

Western Australia

Retirement Villages Act 1992

Reprinted as at 22 January 1999

Western Australia

Retirement Villages Act 1992

CONTENTS

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Interpretation	2
4.	Act binds the Crown	5
5.	Application of Act	5
6.	Contracting out	6
7.	Effect of Act on other legislation	6

Part 2 — Administration

8.	Functions of Department under this Act	7
9.	Commissioner may institute or defend proceedings for a party	7
10.	Delegation by Commissioner	10
11.	Protection of officers	10
12.	Annual report	10

Part 3 — Rights and obligations of residents, owners and administering bodies

13.	Residence contract	12
14.	Cooling-off period	13

15.	Owner to deliver memorial	13
16.	Occupation right not to be created unless memorial is lodged	15
17.	Termination of residence rights	16
18.	Premiums	17
19.	Contractual rights of residents	18
20.	Charges	19
21.	Enforcement of charge	20
22.	Termination of retirement village scheme	22

Part 4 — Resolution of disputes

Division 1 — Retirement villages referees

23.	Appointment of retirement villages referees	23
24.	Eligibility to hold office as referee	23
25.	Terms and conditions of office of referee	23
26.	Acting referees	24

Division 2 — Retirement Villages Disputes Tribunal

27.	The Tribunal	25
28.	Panels	25
29.	Constitution of Tribunal	25
30.	Term of office	26
31.	Remuneration	26
32.	Relationship to Public Service	27
33.	Conditions of appointment	27
34.	Powers not affected by vacancy	27
35.	Meetings of Tribunal	27

Division 3 — Registry and officers

36.	Registry and officers	28
37.	Power of registrar to take affidavits	28

Division 4 — Procedure

38.	Applications for orders to be made to Tribunal	28
39.	Notice of hearing	29
40.	Election as to constitution of Tribunal	29
41.	Witnesses and inspection of documents	29
42.	General powers in proceedings	30

43.	Offences	32
44.	Extension of time	32
45.	Evidence	32
46.	Proceedings before Tribunal	33
47.	Presentation of cases	33
48.	Reference of certain matters concerning administering bodies	35
49.	Costs	35
50.	Reservation of question of law	35
51.	Appeal	36
	Division 5 — Orders by Tribunal	
52.	Limits on orders by Tribunal	37
53.	No monetary limits on jurisdiction of Tribunal	37
54.	Referee not to have jurisdiction where title to land in question	37
55.	Applications referred under <i>Strata Titles Act 1985</i>	37
56.	Disputes in relation to service contracts	37
57.	Applications relating to transfer of residents	38
58.	Termination of occupation on medical grounds	40
59.	Termination of occupation on grounds of breach of residence contract or rules	41
60.	Parties to minimize loss from breach of residence contract	42
61.	Tribunal may waive defect in notice of intention to terminate	42
62.	Tribunal may terminate residence contract where resident causes serious damage or injury	42
63.	Tribunal may terminate residence contract where administering body would otherwise suffer undue hardship	43
64.	Suspension or refusal of orders to terminate	43
65.	Prohibition on certain recovery proceedings in courts, etc.	44
66.	Recovery of possession of premises prohibited except by order	45
67.	Liability of resident remaining in possession	45
68.	Abandoned premises	45

Contents

69.	Right of administering body to compensation where resident abandons premises	46
70.	Goods abandoned by resident after residence contract is terminated	46
71.	Further orders under this Part	47
72.	Enforcement	47
73.	Reasons for decisions	48
74.	Protection	48

Part 5 — Miscellaneous

75.	Rescission of contract	49
76.	Law of perjury to apply	50
77.	Non-compliance may be excused by Court	50
78.	Disclosure of information	51
79.	Liability of directors, etc.	51
80.	Time for bringing proceedings	52
81.	Evidentiary provisions	52
82.	Regulations	52
83.	Review of the Act	53
84.	Savings and transitional	53
85.	<i>Constitution Acts Amendment Act 1899</i> amended	53
86.	<i>Strata Titles Act 1985</i> amended	53

Schedule 1

Notes

Defined Terms

**Reprinted under the
Reprints Act 1984 as
at 22 January 1999**

Western Australia

Retirement Villages Act 1992

An Act to regulate retirement villages and the rights of residents in such villages and for related purposes.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Retirement Villages Act 1992*¹.

2. Commencement

The provisions of this Act shall come into operation on such day as is fixed by proclamation and in any event shall come into effect if not proclaimed, 6 months after Royal Assent¹.

3. Interpretation

(1) In this Act, unless the contrary intention appears —

“**administering body**”, in relation to a retirement village, means the person by whom, or on whose behalf, the retirement village is administered and includes a person (other than a resident) who is the owner of land within the retirement village;

“**code**” means any code of practice prescribed under the *Fair Trading Act 1987* which relates to retirement villages;

“**Commissioner**” means the Commissioner for Fair Trading appointed under the *Consumer Affairs Act 1971*;

“**Department**” has the same meaning as it has in the *Consumer Affairs Act 1971*;

“**owner**”, in relation to land under the operation of the *Transfer of Land Act 1893*, means a person who alone or with others is registered as the proprietor of an estate in fee simple;

“**premium**” means a payment (including a gift) made to the administering body of a retirement village in consideration for, or in contemplation of, admission of the person by or on whose behalf the payment was made as a resident in a retirement village (including any such payment made for the purchase of residential premises in a retirement village or for the purchase, issue or assignment of shares

conferring a right to occupy any such residential premises)
but does not include —

- (a) any such payment excluded by regulation from the
ambit of this definition; or
- (b) recurrent charges;

“recurrent charge” means any amount (including rent) payable
by a resident to the administering body of a retirement
village on a recurrent basis;

“referee” means a retirement villages referee appointed under
section 23;

“registrar” means the registrar appointed under section 36;

“Registrar of Titles” has the meaning given to that expression
by the *Transfer of Land Act 1893*;

“residence contract” means a contract, agreement, scheme or
arrangement which creates or gives rise to a right to occupy
residential premises in a retirement village, and may take
the form of a lease or licence;

“residence rules” means the rules with which residents of a
retirement village are expected by the administering body
to comply, but does not include any prescribed subsidiary
legislation (to which residents are subject) in force under
any prescribed Act;

“resident”, in relation to a retirement village, means a person
who has been admitted to occupation of residential
premises in accordance with a retirement village scheme
and includes a spouse of such a person who —

- (a) is residing with that person; or
- (b) was residing with that person at the time of his or her
death;

“residential premises” means any premises or part of premises
(including any land occupied with the premises) used or
intended to be used as a place of residence and includes a
hostel unit;

s. 3

“residential tenancy agreement” has the same meaning as in the *Residential Tenancies Act 1987*;

“retired person” means a person who has attained the age of 55 years or retired from full-time employment or a person who is or was the spouse of such a person;

“retirement village” means a complex of residential premises, whether or not including hostel units, and appurtenant land, occupied or intended for occupation under a retirement village scheme or used or intended to be used for or in connection with a retirement village scheme;

“retirement village scheme” or **“scheme”** means a scheme established for retired persons or predominantly for retired persons, under which —

- (a) residential premises are occupied in pursuance of a residential tenancy agreement or any other lease or licence;
- (b) a right to occupation of residential premises is conferred by ownership of shares;
- (c) residential premises are purchased from the administering body subject to a right or option of repurchase;
- (d) residential premises are purchased subject to conditions restricting the subsequent disposal of the premises; or
- (e) residential premises are occupied under any other scheme or arrangement prescribed for the purposes of this definition,

but does not include any such scheme under which no resident or prospective resident of residential premises pays a premium in consideration for, or in contemplation of, admission as a resident under the scheme;

“service contract” means a contract between an administering body or former administering body of a retirement village and a resident for the provision to the resident of —

- (a) hostel care;

- (b) infirmary care;
- (c) medical or nursing services;
- (d) meals;
- (e) administrative and management services;
- (f) maintenance and repair services;
- (g) recreation services; or
- (h) any other services,

and any collateral agreement or document relating to the provision of any such service;

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

“Tribunal” means the Retirement Villages Disputes Tribunal established under section 27;

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

- (2) For the purpose of determining whether a contract, agreement, scheme or arrangement is a residence contract as defined in subsection (1), it does not matter that the person granted the right of occupation is a corporation if the premises are used (or intended for use) as a residence by a natural person.

[Section 3 amended by No. 57 of 1997 s.39(10).]

4. Act binds the Crown

This Act binds the Crown.

5. Application of Act

Except as otherwise provided by or under this Act, this Act applies to retirement villages established either before or after the commencement of this Act.

