

NORTHERN TERRITORY OF AUSTRALIA

RETIREMENT VILLAGES ACT

As in force at 1 July 2010

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 1 July 2010. Any amendments that commence after that date are not included.

RETIREMENT VILLAGES ACT

An Act to regulate the operation of retirement villages and to confer on the courts powers in respect of certain matters relating to retirement villages and for related purposes

Part 1 Preliminary

1 Short title

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

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

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

administering authority, in relation to a retirement village, means the person by or on whose behalf the retirement village is administered and includes a person (other than a resident) who owns land within the village.

authorised officer means a person who is an authorised officer under the *Consumer Affairs and Fair Trading Act*.

Chief Health Officer means the Chief Health Officer appointed under the *Public Health Act*.

code means a code of practice prescribed under the *Consumer Affairs and Fair Trading Act* or this Act which relates to retirement villages.

Commissioner means the Commissioner of Consumer Affairs appointed under the *Consumer Affairs and Fair Trading Act*.

premium means a payment (including a gift) made to the administering authority 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 of the retirement village (including any such payment made for the purchase of a residential unit in the retirement village or for the purchase, issue or assignment of shares conferring a right to occupy any such residential unit) but does not include:

- (a) a payment excluded by the Regulations; and
- (b) a recurrent charge.

recurrent charge means an amount (including rent) payable by a resident to the administering authority of a retirement village on a recurrent basis.

Register means the Register within the meaning of the *Land Title Act*.

registered means registered under the *Land Title Act*.

residence contract means a contract, agreement, scheme or arrangement by which a person obtains the 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 authority to comply, but does not include any articles or by-laws (to which the residents are subject) in force under the *Unit Titles Act*.

resident, in relation to a retirement village, means a person who occupies residential premises in a retirement village under a residence contract, and includes a person who occupies such premises and who is or was a spouse or de facto partner of such a person.

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.

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 a spouse or de facto partner of such a person.

retirement village means a complex containing residential premises (whether or not including hostel units) predominantly or exclusively occupied or intended to be predominantly or exclusively occupied by retired persons.

- (2) For the purpose of determining whether a contract, agreement, scheme or arrangement is a residence contract 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.
- (3) For the purposes of the definition of **administering authority**, where land within a retirement village is the subject of title under the *Unit Titles Act* or *Unit Title Schemes Act*, the body corporate established, or the corporation formed, for the land by that Act may be the administering authority of the retirement village.
- (4) Where a corporation established under the *Unit Titles Act*, or a body corporate formed under *Unit Title Schemes Act*, is the administering authority of a retirement village, it:
 - (a) shall comply with the rules laid out in that Act in respect of the processes to be followed in making decisions as the administering authority; and
 - (b) may hold meetings required by this Act or a code relating to the retirement village in conjunction with meetings required under that Act.
- (5) In this Act, a reference to the **Court** means:
 - (a) the Local Court; or
 - (b) where the jurisdictional limit of the Local Court is exceeded, the Supreme Court except where the parties consent in writing to the Local Court hearing and determining the proceedings.
- (6) Land shall not be taken to be subdivided for the purposes of the *Planning Act* by the grant of a right to occupy residential premises in a retirement village under a residence contract.

4 Act binds Crown

- (1) This Act binds the Crown in right of the Territory and, in so far as the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.
- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

5 Application of Act

- (1) Subject to subsection (2), this Act applies to a retirement village to which a code applies, whether established before or after the commencement of this Act, and applies notwithstanding the terms of any contract, agreement, scheme or arrangement, whether made before or after the commencement of this Act.
- (2) The Minister may, by notice in writing, exempt a retirement village from all or specified provisions of this Act or any other Act for such period and subject to such conditions as the Minister thinks fit and specifies in the notice.

Part 2 Commissioner**6 Functions and powers of Commissioner**

- (1) The functions of the Commissioner are:
 - (a) to investigate and carry out research into matters relating to or affecting retirement villages;
 - (b) to investigate and attempt to resolve complaints by residents and administering authorities of retirement villages and to take such action, including prosecution for any offence, as the Commissioner thinks appropriate;
 - (c) to distribute information about the services provided by the Commissioner and the Court in relation to residents of retirement villages and to promote awareness of the rights and responsibilities of residents and persons involved in the retirement village industry; and
 - (d) to investigate and report on any matters, or make inquiries in relation to any matters, referred to the Commissioner by the Minister or by the Court in connection with this Act.
- (2) The Commissioner has power to do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of his or her functions.

