



# Retirement Villages Act 2003

Public Act 2003 No 112  
Date of assent 30 October 2003  
Commencement see section 2

## Contents

1	Title		<i>Memorials</i>
	<b>Part 1</b>		
	<b>Preliminary provisions</b>		
2	Commencement	21	Memorial on certificates of title of retirement villages
3	Purpose	22	Effect of memorial
4	Act to bind the Crown	23	Memorial and loss of registration
5	Interpretation		<i>Statutory supervisor to be asked to act as representative</i>
6	Meaning of retirement village	24	Receiver, liquidator, and statutory manager must ask statutory supervisor to represent residents
7	Obligations of operator		<i>Offer and advertising prohibited if retirement village not registered</i>
8	Operator and director, trustee, or office holder of operator not to be exempt from liability	25	No offer of occupation or advertising unless retirement village registered
9	Power of Court to grant relief in proceedings for negligence, etc		<i>Other restrictions on advertising</i>
	<b>Part 2</b>	26	Operator must ensure that advertisements are not misleading or deceptive
	<b>Registration, occupation right agreements, and related requirements and rules</b>		<i>Occupation right agreements</i>
	<i>Registration of retirement villages</i>	27	Occupation right agreements
10	Retirement villages to be registered	28	Cooling-off period and cancellation for delay
11	Registration is not approval	29	Deposits and other payments must be independently held
12	Registration of existing retirement villages	30	Information to be provided
13	Annual return	31	Occupation right agreement voidable
14	Registrar may alter register		<i>Code of residents' rights</i>
15	Registration to be continuous	32	Retirement villages to have code of residents' rights
16	Certification of registered documents	33	Distribution of code of residents' rights
17	Operator to notify change of circumstances and documentation		
	<i>Suspension of registration</i>		
18	Suspension of registration		
	<i>Cancellation of registration</i>		
19	Cancellation of registration		
20	Further requirements as to registration and keeping registers		

<i>Other information relevant to occupancy</i>	
34	Right to be supplied with information relevant to occupancy
<i>Rights of residents in relation to occupancy right</i>	
35	No legal impediments to occupation
<b>Part 3</b>	
<b>Retirement Commissioner and statutory supervisors</b>	
<i>Retirement Commissioner</i>	
36	Retirement Commissioner to monitor, etc, effect of this Act
<i>Statutory supervisors</i>	
37	Registrar must approve statutory supervisor
38	Operator must appoint statutory supervisor
39	Registrar's consent required for termination or non-renewal of appointment
40	Operator must not indemnify or exempt statutory supervisor from liability
41	Exemption from requirement for statutory supervisor
42	Duties of statutory supervisor
43	Powers of statutory supervisor
44	Public statement by statutory supervisor
45	Liability for loss limited
46	Statutory supervisor may require information
<i>Auditor must answer questions and supply information</i>	
47	Auditor must answer questions and supply information
<b>Part 4</b>	
<b>Dispute resolution, enforcement, and penalties</b>	
<i>Dispute resolution</i>	
48	Interpretation
49	Resident's rights may be exercised by personal representative
50	Types of dispute procedures
51	Complaints facility
52	Resident or operator may require dispute resolution
53	Types of dispute for which resident may give dispute notice
54	Types of dispute for which operator may give dispute notice
55	Operator must notify statutory supervisor of certain disputes
56	Form of dispute notice
57	Time for giving dispute notice
58	Retirement Commissioner approves persons eligible for appointment to disputes panel
59	Operator must appoint disputes panel
60	Composition of disputes panel
61	Disputes panel must disclose interests and previous involvement
62	Operator's duties to secure independence of disputes panel
63	Meaning of previous involvement in dispute
64	Conduct of hearing
65	Hearing must be held
66	Panel may refuse to hear dispute
67	Evidence and attendance
68	Matters that disputes panel must take into account in deciding certain disputes
69	Powers of disputes panel
70	Additional powers of disputes panel in certain disputes
71	Record of decision
72	Effect and enforcement of dispute resolution decisions
73	Effect of vacancy in panel membership
74	Costs on dispute resolution
75	Appeal to District Court
<i>Enforcement and penalties</i>	
76	Jurisdiction of High Court
77	Jurisdiction of District Court
78	Jurisdiction of Disputes Tribunal
79	Contraventions of certain provisions an offence
80	Injunctions may be granted by Court for contravention of certain provisions
81	Order to disclose information or publish advertisement
82	Other orders
83	Monetary limits and exercise of jurisdiction
84	General provisions relating to section 82 orders
85	Defences
86	Finding in proceedings to be evidence
<b>Part 5</b>	
<b>Registrar of Retirement Villages, code of practice, and miscellaneous matters</b>	
<i>Registrar of Retirement Villages</i>	
87	Appointment of Registrar

<p>88 Power of Registrar to delegate <i>Code of practice</i></p> <p>89 Code of practice must be prepared and published</p> <p>90 Duration and variation of code of practice</p> <p>91 Retirement Commissioner to provide publication information</p> <p>92 Status of code of practice</p> <p>93 Exemption from requirement to comply with code of practice</p> <p><i>Registered office of retirement village</i></p> <p>94 Registered office <i>Change of registered office</i></p> <p>95 Change of registered office</p> <p><i>Address for service of retirement village</i></p> <p>96 Address for service</p> <p><i>Registrar's powers of inspection</i></p> <p>97 Registrar's powers of inspection</p> <p>98 Disclosure of information and reports</p> <p>99 Certain provisions of Companies Act 1993 apply</p> <p>100 Deeds of participation</p> <p>101 Regulations</p>	<p>102 Fees and charges</p> <p>103 Regulations defining retirement villages</p> <p>104 Regulations prescribing criteria for exemptions under section 41</p> <p>105 Regulations prescribing criteria for exemptions under section 93</p> <p>106 Notices</p> <p>107 Acts not to apply</p> <p>108 Amendment to Corporations (Investigation and Management) Act 1989</p> <p>109 Amendments to Financial Reporting Act 1993</p> <p>110 Amendment to Securities Act 1978</p> <p style="text-align: center;">—————</p> <p style="text-align: center;"><b>Schedule 1</b></p> <p style="text-align: center;"><b>Registration and register</b></p> <p style="text-align: center;"><b>Schedule 2</b></p> <p style="text-align: center;"><b>Disclosure statements</b></p> <p style="text-align: center;"><b>Schedule 3</b></p> <p style="text-align: center;"><b>Occupation right agreements</b></p> <p style="text-align: center;"><b>Schedule 4</b></p> <p style="text-align: center;"><b>Code of residents' rights</b></p> <p style="text-align: center;"><b>Schedule 5</b></p> <p style="text-align: center;"><b>Matters to be included in code of practice</b></p>
---	---

**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Retirement Villages Act 2003.

**Part 1**  
**Preliminary provisions**

**2 Commencement**

- (1) Part 2, sections 38 to 47, Part 4, sections 94 to 100, sections 107 to 110, and Schedules 1 to 4 come into force on a date to be appointed by the Governor-General by Order in Council, and 1 or more Orders in Council may be made appointing different dates for different provisions.
- (2) The rest of this Act comes into force on 1 February 2004.

### 3 Purpose

The purpose of this Act is—

- (a) to protect the interests of residents and intending residents of retirement villages:
- (b) to enable the development of retirement villages under a legal framework readily understandable by residents, intending residents, and operators:
- (c) for the purposes in paragraphs (a) and (b),—
  - (i) to promote understanding of the financial and occupancy interests of residents and intending residents of retirement villages:
  - (ii) to provide an industry-focused regulatory and monitoring regime for retirement villages in which compliance costs are minimised:
  - (iii) to provide external oversight of the conditions of entry into, and the continuing operations of, retirement villages:
  - (iv) to introduce requirements and procedures necessary to give effect to the regulatory and monitoring regime referred to in subparagraph (ii):
  - (v) to provide an environment of security and protection of rights for residents of retirement villages:
  - (vi) to confer on the Registrar of Retirement Villages and the Retirement Commissioner powers, functions, and duties relating to this Act.

### 4 Act to bind the Crown

This Act binds the Crown.

### 5 Interpretation

In this Act, unless the context otherwise requires,—

**advertisement—**

- (a) means any publication to the public or to any section of the public or to any individual of any words, whether written or printed, spoken, or in any electronic form, or of any pictorial representation or design or device, used to promote a retirement village,—
  - (i) that is authorised or instigated by, or on behalf of, the operator or promoter of the retirement village;or

- (ii) that is prepared with the co-operation of, or by arrangement with, the operator or promoter of that village; and
- (b) includes a disclosure statement

**capital sum**, in relation to a residential unit, means any of the following:

- (a) any lump sum or sums payable for the right to occupy the unit (other than a sum that is a bond or rent within the meaning of section 2 of the Residential Tenancies Act 1986):
- (b) any periodical payment for the right to occupy the unit that, in respect of the period for which it is payable, substantially exceeds the total of—
  - (i) the amount that would be payable as a market rent for the unit under the Residential Tenancies Act 1986 during that period if the unit were let under a tenancy to which that Act applies; and
  - (ii) the lesser of the value of any services or facilities supplied to the resident during that period or the cost to the operator of that supply during that period

**code of practice** means a code of practice approved by the Minister under section 89

**code of residents' rights** means the code of residents' rights described in Schedule 4

**Court** means the High Court of New Zealand

**deed of supervision**—

- (a) means the document setting out the terms and conditions on which a statutory supervisor is appointed under section 38; and
- (b) includes a deed of participation relating to the supervision of a retirement village entered into before the commencement of section 38, in accordance with the Securities Act 1978 or any regulations made under that Act

**disclosure statement**, in relation to a retirement village, means a written document that—

- (a) contains all the information that it is required to contain by Schedule 2, any applicable code of practice, and regulations made under this Act; and

- (b) states that it is a disclosure statement for the purposes of this Act

**facilities**, in relation to a retirement village, means facilities of a shared or communal kind provided in the retirement village for the benefit of residents of the retirement village and includes recreational facilities and amenities

**former resident** means a person—

- (a) who was a resident of a retirement village on or after the date on which this section comes into force; and  
(b) whose occupation right agreement has since terminated

**hospital care institution** has the meaning specified in section 58(4) of the Health and Disability Services (Safety) Act 2001

**intending resident** means a person—

- (a) who has within the last 3 months,—  
(i) indicated to an operator of a retirement village or the operator's agent that he or she is interested in becoming a resident of the retirement village; or  
(ii) had discussions with the operator or the operator's agent about entering into an occupation right agreement; and  
(b) in respect of whom the operator or the operator's agent has a current address, or sufficient other contact details to enable the operator to send notices to that person

**lawyer** means a barrister or solicitor, as those terms are defined in section 2 of the Law Practitioners Act 1982

**Minister** means the Minister of the Crown who is, with the authority of the Prime Minister, for the time being responsible for the administration of this Act

**occupation right agreement** means any written agreement or other document or combination of documents that—

- (a) confers on any person the right to occupy a residential unit within a retirement village; and  
(b) specifies any terms or conditions to which that right is subject

**offer of occupation** means an offer made to any person to become a resident of a retirement village

**operator**, in relation to a retirement village, means any person who is 1 or more of the following:

- (a) a person who is, or will be, liable to fulfill all or any of the obligations under occupation right agreements to residents of the village:
- (b) a holder of a security interest who is exercising effective management or control of the retirement village:
- (c) a receiver of the property comprising the retirement village, or the liquidator of the person to whom either of paragraph (a) or paragraph (b) applies

**promoter**, in relation to a retirement village,—

- (a) means a person who is instrumental in the development of a retirement village in respect of which occupation rights are offered to the public; and
- (b) if a body corporate, includes every person who is a director of that body corporate; but
- (c) does not include a person—
  - (i) acting solely in his or her professional capacity; or
  - (ii) who has ceased to have any involvement with the village

**register** means the register maintained under Schedule 1

**registered document** means, in respect of any registered retirement village, any document registered in accordance with Schedule 1

**Registrar** means the Registrar of Retirement Villages appointed under section 87

**resident** means any of the following:

- (a) a person who enters into an occupation right agreement with the operator of a retirement village:
- (b) a person who, under an occupation right agreement, is, for the time being, entitled to occupy a residential unit within a retirement village, whether or not the agreement is made with that person or some other person:
- (c) if the occupation right agreement so provides or with the consent of the operator of the retirement village, the spouse or partner of the person referred to in paragraph (b) who is occupying the residential unit with that person, or after that person's death or departure from the retirement village

**residential unit or unit** means a building, or part of a building, that is a house, flat, townhouse, unit, serviced unit or apartment (whether or not it has cooking facilities), villa, or

similar dwelling erected, or currently used, primarily and principally as a unit of accommodation; and includes any land, improvements, or appurtenances belonging to the unit or usually enjoyed with it

**rest home** has the meaning specified in section 58(4) of the Health and Disability Services (Safety) Act 2001

**Retirement Commissioner** means the Retirement Commissioner appointed under the Retirement Income Act 1993

**retirement village** has the meaning specified in section 6

**security interest**, in relation to a retirement village, means an interest that a person (other than as an intending resident or resident of the retirement village or a person whose occupation right agreement has terminated) has in all or any part of the retirement village as a consequence of the person holding a debt security or participatory security (within the meaning of the Securities Act 1978) over that part of the retirement village

**services** means services provided at a retirement village of 1 or more of the following kinds:

- (a) gardening, repair, or maintenance services:
- (b) nursing or medical services:
- (c) the provision of meals:
- (d) shops and other services for the provision of goods:
- (e) laundry services (not being the provision of facilities for residents to carry out their own laundry):
- (f) services (for example, hairdressing services) for the personal care of residents:
- (g) transport services:
- (h) services for recreation or entertainment:
- (i) security services:
- (j) other services for the care or benefit of residents

**statutory manager** means a statutory manager of the operator of a retirement village appointed under the Corporations (Investigation and Management) Act 1989

**statutory supervisor**, in relation to a retirement village, means a person appointed under section 38.

## **6 Meaning of retirement village**

- (1) In this Act, but subject to subsections (2) to (6), **retirement village** means the part of any property, building, or other

premises that contains 2 or more residential units that provide, or are intended to provide, residential accommodation together with services or facilities, or both, predominantly for persons in their retirement, or persons in their retirement and their spouses or partners, or both, and for which the residents pay, or agree to pay, a capital sum as consideration and regardless of whether—

- (a) a resident's right of occupation of any residential unit is provided by way of freehold or leasehold title, cross-lease title, unit title, lease, licence to occupy, residential tenancy, or other form of assurance, for life or any other term; or
  - (b) the form of the consideration for that right is a lump sum payment or deduction, or a contribution or a payment in kind of any form, a periodic payment or deduction, or any combination of such payments or deductions, whether made before, during, or after occupancy; or
  - (c) the consideration is actually paid or agreed to be paid by a particular resident or particular residents or on behalf of that resident or those residents, or by another person for the benefit of that resident or those residents; or
  - (d) the resident makes an additional payment or periodical payment (for example, a service fee) for any services or facilities or access to such services or facilities; or
  - (e) the services or facilities, or both, are provided by the owner of the property, building, or other premises, or by any other person under an arrangement with the operator of the village.
- (2) A retirement village includes any common areas and facilities to which residents of the retirement village have access under their occupation right agreements.
- (3) Despite subsections (1) and (2), if 1 or more of the residential units referred to in subsection (1) are located in a rest home or hospital care institution, the only parts of that rest home or hospital care institution that comprise, or are included in, the retirement village are—
- (a) the residential unit or units themselves; and
  - (b) the common areas and facilities within the rest home or hospital care institution (if any) to which the resident or

residents of the unit or units have access only by reason of their occupation right agreement.