6. Contracting out

- (1) Subject to subsection (2), the provisions of this Act have effect despite any stipulation to the contrary in any contract, agreement, scheme or arrangement, and no residence contract or other contract, agreement or arrangement (whether oral or partly or wholly in writing) operates to annul, vary or exclude any of the provisions of this Act.
- (2) A provision of this Act does not apply to a contract, agreement or arrangement made or entered into before the commencement of that provision.
- (3) A person shall not enter into any contract, agreement or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act.
Penalty: \$2 000.

7. Effect of Act on other legislation

The provisions of this Act are, except as otherwise provided by this Act, in addition to and do not derogate from the provisions of any other written law.

Part 2 — Administration

8. Functions of Department under this Act

- (1) Without limiting section 17 of the *Consumer Affairs Act 1971*, the Department has the following functions for the purposes of this Act —
 - (a) to investigate and conduct research into matters relating to or affecting retirement villages;
 - (b) to publish reports and disseminate information on matters relating to retirement villages;
 - (c) to give advice to consumers on the provisions of this Act;
 - (d) to investigate and attempt to resolve complaints by residents and administering bodies of retirement villages and to take action by negotiation, prosecution of any offence or otherwise;
 - (e) to make reports to the Minister on matters referred to the Department by the Minister and matters of importance investigated by the Department, whether referred to it by the Minister or not.
- (2) Section 24 of the *Consumer Affairs Act 1971* applies to information acquired under this Act, and for that purpose the reference to “**this Act**” in the first place where it appears in subsection (2) of that section shall be read as a reference to the *Retirement Villages Act 1992*.

[Section 8 amended by No. 57 of 1997 s.104.]

9. Commissioner may institute or defend proceedings for a party

- (1) If a resident of a retirement village has made a complaint to the Commissioner and the Commissioner —
 - (a) after investigating the complaint, is satisfied that the resident may have a right to institute or defend proceedings under this Act; and

s. 9

- (b) is of the opinion that it is in the public interest that the Commissioner should institute, defend or assume the conduct of those proceedings on behalf of the resident,
- the Commissioner may institute, defend or assume the conduct of those proceedings.
- (2) The Commissioner shall not institute, defend, or assume the conduct of, any proceedings under subsection (1) on behalf of a resident without first obtaining the written consent of the resident which once given shall be irrevocable except with the consent of the Commissioner.
- (3) In relation to any proceedings referred to in subsection (1) the following provisions apply —
- (a) the Commissioner shall, on behalf of the resident of the retirement village, have in all respects the same rights in, and control over, the proceedings, including the right to settle any action or part of any action, as the resident would have had in the conduct of those proceedings;
 - (b) the Commissioner may, without consulting or seeking the consent of the resident, conduct the proceedings in such manner as the Commissioner thinks appropriate and proper;
 - (c) in the case of proceedings already commenced by or against the resident, the Tribunal or the court hearing the proceedings shall, on the application of the Commissioner, order that the Commissioner be substituted for the resident as a party to the proceedings, and may make such other orders or give such other directions in that behalf as the Tribunal or the court thinks fit;
 - (d) any moneys (excluding costs) recovered by the Commissioner shall belong and be paid to the resident without deduction and any amount awarded against the resident shall be paid by and recoverable from the resident, but in all cases the costs of the proceedings

shall be borne by or paid to and retained by the Commissioner as the case may require; and

- (e) if any party to the proceedings alleges another cause of action, or if the resident on whose behalf the proceedings are being defended has another cause of action, the Tribunal or the court hearing the proceedings may, on the application of the Commissioner, order that the proceedings for the other cause of action be heard separately and that the party or the resident as the case may require be a party to those proceedings in his or her own right and may make such other orders or give such other directions in that behalf as the Tribunal or the court thinks fit.
- (4) In any proceedings referred to in subsection (1), a document purporting to be signed by the Commissioner stating in respect of the proceedings that the Commissioner is satisfied that the resident may have a right to institute or defend proceedings under this Act and that it is in the public interest to institute, defend, or assume the conduct of, the proceedings, as the case may be, on behalf of the resident of the retirement village shall, in the absence of proof to the contrary, be accepted as proof that the Commissioner instituted, defended, or assumed the conduct of, the proceedings, as the case may be, in accordance with that subsection.
- (5) In any proceedings referred to in subsection (1) a document purporting to be the consent of the resident of the retirement village to the Commissioner instituting, defending, or assuming the conduct of, the proceedings, as the case may be, shall, in the absence of proof to the contrary, be accepted as proof of that consent.
- (6) Notwithstanding anything in this section, if the Tribunal or the court hearing the proceedings is satisfied whether on application by the resident or otherwise that any proceedings taken by the Commissioner under this section in the name of a resident are

s. 10

not in the interests of the resident the Tribunal or the court, as the case may be, shall order that the proceedings shall be —

- (a) discontinued; or
 - (b) continued so as not to affect the interests of the resident and only in accordance with such directions including directions as to costs, as the Tribunal or court, as the case requires, thinks just.
- (7) Any costs recovered by the Commissioner under subsection (3)(d) shall be credited to the Consolidated Fund.
- (8) In this section “**resident**” includes a prospective resident or former resident.

[Section 9 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

10. Delegation by Commissioner

The Commissioner may by notice published in the *Gazette* delegate any of his or her functions under this Act (other than this power of delegation) to the holder of any specified office in the public service of the State or to any specified officer of an agency or instrumentality of the Crown.

11. Protection of officers

No liability attaches to the Commissioner or any delegate of the Commissioner, or any officer of the Department for any act or omission by the Commissioner, the delegate, or the officer that occurred in good faith and in the performance or discharge or purported performance or discharge of the functions of the Commissioner or the Department under this Act but nothing in this section shall relieve the Crown of any liability that it might have for the actions of such persons but for this section.

12. Annual report

- (1) As soon as practicable after 30 June, but on or before 31 December, in each year, the Commissioner shall prepare and forward to the Minister a report on the operation of this Act during that year.

- (2) The Minister shall lay the report or cause it to be laid before both Houses of Parliament as soon as practicable after receiving the report.

Part 3 — Rights and obligations of residents, owners and administering bodies

13. Residence contract

- (1) A residence contract shall be in writing.
- (2) At least 5 working days before a person enters into a residence contract, the owner shall cause to be given to that person —
 - (a) a statement in the prescribed form completed and signed by the owner containing the information required by the regulations;
 - (b) a notice in the prescribed form of the person's rights under this section and section 14;
 - (c) a copy of the residence rules;
 - (d) a copy of any applicable code; and
 - (e) any other prescribed documents.

Penalty: \$20 000.

- (3) Where the owner is not an administering body, the administering body shall, upon written application by the owner, provide that owner with such information and documents in the possession of the administering body as will enable the owner to comply with subsection (2).

Penalty: \$20 000.

- (4) Where a person enters into a residence contract, the contract will be taken to include a warranty on the part of the owner of the correctness of the information contained in the statement given under subsection (2)(a) (subject to any written alteration to the statement made by the owner with the consent of the prospective resident on or before the signing of the residence contract by the owner), and that warranty prevails over any inconsistent contractual term.
- (5) A person, including an owner, shall not, without the approval of the Commissioner —
 - (a) make a representation to a person that is inconsistent with information contained in a statement given to that person under subsection (2)(a);

- (b) give to a person a statement under subsection (2)(a) that contains information that is inconsistent with a representation made by the owner to that person.

Penalty: \$20 000.

- (6) In any proceedings taken for an offence against subsection (5) it is a defence for the accused to prove —
 - (a) being an owner, that any representation was made without the consent or knowledge of the owner;
 - (b) being a person other than an owner, that the representation was to his or her belief a true representation;
 - (c) in any case, that the consent of the Commissioner was given in relation to the representation.
- (7) In this section “**owner**” means owner of the residential premises to which the residence contract relates.

14. Cooling-off period

- (1) Subject to subsection (2) and section 75, a prospective resident is entitled to rescind a residence contract entered into by that person —
 - (a) at any time within 5 working days after the date of the contract; or
 - (b) if section 13(2) is not complied with — at any time before the expiration of 10 working days after the date on which the documents required under that section are given to the prospective resident.
- (2) A person is not entitled to rescind a residence contract under this section after entering into occupation of residential premises in a retirement village under the residence contract.

15. Owner to deliver memorial

- (1) A person or association of persons whether incorporated or not shall not use land for a retirement village unless the land is under the operation of the *Transfer of Land Act 1893*.