7 Commissioner may institute or defend proceedings

The Commissioner may, at the Commissioner's sole discretion, institute or defend proceedings before the Court for or on behalf of a resident of a retirement village.

8 Conduct of proceedings by Commissioner

If the Commissioner institutes or defends proceedings before the Court on behalf of a resident of a retirement village:

- (a) the Commissioner shall have the conduct of those proceedings on behalf of the resident, may appear personally or by a legal practitioner or agent and may do all such things as are necessary or expedient to give effect to an order or a decision of the Court;
- (b) the Commissioner is liable to pay the costs (if any) of the resident; and
- (c) the resident is liable to pay any other amount that the Court orders the resident to pay.

9 Delegation by Commissioner

- (1) The Commissioner may, in writing, delegate to a person, including the person from time to time holding, acting in or performing the duties of, an office, designation or position, any of the Commissioner's powers and functions under this Act, other than this power of delegation.
- (2) A delegation under subsection (1) does not prevent the exercise of a power or the performance of a function by the Commissioner.

10 Exclusion of liability

No action or proceeding, criminal or civil, shall be commenced or lie against the Commissioner, a delegate of the Commissioner or any person acting for or on behalf of the Commissioner in respect of an act or thing done or omitted to be done in good faith for the purpose of executing this Act.

11 Annual report

- (1) The Commissioner shall submit annually to the Minister a report on the operation of this Act during that year.
- (2) The Minister shall, within 6 sitting days of the Legislative Assembly after receiving a report submitted under subsection (1), lay a copy of the report before the Assembly.
- (3) A report under subsection (1) may be included in a report prepared by the Commissioner under the *Consumer Affairs and Fair Trading Act*.

Part 3 Rights of residents and administering authorities

12 Contractual rights of residents

- (1) A residence contract may be enforced against the administering authority, from time to time, of the retirement village.
- (2) Where a premium is paid under a residence contract providing that it will be repaid in whole or in part on the happening of a contingency and the contingency occurs, the resident or a person claiming on behalf of the resident may recover the amount that is repayable as a debt from the administering authority, from time to time, of the retirement village.
- (3) Proceedings will not lie against the owner of land within a retirement village for the enforcement of rights under subsection (1) or (2) unless:
 - (a) the owner is a party to the residence contract under which the premium is repayable;
 - (b) the owner is the sole administering authority of the retirement village; or
 - (c) an administering authority, other than the owner, has failed to satisfy an order of the Court given for the enforcement of those rights.
- (4) The right of a resident to repayment of a premium, or part of a premium, is a charge on land within the retirement village other than:
 - (a) a residential unit owned by a resident; or
 - (b) common property as defined in the *Unit Titles Act* or *Unit Title Scheme Act* in relation to subdivided land that is the retirement village.
- (5) The charge referred to in subsection (4) is an overriding statutory charge within the meaning of the *Land Title Act*.
- (6) A charge referred to in subsection (4) can only be enforced:
 - (a) with the approval of the Court; and
 - (b) subject to any conditions to which the Court's approval is subject.

- (7) In considering whether to give its approval under subsection (6), the Court shall have regard to the rights and interests of other residents of the retirement village who have charges on the land within the retirement village.
- (8) Where the Court approves the enforcement of a charge under subsection (6), the charge may, subject to the conditions of the Court, be enforced in the same way as an overriding statutory charge registered under the *Land Title Act*.

