

**2016**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**RETIREMENT VILLAGES AMENDMENT BILL 2016**

**EXPLANATORY STATEMENT**

**Presented by  
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Minister for Justice and Consumer Affairs**



## RETIREMENT VILLAGES AMENDMENT BILL 2016

This explanatory statement relates to the Retirement Villages Amendment Bill 2016 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

### Overview

#### Purpose of the Bill

In May 2016, the Minister for Justice and Consumer Affairs, Shane Rattenbury MLA, will table a report on the review of the *Retirement Villages Act 2012* (the RVA). The purpose of the review was to see whether the RVA was operating effectively and meeting the needs of stakeholders. The review was conducted in accordance with section 265 of the RVA.

The review was conducted with the assistance of a review advisory group representing operators and residents of retirement villages, advocacy groups and other relevant bodies.

This Bill contains legislative amendments required to implement the review recommendations.

The Bill will amend the RVA and *Retirement Villages Regulation 2013* to:

- a) provide an optional internal process for the resolution of disputes between residents and operators similar to the former Code, while retaining existing ACT Civil and Administrative Tribunal (ACAT) review provisions;
- b) require representations and information about retirement villages to include information about the difference between retirement villages and aged care facilities; information about exit fees, departure fees and deferred management fees; information about the operator's policy on residents' access to carer services including the rights of carers to stay at the village;
- c) prohibit verbal representations by an operator that a village is an approved provider of permanent residential aged care or that residents have priority on aged care. An operator does not commit an offence by merely describing the different services on offer, provided that appropriate distinction is made;
- d) remove duplication in requirements for operators to provide a copy of a contract to a resident on entry to a retirement village;
- e) amend the definition of a 'registered interest holder' in the RVA to include a long-term sublease or underlease;

- f) clarify the timing of refunds made during the settling-in period for non-registered interest holders;
- g) provide that a 'residence right' includes a person's right to occupy premises under a loan/licence contract and preparation of a village contract also includes preparation of loan agreements, so that a resident is not charged more than once for legal and other expenses incurred in preparing documents;
- h) require an operator to sight a Grant of Probate/Letters of Administration before releasing a fund to an executor or administrator under s240;
- i) allow a retirement village that has not yet received development approval to be advertised, provided that this is disclosed in the advertisement. If the village has not yet received development approval, the operator must not enter into any contracts with prospective residents;
- j) allow operators to retain reasonable costs (e.g. legal fees, advertising costs) from the holding deposit if the prospective resident enters into a village contract with the operator but does not move into the premises. Reasonable costs cannot exceed an amount prescribed by regulation, or if no amount is prescribed, \$10,000. The operator cannot retain the holding deposit if the resident has died or the resident is entering into Commonwealth aged care premises. If the resident is entering aged care premises, the operator may request documentary evidence;
- k) require village rules to be updated to be consistent with the RVA;
- l) provide further direction on security and safety requirements for retirement villages;
- m) clarify the definitions of 'capital item', 'capital repair' and 'capital maintenance';
- n) provide that for the timing of refunds of ingoing contributions, the date specified by the contract does not take priority over earlier events;
- o) clarify the priority of interests where an order has been made for enforcement of a charge over land;
- p) provide that where a departure fee is based on what the next resident pays to enter the village, the operator should share in meeting the recurrent charges;
- q) provide that a contract cannot require a former resident to pay the shortfall where a unit is sold for less than the current value;
- r) require resident consent to all increases in recurrent charges except those made by fixed formula and consent to all proposed annual budget expenditure;
- s) provide that distribution of a surplus in the annual accounts of a village for a financial year must be made to existing residents and the operator in the same proportion as their actual contribution;

- t) allow an operator and residents to agree to change the timeframe for preparation of an annual budget;
- u) provide that where ingoing contributions are to be paid in instalments, require operators to provide residents with clear statements of the amount of time payments are required to be made;
- v) require minutes to be taken at all meetings between village management and residents

### **Human rights implications**

The rights and responsibilities of residents and operators were directly considered in the Terms of Reference for the review of the RVA. The proposed Bill supports sections 17 (Taking part in public life) and 21 (Fair trial) of the Human Rights Act

#### **Taking part in public life**

The proposed amendments provide for increased participation by the resident community in the financial management of retirement villages in the areas of increases in recurrent charges and proposed annual budget spending. This gives residents a greater opportunity to participate in the 'public life' of the village.

#### ***Recurrent charges***

Residents of retirement villages are required under their village contracts to pay recurrent charges for general services in the village. The RVA provides that a village contract may provide that any recurrent charges are to be amended at stated intervals or on stated dates according to a fixed formula. The operator must give the resident 14 days written notice before the amendment takes effect.

The RVA also sets out a process for the amendment of recurrent charges where the contract does not provide for amendment by fixed formula. The RVA requires resident consent to these increases in recurrent charges only if the variation exceeds the Consumer Price Index (CPI).

The Bill amends the RVA to require an operator to seek resident consent to all proposed increases in recurrent charges that are not made by fixed formula. Consent is required regardless of whether the increase exceeds CPI. This provides residents with a greater opportunity to participate in financial decisions related to the village.

No amendment is proposed to increases made by fixed formula, as the resident has consented to this method of increasing recurrent charges when they entered into the contract with the operator.