Penalty: \$20 000.

s. 15

- (2) A breach of subsection (1) shall not be pleaded in bar to any claim for the repayment of a premium or any moneys under a contract of sale relating to any interest in the land.
- (3) Subject to subsection (6), where land is, or is proposed to be, used for the purposes of a retirement village, a memorial in the form approved by the Registrar of Titles containing such information as is prescribed shall be lodged with the Registrar of Titles.
- (4) The owner of retirement village land shall cause a memorial referred to in subsection (3) to be lodged with the Registrar of Titles —
 - (a) if the retirement village was established or if the plan and specifications of the retirement village were approved under the *Local Government (Miscellaneous Provisions) Act 1960* before the commencement of this section and paragraph (b) does not apply — within 3 months after the commencement of this section; and
 - (b) in any other case — before entering into a contract which creates or gives rise to a right to occupy residential premises in the retirement village or inviting other persons to make applications, offers or proposals to enter into such a contract.

Penalty: \$20 000.

- (5) Before a memorial is lodged under subsection (3) the owner must —
 - (a) notify each person who holds a mortgage, charge or encumbrance over the land; and
 - (b) if the memorial relates to a retirement village established, or for which the plan and specifications were approved under the *Local Government (Miscellaneous Provisions) Act 1960*, after the commencement of this section, obtain the consent of each such person to the registration of the memorial.

Penalty: \$5 000.

- (6) A resident who has an interest in land in a retirement village either as a tenant in common or as an owner of a lot under the *Strata Titles Act 1985* is not required to lodge a memorial under subsection (3) so long as —
- (a) the interest of the resident is related only to the place in the retirement village occupied by the resident; and
 - (b) the interest of the resident is not offered as security or the resident does not enter into a contract for the sale of that interest.
- (7) On receiving a memorial under subsection (3) and payment of the fee prescribed under the *Transfer of Land Act 1893*, the Registrar of Titles shall register that memorial and endorse the Register within the meaning of that Act and, where appropriate, the relevant strata plan, to that effect in relation to the land to which the memorial relates.
- (8) If there is produced to the Registrar of Titles documents, if any, prescribed for the purposes of this subsection and the Registrar of Titles is satisfied that no part of the land to which a memorial relates is still used, or proposed to be used, as a retirement village the Registrar of Titles shall, upon application for cancellation of the memorial and payment of the fee prescribed under the *Transfer of Land Act 1893*, cancel the registration of the memorial and accordingly endorse the Register within the meaning of that Act and, if necessary, relevant strata plan, to that effect in relation to the land concerned.

[Section 15 amended by No. 14 of 1996 s.4; No. 81 of 1996 s.153(1).]

16. Occupation right not to be created unless memorial is lodged

- (1) A person shall not invite 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 right to occupy residential premises in a retirement village in respect of which a

s. 17

memorial is required to be lodged under section 15 and has not been so lodged.

Penalty: \$20 000.

- (2) An owner shall not enter into a contract which has or would have the effect of creating or giving rise to a right to occupy residential premises in a retirement village in respect of which a memorial is required to be lodged under section 15 and has not been so lodged.

Penalty: \$20 000.

- (3) Subject to section 75, a person who is a resident and has entered into a contract in respect of which there has been a contravention of subsection (1) or (2) may rescind the contract not later than 6 months after that person becomes aware of the contravention.

17. Termination of residence rights

- (1) A contract which is entered into between a resident and an owner of land used for the purposes of a retirement village and which creates or gives rise to a right to occupy residential premises in that retirement village binds the successors in title of the owners as if the successors had also entered into the contract and the right of occupation cannot be terminated unless —
- (a) the resident dies;
 - (b) the residence contract is terminated by the resident in accordance with the residence contract or under this Act;
 - (c) the resident abandons the residential premises;
 - (d) the residence contract is terminated by the Tribunal under this Act; or
 - (e) the holder of a mortgage, charge or other encumbrance that was in existence before the commencement of this section becomes entitled to vacant possession of the premises in pursuance of rights conferred by the mortgage, charge or other encumbrance.

- (2) Sections 57, 65 to 70, the rights of termination of residence contracts under subsection (1)(a), (b), (c) and (d) and of recovery of possession of residential premises under this Act are subject to any rights of a resident of a retirement village —
- (a) arising because the resident is the owner of residential premises; or
 - (b) acquired under a contract between the administering body and the resident.
- (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.

18. Premiums

- (1) Subject to subsection (2), a premium paid to the administering body shall be held in trust (in a bank account or invested as trust funds may be invested under Part III of the *Trustees Act 1962*) until —
- (a) the person by or on whose behalf the premium was paid enters into occupation of the residential premises; or
 - (b) it becomes apparent that that person will not enter into occupation of the residential premises.
- (2) The Commissioner may, on the application of an administering body, grant an exemption from subsection (1) if satisfied of the administering body’s capacity and willingness to provide residential premises in accordance with its obligations under the residence contracts.
- (3) An exemption may be conditional or unconditional, and if an administering body contravenes or fails to comply with a condition of an exemption the administering body is guilty of an offence.
Penalty: \$5 000.
- (4) If the prospective resident does not enter into occupation of residential premises, any question affecting entitlement to or

s. 19

disposition of the premium shall be determined by reference to the residence contract subject to the following qualifications —

- (a) if the prospective resident's failure to enter into occupation of residential premises is attributable to a failure on the part of the administering body to carry out contractual obligations, interest and accretions arising from investment of the premium must be paid to the prospective resident;
 - (b) in any other case, the administering body will be entitled to retain any such interest and accretions.
- (5) If a provision of this section is not observed, the administering body is guilty of an offence.

Penalty: \$20 000.

[Section 18 amended by No. 1 of 1997 s.18.]

19. Contractual rights of residents

- (1) A service contract may be enforced against the administering body, for the time being, of the retirement village.
- (2) Every term relating to the provision of a service to a resident under a service contract binds a resident and each successor in title of the resident until the term is varied or cancelled by the Tribunal under this Act.
- (3) Where a premium is paid under a contract providing that it will be repaid in whole or in part on the happening of a contingency and the contingency occurs, the sum repayable shall be paid —
 - (a) where the place formerly occupied by the resident in the retirement village is subsequently occupied by another person — within 7 days of that other person taking occupation;
 - (b) in any other case — within 45 days of the day on which the resident ceases to reside at that place in the retirement village.

- (4) Any amount not paid within the period referred to in subsection (3) may be recovered as a debt from the administering body for the time being of the retirement village.
- (5) Subsection (3) does not apply to a residence contract unless —
 - (a) the residence contract has been terminated in accordance with the terms of the residence contract; and
 - (b) the resident does not have the right to appoint or nominate his or her own agent for the purpose of disposing of the resident's interest in the retirement village.
- (6) Proceedings will not lie against the owner of land in a retirement village for the enforcement of rights under subsection (1) or (2) unless —
 - (a) the owner is a party to the contract under which the premium is repayable;
 - (b) the owner is the sole administering body of the retirement village; or
 - (c) an administering body other than the owner has failed to satisfy a judgment given for the enforcement of those rights.
- (7) In subsection (2) “**service**” means a service referred to in the definition of “service contract” in section 3.

20. Charges

- (1) The rights of a resident to repayment of a premium, or part of a premium, under section 19 are a charge on land in the retirement village other than —
 - (a) residential premises owned by a resident; or
 - (b) any other prescribed part of, or interest in, a retirement village.
- (2) Subsection (1) has effect whether or not the charge is registered.
- (3) If the premium or part of a premium referred to in subsection (1) is paid after the time within which a memorial in respect of the land to which the charge relates is required to be lodged under section 15, the charge is a first charge on the land to which the

s. 21

charge relates, and has priority over all mortgages, charges or encumbrances created or arising after the creation of the charge, or created or arising before the creation of the charge but after the day on which a memorial in respect of the relevant land is registered under section 15.

- (4) If the premium or part of a premium referred to in subsection (1) was paid before the time within which a memorial in respect of the land to which the charge relates is required to be registered under section 15, the charge on the land to which the charge relates has priority over all mortgages, charges and encumbrances created or arising in relation to that land after the day on which a memorial in respect of the relevant land is registered under section 15.
- (5) Land which is charged under this section continues to be liable to the charge despite any change in ownership, and, subject to subsection (1) and section 19(6), the charge is enforceable against any administering body for the time being of the land, whether or not that administering body has notice of the charge.
- (6) The —
 - (a) interests and rights mentioned in the proviso to section 68 of the *Transfer of Land Act 1893*;
 - (b) interests and rights prescribed for the purposes of this subsection,

have priority over a charge under this section.