13 Applications to Court relating to disputes

- (1) If a resident or the administering authority of a retirement village claims that:
 - (a) a dispute has arisen between the resident and the authority or the authority and one or more residents or the resident and another resident; and
 - (b) all procedures for settlement of the dispute under any applicable code (otherwise than by reference of the dispute to the Court) have been exhausted without resolving the dispute to the satisfaction of the resident or the authority or, if there are no such procedures, the dispute has not been resolved,the resident or authority may apply to the Court for an order in respect of the dispute.
- (2) The Court shall not hear an application under subsection (1) (other than an application relating to a dispute arising out of the transfer or the proposed transfer of a resident of a retirement village from one kind of accommodation in the retirement village to another) unless it is of the opinion that:
 - (a) the dispute materially affects a party to the dispute; or
 - (b) it is in the public interest to do so.
- (3) The Court may, on application by a resident or an administering authority under this section, make one or more of the following orders:
 - (a) an order that:
 - (i) restrains the administering authority from transferring the resident from one kind of accommodation in the retirement village to another; or

- (ii) requires the resident to transfer, or the authority to transfer the resident, from one kind of accommodation in the village to another;
 - (b) an order terminating the residence contract of the resident;
 - (c) an order that:
 - (i) restrains any action in breach of any residence contract or residence rule; or
 - (ii) requires the performance of any residence contract or residence rule; or
 - (d) an order that the resident or authority perform such work or take such other steps as the order specifies to remedy a breach of a residence contract;
 - (e) an order for the payment of an amount of money;
 - (f) an order for compensation;
 - (g) an order that requires payment to the Court of part or all of any money payable by a resident to the authority until the whole or part of any residence contract has been performed or any application for compensation has been determined; or
 - (h) an order that requires payment (out of money paid to the Court) towards the cost of remedying a breach of a residence contract or towards the cost of any compensation.
- (4) An order under subsection (3)(c) may be made even though it provides a remedy in the nature of an injunction or order for specific performance in circumstances in which such a remedy would not otherwise be available.
- (5) If a resident or an administering authority of a retirement village claims that:
- (a) a residence rule is unconscionable, harsh or oppressive or contravenes an applicable code; and
 - (b) all procedures for settlement of a dispute relating to the rule under any applicable code or Act (otherwise than by reference of the dispute to the Court) have been exhausted without resolving the dispute to the satisfaction of the resident or authority or, if there are no such procedures, the dispute has not been resolved,

the resident or authority may apply to the Court for an order under subsection (6).

- (6) The Court may, on application by a resident or an administering authority under subsection (5), make an order:
 - (a) setting aside the residence rule; or
 - (b) modifying the operation of the rule, either in its application to the resident or to some or all of the residents of the retirement village.
- (7) If the Court makes an order terminating a residence contract under this section, the Court shall fix, in the order, a date by which the resident must vacate the residential premises.
- (8) In addition to any other order it may make under this section, the Court may make an order for the payment or refund of money by an administering authority to a resident or by a resident to an administering authority.
- (9) An application under this section may be made during the currency or after the termination of a residence contract.
- (10) For the purpose of determining any application under this section with respect to a dispute arising out of the transfer or proposed transfer of a resident of a retirement village from one kind of accommodation in the retirement village to another, the Court may:
 - (a) with the consent of the resident, request the Chief Health Officer 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 authority of the retirement village.

14 Termination of right to occupy premises in retirement village

A resident of a retirement village who is entitled to occupy residential premises under a residence contract has a right of occupation that terminates only in one of the following circumstances:

- (a) when the resident dies;
- (b) if the residence contract is terminated by the resident in accordance with the residence contract;
- (c) if the resident abandons the residential premises;

- (d) if the residence contract is terminated by the Court under this Act.

15 Termination of occupation on medical grounds

- (1) If the administering authority 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 authority may apply to the Court 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 Court may, on application by an administering authority under this section, make an order terminating the residence contract, but only if:
 - (a) it is satisfied that any procedures specified under any applicable code or Act or the residence contract for giving notice of intention to terminate the residence contract and for termination of the contract have been complied with by the authority; and
 - (b) it is of the opinion that:
 - (i) the residential premises occupied by the resident are, because of the resident's physical or mental incapacity, unsuitable for occupation by the resident; and
 - (ii) having considered the circumstances of the case, it is otherwise appropriate to make an order terminating the residence contract.
- (3) The Court shall not form an opinion under subsection (2)(b)(i) unless it has considered a medical report with respect to the resident prepared by a medical practitioner nominated by the resident or, if such a report is not supplied or a nomination is not made, has given the resident a reasonable opportunity to supply such a report or make such a nomination.
- (4) In determining whether to terminate a residence contract under this section, the Court may:
 - (a) with the consent of the resident, request the Chief Health Officer 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 authority,

and shall have regard to any terms of the residence contract relating to the transfer of the resident to other residential premises in the retirement village.