#### ***Village budgets***

Section 162(9) of the RVA provides that residents are taken to have consented to proposed annual budget spending if the amount of recurrent charges has not increased, or has been amended in accordance with a fixed formula in a village contract.

Feedback received during the review indicated that recurrent charges and proposed budget spending were two very different concepts. Recurrent charges are payments made by residents for general services. The budget spending provisions address how this money is to be allocated.

The proposed amendments require separate consent by residents to proposed spending in the village budget. The amendments also provide that consent to recurrent charges does not constitute consent to proposed budget spending.

#### Fair trial

The proposed amendments provide residents and operators with additional options for resolution of disputes. These amendments complement the existing provisions in the RVA for resolution of disputes by ACAT.

The RVA provides for the resolution of disputes between residents and operators by ACAT, and states that nothing in the RVA prevents the operator and residents from establishing mechanisms in the village for informal dispute resolution.

Feedback received during the review suggested that the RVA be amended to provide a more detailed option for internal dispute resolution in addition to the ACAT dispute resolution.

The Bill amends the RVA to include an internal dispute resolution process similar to the process in the former Retirement Villages Code of Practice. The amendments propose that a disputes committee be established for the village, comprised of representatives of residents and operators and an independent chair.

It is not compulsory for residents and operators to use the disputes committee to resolve disputes. The parties may proceed directly to dispute resolution by ACAT or seek outside mediation. The proposed amendments also include a note referring to the complaints handling services provided by the Health Services Commissioner.

These amendments complement the existing dispute resolution provisions in the RVA.

### **Offence provisions – limitations on right to fair trial**

#### Nature of the right affected

Clauses 8, 9, 13 and 23 of the Bill propose amendments to existing strict liability offence provisions in the RVA. The proposed offences are within the scope of the Justice and Community Safety *Guide to Framing Offences*.

Strict liability offences engage with the right to a fair trial in section 21 of the Human Rights Act. While the Human Rights Act does not prohibit strict liability, strict liability offences must be reasonable and justifiable within the specific context of the offence. There is no requirement for the prosecution to prove a fault element, such as intention or recklessness. However, the defence of reasonable mistake of fact does apply (section 36, *Criminal Code 2002*).

Strict liability offences are generally considered an appropriate limitation on the right to a fair trial in a regulatory context where the person should be on notice of requirements imposed on them.

#### Advertising or promoting a retirement village prior to receiving development approval

Section 16 of the RVA provides that it is an offence for a person to advertise or promote a retirement village that has not yet received development approval. This is a strict liability offence with a maximum penalty of 50 penalty units.

Clause 8 of the Bill amends this provision to allow a person to advertise or promote a retirement village, provided that the advertisement or other promotion discloses that the village has not yet received development approval. This amendment is proposed in response to submissions received during the review. A person commits an offence if this disclosure is not made. The failure to disclose in the advertisement or other promotion is an element of the offence. The burden of proof is with the prosecutor to establish that the village was advertised or otherwise promoted without development approval. The provision remains a strict liability offence with a maximum penalty of 50 penalty units.

Clause 9 of the Bill further amends section 16 of RVA to provide that it is an offence for a person to enter into a village contract for a retirement village with a prospective resident if the village has not yet received development approval. Entering into the contract and the lack of development approval are elements of the offence. The burden of proof is on the prosecutor to prove these physical elements.

This proposed amendment is also a strict liability offence. The maximum penalty for this offence is 50 penalty units, which is the same penalty as existing section 16. It is also consistent with the penalties imposed for other offences in division which address operators not meeting the requirements for entering into contracts with prospective residents, such as section 26 (Entering into contract less than 14 days after giving disclosure statement).

#### Making certain representations – aged care services

The RVA does not apply to residential aged care facilities, which provide a greater level of medical care. Aged care facilities are regulated by the *Aged Care Act 1997* (Cwlth). Consultation during the review suggested that there were misunderstandings in the community about the differences between independent retirement village living and residential aged care.

Section 22(1)(v) and (vi) of the RVA provide that it is an offence for an operator to publish or distribute written promotional material that states that the village is an approved provider of residential care within the meaning of the Aged Care Act, or that states that residents of the village have priority access to residential care by an approved provider under the Aged Care Act. This is a strict liability offence with a maximum penalty of 50 penalty units.

Clause 13 of the Bill amends the RVA to provide that it is an offence for an operator to make an express or implied representation, whether oral or in writing, that the village is an approved provider of residential care within the meaning of the Aged

Care Act or that residents of the village have priority access to residential care by an approved provider under the Aged Care Act.

Clause 13 of the Bill further provides that to remove any doubt, an operator does not make a representation merely by giving an explanation or statement about how the services of the retirement village differ from residential aged care, or the fact that a residential aged care facility is associated with the village.

The offence remains strict liability and the maximum penalty remains the same. The amendments proposed by the Bill increase protections for prospective residents by covering both oral and written representations. The amendments also provide protection for operators who are dual providers of independent retirement living and residential aged care.

#### Operator to give resident or prospective resident copy of village contract

Section 60(1) of the RVA provides that an operator commits an offence if the operator enters into a village contract with a resident of the village and the operator does not give the resident a copy of the contract within 14 days after the contract is entered into. This is a strict liability offence with a maximum penalty of 50 penalty units.