21. Enforcement of charge

- (1) A resident of a retirement village in respect of which there is a charge protecting the resident's right to repayment of a premium or part of a premium may apply to the Supreme Court for an order for enforcement of the charge.
- (2) On application by a resident in accordance with subsection (1) the Supreme Court may make an order for enforcement of the charge if it is satisfied that —
 - (a) the resident has brought proceedings against the administering body for the time being of the land

- charged for the recovery of the resident's premium or part of a premium, has obtained judgment and has attempted to execute the judgment but is unable to obtain payment of the whole of the judgment debt; and
- (b) it is not contrary to the interests of any of the residents of the retirement village to make the order.
- (3) An order for the enforcement of a charge may provide for the following matters —
- (a) the sale of the land charged;
- (b) a declaration that the charge is extinguished upon the completion of the sale of the land charged;
- (c) a determination of the amount secured by the charge;
- (d) a determination of the entitlements of residents to payments out of the proceeds of the sale of the land charged, having regard to the amount of each resident's refundable premium or part of a premium and the proportion which it bears to the total amount of premiums or parts of premiums secured by the charge;
- (e) the order in which the proceeds of sale are to be applied having regard to the matters set out in subsection (4).
- (4) Proceeds of sale are to be applied in the following order —
- (a) firstly, in payment of mortgages, charges and encumbrances which rank before the charge in priority unless the sale is subject to those mortgages, charges and encumbrances;
- (b) secondly, in payments of the costs incurred in applying for and obtaining the order for enforcing the charge and in selling the land charged;
- (c) thirdly, in making payments to residents;
- (d) fourthly, in payment of any mortgages, charges and 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. 22

- (5) An order for enforcing a charge may contain such incidental and consequential provisions as the Court may decide.

22. Termination of retirement village scheme

- (1) A retirement village scheme cannot be terminated without the approval of the Supreme Court while a person who has been admitted to occupation of residential premises under the scheme remains in occupation of those premises.
- (2) The Commissioner will be a party to any proceedings in which the Supreme Court's approval of the termination of a retirement village scheme is sought.
- (3) If the Supreme Court approves the termination of a retirement village scheme it may make such orders as it thinks necessary to protect the interests of existing residents.

Part 4 — Resolution of disputes

Division 1 — Retirement villages referees

23. Appointment of retirement villages referees

- (1) The Minister may appoint such number of retirement villages referees as the Minister considers necessary to exercise the powers and perform the duties conferred or imposed on referees under this Act.
- (2) A referee shall be appointed for a term not exceeding 7 years, but, subject to section 24, may be reappointed for a further term or terms.

24. Eligibility to hold office as referee

A person who is or has been a magistrate or is a practitioner within the meaning of the term in the *Legal Practitioners Act 1893* may be appointed and hold office as a referee.

25. Terms and conditions of office of referee

- (1) A referee —
 - (a) may hold his or her office of referee in conjunction with any other office, appointment, duty or function which the Minister considers to be compatible with the first-mentioned office, but shall not otherwise engage in any employment outside the duties of the first-mentioned office;
 - (b) shall be paid such remuneration as the Minister, on the recommendation of the Public Service Commissioner², from time to time determines;
 - (c) shall be paid the same travelling and other allowances as are paid from time to time to a public service officer within the meaning of the *Public Sector Management Act 1994*;
 - (d) is entitled to the same rights in respect of annual leave of absence for recreation, leave of absence on account of illness, and long service leave as if the referee were an officer of the Public Service of the State;

Retirement Villages Act 1992

Part 4 Resolution of disputes

Division 1 Retirement villages referees

s. 26

- (e) may, at any time during the term of appointment as referee, be removed from that office by the Minister if the Minister considers the referee to be —
 - (i) incompetent in the performance of his or her functions under this Act; or
 - (ii) unfit to hold the office of referee for any reason;
 - (f) may resign office by writing signed by the referee delivered to the Minister;
 - (g) where the referee was, immediately before appointment as a referee, an officer of the Public Service of the State —
 - (i) shall retain his or her existing and accruing rights, and in particular his or her rights, if any, under the *Superannuation and Family Benefits Act 1938* and the *Government Employees Superannuation Act 1987*; and
 - (ii) shall, for the purpose of determining all those rights, have the service as a referee taken into account as if it were service in the Public Service of the State.
- (2) Notwithstanding subsection (1), where a person holds office as a referee and also holds another public office for which that person is remunerated out of the Consolidated Fund, the terms and conditions of office as a referee in respect of matters mentioned in subsection (1)(b), (c), (d) and (g) do not apply to that person in his or her office as a referee except to the extent that they are more favourable to that person than the terms and conditions of his or her other public office in respect of like matters to those so mentioned.

[Section 25 amended by No. 6 of 1993 s.11; No. 32 of 1994 s.19.]

26. Acting referees

The Minister may appoint a person who is eligible to be appointed and hold office as a referee to act in the office of a

referee during the absence of that referee from office through illness or other cause and the person so appointed shall while so acting be deemed to be a referee and shall have the immunities, powers, authorities, duties and functions of a referee and be entitled to remuneration and allowances as a referee.

Division 2 — Retirement Villages Disputes Tribunal

27. The Tribunal

- (1) There shall be a tribunal to be known as the Retirement Villages Disputes Tribunal.
- (2) The Tribunal shall have a seal of which all courts and persons acting judicially shall take judicial notice.

28. Panels

- (1) The Minister shall establish —
 - (a) a panel of persons representative of the interests of administering bodies; and
 - (b) a panel of persons representative of the interests of residents.
- (2) A panel established under subsection (1) shall comprise such number of persons appointed in writing by the Minister as the Minister from time to time thinks fit.

29. Constitution of Tribunal

- (1) The Tribunal, when exercising the jurisdiction conferred on it by this Act, is constituted by —
 - (a) a referee sitting alone; or
 - (b) if an election is made under section 40, 3 members of whom —
 - (i) a referee shall be the presiding member;
 - (ii) one member shall be selected by the presiding member from each of the panels established under section 28.

- (2) Where 2 or more persons hold office as referees at the same time the senior referee shall select which referee shall constitute the Tribunal, or be the presiding member of the Tribunal, for the purpose of any proceeding.
- (3) The selections under subsections (1)(b)(ii) and (2) shall be evidenced in writing.

30. Term of office

- (1) Subject to this section a person appointed to be a member of a panel established under section 28 shall hold office for such term, not being more than 3 years, as is specified in the member's instrument of appointment, but may from time to time be reappointed.
- (2) The Minister may remove from office a person appointed to an office referred to in subsection (1) —
 - (a) for mental or physical disability, incompetence, neglect of duty or misconduct that impairs the performance of his or her duties;
 - (b) if the member is an insolvent under administration, as that term is defined in the Corporations Law;
 - (c) if the member ceases to hold the qualification by virtue of which he or she was appointed; or
 - (d) for any other act or omission that in the opinion of the Minister may cause prejudice or injury to the Tribunal.
- (3) A person appointed to an office referred to in subsection (1) may at any time resign his or her office by notice in writing delivered to the Minister.
- (4) Where, before his or her term of office expires, a person appointed to an office referred to in subsection (1) dies or, under this section, is removed from office or resigns his or her office, that office becomes vacant.

31. Remuneration

The members of a panel established under section 28 are entitled to such remuneration and allowances in respect of their

functions when constituting the Tribunal as the Minister from time to time determines on the recommendation of the Public Service Commissioner.

32. Relationship to Public Service

The fact that a person is a member of a panel established under section 28 does not —

- (a) render the provisions of Part 3 of the *Public Sector Management Act 1994*, or any Act applying to persons as officers of the Public Service of the State, applicable to that person; or
- (b) affect or prejudice the application to that person of those provisions if they applied to that person at the time when he or she became such a member.

[Section 32 amended by No. 32 of 1994 s.19.]

33. Conditions of appointment

The appointment of a person as a member of a panel established under section 28 shall, subject to this Act, be in accordance with such terms and conditions as may be specified in the instrument of appointment.

34. Powers not affected by vacancy

Without limiting the application of section 57 of the *Interpretation Act 1984*, the powers of the Tribunal are not affected by a vacancy in the membership of a panel established under section 28.

35. Meetings of Tribunal

- (1) At all meetings of the Tribunal as constituted under section 29(1)(b) the presiding member shall determine any questions relating to the admissibility of evidence and any other question of law or procedure.
- (2) Subject to subsection (1) a question arising at a meeting of the Tribunal as constituted under section 29(1)(b) shall be decided by a majority of the members voting and, in the event of an

equality of votes, shall be decided in accordance with the vote that was cast by the presiding member of the Tribunal.

- (3) The Tribunal shall cause accurate minutes to be kept of proceedings at its meetings.

Division 3 — Registry and officers

36. Registry and officers

- (1) There shall be established and maintained in Perth a registry at which all records of the Tribunal shall be kept.
- (2) There shall be a registrar of retirement villages and such other officers as are necessary for the proper functioning of the registry and to assist the Tribunal.
- (3) The registrar and other officers —
 - (a) shall be appointed and hold office subject to and in accordance with Part 3 of the *Public Sector Management Act 1994*; and
 - (b) may hold office as such in conjunction with any other office in the Public Service of the State.

[Section 36 amended by No. 32 of 1994 s.19.]