- (4) For the avoidance of doubt, the following are not retirement villages for the purposes of this Act:
- (a) owner-occupied residential units registered under the Unit Titles Act 1972 or owner-occupied cross-lease residential units that in either case do not provide services or facilities to their occupants beyond those commonly provided by—
    - (i) similar residential units that are not intended to provide accommodation predominantly for retired people and their spouses or partners; or
    - (ii) residential units occupied under tenancies to which the Residential Tenancies Act 1986 applies:
  - (b) boarding houses, guest houses, or hostels:
  - (c) halls of residence associated with educational institutions.
- (5) Whether or not a property or building is, or any other premises are, a retirement village must be determined according to the nature, substance, and economic effect of the operation of the property, building, or premises and other facts, and independently of its or their form or description in any document.
- (6) For the avoidance of doubt,—
- (a) a property, building, or other premises does not cease to be a retirement village by reason only that persons in their retirement cease to predominate amongst residents of the village:
  - (b) a retirement village does not include any land or building that is under development as a retirement village, or as part of a retirement village, that is not occupied by any resident.
- (7) This section must be read in conjunction with section 103 (which authorises the making of regulations declaring specified property, buildings, or other premises, or property, buildings, or other premises of a specified class, to be or not to be a retirement village for the purposes of this Act).

## **7 Obligations of operator**

If obligations are imposed on the operator of a retirement village by this Act,—

- (a) each operator of that retirement village must perform the obligation or ensure that it is performed; and
- (b) each director or trustee of that operator and the person appointed as the manager of the village must take all reasonable steps to ensure that the obligation is performed.

## **8 Operator and director, trustee, or office holder of operator not to be exempt from liability**

- (1) This section applies to any provision in any agreement or other document that directly or indirectly has the effect of involving the residents of a retirement village in—
  - (a) exempting any operator or any director, trustee, or office holder of an operator from any liability that, by virtue of any rule of law, would otherwise attach to him or her in respect of any negligence, default, breach of duty, or breach of trust of which he or she may be liable in relation to the retirement village; or
  - (b) indemnifying any such operator or director, trustee, or office holder against any such liability.
- (2) Except as provided in subsection (3), any provision to which this section applies is void.
- (3) Nothing in subsection (2) deprives any operator or director, trustee, or office holder of an operator, of any exemption or right to be indemnified in respect of anything done or omitted to be done by him or her while any such provision was in force if the exemption or indemnity was in existence on or before the day on which this section comes into force.

## **9 Power of Court to grant relief in proceedings for negligence, etc**

- (1) Subsection (2) applies if, in any civil proceeding for negligence, default, breach of duty, or breach of trust against an operator or director, trustee, or office holder of an operator in connection with a retirement village, it appears to the Court hearing the case that—
  - (a) the person is or may be liable in respect of the negligence, default, breach of duty, or breach of trust; but
  - (b) the person has acted honestly and reasonably; and

- (c) having regard to all the circumstances of the case, the person ought fairly to be excused for the negligence, default, breach of duty, or breach of trust.
- (2) If this subsection applies, the Court may relieve the person referred to in subsection (1), either wholly or partly, from the person's liability on any terms that the Court thinks fit.

## **Part 2**

### **Registration, occupation right agreements, and related requirements and rules**

#### *Registration of retirement villages*

#### **10 Retirement villages to be registered**

- (1) The operator of a retirement village must ensure that it is registered.
- (2) The operator of a retirement village must lodge with the Registrar an application for registration in the prescribed form together with the following:
  - (a) the form of the disclosure statement or statements, which must—
    - (i) be complete, apart from personal information relating to particular residents or particular occupation right agreements; and
    - (ii) disclose whether any holder of a security interest to whom section 12(1)(b) applies has refused to consent to the registration of the village and the effect of that refusal; and
  - (b) a full legal description of the part of the property, building, or premises comprising the retirement village, together with—
    - (i) copies of any certificates of title, plans, deeds, leases, or other documents evidencing that description, and identifying any computer registers on which the certificates of title are recorded; and
    - (ii) the address of the holder of any security interest registered against any of those certificates of title; and
  - (c) unless the operator of the retirement village is exempt, under section 41, from the requirement to appoint a

- statutory supervisor, the name of the statutory supervisor, a copy of the statutory supervisor's consent to act, and a copy of the deed of supervision; and
- (d) the form of the occupation right agreement; and
  - (e) the prescribed fee for registration or an application for approval to pay the prescribed fee by arrangement; and
  - (f) any other matter prescribed by regulations.
- (3) The Registrar must—
- (a) not register any retirement village if, in the opinion of the Registrar, the application or any information supplied contains a statement that is false or misleading or omits any material particular;
  - (b) register the retirement village if the operator has complied with subsection (1), the circumstances in paragraph (a) do not exist, and all prescribed fees have been paid, or satisfactory arrangements have been made for their payment.
- (4) The Registrar may refuse to consider an application for registration or an amendment to registered documents if arrangements for the payment of prescribed fees are not in place.
- (5) After registering a retirement village, the Registrar must allocate a month to the retirement village for the purpose of delivering the annual return required by section 13 and may, at any time by written notice to the operator, alter the month allocated.
- (6) This section is subject to section 12.

### **11 Registration is not approval**

Registration of a retirement village does not imply approval by the Registrar or the Crown of the retirement village or any of the matters in the application.

### **12 Registration of existing retirement villages**

- (1) If a retirement village has 1 or more residents at the commencement of this section,—
- (a) an application for registration must be lodged under section 10 within 6 months from the day on which this section comes into force;
  - (b) the operator must seek the written consent to the registration of the village of any person who—

- (i) was a holder of a security interest in the village on 31 December 2002; and
  - (ii) has not, since that date, obtained any new security interest in the village or agreed to any increase—
    - (A) in the term of the security interest; or
    - (B) if the holder offers a credit facility (for example, an overdraft), in the maximum sum secured by that security interest; or
    - (C) if any other sum is secured by the security interest, in the sum secured by that security interest:
  - (c) the operator must include the written consent of that person with the application for registration, if that consent is given:
  - (d) no offer of occupation may be made after the expiry of 12 months from the day on which this section comes into force unless the retirement village is registered under this Act.
- (2) If the holder of a security interest to whom subsection (1)(b) applies fails or refuses to consent to the registration of a retirement village,—
  - (a) the operator of the village must promptly notify the statutory supervisor of the village (if there is one), and every resident and intending resident, of that failure or refusal and its effect:
  - (b) that failure or refusal does not prevent the registration of the village as a retirement village, or affect the obligation of the operator to apply for registration of the village.
- (3) Nothing in this section exempts any operator from the obligation to issue a disclosure statement that complies with this Act to any intending resident after the commencement of this section.
- (4) The operator of a retirement village to which subsection (1) applies must issue a disclosure statement that complies with this Act to every resident, within 12 months after the date on which this section comes into force.

**13 Annual return**

- (1) An operator of a retirement village must ensure that there is delivered to the Registrar each year, for registration, during the month allocated to the retirement village for the purpose, an annual return for that village signed by the operator or by a solicitor or chartered accountant.
- (2) The annual return must be in the prescribed form and must contain the prescribed information for the prescribed period.
- (3) The annual return that is delivered for registration must be accompanied by—
  - (a) the certificate referred to in section 16; and
  - (b) a copy of the retirement village's audited financial statements (being statements that comply with the Financial Reporting Act 1993); and
  - (c) if the operator is not exempt, under section 41, from the requirement to appoint a statutory supervisor, a certificate signed by the statutory supervisor stating that—
    - (i) the operator has supplied to the supervisor a copy of the retirement village's audited financial statements (being statements that in the supervisor's opinion comply with the Financial Reporting Act 1993); and
    - (ii) the information contained in the annual return is, to the best of the supervisor's knowledge and belief, accurate; and
  - (d) the prescribed fee for filing an annual return or an application to pay that prescribed fee by arrangement.
- (4) The annual return must be dated as at a day within the month in which the return is required to be delivered to the Registrar, and the information required to be contained in it must be accurate as at that date.
- (5) Despite subsection (1), a retirement village need not make an annual return in the calendar year of its registration.

**14 Registrar may alter register**

The Registrar may alter the register if the annual return contains any of the following information that is different from the information entered on the register:

- (a) an address of the registered office of the retirement village;
- (b) an address for service of the retirement village;

- (c) a postal address of the retirement village.

### **15 Registration to be continuous**

Every retirement village that is registered remains registered unless the Registrar suspends or cancels its registration.

### **16 Certification of registered documents**

An operator of a retirement village must, in the prescribed form and within the prescribed periods, lodge a certificate with the Registrar confirming that each registered document (other than a document that has been replaced by another registered document) is correct and current and, in the opinion of the persons signing the certificate, not likely to mislead or deceive any resident, intending resident, or the public.

### **17 Operator to notify change of circumstances and documentation**

- (1) The operator of a registered retirement village must, in the prescribed form (if any), notify the Registrar and the statutory supervisor of the village (if there is one) of—
  - (a) any material change to any of the registered documents before that document or changed document is published or made available to any resident, any intending resident, or the public; and
  - (b) any material change to the information contained in any registered document; and
  - (c) any change of circumstances that makes any registered document likely to be misleading or deceptive to any resident, any intending resident, or the public; and
  - (d) any change—
    - (i) of any operator of the retirement village (whether as a result of the sale or other disposal of the retirement village or otherwise); or
    - (ii) of the controlling interests in any operator of the retirement village (whether as a result of the sale of shares in the operator or otherwise); or
    - (iii) to the name or address of any operator of the retirement village.
- (2) Nothing in subsection (1) prevents an operator of a retirement village from—

- (a) notifying the Registrar of any change to a registered document or to the information in a registered document that is not required to be notified under subsection (1):
  - (b) complying with subsection (1)(a) or (b) or (d) by lodging with the Registrar an amended or new document in place of a registered document together with the appropriate prescribed form (if any).
- (3) If notice is given to the Registrar under subsection (1) or subsection (2)(a), the Registrar may—
- (a) amend the registered document accordingly or add the document to the register; or
  - (b) require a new document to be lodged under section 10(2); or
  - (c) if section 18(1) applies, suspend registration of the retirement village under that provision.

### *Suspension of registration*

## **18 Suspension of registration**

- (1) The Registrar may suspend the registration of any retirement village if he or she considers that—
- (a) any registered document is likely to mislead or deceive any resident, any intending resident, or the public; or
  - (b) the operator is failing to comply with this Act or any regulations made under this Act; or
  - (c) any prescribed fee required to be paid by the operator of the retirement village is not paid.
- (2) The Registrar must give notice of the suspension to the operator of the retirement village and to the statutory supervisor of the village (if there is one), and that notice must specify—
- (a) the reason for the suspension; and
  - (b) the steps required to be undertaken by the operator to have the suspension lifted.
- (3) Once the operator of a retirement village has received notice of its suspension of registration, the operator, while the suspension is in force,—
- (a) must take all reasonable steps to withdraw any advertisement or offer of occupancy relating to the retirement village;
  - (b) must not enter into any occupation right agreement relating to the retirement village with any person.

*Cancellation of registration***19 Cancellation of registration**

- (1) The Registrar must cancel the registration of a retirement village if the Registrar—
  - (a) receives a request in writing for cancellation from the operator of that retirement village in the prescribed form; and
  - (b) is satisfied that the requirements of subsection (2) (if applicable) and subsection (3) have been complied with; and
  - (c) is satisfied that the village has ceased to operate as a retirement village or will do so on cancellation of its registration.
- (2) If there is more than 1 operator of the retirement village, the request in writing must be made by all operators of the village.
- (3) Except as provided in section 23, cancellation of registration has the same effect as suspension of registration and the operator must take action under section 18 as if notice of suspension of registration had been given under section 18(2).
- (4) No operator may request the cancellation of the registration of any retirement village that has any residents unless—
  - (a) all residents of the village have received independent legal advice about the effects of cancellation of registration; and
  - (b) at least 90% of those residents have consented in writing to that cancellation.
- (5) The Registrar must give notice of the cancellation of registration to the operator or operators of the village and to the statutory supervisor of the village (if there is one).

**20 Further requirements as to registration and keeping registers**

Every operator of a retirement village and the Registrar must comply with the applicable provisions of Schedule 1 (which sets out requirements relating to the lodging of documents for registration and the keeping of the register by the Registrar).

*Memorials***21 Memorial on certificates of title of retirement villages**

- (1) The Registrar must notify the Registrar-General of Land of the registration of a retirement village, and of any change to the property, building, or premises comprising the retirement village notified to the Registrar in accordance with section 13 or section 17.
- (2) The notification must contain a description of the land that comprises the retirement village and identifies the particular certificates of title or computer registers required to be noted under subsection (3), a copy of any written consent to registration of the village lodged with the Registrar under section 12(1)(c), and the address of the holder of any security interest that is registered against the title.
- (3) The Registrar-General of Land must note on every certificate of title or computer register relating to a registered retirement village the words “Subject to section 22 of the Retirement Villages Act 2003 (which provides priority for the rights of residents ahead of the rights of holders of security interests)”.
- (4) The Registrar-General of Land must, when the memorial referred to in subsection (3) is noted, give notice of the memorial to the holder of any security interest registered against the certificate of title.

