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FAIR TRADING ACT 2010

FAIR TRADING (RETIREMENT VILLAGES INTERIM CODE) REGULATIONS 2018

Western Australia

Fair Trading (Retirement Villages Interim Code) Regulations 2018

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Fair Trading Act 2010

Fair Trading (Retirement Villages Interim Code) Regulations 2018

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Fair Trading (Retirement Villages Interim Code) Regulations 2018*.

2. Commencement

These regulations come into operation as follows —

(a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;

(b) the rest of the regulations — on 1 April 2018.

3. Code of Practice prescribed

(1) The code of practice set out in Schedule 1 and cited as the *Interim Code of Fair Practice for Retirement Villages 2018* is prescribed under section 46(1) of the Act as an interim code of practice that applies in relation to retirement villages as defined in the *Retirement Villages Act 1992* section 3(1).

(2) The *Interim Code of Fair Practice for Retirement Villages 2018* has effect for the period of 6 months beginning on 1 April 2018.

4. Expiry

These regulations expire at the end of 30 September 2018.

5. Terms used and boxed and shaded paragraphs in the code of practice

(1) Except where the contrary intention appears, words and expressions used in the *Interim Code of Fair Practice for Retirement Villages 2018* have the same meaning as in the *Retirement Villages Act 1992*.

(2) Boxed and shaded paragraphs in the *Interim Code of Fair Practice for Retirement Villages 2018* are not part of the Code and are included only to assist readers of the Code.

Schedule 1 — *Interim Code of Fair Practice for Retirement Villages 2018*

[r. 3(1)]

Foreword

An increasing number of retired people are finding the concept of retirement villages attractive. These villages exist in a number of forms with a range of tenures and accommodation types. Different financial arrangements and forms of contract include lease, licence, a right conferred by shares, strata title, or freehold title. Retirement villages also differ widely with regard to the nature of care and other amenities and services that may be available.

The Code, the *Retirement Villages Act 1992* and the *Retirement Villages Regulations 1992* provide a package for the regulation of the retirement village industry that safeguards the rights of both the residents and the owners of retirement villages, and provides clear guidelines for the industry. The Code sets out the practices that apply to the promotion, sale and operation of retirement villages.

Division 1 of the Code deals with, and provides information on, general matters such as the meaning of terms used in the Code; the application, general principles and objectives of the Code; the basic rights of residents of a retirement village and the Code's relationship to other relevant legislation.

Division 2 sets out the approvals that must be obtained before any sales promotion of a retirement village is undertaken, and specifies the information that must be disclosed in any advertising or promotional material.

Division 3 sets out the information that must be provided to a prospective resident of a retirement village before the person enters into a residence contract or any service contract with the administering body of the village.

Division 4 specifies the information that must be included in any service contract.

Division 5 sets out the rights and obligations of the administering body and residents in relation to the management and operation of a retirement village, including consultation on the village budget, the provision of quarterly and annual financial statements, the establishment of a residents' committee and the holding of residents' meetings.

Division 6 recognises that disputes may occur in a retirement village and outlines the processes that may be utilised to resolve them, including mediation.

Division 7 explains the rights and the obligations of the administering body and a resident of a retirement village, in relation to the termination of a residence contract.

Division 8 specifies the method of delivery of any written notice, correspondence or other document that must be given under this Code to a resident or the administering body of a retirement village.

Appendix 1 provides a list of questions that a prospective resident should carefully read and consider before deciding to enter any retirement village.

Compliance with this Code

The Code must be complied with and is enforceable by the Commissioner in the State Administrative Tribunal under the *Fair Trading Act 2010*.

If it appears to the Commissioner that an administering body has not complied with the Code, the Commissioner may apply to the State Administrative Tribunal for an order, and the State Administrative Tribunal may make orders including that —

- the administering body cease contravening the Code; and/or
- the administering body rectify any consequence of that contravention.

An administering body that fails to comply with an order made by the State Administrative Tribunal commits an offence that is punishable by a fine of up to $50 000.

Division 1 — Preliminary

1. Citation

This Code is the *Interim Code of Fair Practice for Retirement Villages 2018*.

Definitions in the *Retirement Villages Act 1992*

The following definitions from the *Retirement Villages Act 1992* apply to this Code —

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

Commissioner means the person for the time being designated as the Commissioner under section 7A;

levy means a single amount that the residents of a retirement village are required to pay to recover an unforeseen operating expense of the retirement village not provided for in the recurrent charges;

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

premium means a payment (including a gift) made to the administering body of a retirement village in consideration for, or in contemplation of, admission of the person by or on whose behalf the payment was made as a resident in a retirement village (including any such payment made for the purchase of residential premises in a retirement village or for the purchase, issue or assignment of shares conferring a right to occupy any such residential premises) but does not include —

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

(b) a levy or recurrent charges;

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

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

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

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

(a) is residing with that person; or

(b) was residing with that person at the time of that person's death;