Section 60(2) of the RVA provides that an operator commits an offence if a resident or prospective resident of the village signs a village contract and gives it to the operator before the contract is entered into and the operator does not give the resident or prospective resident a copy of the contract signed by the resident or prospective resident within 14 days after the operator receives it. This is a strict liability offence with a maximum penalty of 50 penalty units.

Clause 23 of the Bill amends section 60(1) and (2) to clarify the effect of these provisions. This amendment makes it clear that these provisions cover two different situations: when the operator and resident sign a village contract in each other's presence, and when a resident or prospective resident signs a village contract before the operator signs the contract.

New section 60(1) provides that an operator commits an offence if the operator and a resident sign a village contract in each other's presence, and the operator does not give the resident a copy of the signed contract within 14 days after the day that it is signed. The offence remains a strict liability offence and the maximum penalty is unchanged.

New section 60(2) applies in a situation where the operator and resident enter into a village contract and do not sign the contract in each other's presence. It is an offence if the operator does not, within 14 days after the resident signs the contract, give the resident a copy of the contract signed by the operator. The offence remains a strict liability offence and the maximum penalty is unchanged.

### **Regulatory impact analysis**

Two of the amendments proposed by the Bill do impose an appreciable cost. However, the benefits provided by these amendments outweigh the costs.

#### **Retention of deposits**

The RVA allows prospective residents to pay holding deposits for residential premises in a retirement village. The operator is required to keep a holding deposit in trust (RVA, s 38).

Section 39(2) of the RVA provides that if the prospective resident enters into a residence contract with the operator, an amount paid as a holding deposit may, if both parties agree, form part of the deposit under the contract.

The RVA does not provide for the payment of binding deposits for village contracts. Unlike the exchange of contracts in a residential property transaction, there is no compensation to operators for financial loss if a prospective resident who has paid a holding deposit decides not to move into a retirement village.

Feedback from operators during the review suggested a need to allow operators to enter into more binding deposit arrangements with prospective residents. This would ameliorate financial loss to operators and make the retirement village industry more consistent with other property industries.

Clauses 16 and 17 of the Bill propose amendments to the RVA to allow operators to enter into binding deposit arrangements with prospective residents. These clauses provide that if a prospective resident has paid a holding deposit, has entered into a residence contract with the operator and decides not to move into a retirement village, the operator may retain the reasonable costs incurred from leaving the residential premises empty. The reasonable costs cannot exceed an amount prescribed by regulation, or if no amount is prescribed, \$10,000.

The Bill further provides that the operator cannot retain deposit funds if the prospective resident has died or if the prospective resident does not intend to enter into a residence contract because the prospective resident has been assessed as suitable for residential aged care. These are important protections for prospective residents who are unable to move into a retirement village due to circumstances beyond their control.

These amendments do not operate retrospectively. An operator cannot retain an amount paid by a prospective resident as a holding deposit prior to commencement of the amendments.

#### **Charge over land**

If a resident is entitled to a refund of an ingoing contribution, the resident is not a registered interest-holder and the refund is more than \$10,000, a charge is created over land in the retirement village for the amount of the refund. The resident may apply to the Supreme Court for an order to dispose of the land if it is unlikely that the operator will be able to refund the money.

Section 247 of the RVA lists the priority of interests that must be satisfied when the Supreme Court makes an order to dispose of the land. However, in its submission to the review, the Law Society suggested this section be amended to provide more clarity to ensure it meets the policy intention that those residents who have registered their charges have priority over those residents who have not. Clause 55 of the Bill inserts new sections 247(c) and (ca), which clarify that residents who have registered their charges have priority over residents who did not.

However, to avoid disadvantage to existing residents who were not aware of the policy intention, this amendment does not operate retrospectively. A registered charge does not have priority over an unregistered charge if the charge over the land was created before the commencement of the Bill.

## CLAUSE NOTES

### Clause 1 Name of Act

This clause provides that the name of the Act is the *Retirement Villages Amendment Act 2016*.

### Clause 2 Commencement

This clause provides for the commencement of the Act. The Act will commence on a day to be fixed by the Minister by written notice.

### Clause 3 Legislation Amended

This clause identifies the legislation amended by the Bill - the *Retirement Villages Act 2012* and the *Retirement Villages Regulation 2013*.

### Clause 4 Meaning of *residence right*

#### **Section 8(1), definition of *residence right*, new paragraph (a)(iia)**

This clause amends the definition of 'residence right' to include a person's right to occupy residential premises under a contract under which the person lends money to the operator of the village in consideration for, or in expectation of, the right to occupy the residential premises.

This amendment has been made to include residents who are in 'loan/licence' arrangements with village operators. This is related to the amendment at clause 20 below.

### Clause 5 Section 8(1), new note

This clause adds a new note to section 8(1) of the RVA. This is related to the amendment at clause 4.

The new note provides that a contract that gives rise to a residence right is a residence contract, and that a residence contract is a village contract.