**22 Effect of memorial**

- (1) If a memorial is entered under section 21, then, unless all residents of the retirement village have received independent legal advice and at least 90% of those residents have consented in writing, the holder of a security interest or any receiver or liquidator or statutory manager of property comprising the retirement village or of any operator of the village must not exercise any right to—
  - (a) dispose of the retirement village other than as a going concern; or
  - (b) disclaim any occupation right agreement relating to the retirement village as onerous property under section 269 of the Companies Act 1993 or section 75 of the Insolvency Act 1967; or
  - (c) evict any resident or exclude any resident from the use of any facilities or any part of the retirement village to which that resident is ordinarily entitled.

- (2) Subsection (1) applies whether or not the security interest is registered against the certificate of title.
- (3) The holder of the security interest, or any receiver or liquidator or statutory manager of property comprising the retirement village or of an operator of the village, may apply to the High Court for an exemption from any requirement of subsection (1), and that exemption may be granted subject to any conditions that the Court considers appropriate.
- (4) This section does not affect—
  - (a) the exercise of any right conferred on any person under an occupation right agreement (including, without limitation, any right to specified services or any right conferred on the operator of a retirement village to terminate the occupation right of a resident or exclude a resident from the use of any facilities or part of the village, or to reduce or cancel services); or
  - (b) the exercise of any specified right by a person who—
    - (i) was the holder of a security interest in the retirement village on 31 December 2002 (being a security interest that continues to secure the payment or repayment of all or any part of a sum secured by it on that date, that has not been paid or repaid); and
    - (ii) has not, since that date, obtained any new security interest in the village or agreed to any increase—
      - (A) in the term of the security interest; or
      - (B) if the holder offers a credit facility (for example, an overdraft), in the maximum sum secured by that security interest; or
      - (C) if any other sum is secured by the security interest, in the maximum sum secured by that interest; and
    - (iii) has failed or refused to consent to the registration of the village.
- (5) In subsection (4)(b), **specified right** means any right conferred by the security interest referred to in subsection (4)(b)(i) (being a right provided in that security interest as at 31 December 2002).

**23 Memorial and loss of registration**

- (1) If the registration of a retirement village is cancelled under section 19 (but not if it is suspended under section 18), the Registrar must notify the Registrar-General of Land of that cancellation.
- (2) The notification must identify the particular certificates of title or computer registers to enable the Registrar-General of Land to act under subsection (3).
- (3) Upon receipt of a notice under subsection (1), the Registrar-General of Land must remove a memorial on a certificate of title entered under section 21.

*Statutory supervisor to be asked to act as representative***24 Receiver, liquidator, and statutory manager must ask statutory supervisor to represent residents**

If a receiver is appointed in respect of property of an operator that includes a retirement village or a liquidator or statutory manager is appointed for an operator, the receiver or liquidator or statutory manager must ask the statutory supervisor of the retirement village (if there is one) to represent the interests of residents in negotiations with the receiver or liquidator or statutory manager concerning the protection of the residents' interests.

*Offer and advertising prohibited if retirement village not registered***25 No offer of occupation or advertising unless retirement village registered**

- (1) No person may—
  - (a) make, allow to be made, or acquiesce in the making of any offer of occupation or the publication of any advertisement after the expiry of 6 months from the day on which this section comes into force; or
  - (b) make, allow to be made, or acquiesce in the making of any representation that all or part of any property, building, or premises is a retirement village if that representation is included in an advertisement published after the expiry of 6 months from the day on which this section comes into force; or

- (c) enter into any occupation right agreement after the expiry of 6 months from the day on which this section comes into force—  
that relates to a retirement village that is not registered under this Act.
- (2) Subsection (1) does not apply if—
- (a) the retirement village has never been registered under this Act; and
  - (b) section 12 is complied with; and
  - (c) the Securities Act 1978 and all other applicable legislation is complied with; and
  - (d) the offer is made and the occupation right agreement is entered into no later than the expiry of 12 months from the day on which this section comes into force.
- (3) Subsection (1) does not apply to a statement made by, or on behalf of, the promoter of a retirement village if the statement is to the effect that the promoter intends to apply for registration of the village under this Act and to make offers of occupation to the public and the statement contains no information other than—
- (a) the name of the promoter; and
  - (b) a description of the occupation rights intended to be offered, including a brief description of any rights or privileges to be included in the offer; and
  - (c) a statement of the services or facilities to be provided; and
  - (d) a statement of the total number of occupation rights intended to be offered; and
  - (e) the terms of the intended offer; and
  - (f) a description of the class of persons to whom it is intended the offer will be made; and
  - (g) the date on which the promoter expects the offer will be made.

*Other restrictions on advertising*

**26 Operator must ensure that advertisements are not misleading or deceptive**

- (1) Before any advertisement for occupation rights in a retirement village is published, the operator and promoter of the village must take all practicable steps to ensure that the advertisement is not misleading or deceptive.

- (2) Subsection (1) does not affect the obligations of the operator or promoter under the Fair Trading Act 1986.

### *Occupation right agreements*

#### **27 Occupation right agreements**

- (1) No person may make any other person an offer of occupation in a retirement village, or accept an offer by a person to become a resident in a retirement village, except in accordance with an occupation right agreement that contains, in a clear and unambiguous form,—
- (a) provisions and information of the kind specified in Schedule 3; and
  - (b) any other provisions required to be specified in an occupation right agreement by this Act or regulations made under this Act; and
  - (c) if the occupation right relates to a residential unit to be built or completed at a later date, a proposed date for completion of that unit.
- (2) An occupation right agreement may contain—
- (a) a provision requiring decisions of a majority of residents or a specified proportion of residents greater than a majority to bind all residents, except where this Act or any other enactment requires a specified proportion of residents to give consent in relation to any matter;
  - (b) provisions that differ from the provisions of the current registered form of occupation right agreement, but only if those provisions are no less favourable to the residents concerned than the provisions contained in the registered document.
- (3) An intending resident must receive independent legal advice before signing the occupation right agreement.
- (4) The signature of the intending resident on the occupation right agreement must be witnessed by a lawyer.
- (5) The lawyer who witnesses the signature of an intending resident must certify on the prescribed form (if any) that, before the intending resident signed the agreement, the lawyer explained to that person the general effect of the agreement and its implications.

- (6) The explanation required to be given by subsection (5) must be given in a manner and in language that is appropriate to the age and understanding of the intending resident.
- (7) If an occupation right agreement is to be signed by an attorney of an intending resident, or a welfare guardian or manager of the property of an intending resident appointed under the Protection of Personal and Property Rights Act 1988, that person must be treated as the intending resident for the purposes of subsections (3) to (6).

## **28 Cooling-off period and cancellation for delay**

- (1) An occupation right agreement must contain a provision allowing a resident (other than a person who is a resident solely because paragraph (c) of the definition of **resident** applies to that person) to cancel the agreement,—
  - (a) without having to give any reason, by notice given not later than 15 working days after the agreement is signed by the resident; and
  - (b) if the agreement relates to a residential unit to be built or completed at a later date and the residential unit is not finished to the point of practical completion within 6 months after the proposed date for completion of the unit, by notice given at any time after the expiry of that 6-month period.
- (2) Notice of cancellation—
  - (a) must be in writing and in a form that indicates (irrespective of the exact words used) the intention of the resident to cancel the agreement; and
  - (b) may be given by the resident or any person authorised in writing by the resident to act on his or her behalf.
- (3) The notice may be given to—
  - (a) the operator; or
  - (b) the real estate agent or other person who dealt with the resident on behalf of the operator when the resident acquired an occupation right, unless the operator has notified the resident that the person has ceased to act on behalf of the operator; or
  - (c) any person who the operator has notified the resident is a person authorised to receive communications on behalf of the operator.

- (4) The operator is entitled to reasonable compensation for services provided to the resident under the occupation right agreement and for damage to a residential unit or any facilities in the retirement village for which the resident is responsible before the cancellation takes effect.
- (5) Despite subsection (1), an occupation right agreement may contain a cancellation provision of the kind referred to in subsection (1) that is more favourable to the resident than the provision referred to in subsection (1), but, if the agreement fails to contain any provision of the kind referred to in subsection (1) or contains a provision that is less favourable to the resident than that provision, the agreement is deemed to contain the provision referred to in subsection (1).

## **29 Deposits and other payments must be independently held**

- (1) Every deposit, progress payment, and other payment made by a resident as payment for an occupation right or future occupation right in a retirement village must be held for the benefit of the resident in an interest-bearing account until settlement of the transaction or cancellation of the occupation right agreement under section 28 by either—
  - (a) the statutory supervisor of the retirement village (if there is one); or
  - (b) if there is no statutory supervisor, by a lawyer nominated by both the resident and the operator in a document that is separate from the occupation right agreement.
- (2) If an occupation right agreement is cancelled under section 28 the resident is entitled, on request, to a refund, with interest and without deduction other than tax, of the deposit and all progress payments within 10 working days after the request.
- (3) If, at the expiry of the period allowed under section 28 for the cancellation of an occupation right agreement, notice of cancellation has not been given, any interest accrued on a deposit, progress payment, or other payment to which subsection (1) applies must be paid to the operator.

## **30 Information to be provided**

- (1) Before any occupation right agreement can be entered into, the intending resident must receive—

- (a) a disclosure statement that complies with Schedule 2; and
  - (b) the residents' code of rights; and
  - (c) the code of practice (if any), and, if the code is not yet in force, a statement in writing that the code is not yet in force and the date on which it comes into force; and
  - (d) a copy of the occupation right agreement.
- (2) In any proceedings that involve an issue as to whether an intending resident has received the information specified in subsection (1),—
- (a) it is for the operator to prove that the intending resident received the information or advice; but
  - (b) a written acknowledgment by the intending resident that he or she has received the information is, in the absence of evidence to the contrary, sufficient proof that the resident has received the information or advice.

### **31 Occupation right agreement voidable**

- (1) If an occupation right agreement is entered in contravention of section 18(3) or section 25(1) or section 27 or section 30(1) in any substantial respect, the agreement is, unless it has been terminated, voidable by the resident by notice in writing to the operator and to the statutory supervisor of the village (if there is one) given at any time within the prescribed period).
- (2) If a resident exercises the right conferred by subsection (1), the resident is entitled to receive—
- (a) a refund, without deduction, of—
    - (i) all capital sums paid before or during the resident's occupancy as consideration for right of occupation in the residential unit and all other payments for which services or facilities were not provided;
    - (ii) interest at the prescribed rate;
    - (iii) actual and reasonable costs associated with the voiding of the agreement;
  - (b) interest at the prescribed rate;
  - (c) actual and reasonable costs associated with the voiding of the agreement (for example, legal expenses and removal costs).
- (3) Despite subsections (1) and (2),—

- (a) if the resident and the operator cannot agree when the refund required by subsection (2) is to be made, either party may give a dispute notice under section 53 or section 54, as the case requires:
  - (b) if an operator receives from a resident a notice purporting to avoid an occupation right agreement for a contravention of section 18(3) or section 25(1) or section 27 or section 30(1) that the operator considers not to involve a contravention of any of those provisions in any substantial respect, the operator—
    - (i) may give a dispute notice under section 54 concerning the operation of subsections (1) and (2); and
    - (ii) must take all reasonable steps to remedy the contravention; and
    - (iii) if a dispute notice is given by the operator, is not required to make the refund referred to in subsection (2) while the dispute is unresolved.
- (4) In subsection (1), the **prescribed period**,—
- (a) in relation to a contravention of section 18(3) or section 25(1) is the lesser of—
    - (i) a period of 3 years after the date on which the agreement was entered into; or
    - (ii) a period of 6 months after the resident knows, or ought to know, of the contravention:
  - (b) in relation to a contravention of section 27 or section 30(1) is the lesser of—
    - (i) a period of 1 year after the date on which the agreement was entered into; or
    - (ii) a period of 6 months after the resident knows, or ought to know, of the contravention.
- (5) For the purposes of this section, a contravention of a particular provision is a contravention of that provision in a substantial respect if—
- (a) the contravention involves a significant detriment to the resident; or
  - (b) the contravention is otherwise material, and is not solely technical or minor in character; or
  - (c) the contravention involves deliberate misconduct on the part of the operator.

*Code of residents' rights***32 Retirement villages to have code of residents' rights**

- (1) The code of residents' rights set out in Schedule 4 is a summary of the minimum rights conferred on a resident of a retirement village by this Act.
- (2) Nothing in the code of residents' rights applies to any health services or disability services or any facilities to which the Code of Health and Disability Services Consumers' Rights under the Health and Disability Commissioner Act 1994 applies.

**33 Distribution of code of residents' rights**

- (1) The operator must ensure that a copy of the code of residents' rights is—
  - (a) given to each intending resident before the person enters into an occupation right agreement; and
  - (b) given to a resident (or his or her nominated representative) on request.
- (2) A resident is entitled to bring any alleged breach of a right referred to in the code of residents' rights to the attention of 1 or more of the following:
  - (a) the operator of the retirement village;
  - (b) the statutory supervisor of the retirement village (if there is one);
  - (c) the Registrar;
  - (d) the Retirement Commissioner;
  - (e) a disputes panel, in the manner provided in Part 4.
- (3) Subsection (2) does not limit the ability of a resident to bring any alleged breach of a right referred to in the code of residents' rights to the attention of any other person.