37. Power of registrar to take affidavits

- (1) The registrar may take an affidavit required by this Act, or relating to any proceeding before the Tribunal.
- (2) Any affidavit required by this Act, or to be used in a proceeding before the Tribunal, shall and may be sworn before the registrar, a magistrate or a clerk of a Local Court, a justice of the peace or a commissioner for taking affidavits in the Supreme Court.

Division 4 — Procedure

38. Applications for orders to be made to Tribunal

- (1) An application for an order under this Part shall be made in writing in a form approved by the Minister to the Tribunal and

shall specify the grounds on which the application is made and the order sought.

- (2) An application under subsection (1) shall be accompanied by the prescribed fee (if any).

39. Notice of hearing

- (1) Before the Tribunal hears an application the registrar shall —
- (a) give to the applicant notice in writing setting out the time and place of the hearing; and
 - (b) give to any other party —
 - (i) notice in writing setting out the time and place of the hearing; and
 - (ii) notice of the nature of the application.
- (2) A referee may cause notice to be given of proceedings under this Act to such persons, in addition to the persons referred to in subsection (1), as the referee thinks fit.

40. Election as to constitution of Tribunal

- (1) Any party given notice under section 39(1) may elect in writing, not later than 10 days before the commencement of the hearing, for the Tribunal to be constituted under section 29(1)(b).
- (2) If an election is not received by the registrar within the time specified in subsection (1), the Tribunal shall be constituted by a referee sitting alone.
- (3) An election under subsection (1) extinguishes any right to have the application in question heard before a referee sitting alone.

41. Witnesses and inspection of documents

- (1) For the purpose of any proceedings —
- (a) the Tribunal or the registrar may by summons —
 - (i) require the attendance of any person before the Tribunal;

- (ii) require the production of any books, papers or documents; or
 - (iii) require both such attendance and production;
- (b) the Tribunal may —
 - (i) inspect any books, papers or documents produced, retain them for such reasonable period as the Tribunal thinks fit, and make copies of any of them, or of any of their contents;
 - (ii) require any person appearing before the Tribunal to make an oath or affirmation that that person will truly answer any relevant question put to that person by the Tribunal or any person appearing before the Tribunal;
 - (iii) require any person appearing before the Tribunal (whether that person has been summoned to appear or not) to answer any relevant question put to that person by the Tribunal or any person appearing before the Tribunal.
- (2) A person is not excused from complying with a requirement under subsection (1) to produce a document, to swear, or to answer any question, on the ground that the production of the document or the answer to the question might incriminate the person or render the person liable to a penalty.
- (3) Notwithstanding subsection (2), an answer given by a person pursuant to a requirement under subsection (1) is not admissible in evidence against the person in any civil or criminal proceedings other than a prosecution for perjury committed in answering the question.

42. General powers in proceedings

The Tribunal when hearing any application may —

- (a) hear the application in such manner as the Tribunal considers best suited to the purposes of this Act;

- (b) decline to entertain the application if the Tribunal considers that —
 - (i) the matter in dispute could be adequately dealt with under an applicable code or applicable residence rules or by negotiation by the Department under section 8(1)(d); or
 - (ii) the application is frivolous;
- (c) proceed to hear and determine the application in the absence of any party thereto;
- (d) where a person served with a summons to attend the Tribunal, fails to so attend, issue a warrant to bring the person before the Tribunal;
- (e) order the refund to a person of a fee paid under section 38(2) by that person;
- (f) vary or set aside any order where the Tribunal considers there are proper grounds for doing so;
- (g) adjourn the hearing to any time or place or to a time and place to be fixed;
- (h) allow the amendment of the application;
- (i) hear the application jointly with any other application;
- (j) receive in evidence any transcript of evidence in proceedings before a court or person or body acting judicially and draw any conclusions of fact therefrom that the Tribunal considers proper;
- (k) adopt, as the Tribunal considers proper, any findings, decision or judgment of a court or person or body acting judicially that may be relevant to the proceedings; and
- (l) generally give all such directions and do all such things that the Tribunal thinks necessary or expedient in the proceedings.

43. Offences

A person who —

- (a) having been served with a summons to attend the Tribunal, fails without reasonable excuse (proof of which lies upon the person) to attend in obedience to the summons;
- (b) having been served with a summons to produce before the Tribunal any document, fails without reasonable excuse (proof of which lies upon the person) to comply with the summons;
- (c) misbehaves before the Tribunal, wilfully insults the Tribunal or a member thereof, or interrupts the proceedings of the Tribunal; or
- (d) fails without reasonable excuse (proof of which lies upon the person) to swear, or to answer any question, when required to do so by the Tribunal,

commits an offence.

Penalty: \$2 000.

44. Extension of time

- (1) Notwithstanding any other provision of this Act, the Tribunal may, of its own motion or on application by any person, extend or reduce the period of time for the doing of anything under an applicable code, this Act or the regulations.
- (2) An application referred to in subsection (1) may be made even though the relevant period of time has expired.

45. Evidence

In any proceedings the Tribunal shall not be bound by the rules of evidence but may inform itself upon any matter relating to the proceedings in such manner as the Tribunal thinks fit.

46. Proceedings before Tribunal

- (1) Proceedings before the Tribunal under this Act may, at the discretion of the Tribunal, be held as in closed court.
- (2) The Tribunal or the registrar may, in respect of any proceedings or proposed proceedings before the Tribunal under this Act, request a report or other assistance from the chief executive officer of the Department of Health or any other person or body.

47. Presentation of cases

- (1) Except as provided in this section, a party to any proceedings shall present his or her own case and not be represented or assisted in the presentation of the case by any other person.
- (2) A party to any proceedings may be represented by an agent or assisted by an agent in the presentation of the case if the Tribunal when hearing the proceedings is satisfied that —
 - (a) the party is unable to appear personally or conduct the proceedings properly himself or herself; and
 - (b) no other party will be unfairly disadvantaged by the fact that the agent is allowed so to act.
- (3) All or any of the parties to any proceedings may be represented by legal practitioners if —
 - (a) all the parties agree and the Tribunal when hearing the proceedings is satisfied that any party who is not so represented will not be unfairly disadvantaged;
 - (b) one of the parties is a legally qualified person;
 - (c) one of the parties is a body corporate and any other party elects to be so represented;
 - (d) the Tribunal is satisfied that one of the parties is unable to appear personally or conduct the proceedings properly himself or herself;

Retirement Villages Act 1992

Part 4 Resolution of disputes

Division 4 Procedure

s. 47

- (e) the proceedings are instituted or defended, or the conduct thereof has been assumed, by the Commissioner; or
 - (f) an order is sought for a monetary amount in excess of \$10 000.
- (4) This section does not prevent —
- (a) a body corporate from being represented by an officer or employee of the body corporate (not being a legally qualified person) authorized to conduct the proceedings on its behalf (whether or not that person is remunerated by the body corporate for representing it in the proceedings); or
 - (b) a person from acting as an interpreter for a party, if the fee for so acting does not exceed an amount fixed by the Tribunal at the hearing.
- (5) The administering body of a retirement village may, in addition to any other representation permitted under this section and with the approval of the Tribunal hearing the proceedings, be represented by the administering body's agent in proceedings before the Tribunal.
- (6) The Tribunal shall not approve of an administering body's agent representing the administering body in proceedings unless it appears to the Tribunal that the agent should be permitted to represent the administering body in the course of carrying out his or her usual functions as the administering body's agent.
- (7) A person shall not demand or receive any fee or reward for representing or assisting a party to proceedings unless —
- (a) that person is a legal practitioner;
 - (b) where the party is a body corporate, that person is an officer or employee of the body corporate representing it under subsection (4); or
 - (c) where the party is an administering body, that person is the administering body's agent representing it under subsection (5).

Penalty: \$1 000.

- (8) In this section —
- “**agent**” means any person who is not a legally qualified person;
- “**legal practitioner**” means a practitioner as defined in the *Legal Practitioners Act 1893*;
- “**legally qualified person**” means a legal practitioner, an articulated law clerk, or any person who holds or has held legal qualifications under the laws of this State or any other place.

48. Reference of certain matters concerning administering bodies

The Tribunal may, where the Tribunal considers it appropriate, bring or cause to be brought to the attention of the Commissioner the conduct of the administering body of a retirement village in a particular matter before the Tribunal.

49. Costs

The Tribunal hearing proceedings shall not award costs, unless —

- (a) all parties to the proceedings were represented by legal practitioners, as defined in section 47(8); or
- (b) the Tribunal is of the opinion that there are special circumstances justifying the award of costs.

50. Reservation of question of law

- (1) The Tribunal hearing proceedings may reserve any question of law for the decision of the District Court.
- (2) Any costs arising from the reservation of any question under this section, including any costs incurred by the parties to the proceedings, shall be charged to the Consolidated Fund and this subsection, without any further appropriation, shall be sufficient authority for any such payment.