### Clause 6 Meaning of *registered interest holder* and *registered long-term sublessee*, Section 12(1), definition of *registered long-term sublessee*

This clause amends the definition of 'registered long-term sublessee' in section 12 to include a person whose residence contract is in the form of a registered long-term sublease, or other long-term sublease, if the sublease includes a provision that entitles the person to at least 50% of any capital gain, or the person is entitled under a contract, an agreement or other arrangement to at least 50% of the capital gain. This remedies a gap in the legislation for registered interest holders.

### **Clause 7 Section 12(2)**

This clause substitutes the definition of ‘registered long-term sublease’ at section 12(2) of the RVA and is related to the amendment at clause 6. A ‘registered long-term sublease’ is defined as a sublease (however described) registered under the *Land Titles Act 1925* that has a term of at least 50 years, including any option to renew, or is for the life of the lessee.

### **Clause 8 Advertising or promoting village before development approval given, Section 16(1)(c)**

This clause substitutes section 16(1)(c) and inserts new section 16(1)(d) into the RVA.

Section 16(1)(c) previously stated “the person has not received development approval for the development of the retirement village”. This clause substitutes the words “development approval has not been received for the development of the retirement village”. This editorial amendment simplifies the clause and makes it consistent with current drafting style.

New section 16(1)(d) permits advertisement or other promotion of retirement villages where development approval has not yet been received, provided that this is disclosed in the promotion or advertisement. It is an offence to not disclose that development approval has not yet been received for development of the retirement village.

### **Clause 9 New section 16(1A)**

This clause inserts a new offence provision into the RVA. A person commits an offence if the person enters into a village contract for a retirement village with a prospective resident and development approval has not been given for the development of the village of the retirement village.

### **Clause 10 New section 22 heading**

This clause amends the heading of section 22 to reflect current drafting style.

### **Clause 11 Section 22(1)(b)(v) and (vi)**

This clause omits sections 22(1)(b)(v) and (vi) of the RVA and is consequential to the amendment at clause 13 below.

### **Clause 12 Section 22(2), note 2**

This clause omits note 2 from section 22(2) of the RVA and is consequential to the amendment at clause 13 below.

### **Clause 13 New section 22A**

This clause inserts new section 22A into the RVA. New section 22A applies to the making of certain representations by the operator about aged care services.

The RVA previously prohibited the making of written representations by the operator that the village was an approved provider of residential care within the meaning of the *Aged Care Act 1997* (Cwlth) and that residents of the village have priority access to residential care by an approved provider under the Aged Care Act.

This clause extends this prohibition to express or implied written and oral representations.

This clause further provides that to remove any doubt, it is not an offence for the operator to merely give an explanation or statement of how the services of the retirement village differ from residential care services given to a prospective resident in the general inquiry document (section 23, RVA) or the disclosure statement (section 24, RVA). It is also not an offence for the operator to give an explanation or statement of the fact that a residential aged care facility is associated with the village.

### **Clause 14 General inquiry document, section 23(2), except notes**

This clause substitutes section 23(2) of the RVA. Section 23(2) applies to the general inquiry document for a retirement village. This clause provides that the general inquiry document must comply with any requirement prescribed by regulation. This clause is consequential to the amendment at clause 59, which moves the detail from section 23(2)(a) to the Regulation and includes some additional requirements.

### **Clause 15 Disclosure statement, section 24(3), and note**

This clause substitutes section 24(3) of the RVA. Section 24(3) applies to the disclosure statement for a retirement village. This clause provides that the disclosure statement must comply with any requirement prescribed by regulation. This clause is consequential to the amendment at clause 60, which moves detail from section 24(3) to the Regulation and includes some additional requirements.

This clause also adds a new note to section 24. The note refers to section 48 of the *Legislation Act 2001*, which provides that power to make a statutory instrument includes power to make different provision in relation to different matters or different classes of matters.

### **Clause 16 Repaying etc holding deposits and ingoing contributions, section 39(1)(b)(i)**

This clause substitutes section 39(1)(b)(i) of the RVA to refer to a prospective resident that does not intend to enter into a residence contract, and a prospective

resident that does not intend to enter into a residence contract because the prospective resident has been assessed as eligible for residential care within the meaning of the Aged Care Act.

**Clause 17 New section 39(3A) to (3D)**

This clause inserts new sections 39(3A), (3B), (3C) and (3D) into the RVA.

This clause applies in a situation where the prospective resident and operator have entered into a residence contract and the prospective resident gives notice that they do not intend to move into the premises. If the prospective resident gives notice after the end of the cooling-off period for the contract, before final payment is made under the contract and before the settling-in period begins, the operator may retain an amount from the holding deposit to cover reasonable costs incurred by the operator in relation to the premises. Reasonable costs may be retained for the period starting on the day after the village contract is entered into, and ending on the earliest of the following circumstances: 14 days after the prospective resident gives notice, the day the operator enters into a village contract with an incoming resident in relation to the premises, the day the operator enters into a residential tenancy agreement with an incoming tenant or the day a person takes up residence in the premises with the operator's consent.

This clause provides that examples of reasonable costs include legal expenses, commissions, advertising and marketing costs and recurrent charges. However, new section 39(3C) provides that the reasonable costs must not exceed an amount prescribed by regulation, or if no amount is prescribed, \$10,000.

The operator will not be able to retain the funds if the prospective resident has died or if the prospective resident has been assessed as eligible for residential care within the meaning of the Aged Care Act. The operator request evidence of the prospective resident's intention to enter into aged care, or evidence that the prospective resident has died.