*Other information relevant to occupancy***34 Right to be supplied with information relevant to occupancy**

- (1) Each resident or intending resident of a retirement village has the right to be promptly informed by the operator of the retirement village about any matter that would or might have a material impact on—
  - (a) the occupancy right, or rights to quiet enjoyment, of the resident or intending resident; or

- (b) the charges levied on the resident or intending resident for his or her occupancy right, or right to services and facilities, within the retirement village.
- (2) The operator of a retirement village must,—
- (a) if the village has a statutory supervisor, promptly notify the statutory supervisor and, if the statutory supervisor so directs, each resident and intending resident of the retirement village of the matters referred to in subsection (3); or
  - (b) if the village does not have a statutory supervisor, promptly notify each resident and intending resident of the retirement village of the matters referred to in subsection (3).
- (3) The matters required to be notified under subsection (2) are—
- (a) any proposal by the operator to develop or redevelop any part of the land on which the retirement village is situated or to acquire any contiguous land for development:
  - (b) the receipt by the operator of a notice from the Registrar of suspension of the registration of the retirement village:
  - (c) any request by the operator to the Registrar for cancellation of the registration of the retirement village:
  - (d) any decision by the Registrar, under section 41, to exempt the operator from the requirement to appoint a statutory supervisor:
  - (e) the appointment of a new statutory supervisor:
  - (f) any decision by the Registrar, under section 93, to exempt the operator from the requirement to comply with a provision in the code of practice:
  - (g) any proposed increase in secured liabilities held by any person over any part of the retirement village:
  - (h) any proposed increase in the maximum sum available to the operator of a retirement village under any credit facility:
  - (i) any actual or threatened action by a creditor, mortgagee, or chargeholder in respect of the retirement village against the operator of the retirement village in respect of that person's security or any sum over \$1,000:
  - (j) any decision by an insurer to refuse to insure the retirement village or any part of it:

- (k) any actual or threatened legal proceedings against the retirement village or an operator of the retirement village that affect the interests of any resident or intending resident:
  - (l) any action by a creditor to put the operator or the retirement village in receivership or liquidation.
- (4) This section does not limit section 32 or Schedule 4.

*Rights of residents in relation to occupancy right*

**35 No legal impediments to occupation**

The operators of a retirement village must ensure that, at the commencement of the resident's occupation right, there is no legal impediment to the occupation of the residential unit for residential purposes.

### **Part 3**

## **Retirement Commissioner and statutory supervisors**

### *Retirement Commissioner*

**36 Retirement Commissioner to monitor, etc, effect of this Act**

- (1) The functions of the Retirement Commissioner in relation to this Act are as follows:
- (a) to monitor the effects of this Act and the regulations and code of practice made under this Act:
  - (b) to advise on issues relating to retirement villages when requested to do so by the Minister or required by this Act:
  - (c) to promote education about retirement village issues and to publish information about such issues:
  - (d) to collect and publish information relating to any of the functions referred to in this section:
  - (e) to perform any other function conferred by this Act or regulations made under this Act.
- (2) Section 8(3) of the Retirement Income Act 1993 does not apply to the exercise of the Retirement Commissioner's functions under this Part.
- (3) Every operator of a retirement village must answer any questions and supply any information relating to the retirement village reasonably requested by the Retirement Commissioner

for the performance of the Retirement Commissioner's functions.

- (4) The operator must supply the information within 20 working days of receiving the request or within any further period that the Retirement Commissioner allows.

### *Statutory supervisors*

#### **37 Registrar must approve statutory supervisor**

- (1) Subject to subsection (2), a person must not be appointed a statutory supervisor unless first approved by the Registrar for that purpose.
- (2) Every person who was, immediately before the commencement of this section, approved under section 48 of the Securities Act 1978 to act as the statutory supervisor of retirement village schemes is, subject to subsection (4), approved as a statutory supervisor for the purposes of this Act.
- (3) The Registrar may approve a person as a statutory supervisor for—
  - (a) a specific retirement village; or
  - (b) all retirement villages; or
  - (c) retirement villages of a class defined by the Registrar.
- (4) The Registrar may revoke or amend the approval of a person under this section.

#### **38 Operator must appoint statutory supervisor**

- (1) The operator of a retirement village must appoint a statutory supervisor for the village, unless the operator has obtained an exemption under section 41.
- (2) The statutory supervisor must be appointed under a deed of supervision between the operator and the statutory supervisor, on the terms and conditions set out in that document.
- (3) A deed of supervision must contain all information and other matters or provisions that are required to be included in it by regulations made under this Act.
- (4) Subject to section 37(3), the same person may be a statutory supervisor for more than 1 retirement village, whether or not owned by the same operator.

**39 Registrar's consent required for termination or non-renewal of appointment**

- (1) The Registrar must consent in writing before the operator or the statutory supervisor—
  - (a) terminates the appointment of the statutory supervisor; or
  - (b) elects not to renew the appointment.
- (2) In the case of termination or election not to renew by the statutory supervisor, the Registrar's consent is not necessary if the statutory supervisor has given the operator 1 year's notice.

**40 Operator must not indemnify or exempt statutory supervisor from liability**

- (1) The operator must not indemnify the statutory supervisor for, or exempt the statutory supervisor from, any liability for breach of duty, breach of trust or other fiduciary obligation, that involves gross negligence, bad faith, or wilful misconduct by the statutory supervisor.
- (2) An indemnity or agreement contrary to subsection (1) is void.

**41 Exemption from requirement for statutory supervisor**

- (1) The Registrar may exempt an operator from appointing a statutory supervisor if the Registrar is satisfied that the criteria for exemption prescribed under section 104 are met.
- (2) An operator applies to the Registrar for an exemption by—
  - (a) completing the prescribed form and delivering it to the Registrar; and
  - (b) paying the prescribed fee.
- (3) The Registrar may exempt the operator on the terms and conditions, and for the period, that the Registrar thinks appropriate.
- (4) The Registrar may revoke an exemption, or vary its terms or conditions, if the Registrar is satisfied that—
  - (a) the ground for the exemption no longer applies; or
  - (b) the operator has not complied with its terms and conditions.
- (5) The Registrar must give notice of the revocation or variation of an exemption as soon as possible to the operator.

**42 Duties of statutory supervisor**

A statutory supervisor must—

- (a) provide a stakeholder facility (for example, under section 29(1)) for intending residents and residents who pay deposits or progress payments in respect of occupation right agreements or uncompleted residential units or facilities at the retirement village; and
- (b) monitor the financial position of the retirement village; and
- (c) report annually to the Registrar and residents on the performance of its duties and the exercise of its powers; and
- (d) perform any other duties that are imposed by this Act or any other Act, any regulations made under this Act, and any documents of appointment.

**43 Powers of statutory supervisor**

- (1) If a statutory supervisor believes the financial position of the retirement village, the security of the interests of the residents, or the management of the retirement village is inadequate, the statutory supervisor may—
  - (a) direct the operator to supply all residents (or their nominated representatives) with the information that the statutory supervisor may specify; or
  - (b) direct the operator to operate the retirement village in a specified manner; or
  - (c) apply to the Court under section 49 of the Securities Act 1978 which applies with all necessary modifications.
- (2) The statutory supervisor may direct that an advertisement that the statutory supervisor considers is inconsistent with this Act or regulations made under this Act, or the disclosure statement, occupation right agreement, or code of practice, not be published or distributed to the public.

**44 Public statement by statutory supervisor**

The Registrar may authorise a statutory supervisor to make a public statement concerning the financial position, security of the interests of residents, or management of the retirement village if the Registrar and the statutory supervisor believe it is in the interests of residents or potential or intending residents to do so.

**45 Liability for loss limited**

A statutory supervisor is not liable for any loss suffered by any resident or other person as a result of any action taken under section 43 or section 44 unless the statutory supervisor has acted in bad faith or recklessly.

**46 Statutory supervisor may require information**

- (1) The statutory supervisor may require the operator to provide information relating to the financial position, security of the interests of residents, or management of the retirement village to the statutory supervisor.
- (2) The operator must provide the information within 10 working days of receiving the request.

*Auditor must answer questions and supply information***47 Auditor must answer questions and supply information**

- (1) The auditor of a retirement village must comply, at the operator's expense, with any reasonable request by the statutory supervisor, the Registrar, or the Retirement Commissioner that the auditor answer questions or provide other information in relation to the retirement village.
- (2) The auditor must comply within 20 working days after receiving the request or within the further period that the person making the request allows.

**Part 4****Dispute resolution, enforcement, and penalties***Dispute resolution***48 Interpretation**

In this Part,—

**applicant** means a person who gives a dispute notice under section 52

**dispute resolution** means the resolution of a dispute by a disputes panel

**resident** means—

- (a) a resident of a retirement village; or
- (b) a former resident.

**respondent** means a person who is given a dispute notice under section 52.

**49 Resident's rights may be exercised by personal representative**

Any right conferred by this Part on a resident may be exercised by his or her personal representative.

**50 Types of dispute procedures**

In any retirement village there are 2 forms of dispute procedure: a complaints facility and dispute resolution.

**51 Complaints facility**

The operator must operate and make known to the residents of a retirement village a facility for dealing with complaints by the residents.

**52 Resident or operator may require dispute resolution**

- (1) A resident or the operator may require that a dispute be resolved by a disputes panel by giving the other party or parties a dispute notice.
- (2) A resident may not require resolution of a dispute (other than a dispute referred to in section 53(3)) by a disputes panel unless—
  - (a) the dispute has earlier been referred to the complaints facility; and
  - (b) 20 working days have elapsed since referral to the complaints facility.
- (3) An operator may not require resolution of a dispute by a disputes panel unless—
  - (a) the operator has notified the resident concerned of the dispute; and
  - (b) the operator has made reasonable efforts to resolve the dispute with the resident; and
  - (c) 20 working days have elapsed since the resident was notified.

**53 Types of dispute for which resident may give dispute notice**

- (1) A resident may give a dispute notice for the resolution of a dispute concerning any of the operator's decisions—
  - (a) affecting the resident's occupation right or right to access services or facilities; or

- (b) relating to changes to charges for outgoings or access to services or facilities imposed or payable under the resident's occupation right agreement; or
  - (c) relating to the charges or deductions imposed as a result of the resident's occupation right coming to an end for any reason or relating to money due to the resident under the resident's occupation right agreement following termination or avoidance under section 31 of the resident's occupation right agreement; or
  - (d) relating to an alleged breach of a right referred to in the code of residents' rights or of the code of practice.
- (2) Nothing in subsection (1) enables a resident to give a dispute notice concerning any health services or disability services, or any facilities to which the Code of Health and Disability Services Consumers' Rights under the Health and Disability Commissioner Act 1994 applies.
  - (3) A resident may give a dispute notice for resolution of a dispute concerning the operator's breach of the resident's occupation right agreement or code of practice in disposing of a residential unit in a retirement village formerly occupied by the resident.
  - (4) A resident may give a dispute notice for the resolution of a dispute affecting the resident's occupation right between the resident and any other person who is—
    - (a) another resident of the retirement village; or
    - (b) in another resident's residential unit with that other resident's permission.

#### **54 Types of dispute for which operator may give dispute notice**

- (1) An operator may give a dispute notice concerning any of the matters referred to in section 53(1)(a) to (c).
- (2) An operator may give a dispute notice concerning the operation of section 31(1) and (2) on the grounds of alleged contravention of section 18(3) or section 25(1) or section 27 or section 30(1).

**55 Operator must notify statutory supervisor of certain disputes**

- (1) The operator must forward to the statutory supervisor (if there is one) a copy of a dispute notice as soon as practicable after the dispute notice has been given if—
  - (a) the operator considers that the outcome of the dispute may affect—
    - (i) a significant number of the retirement village's residents; or
    - (ii) the general operation of the village; or
    - (iii) the operator's rights and obligations under the deed of supervision; or
  - (b) the dispute notice has been given under section 53(3).
- (2) The operator must, immediately after forwarding a dispute notice to the statutory supervisor, advise the parties to the dispute that the statutory supervisor has been notified of the dispute.
- (3) This section does not limit the right of a resident to inform the statutory supervisor of, or otherwise involve the statutory supervisor in, a dispute to which the resident is a party and for which a dispute notice may be given.

**56 Form of dispute notice**

- (1) A dispute notice must—
  - (a) be written; and
  - (b) identify the decision or decisions, or matters, in respect of which it is made; and
  - (c) identify the person or persons in respect of whom it is made, if not the operator; and
  - (d) state the grounds on which it is made; and
  - (e) state the efforts that have been made to resolve the dispute.
- (2) A dispute notice is valid if it substantially complies with subsection (1).

**57 Time for giving dispute notice**

- (1) A dispute notice must be given within 6 months after the dispute was first referred to the complaints facility or, in the case of a complaint by an operator, the resident concerned was first notified.

- (2) However, a dispute notice may be given after 6 months if the parties to the dispute agree.
- (3) A resident must not give a dispute notice for a dispute under section 53(3) before 9 months after the residential unit has become available to the operator for disposal in accordance with the resident's occupation right agreement or the code of practice.
- (4) This section does not affect, and is not affected by, the responsibilities of an operator under the provisions of the code of practice relating to the disposal of vacant residential units.

**58 Retirement Commissioner approves persons eligible for appointment to disputes panel**

- (1) The Retirement Commissioner must maintain and publish a list of persons whom the Commissioner has approved for appointment as a member of a disputes panel.
- (2) The Retirement Commissioner's approval may be—
  - (a) general, for appointment to any disputes panel; or
  - (b) specific, for appointment to a particular disputes panel; or
  - (c) on the terms and conditions that the Commissioner thinks appropriate.
- (3) The Retirement Commissioner's approval may be for a limited period, but in any event not longer than 5 years.
- (4) The Retirement Commissioner must remove the name of a person from the list if that person,—
  - (a) in the Commissioner's opinion, is unable to perform the duties of a member of a disputes panel; or
  - (b) has died; or
  - (c) had been adjudicated bankrupt; or
  - (d) has requested the removal of his or her name; or
  - (e) has been on the list for more than 5 years; or
  - (f) for any other sufficient reason should not, in the Commissioner's opinion, be appointed to a disputes panel.
- (5) The Retirement Commissioner may restore a person to the list whose name has been removed under subsection (4) if the Commissioner again approves that person for appointment as a member of a disputes panel.

**59 Operator must appoint disputes panel**

- (1) The operator must appoint a disputes panel to resolve a dispute for which a dispute notice has been given.
- (2) The operator must appoint the panel within 20 working days after—
  - (a) the operator has received the dispute notice, in the case of a notice given by a resident; or
  - (b) the operator has given a resident the dispute notice, in the case of a notice given by the operator.

**60 Composition of disputes panel**

- (1) The operator must appoint 1 or more independent persons to form the disputes panel.
- (2) The operator must consult the other parties to the dispute before making an appointment.
- (3) A person must not be appointed a member of a disputes panel unless that person's name appears on the Retirement Commissioner's list under section 58(1).
- (4) In the case of a dispute referred to in section 53(3),—
  - (a) the operator must appoint at least 3 members to the panel; and
  - (b) 1 of the members must be a retired Judge or have held a practising certificate as a barrister or solicitor for at least 7 years; and
  - (c) the person referred to in paragraph (b) must chair the panel.