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

16 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 authority of the retirement village,

the authority may apply to the Court 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 Court may, on application by an administering authority under this section, make an order terminating the residence contract, but only if it is satisfied that:
 - (a) the breach, in the circumstances of the case, is such as to justify termination of the contract;
 - (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) In addition to any order the Court may make under subsection (2) it may, in proceedings under this section, make an order:
 - (a) setting aside a residence rule; or

- (b) modifying the operation of a rule, either in its application to a resident or to some or all of the residents of a retirement village,

if it is of the opinion that the rule is unconscionable, harsh or oppressive or contravenes any applicable code.

- (4) The Court may make an order under subsection (3) whether or not any procedures specified under any applicable code or the residence contract for giving notice of intention to terminate a residence contract or for termination of the residence contract or for the settlement of a dispute have been complied with.
- (5) If the Court makes an order terminating a residence contract under this section, the Court shall fix in the order a date by which the resident must vacate the residential premises occupied by the resident.
- (6) In addition to any other order it may make under this section, the Court may make an order for the payment or refund of money by an administering authority to a resident or by a resident to an administering authority.

17 Parties to minimise 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 26.

18 Court may waive defect in notice of intention to terminate

The Court may, if it thinks it appropriate to do so in the special circumstances of the case, make an order terminating a residence contract under section 15 or 16 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.

19 Court may terminate residence contract where resident causes serious damage or injury

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

20 Court may terminate residence contract where administering authority would otherwise suffer undue hardship

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

21 Suspension or refusal of orders for termination

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

- (2) The Court may, as a condition of the suspension of the operation of an order for possession, require the resident to pay to the administering authority an occupation fee specified by the Court for the period for which the order for possession is suspended.
- (3) The Court may refuse to make an order terminating a residence contract if it is satisfied that:
 - (a) the administering authority was wholly or partly motivated to terminate the contract by the fact that:
 - (i) the resident had applied or proposed to apply to the Court 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 Court was in force in relation to the resident and the authority; or
 - (b) in the case of an application by an authority under section 16 the resident remedied the breach concerned.

22 Recovery of possession of premises prohibited except by order

- (1) A person shall not, except in accordance with a judgment, warrant or order of a court, enter residential premises occupied by a resident of a retirement village under a residence contract for the purpose of recovering possession of the premises.

Maximum penalty: 175 penalty units.

- (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 any other 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.

23 Enforcement of orders for possession

(1) If an order fixing a date for vacation of residential premises occupied by a resident of a retirement village under a residence contract is made by the Court, a Registrar of the Court:

- (a) on the application of the person in whose favour the order was made; and
- (b) if satisfied that the order or a condition of suspension of the order has not been complied with,

issue a warrant, in or to the effect of the prescribed form, authorising a bailiff to enter the residential premises and to give possession to the person in whose favour the order was made.

- (2) A bailiff enforcing an order for possession of residential premises may enter the premises and take all such steps as are reasonably necessary to enforce the order and shall produce to any person occupying the premises the warrant authorising the enforcement.
- (3) A member of the Police Force may, at the request of a bailiff, assist the bailiff to enforce the order for possession.
- (4) A bailiff enforcing an order for possession of residential premises may use such force as is reasonably necessary for that purpose.
- (5) A person shall not hinder or obstruct a bailiff in the exercise of the powers conferred by this section.
- (6) No matter or thing done by a bailiff or member of the Police Force, in the exercise or purported exercise of a power conferred by this section, shall, if the matter or thing was done in good faith for the purpose of enforcing an order for possession, subject the bailiff or member of the Police Force personally to any action, liability, claim or demand.

24 Liability of resident remaining in possession

- (1) If a resident of a retirement village fails to comply with an order made by the Court fixing a date for vacation of residential premises, the resident is liable to pay compensation to the administering authority of the retirement village for any loss caused to the authority by that failure.
- (2) The Court may, on application by an administering authority under this section made not later than 30 days after the day on which the order fixing the date for vacation of the residential premises took effect, order the resident to pay to the authority such compensation as it thinks fit.