**Clause 18 New section 39(6)**

This clause inserts new section 39(6) into the RVA.

New section 39(6) provides that the settling-in period for the village contract means the period worked out for the contract under section 71 of the RVA.

This amendment is related to clause 17 above

**Clause 20 Costs of preparation of village contracts, new section 52(7)**

This clause inserts new section 52(7) of the RVA.

This clause provides that preparation of a village contract includes preparation of any agreement or contract that comprises the village contract. Examples include a loan agreement, other residence contract and services contract.

#### **Clause 20 Cooling-off period, section 53(1) and (2)**

This clause substitutes sections 53(1) and (2) of the RVA with a new section 53(1).

New section 53(1) provides that if a resident of a retirement village enters into a village contract with the operator of the village, the resident may, within the cooling-off period, rescind the contract by written notice given to the other party to the contract, and if the operator is not the other party to the contract, the operator.

This clause omits the reference in former section 53(1) to a 'prospective resident', as the cooling-off period will only apply once a contract is entered into.

#### **Clause 21 New section 53(6)**

This clause inserts a new section 53(6) into the RVA.

New section 53(6) provides a definition of a 'cooling-off period' for a village contract. The cooling-off period is the period starting immediately after midnight on the day the resident receives a copy of the village contract signed by the operator and ending at midnight on the 7<sup>th</sup> business day after that day. For a contract that is, or includes, a residence contract where the operator is not the other party, the cooling-off period starts immediately after midnight on the day the residence contract is entered into and ends at midnight on the 7<sup>th</sup> business day after that day.

#### **Clause 22 Section 60 heading**

This clause amends the heading of section 60 of the RVA. This amendment is related to clause 23 below.

#### **Clause 23 Section 60(1) and (2)**

This clause substitutes sections 60(1) and (2) of the RVA.

New sections 60(1) and (2) of the RVA clarify and simplify the requirements for operators to provide copies of village contracts to residents.

New section 60(1) provides that the operator of a retirement village commits an offence if the operator and a resident sign a village contract in each other's presence and the operator does not give the resident a copy of the signed contract within 14 days after the day it is signed.

New section 60(2) applies to situations where the operator and resident enter into a village contract and the resident and operator do not sign the contract in each other's presence. The operator commits an offence if the operator does not provide the resident with a copy of the contract within 14 days after the resident signs the contract. This places a clear obligation on the operator to ensure the contract is

entered into promptly. While this may necessitate a change in practice for operators with interstate head offices, industry feedback from the review advisory group has suggested that this timeframe is acceptable.

**Clause 24 Operator to refund certain payments made by resident, section 74(b)**

This clause substitutes section 74(b) in the RVA.

New section 74(b) refers to any ingoing contribution paid to the operator under the village contract. This is related to the amendment at clause 26 below.

**Clause 25 Time for making of payments, section 75(1) and (2)**

This clause substitutes section 75(1) and (2) of the RVA.

This amendment clarifies the timing of payments during the settling-in period and makes the RVA more consistent with the equivalent provisions in the *Retirement Villages Act 1999* (NSW).

**Clause 26 Operator to provide secure premises, section 90(2)**

This clause substitutes section 90(2) in the RVA.

New section 90(2) is a technical amendment, which updates former section 90(2) to reflect current drafting practice.

**Clause 27 New section 90(3A)**

This clause inserts a new section 90(3A) into the RVA.

New section 90(3A) provides that if a tradesperson, or someone else, requires access to residential premises to carry out works, the operator must give reasonable notice of the access to each affected resident.

**Clause 28 Operator to provide safe premises, new section 91(2)(ba) to (bc)**

This clause inserts new sections 91(2)(ba), 91(2)(bb) and 91(2)(bc) into the RVA.

These new sections require the operator to provide emergency assembly point signage consistent with those procedures, provide signage at key points in the village to assist local emergency and home care service agencies to locate village premises and give residents an emergency out-of-hours number to contact the operator in case of serious disturbances in the village.

**Clause 29 New section 110A**

This clause inserts new section 110A into the RVA.

New section 110A requires the operator to keep minutes of an annual management meeting or a meeting between the operator and residents that is convened by the operator. The operator must make the minutes available for inspection by residents at the retirement village. For minutes prepared in relation to a meeting held on a regular basis, the operator must arrange for the minutes to be adopted at the following meeting. The operator may keep the minutes in an electronic form.

**Clause 30 Definitions – div 7.2, Section 135(1), definition of capital item, paragraph (a)**

This clause amends the definition of ‘capital item’ at section 135(1) of the RVA.

This clause provides that a ‘capital item’ includes all or any part of a capital item.

**Clause 31 Section 135(1), definition of capital item, paragraph (a)(iii)**

This clause amends section 135(1)(a)(iii) of the RVA.

Section 135(1)(a)(iii) previously referred to ‘any part of the village’s infrastructure’. This clause omits the terms ‘any part of’, as these terms have been added to the definition of ‘capital item’. This is related to the amendment at clause 30 above.

**Clause 32 Resident may carry out urgent work, Section 139(2)**

This clause substitutes section 139(2) of the RVA.