**61 Disputes panel must disclose interests and previous involvement**

- (1) A person asked by an operator to become a member of a disputes panel to resolve a dispute must disclose to the operator—
  - (a) every interest that the person has in the operator, other than the interest the person has in the operator because the operator is responsible for engaging and paying the person to resolve the dispute; and
  - (b) any association between that person and any resident who is involved in the dispute.

- (2) A member of a disputes panel to which an operator proposes to allocate a dispute for resolution must disclose to the operator any previous involvement that the member has had in the dispute other than as a member of the disputes panel.

## **62 Operator's duties to secure independence of disputes panel**

- (1) An operator must not appoint as a member of a disputes panel—
  - (a) a person employed or engaged, or who was formerly employed or engaged, by the operator in any other capacity; or
  - (b) a person who discloses to the operator any interest in the operator other than the interest the person has in the operator because the operator is responsible for engaging and paying the person to resolve the dispute; or
  - (c) if the operator is a religious or charitable organisation, a person who is or has been an office holder in that organisation.
- (2) An operator must appoint the members of a disputes panel on contracts for services.
- (3) An operator must not include in a member of a disputes panel's contract any term or condition that could have the effect, directly or indirectly, of influencing the disputes panel or that member, when conducting a dispute resolution, in favour of—
  - (a) the operator; or
  - (b) any particular resident or other person involved in the dispute.
- (4) An operator must not appoint a disputes panel to resolve a dispute that contains as a member any person who discloses to the operator any previous involvement in the dispute other than as a member of the disputes panel.

## **63 Meaning of previous involvement in dispute**

- (1) For the purposes of sections 61 and 62, a person has a **previous involvement** in a dispute between a resident and another resident or person living with another resident if the person is related, or is or was formerly living with or in a relationship with, either the applicant or the respondent.

- (2) Subsection (1) does not limit the meaning of **previous involvement**.

#### **64 Conduct of hearing**

The disputes panel may conduct the dispute resolution in any manner it thinks fit, but it must comply with any other relevant provision of this Act and any regulations made under this Act.

#### **65 Hearing must be held**

- (1) In the course of conducting a dispute resolution, the disputes panel must hold a hearing unless—
- (a) the applicant withdraws the dispute resolution notice; or
  - (b) the applicant and respondent agree not to have a hearing; or
  - (c) the panel refuses to hear the dispute.
- (2) The parties to the dispute are entitled to be present and heard at the hearing.
- (3) The disputes panel must hold the hearing at a time and place that is—
- (a) agreed to by the applicant, the respondent, and the disputes panel; or
  - (b) decided on by the disputes panel, if those persons do not agree.
- (4) The disputes panel must take all practicable steps to ensure that notice of the time and place of the hearing is given—
- (a) to every person entitled to be present and heard at the hearing; and
  - (b) at least 7 days before the date of the hearing.

#### **66 Panel may refuse to hear dispute**

- (1) A disputes panel may refuse to hear, or continue to hear, a dispute if the panel considers, after consulting with the parties,—
- (a) that the dispute is frivolous or vexatious or an abuse of process; or
  - (b) that the dispute should be heard by a court of law; or
  - (c) that the panel should not hear it for any other sufficient reason.

- (2) When the panel consults the parties on a proposal to exercise any of its powers under subsection (1), the panel must advise the parties of the effect and implications of the proposal.
- (3) If the panel refuses to hear, or to continue to hear, a dispute under subsection (1)(b), the panel must refer the dispute to the nearest District Court for hearing.
- (4) A District Court to which a dispute is referred under subsection (3)—
  - (a) must hear and determine the dispute as if it were a disputes panel, and has all the powers and duties of a disputes panel under this Act:
  - (b) in respect of any matter not otherwise provided for, may hear and determine the dispute in accordance with the District Courts Act 1948 and the District Courts Rules 1992.
- (5) The panel at its discretion may award costs for the hearing to the point that the panel refuses to continue to hear the dispute, and must take into account the conduct of the parties.
- (6) If the panel refuses to hear, or continue to hear, a dispute under subsection (1)(c), the operator must appoint another panel to hear the dispute.

## **67 Evidence and attendance**

- (1) The disputes panel may admit any relevant evidence at the hearing from any person, whether or not the evidence would be admissible in a court and whether or not the person is present at the hearing.
- (2) The disputes panel may decline to receive any evidence from any person who is not present but, before doing so, must give the relevant party a reasonable opportunity to arrange to have the person attend the hearing or an adjourned hearing.
- (3) The disputes panel may make a decision even though a person entitled to be present and heard at the hearing did not attend it unless, before the disputes panel makes the decision,—
  - (a) the person gives the disputes panel a reasonable excuse for the person's non-attendance; and
  - (b) the disputes panel considers that a decision should not be made until the person has been heard.

- (4) The disputes panel may allow 1 or more parties to be represented, whether by counsel or otherwise, and to question the other party as it considers appropriate, having regard to—
- (a) the nature of the dispute; and
  - (b) the amounts or matters involved; and
  - (c) the implications for the party of an adverse finding; and
  - (d) the ability of the party to address issues personally.

**68 Matters that disputes panel must take into account in deciding certain disputes**

The matters that a disputes panel must take into account in deciding a dispute referred to in section 53(3) include—

- (a) the relevant real estate market; and
- (b) the age and condition of the retirement village; and
- (c) the effect of the panel's decision on other residents of the retirement village and on the financial stability of the village.

**69 Powers of disputes panel**

- (1) A disputes panel may—
- (a) amend an occupation right agreement so that it complies with any applicable code of practice or section 27(1); or
  - (b) order any party to comply with its obligations under an occupation right agreement or the code of practice, or to give effect to a right referred to in the code of residents' rights; or
  - (c) in the case of a dispute with the operator concerning the liability for, or payment of, any monetary amount, order the operator or, as the case may be, the resident to pay or refund all or part of the amount in dispute; or
  - (d) in the case of a dispute where the operator is not a party to the dispute,—
    - (i) order a party to return to the other party specific property not exceeding \$1,000 in value; or
    - (ii) order a party to pay the other party an amount by way of compensation not exceeding \$1,000; or
  - (e) not impose any other obligation other than in relation to the payment of costs on any party.
- (2) For the avoidance of doubt, a disputes panel may amend an occupation right agreement to comply with a provision of the

code of practice from which the operator of the retirement village is exempted from complying, but the disputes panel must make the amendment subject to that exemption while it is in force.

## **70 Additional powers of disputes panel in certain disputes**

- (1) In a dispute referred to in section 53(3), a disputes panel may make 1 or more of the following orders:
  - (a) an order that the operator must market the residential unit concerned in a particular way, or at a particular price:
  - (b) an order that the operator must pay the resident a sum in compensation:
  - (c) an order that the operator must pay the resident interest not exceeding the rate of interest prescribed under section 87 of the Judicature Act 1908:
  - (d) an order that the operator,—
    - (i) if the resident has a legal or equitable estate or interest in the residential unit, must buy the resident's estate or interest at a price and within the time fixed by the panel; or
    - (ii) in any other case, must pay the resident a sum fixed by the panel within a time fixed by the panel as if the operator had disposed of the residential unit.
- (2) The panel must not make an order under subsection (1)(d) unless it has considered the alternative orders it could make and is satisfied that none is appropriate.
- (3) The powers in subsection (1) are additional to the panel's powers under section 69.
- (4) The panel may, in relation to an order under subsection (1),—
  - (a) suspend the operation of the order until a specified date:
  - (b) adjourn the hearing to a specified date to review an order or orders that it has made.

## **71 Record of decision**

- (1) The disputes panel must record in writing its findings on material issues of fact and the reasons for its decision resolving a dispute.

- (2) The panel must give each party, and the operator (if the operator is not a party to the dispute), a copy of the record of the decision signed by the presiding member of the panel.
- (3) The operator must keep the record for at least 5 years and make it available to the statutory supervisor and the Retirement Commissioner on request.

## **72 Effect and enforcement of dispute resolution decisions**

- (1) A dispute resolution decision in relation to a dispute with an operator is binding on the applicant and the respondent.
- (2) A dispute resolution decision in relation to a dispute with another resident or person living with another resident is binding on the applicant and the respondent.
- (3) Subsections (1) and (2) do not prevent any action by way of judicial review.
- (4) An order made by a disputes panel—
  - (a) has effect and is enforceable as if it were an order of—
    - (i) the District Court if a District Court had jurisdiction to hear the dispute as a court of first instance; or
    - (ii) the High Court in any other case:
  - (b) if it is an order to pay money, creates a judgment debt.

## **73 Effect of vacancy in panel membership**

Except in the case of a single member disputes panel, the death, resignation, or unavailability of a member of a disputes panel does not prevent the remaining member or members of the panel from making a decision resolving a dispute.

## **74 Costs on dispute resolution**

- (1) The operator that appoints a disputes panel is responsible for meeting all the costs incurred by the disputes panel in conducting a dispute resolution, whether or not the operator is a party to the dispute.
- (2) Whether or not there is a hearing, the disputes panel may—
  - (a) award the applicant costs and expenses if the disputes panel makes a dispute resolution decision fully or substantially in favour of the applicant;
  - (b) award the applicant costs and expenses if the disputes panel does not make a dispute resolution decision in

- favour of the applicant but considers that the applicant acted reasonably in applying for the dispute resolution:
- (c) award any other person costs and expenses if the disputes panel makes a dispute resolution decision fully or substantially in favour of that person:
  - (d) in a dispute where the operator is not a party to the dispute, award to the operator, by way of refund, all or part of the costs incurred by the disputes panel in conducting a dispute resolution.
- (3) The disputes panel must make a decision whether to award costs and expenses under this section and the amount of any award—
- (a) after having regard to the reasonableness of the costs and expenses and the amount of any award incurred by the applicant or other person in the circumstances of the particular case; and
  - (b) after taking into account the amount or value of the matters in dispute, the relative importance of the matters in dispute to the respective parties, and the conduct of the parties; and
  - (c) in accordance with, and subject to any limitations prescribed in, any regulations made under this Act for the purpose.
- (4) Any person against whom costs and expenses are awarded under this section must pay them within 28 days of the decision to award them.

## **75 Appeal to District or High Court**

- (1) Any party to a dispute resolution may appeal against the decision of the disputes panel or District Court resolving the dispute.
- (2) The appeal is to—
  - (a) the nearest District Court if a District Court had jurisdiction to hear the dispute as a court of first instance; or
  - (b) in the case of a dispute referred to a District Court under section 66(3), the High Court; or
  - (c) the High Court in any other case.
- (3) The appeal must be heard by the Court in accordance with the directions made by the Court after the appeal has been filed.
- (4) The Court must hear the appeal by rehearing the dispute.

- (5) The appeal must be filed in the appropriate Court within 20 working days after the disputes panel has made the decision.
- (6) The decision of the Court hearing the appeal is final, and there is no further appeal.

### *Enforcement and penalties*

#### **76 Jurisdiction of High Court**

In accordance with sections 79 to 86, the High Court must hear and determine the following matters:

- (a) appeals from criminal proceedings in a District Court for offences against section 79;
- (b) applications for injunctions under section 80;
- (c) applications for orders under sections 81 and 82.

Compare: 1986 No 5 s 37

#### **77 Jurisdiction of District Court**

In accordance with sections 79 to 86, the District Court must hear and determine the following matters:

- (a) proceedings for offences against section 79;
- (b) applications for orders under sections 81 and 82.

Compare: 1986 No 5 s 38

#### **78 Jurisdiction of Disputes Tribunal**

In accordance with sections 76 to 83, a Disputes Tribunal established under section 4 of the Disputes Tribunals Act 1988 has jurisdiction to hear and determine applications for orders under section 82(3)(c) to (e).

Compare: 1986 No 5 s 39

#### **79 Contraventions of certain provisions an offence**

- (1) Every person commits an offence who, without reasonable excuse, contravenes any of sections 12, 18(3), 22(1), 25(1), 32, 33(1), 35, 38(1), 39, or 97(3), or includes any material that is false or misleading in an application for an exemption under section 41 or section 93, and is liable on summary conviction,—
  - (a) in the case of a person other than a body corporate, to a fine not exceeding \$30,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

- (2) Every person commits an offence who, without reasonable excuse, contravenes any of sections 17, 19(3), 26(1), 27(1), 28(1), 29, 30(1), 34(2), 59(2), 92(2), or 98(5) and is liable on summary conviction,—
  - (a) in the case of a person other than a body corporate, to a fine not exceeding \$15,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$50,000.
- (3) Every person commits an offence who, without reasonable excuse, contravenes any of sections 13, 16, 26, 70(2), 92(2), 95(2), 96(4), or 98(2) and (3) and is liable on summary conviction,—
  - (a) in the case of a person other than a body corporate, to a fine not exceeding \$5,000; or
  - (b) in the case of a body corporate, to a fine not exceeding \$10,000.
- (4) Every auditor of a retirement village commits an offence who fails to comply with any reasonable request made under section 47 by the statutory supervisor, the Registrar, or the Retirement Commissioner and is liable on summary conviction to a fine not exceeding \$10,000.
- (5) Every operator of a retirement village commits an offence who fails to comply with any reasonable request made under section 46 and is liable on summary conviction to a fine not exceeding \$10,000.
- (6) Every person commits an offence who, without reasonable excuse, contravenes any other provision of this Act and is liable on summary conviction to a fine not exceeding \$5,000.
- (7) Proceedings under this section may be commenced at any time within 3 years after the matter giving rise to the contravention arose.

