residential care facility*—

as if the premises were not a residential care
facility—

- (c) unless at the time of the commencement of
section 3 of that Act all persons to whom
accommodation is being provided on the
premises are approved as aged care
recipients under Part 2.3 of the Aged Care
Act 1997 of the Commonwealth; or
- (d) until such time (if any), after the
commencement of section 3 of that Act, as
all persons to whom accommodation is being
provided on the premises are approved as
aged care recipients under Part 2.3 of the
Aged Care Act 1997 of the Commonwealth.

47 Transitional provision—Extinguishment of charge relating to residential care facilities—2005 Amendment Act

S. 47
inserted by
No. 4/2005
s. 21.

- (1) If, within 18 months of the commencement of section 3 of the 2005 Amendment Act, premises that were part of a retirement village, immediately before the commencement of that section, come to be taken not to be part of the retirement village, by virtue of the operation of section 46(c) or (d), the owner of the land on which the premises are situated may apply to the Director for a declaration that the charge, in so far as it applies to the land on which the premises are situated, is extinguished.
- (2) An application under subsection (1)—
 - (a) must be in writing; and
 - (b) must include a statutory declaration signed by the owner of the land and stating that—
 - (i) the land is no longer used as a retirement village; and
 - (ii) the owner has notified all residents of the premises and all residents of the retirement village of which the premises was formerly a part explaining the consequences of making the declaration, in a form approved by the Director; and
 - (iii) the owner has no knowledge of any proceedings by a resident to obtain payment of a refundable in-going contribution or to enforce the charge; and

- (c) must include a copy of the notice given to the residents referred to in paragraph (b); and
 - (d) if so required by the Director, must include any information that is reasonably necessary to establish the boundaries of the land to which the application relates and the use to which that land is put.
- (3) The Director may grant or refuse an application under this section.
- (4) On an application made in accordance with this section the Director may by instrument declare that a charge is extinguished in so far as it applies to the land to which the application relates if the Director is satisfied that the land is no longer a part of land used as a retirement village.
- (5) If in respect of land charged under this Part there is produced to the Registrar of Titles a copy of the instrument in which the Director has made a declaration that the charge is extinguished, to the extent that it applies to the land that is the subject of an application under this section, the Registrar of Titles may delete any recordings of the charge from the Register or make a recording in the Register of the extinguishment of the charge.

S. 48
inserted by
No. 4/2005
s. 21.

**48 Transitional provision—Cancellation of notices relating to residential care facilities—
2005 Amendment Act**

- (1) If, within 18 months of the commencement of section 3 of the 2005 Amendment Act, premises that were part of a retirement village immediately before the commencement of that section come to be taken not to be part of that village, by virtue of the operation of section 46(c) or (d), the owner of the land on which the premises are situated may apply to the Director for a declaration that the

notice, in so far as it applies to the land on which the premises are situated, is cancelled.

(2) An application under subsection (1)—

- (a) must be in writing; and
- (b) must include a statutory declaration signed by the owner of the land stating that—
 - (i) the land to which the application relates is no longer used as a retirement village; and
 - (ii) the owner has served on—
 - (A) all residents and former residents of the premises; and
 - (B) all residents and former residents of the retirement village of which the premises were formerly a part; and
 - (C) the legal personal representatives of any former residents of the premises or retirement village who have died while residents of the village—
notice in writing explaining the consequences of making the declaration, in a form approved by the Director; and
 - (iii) the owner has no knowledge of any proceedings by a resident to obtain payment of a refundable in-going contribution or to enforce the charge; and
- (c) must include a copy of the notice given to the residents referred to in paragraph (b); and

- (d) if so required by the Director, must include any information that is reasonably necessary to establish the boundaries of the land to which the application relates and the use to which the land is put.
- (3) The Director may grant or refuse an application under this section.
- (4) On an application made in accordance with this section the Director may, by instrument published in the Government Gazette, declare that the retirement village notice to which the application relates is cancelled, in so far as it applies to the land to which the application relates, if the Director is satisfied that—
 - (a) the land is no longer a part of land used as a retirement village; and
 - (b) the owner has served on all residents, former residents and their legal personal representatives notice in accordance with this section.
- (5) If there is produced to the Registrar of Titles a copy of the Government Gazette in which the Director has published a declaration that a retirement village notice is cancelled, to the extent that it applies to the land that is the subject of an application under this section, the Registrar of Titles may delete any recordings of the notice from the Register or make a recording in the Register of the cancellation of the notice.

**49 Transitional provision—contracts—
2005 Amendment Act**

Section 21B does not apply to any contract entered into before the commencement of section 7 of the 2005 Amendment Act.

S. 49
inserted by
No. 4/2005
s. 21.

**50 Transitional provision—appointment of agents—
2005 Amendment Act**

Section 32B does not apply to an agent in respect of whom an engagement is in force, immediately before the commencement of section 10 of the 2005 Amendment Act, under an appointment made by an owner resident, and that agent may continue to act under that appointment as if section 32B had not been enacted.