[Section 50 amended by No. 6 of 1993 s.11; No. 49 of 1996 s.64.]

51. Appeal

- (1) Subject to subsection (2), a party to proceedings before the Tribunal may appeal to the District Court against a decision of the Tribunal and, without derogating from any other power of the District Court to make rules of court, the District Court may make rules with respect to the manner of and the time for appeals under this section.
- (2) An appeal does not lie under subsection (1) unless —
 - (a) the appeal involves a question of the jurisdiction of the Tribunal; or
 - (b) where the appeal involves a question of law, the District Court gives leave to appeal.
- (3) Leave to appeal under subsection (2)(b) shall not be given unless the District Court considers that, having regard to all the circumstances, the determination of the question of law could substantially affect the rights of one or more of the parties.
- (4) On an appeal under this section, the District Court may —
 - (a) confirm, vary, or quash the decision appealed against, or substitute a decision that should have been made by the Tribunal for the decision appealed against;
 - (b) remit the subject matter of the appeal to the Tribunal for further hearing or consideration or for re-hearing;
 - (c) make any further or other order, as to costs or otherwise, as it thinks fit.
- (5) Without limiting subsection (4), where an appeal under this section has been commenced, or application has been made for leave to appeal, against a decision of the Tribunal, the Tribunal or the District Court may —
 - (a) suspend the operation or effect of the decision until the appeal is determined or the application for leave to appeal is withdrawn or dismissed; and
 - (b) may revoke any such suspension.

- (6) Where under this section the District Court varies a decision of the Tribunal or substitutes a decision for that of the Tribunal, the decision of the District Court has effect for the purposes of this Act as if it were a decision of the Tribunal.

Division 5 — Orders by Tribunal

52. Limits on orders by Tribunal

- (1) The Tribunal shall not make orders under this Act that are —
- (a) inconsistent with any applicable code; or
 - (b) inconsistent with a residence contract.
- (2) Subsection (1) does not apply to a provision of a residence contract that contravenes section 6.

53. No monetary limits on jurisdiction of Tribunal

Notwithstanding anything in any other Act, the Tribunal is not, in exercising the jurisdiction of the Tribunal under this Act, limited in the amount of money of which the Tribunal may order payment.

54. Referee not to have jurisdiction where title to land in question

Except as provided in section 75, the Tribunal does not have jurisdiction under this Act to determine any question as to the title of land.

55. Applications referred under *Strata Titles Act 1985*

The Tribunal has jurisdiction under this Act to determine any application referred under section 77A of the *Strata Titles Act 1985*.

56. Disputes in relation to service contracts

- (1) Where —
- (a) a party to a service contract proposes a variation or cancellation in relation to any of the terms of a service contract, whether during or on the expiry of its term; or

- (b) a dispute arises between the parties to a service contract, either party to the service contract may make an application in relation to the matter to the Tribunal.
- (2) Without derogating from any of the powers conferred on the Tribunal under section 42 the Tribunal may give practice directions with respect to applications made under subsection (1).
- (3) Where the Tribunal is of the opinion that an order, if made under this section, may be relevant to more than one service contract the Tribunal may require the administering body to furnish the Tribunal with such information in relation to any other service contract or service contracts that may be relevant to the application and effect shall be given to any such order.
- (4) The Tribunal may upon application made under this section order —
- (a) specific performance of the service contract;
 - (b) the payment of a sum of money,

and make such other orders as the Tribunal considers appropriate and may declare that the order applies to such service contracts as are specified in the order and the order shall have effect accordingly.

57. Applications relating to transfer of residents

- (1) If a resident of a retirement village claims that —
- (a) a dispute has arisen between the resident and the administering body as to whether the resident should be transferred from one kind of accommodation in the village to another; and
 - (b) all procedures for settlement of the dispute under any applicable code and this Act (otherwise than by reference of the dispute to the Tribunal) have been exhausted without resolving the dispute to the

satisfaction of the resident or, if there are no such procedures, the dispute has not been resolved,

the resident may apply to the Tribunal for an order in respect of the dispute.

- (2) The Tribunal may, on application by a resident under this section, make one or more of the following orders —
 - (a) an order that —
 - (i) restrains the administering body from transferring the resident from one kind of accommodation in the retirement village to another; or
 - (ii) requires the resident to transfer, or the administering body to transfer the resident, from one kind of accommodation in the retirement village to another;
 - or
 - (b) an order terminating the residence contract of the resident.
- (3) If the Tribunal makes an order terminating a residence contract under this section, the Tribunal shall fix in the order a date by which the resident must vacate the residential premises.
- (4) In addition to any other order the Tribunal may make under this section, the Tribunal may make an order for the payment or refund of money by an administering body to a resident or by a resident to an administering body.
- (5) An application under this section may be made during the currency or after the termination of a residence contract.
- (6) For the purpose of determining any application under this section, the Tribunal may —
 - (a) with the consent of the resident, request the chief executive officer of the Department of Health or any other person or any body to prepare a report with respect to the resident's physical or mental capacity; and

- (b) have regard to any such report and any other report prepared on behalf of the resident or the administering body of the retirement village.

58. Termination of occupation on medical grounds

- (1) If the administering body of a retirement village is of the opinion that residential premises occupied by a resident of the retirement village are, because of the resident's physical or mental incapacity, unsuitable for occupation by the resident, the administering body may apply to the Tribunal for an order terminating the resident's residence contract and fixing a date by which the resident must vacate the residential premises occupied by the resident.
- (2) The Tribunal may, on application by an administering body under this section, make an order terminating the residence contract, but only if the Tribunal is satisfied that any procedures specified under any applicable code or the residence contract for giving notice of intention to terminate the residence contract and for termination of the contract have been followed by the administering body and the Tribunal is of the opinion that —
 - (a) the residential premises occupied by the resident are, because of the resident's physical or mental incapacity, unsuitable for occupation by the resident; or
 - (b) having considered the circumstances of the case, it is otherwise appropriate to make an order terminating the residence contract.
- (3) In determining whether to terminate a residence contract under this section, the Tribunal may —
 - (a) with the consent of the resident, request the chief executive officer of the Department of Health or any other person or any body to prepare a report with respect to the resident's physical or mental capacity; and
 - (b) have regard to any such report and any other report prepared on behalf of the resident or the administering body.

- (4) If the Tribunal makes an order terminating a residence contract under this section, the Tribunal shall fix in the order a date by which the resident must vacate the residential premises occupied by the resident.
- (5) In addition to any other order the Tribunal may make under this section, the Tribunal may make an order for the payment or refund of money by an administering body to a resident or by a resident to an administering body.

59. Termination of occupation on grounds of breach of residence contract or rules

- (1) If —
 - (a) a resident of a retirement village breaches the resident's residence contract or the residence rules of a retirement village; and
 - (b) any procedures specified under any applicable code or the residence contract for giving notice of intention to terminate the residence contract and for termination of the residence contract have been complied with by the administering body of the retirement village,the administering body may apply to the Tribunal for an order terminating the contract and fixing a date by which the resident must vacate the residential premises occupied by the resident.
- (2) The Tribunal may, on application by an administering body under this section, make an order terminating the residence contract, but only if the Tribunal is satisfied that —
 - (a) the breach, in the circumstances of the case, is such as to justify termination of the contract; or
 - (b) persistent breaches by the resident are, in the circumstances of the case, such as to justify termination of the contract; or
 - (c) having considered the circumstances of the case, it is otherwise appropriate to do so.

- (3) If the Tribunal makes an order terminating a residence contract under this section, the Tribunal shall fix in the order a date by which the resident must vacate the residential premises occupied by the resident.
- (4) In addition to any other order the Tribunal may make under this section, the Tribunal may make an order for the payment or refund of money by an administering body to a resident or by a resident to an administering body.

60. Parties to minimize loss from breach of residence contract

- (1) The rules of law relating to mitigation of loss or damage on breach of a contract apply to a breach of a residence contract.
- (2) Nothing in this section affects the operation of section 69(2) (which also deals with mitigation of loss).

61. Tribunal may waive defect in notice of intention to terminate

The Tribunal may, if the Tribunal thinks it appropriate to do so in the special circumstances of the case, make an order terminating the residence contract under section 58 or 59 even though any procedures specified under any applicable code or the residence contract for giving notice of intention to terminate the residence contract have not been complied with.

62. Tribunal may terminate residence contract where resident causes serious damage or injury

- (1) The Tribunal may, on application by the administering body of a retirement village, make an order terminating a residence contract if the Tribunal is satisfied that the resident has intentionally or recklessly caused or permitted, or is likely intentionally or recklessly to cause or permit —
 - (a) serious damage to the residential premises; or
 - (b) injury to the administering body or an employee of the administering body or any other resident.