Compare: 1986 No 5 s 40

## **80 Injunctions may be granted by Court for contravention of certain provisions**

- (1) The Court may, on the application of the Registrar, a statutory supervisor of a retirement village, or any other person, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute any of the following:
  - (a) a contravention of any of sections 25 to 33:

- (b) an attempt to contravene any of those provisions:
  - (c) aiding, abetting, counselling, or procuring any other person to contravene any of those provisions:
  - (d) inducing, or attempting to induce, any other person, whether by threats, promises or otherwise, to contravene any of those provisions:
  - (e) being in any way directly or indirectly knowingly concerned in, or party to, the contravention by any other person of any of those provisions:
  - (f) conspiring with any other person to contravene any of those provisions.
- (2) The Court may, at any time, rescind or vary an injunction granted under this section.
- (3) If an application is made to the Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may,—
- (a) if it is satisfied that the person has engaged in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or
  - (b) if, in the opinion of the Court, it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind.
- (4) An injunction referred to in subsection (3) may be granted whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind.
- (5) If an application is made to the Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may,—
- (a) if it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or
  - (b) if, in the opinion of the Court, it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind.
- (6) To avoid doubt, an injunction referred to in subsection (5) may be granted—
- (a) whether or not the person has previously engaged in conduct of that kind; and

- (b) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

Compare: 1986 No 5 s 41

## **81 Order to disclose information or publish advertisement**

- (1) If, on the application of the Registrar, a statutory supervisor of a retirement village, or any other person, the Court is satisfied that a person has engaged in conduct constituting a contravention of sections 18(3), 25, or 26, the Court may (whether or not that person has previously engaged in that conduct) make either or both of the following orders:

- (a) an order requiring that person, or any other person involved in the contravention, to disclose, at that person's own expense, to the public, or to a particular person or to persons included in a particular class of persons, in any manner specified in the order, any applicable information or applicable information of any kind that is specified:

- (b) an order requiring that person, or any other person involved in the contravention, to publish, at that person's own expense, in any manner and at any times that are specified in the order, corrective statements the terms of which are specified in, or are to be determined in accordance with, the order.

- (2) In subsection (1), **applicable information** is information that is in the possession of the person to whom the order is directed or to which that person has access.

Compare: 1986 No 5 s 42

## **82 Other orders**

- (1) The Court may make all or any of the orders referred to in subsection (3) if, in any proceedings under sections 79 to 86 or on the application of a resident, or the statutory supervisor of a retirement village, or the Registrar, the Court finds that a person, whether or not that person is a party to the proceedings, has suffered, or is likely to suffer, loss or damage due to the conduct of any other person that constitutes or would constitute—

- (a) a contravention of any of sections 25 to 33; or

- (b) aiding, abetting, counselling, or procuring the contravention of any of those provisions; or
  - (c) inducing by threats, promises, or otherwise the contravention of any of those provisions; or
  - (d) being in any way directly or indirectly knowingly concerned in, or party to, the contravention of any of those provisions; or
  - (e) conspiring with any other person in the contravention of any of those provisions.
- (2) The Court may make all or any of the orders referred to in subsection (3), whether or not it grants an injunction or makes any other order under this Part.
- (3) For the purposes of subsection (1), the Court may make the following orders:
- (a) an order declaring the whole or any part of an occupation right agreement made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct referred to in subsection (1), or of a collateral arrangement relating to that occupation right agreement, to be void and, if the Court thinks fit,—
    - (i) to have been void from the beginning; or
    - (ii) at all times on and after any date, before the date on which the order is made, that is specified in the order:
  - (b) an order varying that occupation right agreement or arrangement in any manner that is specified in the order and, if the Court thinks fit, declaring the agreement or arrangement to have had effect as so varied on and after any date, before the date on which the order is made, that is specified in the order:
  - (c) an order directing the person who engaged in the conduct referred to in subsection (1) to refund money or return property to the person who suffered the loss or damage:
  - (d) an order directing the person who engaged in the conduct referred to in subsection (1) to pay to the person who suffered the loss or damage the amount of the loss or damage:
  - (e) an order directing the person who engaged in the conduct referred to in subsection (1), at that person's own

expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage.

Compare: 1986 No 5 s 43(1), (2)

### **83 Monetary limits and exercise of jurisdiction**

- (1) In the exercise of its jurisdiction under section 82, a District Court must not—
  - (a) make any order under section 82(3) in any case where the value of the consideration for the promise or act of any party to the occupation right agreement or collateral arrangement exceeds \$200,000:
  - (b) make an order under section 82(3)(b) in any case where the value of the consideration for the promise or act of any party to the occupation right agreement or arrangement exceeds \$200,000:
  - (c) make an order under section 82(3)(c) directing a person to refund money or return property if the amount of money or the value of the property exceeds \$200,000:
  - (d) make an order under section 82(3)(d) requiring a person to pay an amount exceeding \$200,000:
  - (e) make an order under section 82(3)(e) directing a person to supply services if the value of the services exceeds \$200,000.
- (2) In the exercise of its jurisdiction under section 82, a Disputes Tribunal must not—
  - (a) make an order under section 82(3)(c) directing a person to refund money or return property if the amount of money or the value of the property exceeds \$7,500:
  - (b) make an order under section 82(3)(d) requiring a person to pay an amount exceeding \$7,500:
  - (c) make an order under section 82(3)(e) directing a person to supply services if the value of the services exceeds \$7,500.
- (3) Despite subsection (2), if, in respect of any proceedings properly before a Disputes Tribunal, the jurisdiction of the Tribunal has been extended under an agreement made under section 13 of the Disputes Tribunals Act 1988, subsection (2) must be read as if every reference in that subsection to \$7,500 were a reference to \$12,000.

Compare: 1986 No 5 s 43(3), (4), (4A)

**84 General provisions relating to section 82 orders**

- (1) An application under section 82(1) may be made at any time within 3 years after the date on which the loss or damage, or the likelihood of loss or damage, was discovered or ought reasonably to have been discovered.
- (2) An order made under section 82(3)(a) or (b) does not prevent proceedings being instituted or commenced under sections 79 to 86.
- (3) Nothing in section 82 or section 83 limits or affects the Illegal Contracts Act 1970.
- (4) For the purposes of sections 81 and 82, a reference to **Court** includes a reference to a District Court and also, for the purposes of section 82, a Disputes Tribunal.
- (5) Nothing in section 82 or section 83 affects section 317 of the Injury Prevention, Rehabilitation, and Compensation Act 2001.

Compare: 1986 No 5 s 43(5)–(9)

**85 Defences**

- (1) It is a defence to a prosecution for an offence against section 79 if the defendant proves—
  - (a) that the contravention was due to a reasonable mistake; or
  - (b) that the contravention was due to reasonable reliance on information or legal advice supplied by another person; or
  - (c) that—
    - (i) the contravention was due to the act or default of another person, or to an accident or to another cause beyond the defendant's control; and
    - (ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.
- (2) For the purposes of subsection (1)(b) and (c), **another person** does not include—
  - (a) a servant or agent of the defendant (other than a lawyer); or
  - (b) if the defendant is a body corporate, a director, servant, or agent of the defendant (other than a lawyer).

- (3) It is a defence to a prosecution for an offence against section 79 or to any other proceedings under sections 80 to 86, in relation to a contravention of a provision committed by the publication of an advertisement, if the defendant proves—
- (a) that the defendant's business is publishing or arranging for the publication of advertisements; and
  - (b) that the defendant received the advertisement or the information contained in the advertisement, as the case may be, in the ordinary course of that business and did not know and had no reason to suspect that the publication of the advertisement or the publication of the advertisement containing that information, as the case may be, would constitute a contravention of the provision.

Compare: 1986 No 5 s 44(1), (2), (4)

### **86 Finding in proceedings to be evidence**

In any application for an order against a person under section 82, a finding of any fact made in proceedings for an injunction under section 80 or for an order under section 81 or for an offence under section 79 (being proceedings before the High Court or a District Court in which that person was found to have engaged in conduct of the kind referred to in section 82(1)(a) to (e)) is—

- (a) prima facie evidence of that fact; and
- (b) may be proved by production of a document under the seal of the High Court or District Court, as the case may be, in which the finding was made.

Compare: 1986 No 5 s 46

## **Part 5**

### **Registrar of Retirement Villages, code of practice, and miscellaneous matters**

#### *Registrar of Retirement Villages*

### **87 Appointment of Registrar**

- (1) There must be a Registrar of Retirement Villages who must be appointed under the State Sector Act 1988 by the chief executive of the department that, with the authority of the Prime Minister, is for the time being responsible for the employment of that Registrar.

- (2) The person holding office as Registrar of Companies under the Companies Act 1993 immediately before the commencement of this section is deemed to have been appointed as Registrar of Retirement Villages in accordance with this section.

### **88 Power of Registrar to delegate**

- (1) The Registrar may from time to time, in writing, delegate to any person all or any of the functions, duties, and powers exercisable by the Registrar under this Act, except this power of delegation.
- (2) Subject to any general or special directions given or conditions attached at any time by the Registrar, the person to whom any functions, duties, or powers are delegated under this section must perform and may exercise those functions, duties, and powers in the same manner and with the same effect as if they had been conferred on that person directly by this section and not by delegation.
- (3) Every person purporting to act under any delegation under this section is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (4) Any delegation under this section may be made to a specified person or to persons of a specified class, or may be made to the holder or holders for the time being of a specified office or specified classes of offices.
- (5) Every delegation under this section is revocable in writing at will, and no such delegation prevents the exercise of any function, duty, or power by the Registrar.
- (6) Every delegation under this section, until revoked, continues in force according to its tenor, even if the Registrar by whom it was made has ceased to hold office.

### *Code of practice*

#### **89 Code of practice must be prepared and published**

- (1) The Minister may approve 1 of the draft codes of practice submitted to the Minister by any retirement village, group of retirement villages, or association of operators of a retirement village as the code of practice applicable to all retirement villages, after considering any recommendations of the

- Retirement Commissioner made in accordance with subsection (2).
- (2) Before making a recommendation to the Minister for the purposes of subsection (1), the Retirement Commissioner must consider any recommendations by any groups of persons or bodies that, in the opinion of the Retirement Commissioner, represent the interests of—
    - (a) operators of retirement villages; or
    - (b) residents or intending residents; or
    - (c) statutory supervisors; or
    - (d) other persons.
  - (3) The Minister is not obliged to approve a draft code of practice submitted under subsection (1) that the Minister considers is incomplete or inappropriate or that fails to comply with the requirements of subsection (5) or Schedule 5.
  - (4) If no draft code of practice acceptable to the Minister has been submitted under subsection (1) before 1 January 2005, the Minister must prepare, approve, and publish a code of practice after considering any recommendations of—
    - (a) the Retirement Commissioner; and
    - (b) any groups of persons or bodies that, in the opinion of the Minister, represent the interests of operators of retirement villages, residents or intending residents, statutory supervisors, or other persons.
  - (5) A draft code of practice submitted under subsection (1) or a code of practice prepared under subsection (4) must—
    - (a) specify rules of practice in relation to every matter that the code is required by Schedule 5 to address;
    - (b) be consistent with the rights referred to in the code of residents' rights.
  - (6) The Minister must publish in the *Gazette* notice of—
    - (a) the approval of any code of practice approved by the Minister under subsection (1) or subsection (4) and any variation under section 90(4); and
    - (b) the place or places at which copies of the code and any variation can be obtained.

## **90 Duration and variation of code of practice**

- (1) The code of practice—
  - (a) comes into force,—

- (i) in the case of the first code of practice, 1 year after it is approved under section 89(1) or (4):
    - (ii) in the case of any subsequent code of practice approved under section 89(1), on the date stated by the Minister in the document approving the code; and
  - (b) continues in force until a subsequent code of practice approved under section 89(1) comes into force.
- (2) An operator of a retirement village may elect to be bound by a code of practice that is not yet in force, by giving notice of that election to—
- (a) the Registrar; and
  - (b) the statutory supervisor of the village (if there is one); and
  - (c) every resident and intending resident of the retirement village.
- (3) If an operator elects, under subsection (2), to be bound by a code of practice that is not yet in force,—
- (a) that code must for all purposes be treated as if it were in force in respect of that operator and the retirement village to which the election relates; and
  - (b) any earlier code of practice ceases to apply to that operator and the retirement village to which the election relates.
- (4) The code of practice approved under section 89(1) or (4) may be varied by the Minister after considering any recommendations of—
- (a) the Retirement Commissioner; and
  - (b) any groups of persons or bodies that, in the opinion of the Minister, represent the interests of operators of retirement villages, residents or intending residents, statutory supervisors, or other persons.
- (5) Any variation by the Minister comes into force on the date stated by the Minister in the document making the variation.

## **91 Retirement Commissioner to provide publication information**

- (1) Before making any recommendation under section 89 or section 90(4), the Retirement Commissioner must give public notice of—

- (a) the places at which the public may inspect or obtain, without charge,—
    - (i) the draft code of practice under consideration; or
    - (ii) the proposed variation under consideration:
  - (b) the last date on which the Retirement Commissioner will receive written submissions on the draft code of practice or variation (which date must not be less than 1 month after the date of the publication of the notice).
- (2) The Retirement Commissioner must also ensure that the information required to be given by public notice under subsection (1) can be accessed by the public at a website maintained by the Commissioner.

## **92 Status of code of practice**

- (1) A code of practice is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but not for the purposes of the Acts and Regulations Publication Act 1989.
- (2) While a code of practice is in force, it—
- (a) must be complied with by—
    - (i) every operator of a retirement village;
    - (ii) every receiver or liquidator or statutory manager of an operator or the property of the operator; and
  - (b) is enforceable as a contract by a resident and prevails over any less favourable provision in his or her occupation right agreement; and
  - (c) must be given effect to in any occupation right agreement offered to a resident.
- (3) Nothing in a code of practice applies to any health services or disability services or facilities to which the Code of Health and Disability Services Consumers' Rights under the Health and Disability Commissioner Act 1994 applies.
- (4) The operator of a retirement village must make a copy of the code of practice available to every resident and intending resident on request.
- (5) Subsection (2) is subject to section 93.

**93 Exemption from requirement to comply with code of practice**

- (1) The Registrar may exempt an operator from complying with any provision of the code of practice if the Registrar is satisfied that the criteria for exemption prescribed under section 105 are met.
- (2) An operator applies to the Registrar for an exemption by—
  - (a) completing the prescribed form and delivering it to the Registrar; and
  - (b) paying the prescribed fee.
- (3) The Registrar may exempt the operator on the terms and conditions, and for any period (not exceeding 2 years), that the Registrar thinks appropriate in the particular circumstances.
- (4) The Registrar may revoke an exemption, or vary its terms or conditions, if the Registrar is satisfied that—
  - (a) the ground for the exemption no longer applies; or
  - (b) the operator has not complied with its terms and conditions.
- (5) The Registrar must give notice of the revocation or variation of an exemption as soon as possible to—
  - (a) the statutory supervisor (if there is one); and
  - (b) the operator.