S. 50
inserted by
No. 4/2005
s. 21.

**51 Transitional provision—powers of attorney—
2005 Amendment Act**

Division 2 of Part 6A does not apply to any power of attorney given before the commencement of section 16 of the 2005 Amendment Act.

S. 51
inserted by
No. 4/2005
s. 21.

**52 Transitional provision—payments to owner
residents—2005 Amendment Act**

- (1) Section 26 (as in force on and from the commencement of section 16 of the 2005 Amendment Act) and section 38I do not apply to existing contracts and section 26 (as in force immediately before that commencement) continues to apply to any such contract.
- (2) A person who is liable, under an existing contract, to make a payment to—
 - (a) a former resident of a retirement village on the former resident leaving the retirement village; or

S. 52
inserted by
No. 4/2005
s. 21.

- (b) the estate of a former resident on the resident's death—

being a payment that is consequent on the former resident so leaving or dying, must make that payment—

- (c) within 14 days of the resident so leaving or dying; or
- (d) if the former resident is not entitled to recover the amount until the fulfilment of a condition, on the day that is 14 days after the day on which the payment is required to be made under that condition.

Penalty: 60 penalty units.

- (3) At the same time as the payment is made, the manager of the retirement village must give the former resident a statement setting out all amounts payable to the former resident and all amounts payable by the former resident to discharge the residence contract and showing how the amounts were calculated.

Penalty: 60 penalty units.

- (4) In this section—

existing contract means a contract entered into before the commencement of section 16 of the 2005 Amendment Act;

former resident, in relation to a retirement village, means a person who was a resident of the village but who has left the village or who has died.

53 Transitional provision—registration of retirement villages—2005 Amendment Act

S. 53
inserted by
No. 4/2005
s. 21.

The manager of a retirement village that is in existence on the commencement of section 16 of the 2005 Amendment Act must, within 21 days of that commencement, give a notice to the Director that complies with section 38L(1).

54 Transitional provision—contractual provisions relating to arbitration—2005 Amendment Act

S. 54
inserted by
No. 4/2005
s. 21.

Section 42A applies to any residence contract and to any management contract in force on the commencement of section 19 of the 2005 Amendment Act.

55 Transitional provision—Consumer Legislation Amendment Act 2020

S. 55
inserted by
No. 32/2020
s. 17.

On and from the commencement of Part 4 of the **Consumer Legislation Amendment Act 2020**, the amendments made to this Act by that Part apply to a charge created before that commencement.

*	*	*	*	*	Sch. (Heading) repealed by No. 21/2015 s. 3(Sch. 1 item 45).
*	*	*	*	*	Sch. 1 amended by No. 85/1998 s. 24(Sch. item 52.22), repealed by No. 4/2005 s. 22.
*	*	*	*	*	Sch. 2 repealed by No. 4/2005 s. 23.

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Part 8—Transitional

Sch. 3
amended by
Nos 35/1996
s. 453(Sch. 1
item 72.3),
74/2000
s. 3(Sch. 1
items 109.1,
109.2),
repealed by
No. 4/2005
s. 24.

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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.

Minister's second reading speech—

Legislative Assembly: 7 October 1986

Legislative Council: 7 May 1986

The long title for the Bill for this Act was "A Bill for an Act to make provision concerning Retirement Villages and for other purposes."

The **Retirement Villages Act 1986** was assented to on 23 December 1986 and came into operation as follows:

Part 1, section 43 on 25 February 1987: Government Gazette 25 February 1987 page 407; rest of Act on 8 June 1987: Government Gazette 27 May 1987 page 1235.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

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- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

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2 Table of Amendments

This publication incorporates amendments made to the **Retirement Villages Act 1986** by Acts and subordinate instruments.

Subdivision Act 1988, No. 53/1988 (as amended by No. 47/1989)

Assent Date: 31.5.88
Commencement Date: 30.10.89: Government Gazette 4.10.89 p. 2532
Current State: All of Act in operation

Transfer of Land (Computer Register) Act 1989, No. 18/1989 (as amended by No. 48/1991)

Assent Date: 16.5.89
Commencement Date: 3.2.92: Government Gazette 18.12.91 p. 3488
Current State: All of Act in operation

Health Services (Further Amendment) Act 1990, No. 53/1990

Assent Date: 7.11.90
Commencement Date: Ss 9, 27 on 14.5.89: s. 2(1); rest of Act on 7.11.90: s. 2(2)
Current State: All of Act in operation

Building Act 1993, No. 126/1993

Assent Date: 14.12.93
Commencement Date: S. 264(Sch. 5 item 18) on 1.7.94: Special Gazette (No. 42) 1.7.94 p. 1
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: S. 118(Sch. 1 item 49.1) on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 items 72.1–72.3) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Residential Tenancies Act 1997, No. 109/1997