25 Abandoned premises

- (1) The Court may, on application by the administering authority of a retirement village, make an order that declares that residential premises occupied by a resident of the retirement village were abandoned by the resident on a day specified by the Court.
- (2) The resident shall be taken for the purposes of this Act to have abandoned the residential premises on that day.

26 Right of administering authority 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 authority of the retirement village for any loss (including loss of rent) caused by the abandonment.
- (2) The administering authority 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 Court may, on application by the administering authority, order the resident to pay to the authority such compensation (including compensation for loss of rent) as it thinks fit.

27 Goods abandoned by resident after residence contract is terminated

- (1) If a residence contract is terminated and goods are left on the residential premises by a former resident of a retirement village, the administering authority of the retirement village may:
 - (a) apply to the Court for an order under this section; or
 - (b) dispose of the goods in accordance with any provision made for the purpose by the Regulations,or both.
- (2) The Court may, on application by an administering authority under this section, make any one or more of the following orders:
 - (a) an order authorising the removal, destruction or disposal of the goods;
 - (b) an order authorising 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 Court, in the circumstances, thinks appropriate.
- (3) A purchaser of goods sold by an administering authority in accordance with an order of the Court 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 authority does not incur any liability in respect of the removal, destruction, disposal or sale of goods in accordance with an order of the Court or the Regulations.

28 Operation of termination provisions, &c.

Sections 13, 14, 22, 23, 24, 25, 26 and 27 and the rights of termination of residence contracts and of recovery of possession of residential premises under this Part are subject to any rights of a resident of a retirement village:

- (a) arising because the resident has the freehold of residential premises; or
- (b) acquired under a contract between the administering authority and the resident.

29 Review of residence contract by Court

Where, in proceedings before the Court, there is evidence which satisfies the Court that a residence contract or a part of a residence contract is harsh and unconscionable or is otherwise such that a Court of Equity would give relief, the Court may set aside the residence contract, in whole or in part, or revise or alter the residence contract as it thinks fit.

Part 4 Proceedings before Court

30 Limits on orders by Court

- (1) The Court 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 39.

31 Extension of time

- (1) Notwithstanding any other provision of this Act, the Court 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 under subsection (1) may be made even though the relevant period of time has expired.

32 Notice of hearing

- (1) If a person who is a party to proceedings before the Court under this Act:
- (a) is a represented person, within the meaning of the *Adult Guardianship Act*; or
- (b) has a guardian,

or both, the Court shall cause notice of the proceedings to be given to the Public Guardian, within the meaning of the *Adult Guardianship Act*, the guardian of the person and any other person prescribed for the purposes of this section.

- (2) The Court may cause notice to be given of proceedings under this Act to such persons as it thinks fit.

33 Proceedings before Court

The Court or a Registrar of the Court may, in respect of any proceedings or proposed proceedings before the Court under this Act, request a report or other assistance from the Commissioner, the Chief Health Officer or any other person or body.

34 Presentation of cases

- (1) The administering authority of a retirement village may, with the approval of the Court, be represented by the authority's agent in proceedings before the Court under this Act.

- (2) The Court shall not approve of an administering authority's agent representing the authority in proceedings unless it appears to the Court that the agent should be permitted to represent the authority in the course of carrying out his or her usual functions as the authority's agent.

35 Reference of certain matters concerning administering authorities

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

Part 5 Miscellaneous

36 Notation of Register

- (1) Where land is or is to be used as a retirement village, a record of that fact shall be made in the Register.
- (2) The registered proprietor, within the meaning of the *Land Title Act*, of land referred to in subsection (1) shall apply, in the prescribed form, to the Registrar-General for the recording in the Register of the fact as required by that subsection:
- (a) if the retirement village was established before the commencement of this Act, not later than 3 months after that commencement; or
- (b) in any other case, before any person is admitted to occupation of residential premises of the retirement village or before any person pays the whole or any part of a premium.

Maximum penalty: 265 penalty units in the case of an individual.

1325 penalty units in the case of a body corporate.