*Registered office of retirement village***94 Registered office**

- (1) A retirement village must always have a registered office in New Zealand.
- (2) The registered office of a retirement village at a particular time is the place that is described as its registered office in the register maintained under Schedule 1 at that time.
- (3) The description of the registered office must—
  - (a) state the address of the registered office; and
  - (b) if the registered office is at the offices of any firm of chartered accountants, barristers and solicitors, or any other person, state—
    - (i) that the registered office of the retirement village is at the offices of that firm or person; and
    - (ii) particulars of the location in any building of those offices; or

- (c) if the registered office is not at the offices of any such firm or person but is located in a building occupied by persons other than the retirement village, state particulars of its location in the building.

Compare: 1993 No 105 s 186

### *Change of registered office*

#### **95 Change of registered office**

- (1) The operators of a retirement village may change the registered office of the retirement village at any time.
- (2) Notice in the prescribed form of the change must be given to the Registrar for registration.
- (3) The change in the registered office takes effect on a date stated in the notice, not being a date earlier than 5 working days after the notice is registered.

Compare: 1993 No 105 s 187

### *Address for service of retirement village*

#### **96 Address for service**

- (1) A retirement village's address for service at any particular time is the address that is described as its address for service in New Zealand in the register maintained under Schedule 1 at that time.
- (2) A retirement village's address for service must not be at a postal centre or document exchange.
- (3) The operators of a retirement village may change the address for service of the retirement village at any time.
- (4) Notice in the prescribed form of the change must be given to the Registrar for registration.
- (5) A change of address for service takes effect on a date stated in the notice, not being a date that is earlier than 5 working days after the notice is registered.

Compare: 1993 No 105 s 193

### *Registrar's powers of inspection*

#### **97 Registrar's powers of inspection**

- (1) The Registrar or a person authorised by the Registrar may,—
- (a) for the purpose of—

- (i) ascertaining whether a retirement village or operator complies, or has complied, with this Act or the Financial Reporting Act 1993; or
  - (ii) ascertaining whether the Registrar should exercise any of his or her rights or powers under this Act or the Financial Reporting Act 1993; or
  - (iii) detecting offences against this Act or the Financial Reporting Act 1993; and
- (b) if, in the Registrar's opinion, it is in the public interest to do so,—
  - (i) inspect and take copies of relevant documents; or
  - (ii) take possession of relevant documents and remove them from the place where they are kept, and retain them for a reasonable time, for the purpose of taking copies; or
  - (iii) retain relevant documents for a period that is, in all the circumstances reasonable, if there are reasonable grounds for believing that they are evidence of the commission of an offence.
- (2) Nothing in this section affects the Tax Administration Act 1994 or the Statistics Act 1975.
- (3) A person must not obstruct or hinder the Registrar or a person authorised by the Registrar while exercising a power conferred by subsection (1).
- (4) In this section **relevant document**, in relation to a retirement village, means a document that contains information relating to—
  - (a) the retirement village; or
  - (b) money or other property that is, or has been, managed, supervised, controlled, or held in trust by or for the retirement village.
- (5) Nothing in this section requires any person to produce a document if that person could refuse to produce that document in proceedings on the grounds of any privilege available in a court of law.

## 98 Disclosure of information and reports

- (1) Subsection (2) applies if a person authorised by the Registrar for the purpose of section 97 has—
  - (a) obtained a document or information in the course of making an inspection under that section; or

- (b) prepared a report in relation to an inspection under that section.
- (2) If this subsection applies, a person must, if directed to do so by the Registrar, give the document, information, or report to—
- (a) the Minister; or
  - (b) the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act; or
  - (c) the official assignee, for the purposes of the bankruptcy of an operator of a retirement village; or
  - (d) any person authorised by the Registrar to receive the document, information, or report for the purposes of this Act or in connection with the exercise of powers conferred by this Act; or
  - (e) a liquidator for the purposes of the liquidation of a retirement village or an operator of a retirement village.
- (3) A person authorised by the Registrar for the purposes of section 97 who has—
- (a) obtained a document or information in the course of making an inspection under that section; or
  - (b) prepared a report in relation to an inspection under that section—
- must give the document, information, or report to the Registrar when directed to do so by the Registrar.
- (4) Subsection (5) applies if a person authorised by the Registrar for the purposes of section 97 has—
- (a) obtained a document or information in the course of making an inspection under that section; or
  - (b) prepared a report in relation to an inspection under that section.
- (5) A person to whom this subsection applies must not disclose that document, information, or report except—
- (a) in accordance with subsection (2) or subsection (3); or
  - (b) subject to the approval of the Registrar, with the consent of the person to whom it relates; or
  - (c) subject to the approval of the Registrar, for the purposes of this Act or in connection with the exercise of powers conferred by this Act; or
  - (d) to the extent that the information, or information contained in the document or report, is available under any Act or in a public document; or

- (e) subject to the approval of the Registrar, to a liquidator for the purposes of the liquidation of a company or the assets of an overseas company; or
- (f) in the course of criminal proceedings.

## **99 Certain provisions of Companies Act 1993 apply**

- (1) Sections 364 and 388 to 392 of the Companies Act 1993 (which provide for the method of service to be undertaken by the Registrar) apply, with any necessary modifications, in respect of the service of any document by the Registrar under this Act or any regulations made under this Act.
- (2) Sections 368 to 372 of the Companies Act 1993 apply in respect of the disclosure of information or reports referred to in section 97, with any necessary modifications.

## **100 Deeds of participation**

If a deed of participation relating to the supervision of a retirement village that was entered into before the commencement of section 38 contains any provision that is inconsistent with this Act, that provision is void.

## **101 Regulations**

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
  - (a) regulating advertising undertaken in connection with the promotion of retirement villages and the terms and form of disclosure statements to be used for the purposes of this Act:
  - (b) specifying the matters to be included in applications for registration and the documents required to accompany those applications:
  - (c) prescribing interest on amounts for which interest is required to be paid:
  - (d) specifying matters to be included in occupation right agreements:
  - (e) specifying information, provisions, and matters to be included in a deed of supervision:
  - (f) conferring any powers or duties on the Retirement Commissioner or statutory supervisors or both:
  - (g) regulating the manner in which disputes panels must conduct their hearings:

- (h) specifying the matters for which fees and charges must be paid under this Act or regulations made under this Act:
  - (i) prescribing forms for the purposes of this Act:
  - (j) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Without limiting the generality of subsection (1)(a), regulations may be made under that provision—
- (a) prescribing the information, statements, certificates, documents, or other matters that must or must not be contained in, or endorsed on, or attached to, advertisements or disclosure statements, either generally or in respect of any specified class of advertisement or disclosure statement; or
  - (b) prohibiting or restricting the use in advertisements or disclosure statements of prescribed words, information, statements, sounds, and images, graphics, or other matters, either generally or in respect of any specified class of advertisement or disclosure statement; or
  - (c) prescribing requirements as to the layout or method of presentation of any advertisement, or disclosure statement and the size of type used in those advertisements or disclosure statements, either generally or in respect of any specified class of advertisement or disclosure statement.

## **102 Fees and charges**

- (1) Without limiting the generality of section 101, regulations may be made under that section prescribing—
- (a) fees or other amounts payable to the Registrar or the Registrar-General of Land in respect of the performance of functions and the exercise of powers under this Act or regulations made under this Act:
  - (b) amounts payable to the Registrar by way of penalty for failure to deliver a document within the time prescribed by this Act or regulations made under this Act:
  - (c) fees or other amounts payable to the Registrar or the Registrar-General of Land in respect of any other matter under this Act or regulations made under this Act.

- (2) The Registrar or the Registrar-General of Land may refuse to perform a function or exercise a power until the prescribed fee or amount is paid.
- (3) Regulations made under section 101(1)(h) may authorise the Registrar or the Registrar-General of Land to waive, in whole or in part and on any conditions prescribed, payment of any amount referred to in subsection (1)(b).
- (4) Any fee or amount payable to the Registrar or the Registrar-General of Land is recoverable in any court of competent jurisdiction as a debt due to the Crown.

### **103 Regulations defining retirement villages**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, declare specified property, buildings, or other premises, or property, buildings, or other premises of a specified class, to be or not to be a retirement village for the purposes of this Act.
- (2) The Minister must not recommend the making of any Order in Council under subsection (1) unless, in the opinion of the Minister, the Order in Council is necessary—
  - (a) to prevent the avoidance of obligations under this Act as a consequence of any scheme or arrangement; or
  - (b) to clarify whether—
    - (i) specific property, buildings, or other premises; or
    - (ii) property, buildings, or other premises of a specified class—whose status is in doubt are or are not a retirement village.

### **104 Regulations prescribing criteria for exemptions under section 41**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing criteria for the grant of exemptions under section 41 (which relates to the grant of exemptions from the requirement to appoint a statutory supervisor).
- (2) The Minister must not recommend the making of any Order in Council under subsection (1) unless, in the opinion of the Minister, the regulations will enable the grant of an exemption from the requirement to appoint a statutory supervisor only in

circumstances where the appointment of a statutory supervisor is unnecessary for the protection of residents' interests or undesirable.

### **105 Regulations prescribing criteria for exemptions under section 93**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prescribing criteria for the grant of exemptions under section 93 (which relates to the grant of exemptions from the requirement to comply with a provision or provisions of the code of practice).
- (2) The Minister must not recommend the making of an Order in Council under subsection (1) unless, in the opinion of the Minister, the regulations will enable the grant of an exemption from the requirement to comply with a provision or provisions of the code of practice only in circumstances where compliance with the provision or provisions that are the subject of the exemption is unnecessary for the protection of residents' interests or undesirable.

### **106 Notices**

- (1) Any notice under this Act may be given to any person by delivering it to that person either personally or by leaving it at, or sending it to, the person's last known or usual place of residence or business.
- (2) If a notice addressed to a person at the person's last known or usual place of residence or business is posted, it is deemed, in the absence of evidence to the contrary, to have been received at the time when it would in the ordinary course of post be delivered.

### **107 Acts not to apply**

- (1) Neither the Securities Act 1978 nor the Residential Tenancies Act 1986—
  - (a) applies to—
    - (i) any offer of occupation; or
    - (ii) any occupation right agreement; or
    - (iii) any advertisement for occupation of a retirement village; or

- (b) applies to any rights or obligations on a resident or operator of a retirement village acting in that capacity.
- (2) To avoid doubt, subsection (1) does not exempt any person from the application of any provision of the Securities Act 1978—
- (a) in relation to the offer of any securities (other than a security arising out of a matter referred to in subsection (1)(a)),—
    - (i) in the retirement village; or
    - (ii) by any operator of a retirement village; or
  - (b) in relation to an offer of securities to any person who is already a resident and who is not obliged to subscribe to the securities by an occupation right agreement.

### **108 Amendment to Corporations (Investigation and Management) Act 1989**

Section 11 of the Corporations (Investigation and Management) Act 1989 is amended by inserting, after the words “Securities Act 1978”, the words “or the Retirement Villages Act 2003”.

### **109 Amendments to Financial Reporting Act 1993**

- (1) Section 4(1) of the Financial Reporting Act 1993 is amended by adding the following paragraph:
- “(e) every operator within the meaning of the Retirement Villages Act 2003 (other than a receiver or liquidator, or a person who has no financial interest in the village).”
- (2) Section 9A of the Financial Reporting Act 1993 is amended by adding the following subsections:
- “(4) Subsection (5) applies if—
- “(a) the financial statements of an operator of a retirement village (as those terms are defined in sections 5 and 6 of the Retirement Villages Act 2003) include the activities of—
    - “(i) more than 1 retirement village; or
    - “(ii) another trading activity that operates independently of the retirement village; and
  - “(b) either the statutory supervisor of the retirement village, or (if the operator is exempted under section 41 of that

Act from appointing a statutory supervisor) the Registrar, as a condition of that exemption, requires the operator to comply with subsection (5).

- “(5) If this subsection applies, any requirement for an operator of a retirement village to prepare financial statements includes—
- “(a) a requirement to prepare financial statements in respect of the retirement village as well as in respect of the operator; and
  - “(b) a requirement to lodge a copy of both statements, within 20 working days after the financial statements are required to be signed,—
    - “(i) with the statutory supervisor of the retirement village (if there is one); or
    - “(ii) if the operator is exempted from appointing a statutory supervisor, with the Registrar or with any person the Registrar appoints under a condition of that exemption.”

#### **110 Amendment to Securities Act 1978**

Section 5(1) of the Securities Act 1978 is amended by adding the following paragraph:

- “(k) an interest in a retirement village that is an interest exempted from this Act by section 107(1) of the Retirement Villages Act 2003.”
-

## Schedule 1

### Registration and register

s 20

#### Form of register

##### *Register*

- 1 The Registrar must ensure that a register of retirement villages registered under Part 2, the application for registration and supporting documents, and the other documents required to be registered under this Act is kept.
- 2 The New Zealand register may be divided into different parts, which may be kept in any places in New Zealand that the Registrar determines from time to time.
- 3 The register may be—
  - (a) an electronic register; or
  - (b) kept in any other manner that the Registrar thinks fit.

##### *Registrar may direct transfer*

- 4 The Registrar may direct the transfer of part of the register and of any record relating to a retirement village from one place in New Zealand to another place in New Zealand.
- 5 Despite clause 4, the Registrar must not direct the transfer of any part of the register or of any record relating to a particular retirement village unless the operator of the retirement village has requested the transfer and written notice of the proposed transfer is given to the operator.
- 6 The Registrar must give notice in the *Gazette* of any transfer under clause 4 as soon as practicable after the transfer is made.
- 7 Nothing in clauses 5 and 6 applies to the transfer of part of the register or of any record relating to a particular retirement village from one place in New Zealand to another place in New Zealand if—
  - (a) the register is an electronic register; and

- (b) the transfer is of the whole of the register kept in that place.

8 All the records relating to a particular retirement village must be kept in the same place.

*Registration of documents*

9 On receipt of an application for registration as a retirement village or any other document for registration under this Act, the Registrar must,—

- (a) subject to clause 10, register the document in the register; and
- (b) give written advice of the registration to the person from whom the document was received.