Section 139 applies in situations where the resident carries out urgent work in relation to a capital item. Section 139(2) previously provided that a resident who carried out urgent work was entitled to be reimbursed by the operator for reasonable costs. New section 139(2) places an obligation on the operator to reimburse the resident for the reasonable costs incurred in carrying out the work.

**Clause 33 Section 139(3)**

This clause amends section 139(3) and is related to the amendment at clause 32.

This clause requires the operator to reimburse the resident within 21 days.

**Clause 34 Section 150**

This clause substitutes section 150 of the RVA.

Section 150 previously set out a procedure for the amendment of recurrent charges payable under a village contract if the amount did not exceed the variation in the CPI. The operator was required to give residents at least 14 days written notice before the proposed amendment took effect.

New section 150 provides that where recurrent charges are to be amended otherwise than in accordance with a fixed formula, resident consent or an ACAT order is required.

The operator must give a resident written notice of a proposed amendment at least 60 days before the day the proposed amendment takes effect.

**Clause 35 Recurrent charges amended otherwise than by fixed formula – exceeding variation in CPI, section 151**

This clause omits section 151 of the RVA.

This amendment is related to the amendment at clause 34 above. The RVA previously made a distinction between amendments to recurrent charges that did not exceed CPI and amendments that did. Resident consent was only required for charges that exceeded CPI.

Resident consent is now required for all amendments to recurrent charges that are not made by fixed formula.

**Clause 36 Amending certain recurrent charges otherwise than in accordance with Act, Section 152(1)(a) to (c), except penalty**

This clause substitutes sections 152(1)(a), 152(1)(b) and 152(1)(c) in the RVA.

Section 152 provides that it is an offence for the operator to amend recurrent charges otherwise than in accordance with the RVA. This clause makes a consequential amendment to section 152 to reflect the amendments made in clauses 34 and 35.

**Clause 37 Residents consent to amendment, Section 153(1)**

This clause amends section 153(1) of the RVA.

Section 153 sets out a procedure for residents' consent to amendments in recurrent charges. This clause makes a consequential amendment to section 153(1) to reflect amendments in clauses 34, 35 and 36 above.

**Clause 38 Section 153(2)**

This clause amends section 153(2) of the RVA. This clause makes a consequential amendment to reflect amendments in clauses 34, 35, 36 and 37 above.

**Clause 39 Section 153(2), new note**

This clause inserts a new note into section 153(2).

The new note provides that consent by residents to the amendment of recurrent charges under a village contract is not consent to spending stated in a proposed annual budget for the village.

**Clause 40 ACAT orders – recurrent charges, Section 154(4)**

This clause omits section 154(4) of the RVA.

Section 154(4) referred to orders made by ACAT for recurrent charges under section 151. This amendment is a consequential amendment to reflect amendments in clauses 35, 36, 37, 38, 39 and 40 above.

#### **Clause 41 Proposed annual budget, section 159(1)(a)**

This clause substitutes section 159(1)(a) of the RVA.

New sections 159(1)(a) and 159(1)(aa) allow the operator and residents to agree to a different timeframe for the operator to provide residents with a copy of the proposed annual budget. This timeframe must be no shorter than 30 days before the beginning of the financial year to which the budget relates.

If no alternative timeframe is agreed, the operator must provide residents with a copy of the proposed annual budget at least 60 days before the beginning of the financial year to which the budget relates.

#### **Clause 42 Residents' consent to spending, section 162(9)**

This clause substitutes section 162(9) of the RVA.

Section 162(9) previously provided that residents were taken to have consented to the proposed annual budget if recurrent charges had been amended in accordance with section 148(1)(a) (Amendment of recurrent charges) and section 149(4) (Recurrent charges amended by fixed formula).

This clause provides that to remove any doubt, consent by residents to the amendment of recurrent charges under a village contract is not consent to spending stated in a proposed annual budget.

#### **Clause 43 Any surplus to be carried over, section 173(1)(b)**

This clause substitutes section 173(1)(b) of the RVA.

Section 173 applies when there is a surplus in the annual accounts in the village. Section 173(1)(b) previously referred to residents consenting to a proposal to distribute the whole or any part of the surplus to the existing residents in equal shares.

New section 173(1)(b) provides for resident consent to a proposal that the operator distribute the whole or any part of the surplus to the operator and existing residents. This amendment recognises that the operator may have contributed to the surplus by paying recurrent charges.

This amendment is related to the amendment at clause 44 below.

#### **Clause 44 New section 173(2A)**

This clause inserts new section 173(2A) into the RVA.

New section 173(2A) provides that a proposal to distribute a surplus in the annual accounts must provide for the distribution to be made to the operator and existing residents in the same proportion as their contribution to the surplus.

#### **Clause 45 Section 174A**

This clause substitutes section 174A of the RVA.

Section 174A previously provided that for the purposes of the dispute resolution provisions in part 8, a 'resident' of a retirement village includes a former occupant of the retirement village.

New section 174A provides that a 'resident' in part 8 includes a former occupant of the retirement village, except for division 8.1A. This is related to the amendments at clause 43 below.

#### **Clause 46 New division 8.1A**

Clause 43 inserts a new division 8.1A Dispute resolution—disputes committee into the RVA. New division 8.1A establishes an optional internal dispute resolution process.