- (3) Where land is subject to the *Unit Titles Act*, an application under subsection (2) shall be made by the corporation constituted under that Act for the units or building lots on the land.
- (3A) If the land is scheme land of a scheme as defined in the *Unit Title Schemes Act*, the body corporate (as defined in that Act) of the scheme must make an application under subsection (2) for the units of the scheme.

- (4) The Registrar-General, on receiving an application under subsection (2), shall notify each person who holds a registered mortgage, registered charge or registered encumbrance over land to which the application relates of the making of the application and that the Registrar-General will make a record in the Register that the land is or is to be used as a retirement village.
- (5) The Registrar-General shall, on making a record in the Register that land is or is to be used as a retirement village, notify the owner of the land that the record has been made.
- (6) Where this section requires a notice to be given to a person, the requirement is satisfied if the notice is:
 - (a) given personally to the person;
 - (b) sent by security post or certified post or by facsimile:
 - (i) to the address for service noted in the Register;
 - (ii) in the case of a corporation, either to that address or to the address of the corporation's registered office for the purposes of the Corporations Act 2001; or
 - (iii) where the address or addresses authorised by subparagraphs (i) and (ii) appear to the Registrar-General to be unsatisfactory, to any other address which the Registrar-General may consider appropriate; or
 - (c) published in such manner as the Registrar-General may direct.

37 Insurance by administering authority

- (1) An administering authority of a retirement village shall insure and keep insured all buildings and other improvements on the land within the retirement village for their replacement value from time to time against all the following risks:
 - (a) fire, lightning, tempest, earthquake and explosion;
 - (b) riot, civil commotion, strikes and labour disturbances;
 - (c) malicious damages;
 - (d) bursting, leaking and overflowing of boilers, water tanks, water pipes and associated apparatus;
 - (e) impact of aircraft (including parts of, and object falling from aircraft) and of road vehicles, horses and cattle.

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- (2) An administering authority of a retirement village shall, on the written request of a resident, produce for inspection by the resident a copy of the policy of insurance effected by the administering authority in accordance with subsection (1) and the receipt for premiums paid under the policy.
 - (3) Where an administering authority of a retirement village receives insurance money in respect of damages to, or destruction of, any building or improvement on the land within the retirement village, it shall, without delay, pay the money into a trust account and shall apply the money only to rebuilding and reinstating the building or improvement.
 - (4) Notwithstanding subsection (3), the residents and the administering authority of a retirement village may agree to insurance money received as a result of the damage or destruction of a building or improvement being applied for a purpose other than the rebuilding or reinstatement of the building or the improvement.

38 Money paid by residents to administering authority

- (1) Subject to subsection (2), where the residents of a retirement village are required by the residence contract to pay money to the administering authority to pay for the maintenance of premises on the land within the retirement village or to make provision for future liabilities and the replacement of capital items, the administering authority shall pay the money into a trust account and may only invest the money in such manner as trust funds may be invested under the *Trustee Act*.
- (2) Where the Minister is satisfied that:
 - (a) an administrative authority has sufficient assets to meet its obligations concerning future liabilities under this Act; or
 - (b) it is in the best interest of the residents of a retirement village,the Minister may exempt an administrative authority from the requirements of subsection (1).

39 Contracting out prohibited

- (1) Except as provided by subsection (2), this Act has effect notwithstanding anything to the contrary in any contract, agreement, scheme or arrangement, and no residence contract or other contract, agreement, scheme or arrangement (whether oral or wholly or partly in writing, and whether made or entered into before or after the commencement of this section) operates to annul, vary or exclude any of the provisions of this Act.

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- (2) Nothing in subsection (1) derogates from the rights of a resident arising out of a residence contract entered into before the commencement of that subsection.
- (3) A person shall not enter into any contract, agreement, scheme or arrangement with the intention, either directly or indirectly, of defeating, evading or preventing the operation of this Act.

Maximum penalty: 40 penalty units in the case of an individual.

440 penalty units in the case of a body corporate.

40 **Unauthorised use of *retirement village* prohibited**

A person shall not, in respect of a complex of residential premises or a proposed development of such a complex, use the term ***retirement village*** or words that may be taken to mean that the complex or proposed development is a retirement village unless the complex or proposed development is one to which this Act applies.

Maximum penalty: 265 penalty units in the case of an individual.

1325 penalty units in the case of a body corporate.