10 The Registrar may refuse to register a document received by the Registrar for registration under this Act if that document—

- (a) is not in the prescribed form, if any; or
- (b) does not comply with this Act or regulations made under this Act; or
- (c) is not printed or typewritten; or
- (d) if the register is an electronic register, is not in a form that enables particulars to be entered directly by electronic or other means in the register; or
- (e) has not been properly completed; or
- (f) contains material that is not clearly legible.

11 If the Registrar refuses to register a document in reliance on clause 10, the Registrar must request either—

- (a) that the document be appropriately amended or completed and submitted for registration again; or
- (b) that a fresh document be submitted in its place.

12 A document is **registered** when—

- (a) the document itself is constituted as part of the register; or
- (b) particulars of the document are entered in any device or facility referred to in clause 3.

- 13 Neither registration nor refusal of registration of a document by the Registrar affects, or creates a presumption as to, the validity or invalidity of the document or the correctness or otherwise of the information contained in it.

*Inspection and evidence of register*

- 14 A person may, on payment of fees (if any) that are prescribed, inspect—
- (a) any document that constitutes part of the register;
  - (b) particulars of any registered document that have been entered on the register referred to in clause 3;
  - (c) any registered document, particulars of which have been entered in the register.
- 15 A person may, on payment of any prescribed fees, require the Registrar to give or certify—
- (a) a copy of, or extract from, a document that constitutes part of the register; or
  - (b) particulars of any registered document that have been entered in the register referred to in clause 3; or
  - (c) a copy of, or extract from, a registered document, particulars of which have been entered in that register.
- 16 A process to compel the production of—
- (a) a registered document kept by the Registrar; or
  - (b) evidence of the entry of particulars of a registered document in the register referred to in clause 3—
- must not issue from the Court without the leave of the Court, and, if it is issued from the Court with the leave of the Court, it must have a statement attached to it that it is issued with the leave of the Court.
- 17 A copy of, or extract from, a registered document—
- (a) that constitutes part of the register; or
  - (b) particulars of which have been entered in the register referred to in clause 3—
- that is certified to be a true copy or extract by the Registrar is admissible in evidence in legal proceedings to the same extent as the original document.

- 18 An extract certified by the Registrar as containing particulars of a registered document that have been entered in the register referred to in clause 3 is, in the absence of proof to the contrary, conclusive evidence of the entry of those particulars.
-

## Schedule 2

### Disclosure statements

s 30

#### *Required information*

#### **1 Ownership, management, and supervision**

A disclosure statement must contain all prescribed details relating to the following:

- (a) the ownership structure of the retirement village and the type of occupancy right or occupancy rights offered within the retirement village:
- (b) the type of interest a resident of the retirement village has in his or her residential unit, including (without limitation)—
  - (i) whether the interest can be sold or otherwise dealt with; and
  - (ii) any conditions or restrictions on that sale or disposition:
- (c) the management arrangements for the retirement village:
- (d) the identity and role of the statutory supervisor (if there is one):
- (e) any exemption from the requirement to appoint a statutory supervisor.

#### **2 State of village, services, charges, and accounts**

A disclosure statement must contain all prescribed details relating to the following:

- (a) the state of the retirement village, including (without limitation)—
  - (i) its stage of completion; and
  - (ii) the numbers of occupied and unoccupied residential units; and
  - (iii) the number of new units planned and the location, size, and effect on residents of those new units; and
  - (iv) the actual and average time taken to date to dispose of vacant residential units (if any) to new residents:
- (b) the services and facilities offered at the retirement village and new services or facilities planned and the location, size, and effect on residents of those new services or facilities:

- (c) charges of all kinds, including (without limitation)—
  - (i) entry costs, transfer costs, periodical charges, and charges for maintenance, rates, and insurance; and
  - (ii) the frequency of billing; and
  - (iii) the respective roles of the operator and the residents in setting charges:
- (d) provision made for maintenance and refurbishment at the retirement village:
- (e) the preparation, auditing, and disclosure of financial accounts for the retirement village.

### **3 Occupation right agreements, terminations, deductions, and estimated financial returns**

A disclosure statement must contain all prescribed details relating to the following:

- (a) the cooling-off period and the right to cancel for delay provided by section 28 of the Retirement Villages Act 2003, and any additional cooling-off period or right to cancel for delay given by the occupation right agreement:
- (b) whether the operator or a resident can vary an occupation right agreement and if so in what circumstances:
- (c) the arrangements for termination of an occupation right agreement, including (without limitation)—
  - (i) the effect of termination on the position of other persons living in the residential unit vacated by the resident; and
  - (ii) the nature of any continuing charges following termination; and
  - (iii) the process to be followed in finding a new resident for a vacant residential unit; and
  - (iv) the process for determining the sum or sums to be paid by the new resident for the right to occupy the vacant residential unit and the entitlements of any resident, former resident, or the estate of a former resident in relation to that sum or sums:
- (d) deductions from payments made by or due to residents, including (without limitation)—
  - (i) deductions made on entry or exit from the retirement village and deductions from periodical payments; and

- (ii) deductions made for the purposes of maintenance, refurbishment, and development; and
  - (iii) deductions for rates, maintenance and other outgoings:
- (e) the estimated financial return that a resident, former resident, or the estate of a former resident, could expect to receive on the sale or other disposal of a vacant residential unit at intervals of 2 years, 5 years, and 10 years after the resident enters into an occupation right agreement; including (without limitation)—
- (i) how that estimated return is affected by the duration of the resident's occupation; and
  - (ii) whether that estimated return will be affected by a termination of the occupation right agreement arising out of a breach of the agreement by the resident or a decision of the resident to terminate the agreement voluntarily.

#### **4 Other matters**

A disclosure statement must—

- (a) disclose whether any holder of a security interest to whom section 12(1)(b) applies has refused to consent to the registration of the village and the effect of that refusal; and
  - (b) contain all prescribed details of any exemption from the requirement to comply with a provision or provisions of the code of practice; and
  - (c) contain any other matters required to be included in the statement by the code of practice or any regulations made under the Retirement Villages Act 2003.
-

s 27

### **Schedule 3**

## **Occupation right agreements**

### Required information and provisions

1. The occupation right agreement must contain—
  - (a) provisions in relation to the following topics:
    - (i) the staffing of the retirement village;
    - (ii) the safety and personal security of residents;
    - (iii) fire protection and emergency management;
    - (iv) the transfer of residents within the retirement village;
    - (v) meetings of residents with the operator;
    - (vi) accounts;
    - (vii) maintenance and upgrading;
    - (viii) the termination of the occupation right agreement by a resident or the operator;
    - (ix) communication to those for whom English is a second language or whose ability to communicate is limited;
  - (b) provisions requiring—
    - (i) the operator and the purchaser to consult with residents before the operator's interest in the village is sold or otherwise disposed of;
    - (ii) the consultation referred to in subparagraph (i) to take place—
      - (A) at a time directed by the statutory supervisor of the retirement village (if there is one); or
      - (B) in any other case, at an appropriate time that is a reasonable time before settlement of the transaction;
    - (iii) the operator to consult with residents before appointing a new manager;
    - (iv) the operator to consult with the residents about any proposed changes in the services and benefits provided or the charges that the residents pay that will or might have a material impact on the residents' occupancy or ability to pay for the services and benefits provided;
    - (v) the operator, the people who work at the village, and the people who provide services at the village, to treat the residents with courtesy and to respect the rights of residents;

- (vi) the operator, the people who work at the village, and the people who provide services at the village, not to exploit the residents:
  - (c) provision for a complaints facility and disputes procedure that complies with the Retirement Villages Act 2003:
  - (d) any provisions required by the Retirement Villages Act 2003 or regulations made under that Act:
  - (e) any provisions required by the code of practice, unless the operator is exempt from the requirement to comply with that provision:
  - (f) information on the code of residents' rights and the code of practice.
2. The provisions referred to in paragraphs (a) to (e) of clause 1 must be consistent with—
- (a) the Retirement Villages Act 2003, and any regulations made under that Act; and
  - (b) any provision in the code of practice, unless the operator is exempt from the requirement to comply with that provision.
-

s 32

## Schedule 4

### Code of residents' rights

#### Basic rights of residents

This is a summary of the basic rights given to you by the Retirement Villages Act 2003.

#### *Services and other benefits*

- 1 You have the right to services and other benefits promised to you in your occupation right agreement.

#### *Information*

- 2 You have the right to information relating to any matters affecting, or likely to affect, the terms or conditions of your residency.

#### *Consultation*

- 3 You have the right to be consulted by the operator about any proposed changes in the services and benefits provided or the charges that you pay that will or might have a material impact on your—
  - (a) occupancy; or
  - (b) ability to pay for the services and benefits provided.

#### *Right to complain*

- 4 You have the right to complain to the operator and to receive a response within a reasonable time.

#### *Disputes*

- 5 You have the right to a speedy and efficient process for resolving disputes between you and the operator or between you and other residents of the village.

#### *Use of support person or representative*

- 6 You have the right, in your dealings with the operator or other residents of the village, to involve a support person or a person to represent you. The cost of involving a support person or person to represent you must be met by you.

*Right to be treated with courtesy and have rights respected*

- 7 You have the right to be treated with courtesy and have your rights respected by the operator, the people who work at the village, and the people who provide services at the village.

*Right not to be exploited*

- 8 You have the right not to be exploited by the operator, the people who work at the village, and the people who provide services at the village.

**Your obligations to others**

Your rights exist alongside the rights of other residents and the rights of the operator, the people who work at the village, and the people who provide services at the village. In the same way that these people are expected to respect your rights, it is expected that you in return will respect their rights and treat them with courtesy.

**Operator's contact person**

If you want more information about your rights or wish to make a complaint against the operator or another resident, the operator's contact person is [*name*] [*telephone number*].

**Other contact persons**

Other contact persons, if you want to make a complaint about a breach of your rights, are—

- (a) the statutory supervisor (if there is one):
  - (b) the Registrar of Retirement Villages:
  - (c) the Retirement Commissioner.
-

s 89

## Schedule 5

### Matters to be included in code of practice

The code of practice must specify minimum requirements to be included in any occupation right agreement in relation to the following topics:

#### 1 Staffing of retirement village

The matters that must be addressed in the code of practice are—

- (a) the qualifications and experience of staff at each retirement village;
- (b) arrangements for the training and ongoing supervision of those staff.

#### 2 Safety and personal security of residents

The matters that must be addressed in the code of practice are—

- (a) the manner in which the physical environment and management practices at each retirement village must maintain and enhance the physical safety and security of residents (including those with disabilities);
- (b) the circumstances in which a retirement village can use the personal security of intending residents or residents as a promotional feature in its advertising, and if this is permitted, requirements to ensure that security is maintained at levels featured in any promotional material.

#### 3 Fire protection and emergency management

The matters that must be addressed in the code of practice are—

- (a) requirements relating to the protection of residential village units and retirement village facilities from fire;
- (b) requirements relating to plans, instructions, and equipment for dealing with fire and other emergencies;
- (c) requirements relating to insurance cover for residential units and retirement village facilities and units for fire and accidental damage;
- (d) requirements relating to access to residential units and retirement village facilities for those with disabilities.

**4 Transfer of residents within retirement village**

The matters that must be addressed in the code of practice are—

- (a) requirements to be included in occupation right agreements about the transfer of residents from independent self-care units to parts of the retirement village providing greater care:
- (b) requirements relating to the financial and other arrangements that apply in the event of a transfer of a resident in the circumstances referred to in paragraph (a).

**5 Meetings of residents with operator and resident involvement**

The matters that must be addressed in the code of practice are—

- (a) requirements as to the frequency of meetings between residents and the operator of the retirement village or representatives of the operator:
- (b) requirements as to the opportunity for residents to participate in decision-making affecting the retirement village and access by the residents to the operator of the retirement village or representatives of the operator.

**6 Complaints facility**

The matters that must be addressed in the code of practice are—

- (a) the procedures for making and acknowledging receipt of complaints by residents (including complaints about another resident of the retirement village):
- (b) requirements for informing a resident about progress on the resident's complaint at regular intervals:
- (c) the procedures for—
  - (i) resolving complaints; and
  - (ii) making decisions on complaints where resolution is not possible:
- (d) time limits within which the person dealing with the complaint on behalf of the operator must make and notify a decision on the complaint:
- (e) requirements as to the form of notification of a decision about a complaint.

**7 Accounts**

The matters that must be addressed in the code of practice are—

- (a) requirements relating to the frequency of accounts for outgoings and service charges:
- (b) requirements relating to the breakdown of items for which charges are imposed:
- (c) requirements designed to ensure that accounts are presented in a format that can be readily understood.

**8 Maintenance and upgrading**

The matters that must be addressed in the code of practice are—

- (a) requirements for residents to be notified of a contact person for minor repairs and maintenance:
- (b) requirements relating to the periodical review of maintenance agreements and the role of residents in respect of those reviews:
- (c) requirements for the maintenance and periodic upgrading of retirement villages to be provided in the funding arrangements for retirement villages:
- (d) construction standards for new retirement villages or new residential units within existing retirement villages.

**9 Termination of occupation right agreement by operator or resident**

The matters that must be addressed in the code of practice are—

- (a) the grounds on which an occupation right agreement may be terminated by the operator of the retirement village or a resident:
- (b) the process that must be followed by the operator or resident before exercising any right to terminate an occupation right agreement:
- (c) requirements relating to payments due when an occupation right agreement is terminated and the manner in which those amounts are calculated, including—
  - (i) the period for which charges will continue to be imposed after termination:
  - (ii) the relationship between those charges and ongoing costs:

- (iii) the operator's responsibilities in relation to the sale or other disposal of a residential unit made vacant as a result of the termination:
- (iv) the rights of the former resident or the estate of the former resident in relation to the sale or other disposal of a residential unit made vacant as a result of the termination.

## 10 Communication

The matters that must be addressed in the code of practice are requirements in relation to communication by the operator of a retirement village with residents or intending residents for whom English is a second language or whose ability to communicate is limited.

---

### Legislative history

17 December 2001	Introduction (Bill 190-1)
26 February 2002	First reading and referral to Justice and Electoral Committee
2 May 2003	Reported from Justice and Electoral Committee (Bill 190-2)
1 July 2003	Second reading
21 October 2003	Committee of the whole House, third reading
30 October 2003	Royal assent

---

This Act is administered in the Ministry of Economic Development and the Ministry of Social Development.

---