##### New section 175A Disputes committee

New section 175A provides that the operator must establish a committee to resolve disputes that arise between residents and the operator.

The disputes committee must consist of a member appointed by residents, a member appointed by the operator and a chair agreed upon by the representatives of the operator and residents to be independent.

##### New section 175B Dispute between operator and resident – notice to dispute committee

New section 175B provides that if a resident or the operator claims that a dispute has arisen between the resident and the operator, the resident or operator may give written notice of the dispute to the disputes committee for the retirement village.

A dispute includes a dispute about whether the operator is discharging the operator's obligations under section 99(2)(b) (Operator to respect rights of residents).

New section 175B also includes a note which refers to the complaint handling services provided by the Health Services Commissioner.

##### New section 175C Disputes committee – decision

New section 175C provides that the disputes committee must, within 30 days after receiving notice of a dispute, resolve the dispute, arrange for mediation or tell the parties that the dispute is unresolved.

If the dispute is resolved by the disputes committee or by mediation, the parties must take all reasonable steps to give effect to the decision or agreement.

#### New section 175D Costs of dispute resolution

New section 175D provides that the costs of establishing and maintaining the dispute resolution process for a retirement village must be funded from recurrent charges.

Any other costs of a dispute taken to the disputes committee must be paid by the person incurring the costs.

#### **Clause 47 Division 8.2 heading**

This clause substitutes the heading of Division 8.2 of the RVA.

Division 8.2 was previously headed 'Dispute resolution'. This clause changes the heading to 'Dispute resolution – ACAT' to reflect the amendments in clause 46 above.

#### **Clause 48 Section 176 Heading**

This clause substitutes the heading of section 176 of the RVA.

Section 176 was previously headed 'Disputes between operator and resident'. This clause changes the heading to 'Disputes between the operator and resident – application to ACAT' to reflect the amendments in clause 46 above.

#### **Clause 49 Section 178**

This clause substitutes section 178 of the RVA.

Section 178 previously provided that nothing in division 8 prevented the operator and residents from resolving a dispute informally. Section 178 also provided that any term of the village contract that provides the parties must attempt to resolve disputes between them by a process other than the process provided for under the RVA was void.

New section 178 updates this provision to refer to the new internal dispute resolution process. The operator and resident may agree to resolve the dispute without using the disputes committee or applying to ACAT. There is also no requirement to attempt to resolve the dispute through the disputes committee before applying to ACAT for dispute resolution.

New section 178 also includes a note, stating that section 35 of the *ACT Civil and Administrative Tribunal Act 2008* provides for the ACAT to order mediation before the hearing of an application if the ACAT considers that the matter is suitable for mediation and is reasonably likely to be resolved by mediation.

### **Clause 50 ACAT orders, section 181(2), new note**

This clause inserts a new note into section 181(2) of the RVA.

The new note provides that the ACAT may order mediation under section 35 of the *ACT Civil and Administrative Tribunal Act 2008* before the hearing of an application if the ACAT considers that the matter is suitable for mediation and is reasonably likely to be resolved by mediation.

### **Clause 51 Recurrent charges for general services – registered interest holders, new section 210(4) and (5)**

This clause inserts new sections 210(4) and (5) into the RVA.

New sections 210(4) and (5) provide that for registered interest holders, an operator is deemed to share in the capital gain under the village contract where a departure fee payable by the former occupant is calculated with reference to the amount of the ingoing contribution payable by the incoming resident.

The amount of the capital gain which the operator is deemed to receive is the same percentage as the percentage applied to the incoming resident's ingoing contribution when calculating the departure fee.

### **Clause 52 Payments to former occupants who were not registered interest holders, section 238(2)**

This clause amends section 238(2) of the RVA.

Section 238(2) previously provided that RVA that an operator must refund a former resident's ingoing contribution on either the date stated in the village contract or the earliest of a list of other events, such as the day agreed to by the operator and former resident, or 14 days after the operator receives payment for the premises from an incoming resident.

This clause amends section 238(2) to provide that the date specified in the contract does not take priority over the other events listed in s238(2)(b). Instead, the date of the contract would be one of a list of occurrences listed in s238(2). The operator would be required to refund the ingoing contribution on the earliest of these events.

### **Clause 53 Section 240**

This clause substitutes section 240 of the RVA.

Section 240 applies to payments to executors and administrators. Section 240 previously provided that where a payment must be made to the estate or administrator of the former occupant's estate. If the operator is unable to find out the identity of the executor or administrator, the operator may apply to the ACAT for an order directing the operator to deal with the money as stated in the order.

This clause amends section 240 to require the operator to sight a grant of probate or letters of administration prior to making a payment to the executor or administrator of the former occupant's estate. If the operator is unable to find out the identity of the executor or administrator, the operator may apply to ACAT for an order directing the operator to deal with the money as stated in the order.

#### **Clause 54 Priority of interests, section 247(c)**

This clause substitutes section 247(c) and inserts new section s247(ca) into the RVA

If a resident is entitled to a refund of an ingoing contribution, the resident is not a registered interest-holder and the refund is more than \$10,000, a charge is created over land in the retirement village for the amount of the refund (RVA, section 242). The resident may apply to the Supreme Court for an order to dispose of the land if it is unlikely that the operator will be able to refund the money (RVA, section 245).