Assent Date: 23.12.97
Commencement Date: S. 533(Sch. 2 item 11) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

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Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 52) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Fair Trading (Inspectors Powers and Other Amendments) Act 1999, No. 17/1999

Assent Date: 18.5.99
Commencement Date: Ss 43, 44 on 1.9.99: Government Gazette 19.8.99 p. 1901
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 109) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 64) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 8(Sch. 6 item 6) on 28.6.01: Government Gazette 28.6.01 p. 1428
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 99) on 15.7.01: s. 2
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Retirement Villages (Amendment) Act 2005, No. 4/2005

Assent Date: 5.4.05
Commencement Date: Ss 3–5, 6(1), 9, 11, 13, 15, 17–24 on 23.5.05: Government Gazette 12.5.05 p. 882; ss 12, 14, 16 on 30.1.06: Government Gazette 15.12.05 p. 2901; ss 6(2), 7, 8, 10 on 1.8.06: s. 2(2)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

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Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 93) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 43) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Owners Corporations Act 2006, No. 69/2006

Assent Date: 19.9.06
Commencement Date: S. 224(Sch. 3 item 7) on 31.12.07: s. 2(2)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 59) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Fair Trading and Consumer Acts Further Amendment Act 2008, No. 2/2008

Assent Date: 11.2.08
Commencement Date: S. 60(Sch. item 11) on 12.2.08: s. 2(1)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Motor Car Traders Amendment Act 2008, No. 4/2008

Assent Date: 4.3.08
Commencement Date: S. 32(Sch. item 29) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 52) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Fair Trading and Other Acts Amendment Act 2009, No. 19/2009

Assent Date: 10.6.09
Commencement Date: S. 29 on 11.6.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

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Consumer Affairs Legislation Amendment Act 2010, No. 1/2010

Assent Date: 9.2.10
Commencement Date: S. 99 on 1.8.10: Government Gazette 22.7.10 p. 1628
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 47) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Consumer Affairs Legislation Amendment (Reform) Act 2010, No. 63/2010

Assent Date: 28.9.10
Commencement Date: S. 65 on 1.11.10: Government Gazette: 14.10.10 p. 2404
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Fair Trading Amendment (Australian Consumer Law) Act 2010, No. 72/2010

Assent Date: 19.10.10
Commencement Date: S. 48(Sch. item 20) on 1.1.11: Special Gazette (No. 502) 20.12.10 p. 1
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Australian Consumer Law and Fair Trading Act 2012, No. 21/2012

Assent Date: 8.5.12
Commencement Date: S. 239(Sch. 6 item 38) on 1.7.12: Special Gazette (No. 214) 28.6.12 p. 1
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Retirement Villages Amendment (Information Disclosure) Act 2013, No. 2/2013

Assent Date: 12.2.13
Commencement Date: 1.3.14: s. 2(2)
Current State: All of Act in operation

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 86) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 145) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

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Consumer Affairs Legislation Amendment Act 2014, No. 50/2014

Assent Date: 12.8.14
Commencement Date: Ss 44, 45 on 13.8.14: s. 2(1)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Veterans and Other Acts Amendment Act 2015, No. 12/2015

Assent Date: 21.4.15
Commencement Date: S. 21(Sch. 1 item 8) on 22.4.15: s. 2(1)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Statute Law Revision Act 2015, No. 21/2015

Assent Date: 16.6.15
Commencement Date: S. 3(Sch. 1 item 45) on 1.8.15: s. 2(1)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Consumer Acts and Other Acts Amendment Act 2016, No. 23/2016

Assent Date: 10.5.16
Commencement Date: Ss 27–29, 30(2), 32, 33 on 1.6.16: Special Gazette (No. 162) 24.5.16 p. 16; ss 30(1), 31 on 1.7.16: Special Gazette (No. 204) 28.6.16 p. 1
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017, No. 38/2017

Assent Date: 29.8.17
Commencement Date: S. 92 on 30.8.17: s. 2(1)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Justice Legislation Miscellaneous Amendment Act 2018, No. 48/2018

Assent Date: 25.9.18
Commencement Date: S. 65 on 28.10.18: Special Gazette (No. 480) 16.10.18 p. 1
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Consumer Legislation Amendment Act 2020, No. 32/2020

Assent Date: 4.11.20
Commencement Date: Ss 14–17 on 1.2.21: Special Gazette (No. 685) 22.12.20 p. 1
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

Owners Corporations and Other Acts Amendment Act 2021, No. 4/2021

Assent Date: 23.2.21
Commencement Date: S. 86 on 1.12.21: s. 2(2)
Current State: This information relates only to the provision/s amending the **Retirement Villages Act 1986**

3 Amendments Not in Operation

This version does not contain amendments that are not yet in operation.

4 Explanatory details

No entries at date of publication.