41 **Costs of administration**

- (1) There shall be paid such contributions as is determined, from time to time, by the Minister primarily responsible for the administration of the *Agents Licensing Act* out of the Fidelity Fund established under that Act for payment of the costs of the administration of this Act (including the costs of obtaining a report or other assistance from the Chief Health Officer).
- (2) Contributions referred to in this section shall be paid in the manner determined by the Treasurer.

42 **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;
- (d) in accordance with a requirement imposed under the *Ombudsman Act*, or
- (e) with other lawful excuse.

Maximum penalty: 20 penalty units.

43 Powers of authorised officers

An authorised officer may, at any time, enter and remain in a retirement village for the purpose of:

- (a) observing the operations of the retirement village;
 - (b) recording the operations of the retirement village; and
 - (c) ascertaining whether this Act, the Regulations or codes applying to the retirement village are being complied with.
- (2) A person shall not, without reasonable excuse, obstruct or hinder an authorised officer in the exercise of his or her powers under this Act.

44 Application of *Consumer Affairs and Fair Trading Act* to codes prescribed under this Act

The *Consumer Affairs and Fair Trading Act* applies to and in relation to a code prescribed under this Act as if the code were a code prescribed under that Act.

45 Offences by corporations

- (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation shall be taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the Regulations.

46 Offences

A person who is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of a provision of this Act or the Regulations is guilty of an offence against this Act or the Regulations and liable to the same penalty as a person who contravenes the provision.

47 Service of documents

- (1) A notice or other document required to be given under this Act to a resident of a retirement village may be given:
 - (a) by delivering it personally to the resident;
 - (b) by delivering it to the residential premises occupied by the resident and by leaving it there with some person apparently of or above the age of 16 years for the resident;
 - (c) by sending it by post to the residential premises occupied by the resident and addressed to the resident; or
 - (d) in such other manner as may be prescribed for the purposes of this section or approved by the Court.
- (2) A notice or other document required to be given to the administering authority of a retirement village under this Act may be given:
 - (a) by delivering it personally to the authority's agent;
 - (b) by sending it by post to the authority's usual place of business;
 - (c) by sending it by facsimile transmission to the authority's usual place of business; or
 - (d) in such other manner as may be prescribed for the purposes of this section or approved by the Court.

48 Codes of practice

- (1) A code shall be developed, implemented and administered having regard to:
 - (a) clarifying the rights and obligations of residents and the administering authorities of retirement villages;
 - (b) the need to ensure that persons entering into a residence contract are provided with all information necessary to make an informed decision regarding his or her future needs as a

resident of the retirement village and of the circumstances in which the person may cease to be a resident; and

- (c) where the residence contract imposes ongoing financial obligations on the residents of a retirement village to the administering authority in respect of the operation of the retirement village, the need to ensure that residents are provided with sufficient financial information and determinative rights in order to be able to participate in decisions concerning the matters for which there is an ongoing financial obligation.
- (2) A code shall contain provisions relating to:
- (a) the rights of residents of retirement villages to privacy;
 - (b) ensuring that residence contracts and documentation relating to retirement villages are clear, concise, complete and in plain language;
 - (c) the full disclosure of fees and financial information relating to retirement villages;
 - (d) the full disclosure of details concerning the title to retirement villages;
 - (e) the cooling off period to be provided in residence contracts;
 - (f) the full disclosure of all rights that the administering authorities have regarding the relocation of residents of retirement villages;
 - (g) the full disclosure of financial rights of residents following the ceasing (whether under a residence contract or this Act) of a resident's rights to reside in a retirement village;
 - (h) the management of retirement villages;
 - (j) the payment of money by residents of retirement villages to the administering authority and the management, banking and use of that money by the administering authority;
 - (k) the procedure for terminating residence contracts and for ensuring that residents are given adequate notice of and reasons for the proposed termination; and
 - (m) the resolution of disputes between residents of retirement villages and residents and administering authorities.

49 Jurisdiction of Anti-Discrimination Commissioner

Nothing in this Act effects the jurisdiction of the Anti-Discrimination Commissioner appointed under the *Anti-Discrimination Act* to deal with a complaint under that Act.