- (2) If the Tribunal makes an order terminating a residence contract under this section, the Tribunal —
 - (a) shall fix in the order a date by which the resident must vacate the residential premises occupied by the resident; and
 - (b) may make such other orders (including an order that the resident pay compensation to the administering body or that the administering body pay to the resident compensation for the resident's loss of rights under the contract) as the Tribunal thinks fit.
- (3) An application under this section may be made whether or not the administering body has given notice of intention to terminate the residence contract.

63. Tribunal may terminate residence contract where administering body would otherwise suffer undue hardship

- (1) The Tribunal may, on application by the administering body of a retirement village, make an order terminating a residence contract if the Tribunal is satisfied that the administering body would, in the special circumstances of the case, suffer undue hardship if the contract were not terminated.
- (2) If the Tribunal makes an order terminating a residence contract under this section, the Tribunal —
 - (a) shall fix in the order a date by which the resident must vacate the residential premises occupied by the resident; and
 - (b) may make such other orders (including an order that the administering body pay to the resident compensation for the resident's loss of rights under the contract) as the Tribunal thinks fit.

64. Suspension or refusal of orders to terminate

- (1) The Tribunal may suspend the operation of an order fixing a date by which a resident of a retirement village must vacate residential premises occupied by the resident if the Tribunal is

Retirement Villages Act 1992

Part 4 Resolution of disputes

Division 5 Orders by Tribunal

s. 65

satisfied that it is desirable to do so, having regard to the relative hardship likely to be caused by the suspension to —

- (a) the resident; and
 - (b) other residents or the administering body of the retirement village.
- (2) The Tribunal may, as a condition of the suspension of the operation of an order referred to in subsection (1), require the resident to pay to the administering body an occupation fee specified by the Tribunal for the period for which that order is suspended.
- (3) The Tribunal may refuse to make an order terminating a residence contract if the Tribunal is satisfied that —
- (a) the administering body was wholly or partly motivated to seek the termination of the contract by the fact that —
 - (i) the resident had applied or proposed to apply to the Tribunal for an order;
 - (ii) the resident had complained to a governmental authority or had taken some other action to secure or enforce his or her rights as a resident;
or
 - (iii) an order of the Tribunal was in force in relation to the resident and the administering body;or
 - (b) in the case of an application by an administering body under section 59 the resident remedied the breach concerned.

65. Prohibition on certain recovery proceedings in courts, etc.

No proceedings in any court to obtain recovery of possession of residential premises occupied by a resident of a retirement village under a residence contract shall be commenced by the administering body of the retirement village against the resident.

66. Recovery of possession of premises prohibited except by order

- (1) A person shall not, except under a judgment, warrant or order of a court or an order of the Tribunal, enter residential premises occupied by a resident of a retirement village under a residence contract for the purpose of recovering possession of the premises.
Penalty: \$2 000.
- (2) This section applies to a person who enters residential premises whether on his or her own behalf or on behalf of another person.
- (3) A court before which proceedings for an offence under this section are brought may (in addition to imposing any penalty) order the person who committed the offence or any person on whose behalf that person acted to pay to the person entitled to occupy the premises concerned such compensation as it thinks fit.

67. Liability of resident remaining in possession

- (1) If a resident of a retirement village refuses or fails to comply with an order to give possession of residential premises in the retirement village to another person on a fixed date, the resident is liable to pay compensation to the administering body of the retirement village for any loss caused to the administering body by that refusal or failure.
- (2) The Tribunal may, on application by an administering body under this section made not later than 30 days after the day on which the order fixing the date to give possession took effect, order the resident to pay to the administering body such compensation as the Tribunal thinks fit.

68. Abandoned premises

- (1) The Tribunal may, on application by the administering body of a retirement village, make an order that declares that residential premises occupied by a resident of a retirement village were abandoned by the resident on a day specified by the Tribunal.

- (2) The resident shall be taken for the purposes of this Act to have abandoned the residential premises on the day specified by the Tribunal.

69. Right of administering body to compensation where resident abandons premises

- (1) If a resident of a retirement village abandons the residential premises, the resident is liable to pay compensation to the administering body of the retirement village for any loss (including loss of rent) caused by the abandonment.
- (2) The administering body shall take all reasonable steps to mitigate the loss and is not entitled to compensation for any loss that could have been avoided by taking those steps.
- (3) The Tribunal may, on application by the administering body, order the resident to pay to the administering body such compensation (including compensation for loss of rent) as the Tribunal thinks fit.

70. Goods abandoned by resident after residence contract is terminated

- (1) If a residence contract is terminated and goods are abandoned on the residential premises by a former resident of a retirement village, the administering body of the retirement village may —
- (a) apply to the Tribunal for an order under this section; or
 - (b) dispose of the goods in the prescribed manner,
- or both.
- (2) The Tribunal may, on application by an administering body under this section, make any one or more of the following orders —
- (a) an order authorizing the removal, destruction or disposal of the goods;
 - (b) an order authorizing the sale of the goods;

- (c) an order directing that notice of any action or proposed action in relation to the goods be given to the former resident or any other person;
 - (d) an order as to the manner of sale of the goods;
 - (e) an order as to the proceeds of sale of the goods;
 - (f) any ancillary order which the Tribunal, in the circumstances, thinks appropriate.
- (3) A purchaser of goods sold by an administering body in accordance with an order of the Tribunal or the regulations acquires a good title to the goods in defeasance of the interest of the former resident or any other person who has an interest in the goods.
- (4) An administering body does not incur any liability in respect of the removal, destruction, disposal or sale of goods in accordance with an order of the Tribunal or regulations made under section 82.

71. Further orders under this Part

Upon an application for an order under this Part the Tribunal may make such ancillary or incidental order as the Tribunal considers appropriate.

72. Enforcement

- (1) An order made under this Act by the Tribunal requiring —
- (a) a resident of a retirement village under a residence contract to give possession of residential premises to another person on a fixed date has the same force and effect and may be enforced by the issue of a warrant as if it were an order for the possession of land by a local court under Part VI of the *Local Courts Act 1904*;
 - (b) a person to pay an amount to another person has the same force and effect and the same proceedings may be brought upon it on the application of that other person as if it were a judgment for the payment of money of a local court in its jurisdiction under Part III of the *Local Courts Act 1904*.

- (2) Regulations made under section 82 may make provision for the procedure to be followed for the purpose of enforcing an order of the Tribunal.

73. Reasons for decisions

The Tribunal —

- (a) shall, where a party to proceedings before the Tribunal has, within 14 days after the Tribunal has made a decision or order in those proceedings, requested the Tribunal to give reasons in writing for the decision or order; or
- (b) may, of its own motion,

give that party reasons in writing for the decision or order.

74. Protection

No liability attaches to a member of the Tribunal, the Tribunal, a member of a committee convened under a code to hear and mediate disputes within a retirement village, any such committee, the registrar, or any other person for any act or omission by him or her or on his or her part or by the Tribunal or any such committee or on the part of the Tribunal or any such committee that occurred in good faith and in the performance or discharge or purported performance or discharge, of his or her or its functions under this or any other written law.

Part 5 — Miscellaneous

75. Rescission of contract

- (1) A contract is rescinded under section 14 or 16 by notice in writing given by the person entitled to rescind the contract to all other parties to the contract.
- (2) The rescission of a contract under section 14 or 16 takes effect on the date of service of the notice under subsection (1) of this section and the contract is terminated at the time when the notice is so given.
- (3) Subject to the making of an order to the contrary under subsection (4), if a contract is rescinded under section 14 or 16 —
 - (a) the rescission notice is to be regarded as applying to the service contract, the residence contract and all collateral contracts entered into by the person rescinding the contract; and
 - (b) that person is entitled to the repayment of all moneys paid by that person or on that person's behalf in connection with those contracts and such moneys shall be recoverable, by action as for debt, by that person accordingly.
- (4) If a contract is rescinded under section 14 or 16, the Tribunal may, upon application by any party to that contract, make —
 - (a) such orders as it thinks just providing for the repayment of part or all of the moneys paid by the person rescinding the contract, or on that person's behalf, in connection with the contracts to which the rescission notice applies under subsection (3)(a); and
 - (b) such other vesting or consequential orders as it thinks just,and for the purposes of carrying out this section the Tribunal may give such directions as the Tribunal considers necessary or expedient.
- (5) An application under subsection (4) shall be made within 30 days of the day on which the contract is rescinded.

s. 76

- (6) An owner or administering body who refuses or fails to return moneys to which a person is entitled under subsection (3) or (4) commits an offence.

Penalty: \$20 000.