Section 247 of the RVA lists the priority of interests that must be satisfied when the Supreme Court makes an order to dispose of the land. New sections 247(c) and (ca) clarify that residents who have registered their charges have priority over residents who did not.

#### **Clause 55 New part 21, Transitional – Retirement Villages Amendment Bill 2016**

This clause inserts a new part 21 into the RVA. New part 21 includes all transitional amendments.

##### New section 520 Meaning of commencement day – part 21

New section 520 inserts a definition of 'commencement day' into new part 21 of the RVA. In part 21, 'commencement day' means the day the section 3 of the *Retirement Villages Amendment Bill 2016* commences.

##### New section 521 Holding deposits paid before the commencement day

New section 521 is related to the holding deposit amendments at clauses 16 and 17. New section 521 provides that these clauses do not apply to an amount paid by a prospective resident to the operator of a village before the *Retirement Villages Amendment Bill 2016* commences.

##### New section 522 Existing villages rules to be consistent

New section 522 applies if a retirement village has village rules that are inconsistent with the RVA on the commencement day. The operator must propose amendments to ensure that the rules are consistent with the RVA.

New section 522 includes note 1, which refers to the process under section 83 of the RVA for proposing amendments to village rules. A proposed amendment can only be made with the consent of residents.

New section 522 includes note 2, which refers to section 79 of the RVA. This section provides that a village rule has no effect to the extent that it is inconsistent with the RVA or another Territory Law.

New section 522 also includes note 3, which refers to section 86 of the RVA. Section 86 provides that application may be made to the ACAT for an order about the legal validity of a village rule in force in the village.

#### New section 523 Priority of interests created before commencement day

New section 523 is related to the amendment at clause 52 above (priority of interests). This new section provides that the amendments in clause 54 do not operate retrospectively.

#### New section 524 Expiry – pt 21

New section 524 provides that this part expires 12 months after the commencement day.

#### **Clause 56 Dictionary, definition of CPI**

This clause omits the definition of ‘CPI’ from the Dictionary of the RVA.

This is a consequential amendment that is related to the amendments at clauses 34, 35, 36, 37 and 38.

#### **Clause 57 Dictionary, new definition of *disputes committee***

This clause inserts a reference to the definition of ‘disputes committee’ at section 175A into the Dictionary of the RVA. This is a consequential amendment that is related to clause 46.

#### **Clause 58 Dictionary, definition of *resident*, paragraph (b)(vi)**

This clause amends the definition of ‘resident’ in the Dictionary of the RVA. This is a consequential amendment that is related to clause 45.

### **Part 3 Retirement Villages Regulation 2013**

#### **Clause 59 New section 6A**

This clause inserts a new section 6A into the Regulation.

New section 6A provides that the general inquiry document for a retirement village must include a brief explanation of the following: the residential premises, services and facilities; the main differences between a retirement village and an aged care

facility; departure fees if these are provided for in the village contract; and any policy about access by resident to home care services.

#### **Clause 60 Section 7**

This clause substitutes section 7 of the Regulation.

This clause adds additional requirements to the disclosure statement for a retirement village. Section 7 of the Regulation and section 24 of the RVA previously provided that a disclosure statement must include details of particular residential premises in the retirement village, including fees and charges payable in relation to the premises; information about whether the operator operates a residential aged care facility; details about the ownership of the village, including whether a resident can own residential premises in the village' information about the management of the village, whether the village has a residents' committee and, if so, information about the committee' the financial management of the village, including details about the village's income and expenditure; information about the village's safety, including information about its security and emergency systems, the extent to which the operator has complied with legislation applying to the village, including the Act and the *Planning and Development Act 2007*; village contracts the prospective resident will need to enter into to become a resident; the village rules; the facilities available to residents; services provided by the operator; costs associated with entering into a residence contract with the operator; information about any waiting list for the village and any waiting list fee payable; a statement to the effect that, to the best of the operator's knowledge, the information in the disclosure statement is true.

This clause provides that the disclosure statement must also include a statement of how the services of the retirement village differ from residential aged care, a statement that the former occupant is not liable to refurbish the premises and information about the operator's policy (if any) about access by residents to home care services.

#### **Clause 61 New section 24A**

This clause inserts a new section 24A into the Regulation.

New section 24A defines 'capital maintenance' as work done to prevent or repair defects, damage and deterioration of a capital item. A 'defect' does not include a defect covered by a warranty or consumer guarantee or a defect known to the operator when the item was acquired. Capital maintenance also includes replacing a capital item that is not a fixture (other than a vehicle) and replacing part of a capital item necessary for the proper operation of the item.

**Clause 62 Schedule 1, new section 1.1A**

This clause inserts a new section 1.1A into Schedule 1 of the Regulation.

New section 1.1A provides that if a village contract provides that the ingoing contribution must be paid in instalments at intervals stated in the contract, the village contract must state the day that the balance of the ingoing contribution is payable.

**Clause 63 Schedule 2, new section 2.11**

This clause inserts a new section 2.11 into Schedule 2 of the Regulation.

New section 2.11 provides that a village contract must not include a provision that requires a former occupant to pay the difference between the amount paid by a prospective resident under a village contract for the premises and any value determined for, or assigned to, the occupant's residential premises before the sale of the premises.