50 Rules, &c., imposing restrictions based on whether persons are retired persons

- (1) Nothing in the *Anti-Discrimination Act* prevents a person (including a corporation established under the *Unit Titles Act*) from developing and implementing rules, agreements and contractual arrangements for the purposes of establishing and operating a retirement village that limit ownership and/or occupation of residential premises in the retirement village to retired persons.
- (2) A rule, agreement or contractual arrangement referred to in subsection (1) shall have regard to the rights of family members and to visitors of a resident of a retirement village and to the laws of inheritance.

51 Regulations

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing all matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may make provision for or with respect to:
 - (a) codes of practice under this Act,
 - (b) the service of notices or other documents under this Act or a code;
 - (c) goods abandoned or apparently abandoned by a resident of a retirement village;
 - (d) fees to be paid under this Act; and
 - (e) penalties, not exceeding \$2,500, for offences against the Regulations.

- (3) The Regulations may exempt from the operation of this Act or any specified provision of this Act any specified person, organisation, residence contract or retirement village or any persons, organisations, residence contracts or retirement villages of a specified class, either unconditionally or subject to conditions.

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Retirement Villages Act 1995 (Act No. 28, 1995)***

Assent date	26 June 1995
Commenced	1 November 1995 (<i>Gaz G44</i> , 1 November 1995, p 3)

Statute Law Revision Act 1997 (Act No. 17, 1997)

Assent date	11 April 1997
Commenced	s 16: 10 December 1997; rem: 1 May 1997 (<i>Gaz G17</i> , 30 April 1997, p 2)

Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)

Assent date	12 September 2000
Commenced	1 December 2000 (s 2, s 2 <i>Land Title Act 2000</i> (Act No. 2, 2000) and <i>Gaz G38</i> , 27 September 2000, p 2)

Unit Titles (Consequential Amendments – Building Development) Act 2001 (Act No. 15, 2001)

Assent date	28 June 2001
Commenced	1 March 2002 (s 2, s 2 <i>Unit Titles Amendment Act 2001</i> (Act No. 14, 2001) and <i>Gaz G8</i> , 27 February 2002, p 6)

Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)

Assent date	29 June 2001
Commenced	15 July 2001 (s 2, s 2 <i>Corporations Act 2001</i> (Cth Act No. 50, 2001) and <i>Cth Gaz S285</i> , 13 July 2001)

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)

Assent date	7 January 2004
Commenced	17 March 2004 (<i>Gaz G11</i> , 17 March 2004, p 8)

Ombudsman Act 2009 (Act No. 5, 2009)

Assent date	12 March 2009
Commenced	1 July 2009 (<i>Gaz G21</i> , 27 May 2009, p 5)

Unit Title Schemes Act 2009 (Act No. 14, 2009)

Assent date 26 May 2009
 Commenced pt 2.3, div 3, sdv 4 and s 135 (to ext ins s 54C):
 1 January 2010; s 111: 1 July 2010; rem: 1 July 2009 (s 2,
 Gaz S30, 26 June 2009, p 1, s 2 *Land Title and Related
 Legislation Amendment Act 2008* (Act No. 3, 2008) and Gaz
 S30, 26 June 2009, p 1)

Justice Legislation Amendment (Penalties) Act 2010 (Act No. 12, 2010)

Assent date 20 May 2010
 Commenced 1 July 2010 (Gaz G24, 16 June 2010, p 2)

3 LIST OF AMENDMENTS

- s 3 amd No. 17, 1997, s 17; No. 45, 2000, s 11; No. 1, 2004, s 62; No. 14, 2009,
s 157
- s 12 amd No. 45, 2000, s 11; No. 14, 2009, s 158
- s 13 amd No. 17, 1997, s 17
- s 15 amd No. 17, 1997, s 17
- s 22 amd No. 12, 2010, s 3
- s 33 amd No. 17, 1997, s 17
- s 36 amd No. 45, 2000, s 11; No. 15, 2001, s 11; No. 17, 2001, s 21; No. 14,
2009, s 159; No. 12, 2010, s 3
- ss 39 – 40 amd No. 12, 2010, s 3
- s 41 amd No. 17, 1997, s 17
- s 42 amd No. 5, 2009, s 179; No. 12, 2010, s 3