- (7) A rescission of a residence contract under section 14 or 16 shall have effect notwithstanding that the residence contract may also be subject to the provisions of the *Strata Titles Act 1985* and nothing in this section shall derogate from the rights of a purchaser under that Act.

- (8) Where under section 14 or 16 a person rescinds a residence contract entered into by him or her after the property purchased by him or her has been registered in his or her name, then that person, subject to the tender to him or her of repayment as provided by subsection (3) or (4), shall —

- (a) execute such instruments as, being necessary to register that title in the name of the former owner or his or her nominee, are presented to him or her for execution by or on behalf of the former owner; and
- (b) deliver up to the former owner or his or her nominee any relevant certificate of title in his or her possession or under his or her control,

but the person rescinding the contract shall not be liable for any costs or expenses in respect of the transaction.

76. Law of perjury to apply

- (1) The law with respect to perjury or fabrication of evidence applies to a proceeding before the Tribunal.
- (2) A proceeding before the Tribunal is a judicial proceeding.

77. Non-compliance may be excused by Court

- (1) The District Court may, on the application of any person, excuse that person from the consequences of inadvertent non-compliance with a provision of this Act.

- (2) Where the District Court acts under subsection (1), it may —
 - (a) make consequential orders protecting the interests of any person affected by the contravention; and
 - (b) make any other order that the justice of the case may require.
- (3) An application may not be made under this section after proceedings for an offence relating to the non-compliance have been commenced.

78. Disclosure of information

A person shall not disclose any information obtained in connection with the administration or execution of this Act unless the disclosure is made —

- (a) with the consent of the person from whom the information was obtained;
- (b) in connection with the execution of this Act;
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
- (d) with other lawful excuse.

Penalty: \$2 000.

79. Liability of directors, etc.

- (1) Where a body corporate has committed an offence against this Act and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part of, any person who was an officer or was purporting to act as an officer of the body corporate, that person, as well as the body corporate, commits that offence.
- (2) In subsection (1) “**officer**” has the same meaning as in the Corporations Law but does not include an employee of the body corporate unless he or she was concerned in the management of the body corporate.

s. 80

80. Time for bringing proceedings

Proceedings for an offence against this Act may be commenced at any time within 2 years of the day on which the offence is alleged to have been committed.

81. Evidentiary provisions

In all courts and before all persons and bodies authorized to receive evidence —

- (a) a document purporting to be a copy of a decision or order of the Tribunal and purporting to be certified by the registrar to be such a copy shall be admitted as a true copy of a decision or order of the Tribunal; and
- (b) judicial notice shall be taken of the signature of the registrar on a document mentioned in paragraph (a).

82. Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, the regulations may make provision for or with respect to —
 - (a) the constitution of panels under section 28 and consultation with persons in relation to the membership of such panels;
 - (b) the service of notices under this Act or a code;
 - (c) goods abandoned or apparently abandoned by a resident of a retirement village;
 - (d) the practice and procedure to be followed in proceedings before the Tribunal under this Act (including the practice and procedure to be followed in the office of the registrar) and any incidental or related matters; and
 - (e) fees to be paid under this Act.
- (3) A regulation may create an offence punishable by a penalty not exceeding \$500.

83. Review of the Act

- (1) The Minister shall carry out a review of the operation and effectiveness of this Act within 6 months after the expiration of one year from the commencement of section 6 and subsequently shall carry out such a review as soon as practicable after the expiration of each period of 5 years.
- (2) The Minister shall prepare a report based on each review under subsection (1) and shall, as soon as is practicable after the preparation thereof, cause the report to be laid before each House of Parliament.

84. Savings and transitional

Schedule 1 has effect.

85. Constitution Acts Amendment Act 1899 amended

Schedule V of the *Constitution Acts Amendment Act 1899* * is amended in Division 1 of Part 1 by inserting after the last item in the division the following —

“

Retirement villages referee appointed under the *Retirement Villages Act 1992*.

”

[* Reprinted as at 16 March 1989 and amended by Acts Nos. 75 of 1988, 19 and 28 of 1989, and 6, 10, 27, 38, 39, 40, 73, 19 and 104 of 1990.]

86. Strata Titles Act 1985 amended

After section 77 of the *Strata Titles Act 1985* * the following section is inserted —

“

77A. Application in relation to retirement villages

- (1) Where, after the coming into operation of section 85 of the *Retirement Villages Act 1992*, an application for an order is made to a referee in relation to a dispute or

complaint arising within a retirement village, or in relation to a strata scheme or land within a retirement village, the referee shall refer the application to the Retirement Villages Disputes Tribunal established under that Act for the making of the order.

- (2) For the purpose of making an order referred to in subsection (1), the Retirement Villages Disputes Tribunal has, in addition to its functions under the *Retirement Villages Act 1992*, the functions of a referee under this Act.
- (3) The provisions of this Act apply to an order made by the Retirement Villages Disputes Tribunal pursuant to a referral under this section as if the order were an order made under this Act.
- (4) In subsection (1) “retirement village” means a retirement village as defined in the *Retirement Villages Act 1992*.

”.

[* Act No. 33 of 1985 amended by Acts Nos.42 of 1986, 24 of 1987 and 97 of 1990.]

Schedule 1

[Section 84]

SAVINGS AND TRANSITIONAL PROVISIONS

1. Existing disputes and other matters

This Act does not apply to disputes as to the transfer of a resident from one kind of accommodation in a retirement village to another which occurred, or proceedings to terminate residence contracts or regain possession of residential premises, which commenced before the commencement of section 84.

2. Regulations

- (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the commencement of section 84 or a later day.
- (3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the *Gazette*, the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

3. Exemption

- (1) The Minister may by order exempt any —
 - (a) administering body that administers a retirement village established before the commencement date;
 - (b) retirement village established before the commencement date,from all or any of the provisions of this Act to such extent as the exemption relates to any matter arising before the commencement date and either unconditionally or subject to such conditions as are specified in the order.

Sch. 1

(2) In subclause (1) —

“commencement date” means the date on which this Act comes into operation.

=====

Notes

¹ This reprint is a compilation as at 22 January 1999 of the *Retirement Villages Act 1992* and includes all amendments effected by the other Acts referred to in the following Table.

Table of Acts

Act	Number and Assent Year	Assent	Commencement	Miscellaneous
<i>Retirement Villages Act 1992</i>	34 of 1992	19 June 1992	10 July 1992 (see <i>Gazette</i> 10 July 1992 p.3185)	
<i>Financial Administration Legislation Amendment Act 1993, Part 4</i>	6 of 1993	27 August 1993	Deemed operative 1 July 1993	
<i>Acts Amendment (Public Sector Management) Act 1994, Part 4</i>	32 of 1994	29 June 1994	1 October 1994 (see <i>Gazette</i> 30 September 1994 p.4948)	
<i>Local Government (Consequential Amendments) Act 1996, section 4</i>	14 of 1996	28 June 1996	1 July 1996 (see section 2)	
<i>Financial Legislation Amendment Act 1996, section 64</i>	49 of 1996	25 October 1996	25 October 1996 (see section 2(1))	
<i>Transfer of Land Amendment Act 1996, section 153(1)</i>	81 of 1996	14 November 1996	14 November 1996 (see section 2(1))	
<i>Trustees Amendment Act 1997, section 18</i>	1 of 1997	6 May 1997	16 June 1997 (see section 2 and <i>Gazette</i> 10 June 1997 p.2661)	

Retirement Villages Act 1992

Act	Number and Assent Year	Assent	Commencement	Miscellaneous
<i>Statutes (Repeals and Minor Amendments) Act 1997,</i> sections 39(10) and 104	57 of 1997	15 December 1997	15 December 1997 (see section 2(1))	

² Now “Minister for Public Sector Management”. See Act No. 31 of 1994 s.112(2).

Defined Terms

*[This is a list of terms defined and the provisions where they are defined.
It is not part of the Act.]*

Defined Term	Provision(s)
administering body	3(1)
agent.....	47(8)
code.....	3(1)
commencement date.....	86
Commissioner	3(1)
Department.....	3(1)
legal practitioner	47(8)
legally qualified person.....	47(8)
officer.....	79(2)
owner	3(1), 13(7)
premium	3(1)
recurrent charge	3(1)
referee	3(1)
Registrar of Titles	3(1)
registrar	3(1)
residence contract	3(1)
residence rules.....	3(1)
resident.....	3(1), 9(8)
residential premises.....	3(1)
residential tenancy agreement.....	3(1)
retired person	3(1)
retirement village scheme	3(1)
retirement village	3(1)
scheme	3(1)
service contract	3(1)
service	19(7)
spouse	3(1)
successor in title.....	17(3)
this Act.....	8(2)
Tribunal.....	3(1)
working day	3(1)

Retirement Villages Act 1992

Defined Terms

By Authority: JOHN A. STRIJK, Government Printer