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

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

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

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

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

(a) residential premises are occupied in pursuance of a residential tenancy agreement or any other lease or licence; or

(b) a right to occupation of residential premises is conferred by ownership of shares; or

(c) residential premises are purchased from the administering body subject to a right or option of repurchase; or

(d) residential premises are purchased subject to conditions restricting the subsequent disposal of the premises; or

(e) residential premises are occupied under any other scheme or arrangement prescribed for the purposes of this definition,

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

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

(a) hostel care; or

(b) infirmary care; or

(c) medical or nursing services; or

(d) meals; or

(e) administrative and management services; or

(f) maintenance and repair services; or

(g) recreation services or amenities or entertainment services or amenities; or

(h) any other services,

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

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

2. Application

(1) Subject to subclause (2), this Code applies to the administering body and a resident, a former resident or a prospective resident of a retirement village, whether or not the village was established before or after the commencement of this Code.

(2) This Code does not apply to a resident, a former resident or a prospective resident of a retirement village or to the administering body of a retirement village if —

(a) the administering body is an approved provider within the meaning of the *Aged Care Act 1997* (Commonwealth) in relation to the residential premises used or intended to be used as a place of residence by the resident, the former resident or the prospective resident; and

(b) the administering body provides, has provided, or is to provide, the resident, the former resident or the prospective resident (as the case may be) with residential care within the meaning of the *Aged Care Act 1997* (Commonwealth); and

(c) the resident, the former resident or the prospective resident is or was entitled to receive (as the case may be), residential care in respect of which the administering body is or was eligible for residential care subsidy within the meaning of the *Aged Care Act 1997* (Commonwealth).

(3) Except as provided in subclause (4), Division 2 does not apply to any contract, agreement or arrangement made or entered into before the commencement of this Code.

(4) If a contract, agreement or arrangement made or entered into before the commencement of this Code is silent on a matter with which Division 2 of the Code deals, the provisions of Division 2 apply to such matter.

This Code and the *Retirement Villages Act 1992* do not apply to residential care services provided by an administering body under the *Aged Care Act 1997* (Commonwealth).

Note that under the *Fair Trading Act 2010* section 10 this Code binds the Crown.

3. General principles

The general principles guiding all those involved in the provision of retirement villages and related services are that —

(a) the well-being and interests of residents, together with the rights of administering bodies, must be given due consideration; and

(b) the freedom of decision and action of each resident must be restricted as little as possible and must be recognised in the relationship between a resident and the administering body of a retirement village; and

(c) the relationship of residents with their family and past and present communities is important and must be recognised, taking into account the cultural, religious and linguistic background of each resident; and

(d) residents must be treated fairly and not be subject to abuse or exploitation.

4. Objectives of Code

The objectives of this Code are to —

(a) promote fair trading practices in the provision of retirement villages and related services by setting out the rights and obligations of residents and administering bodies in retirement villages; and

(b) encourage fairness in the promotion, sale or grant of rights in, and operation of, retirement villages; and

(c) require the disclosure of all relevant information to a person who is considering becoming a resident of a retirement village; and

(d) require contracts for the provision of amenities and services in a retirement village to contain full details of the obligations

and entitlements of the resident and the administering body; and

(e) facilitate an effective means of consultation between the administering body and the residents on the management of a retirement village; and

(f) establish appropriate mechanisms for the resolution of any dispute in a retirement village between the residents and the administering body or between residents.

Consultation

For consultation between residents, residents' committees and the administering body to be effective, it requires the provision of information, but this alone does not constitute effective consultation.

Examples of effective consultation include —

(a) the administering body giving residents or residents' committees the opportunity to express views on matters that affect the operation of, or experience of living in, the retirement village; and

(b) the administering body listening to, and considering the views, comments and concerns of residents or residents' committees before making a decision; and

(c) the administering body responding in writing within a reasonable time to concerns raised by a majority of residents or the residents' committee; and

(d) the administering body giving reasons why requests can or cannot be carried out; and

(e) the administering body taking steps, where appropriate and reasonable, to implement requests; and

(f) if there is a dispute, the administering body documenting the concerns raised and actions taken to resolve the dispute; and

(g) the administering body establishing processes for regular communication with residents about village matters.

5. Resident's rights

(1) The administering body of a retirement village must respect a resident's right to privacy in the resident's residential premises, subject to the right of the administering body to inspect the premises as set out in the residence rules and the residence contract.

(2) The administering body of a retirement village must respect a resident's right to quiet enjoyment of the resident's residential premises and any communal amenities.

(3) The administering body of a retirement village must respect a resident's right to complete autonomy over the resident's property and personal and financial affairs, subject to any legislative restriction or any other restriction provided for in the residence contract.

Other relevant legislation

The provisions of this Code should be read in conjunction with other relevant legislation. The *Retirement Villages Act 1992* and the *Retirement Villages Regulations 1992* set out rights and obligations relating to retirement villages. The *Fair Trading Act 2010* is applicable to residence contracts and other contracts concerning retirement villages. If residential premises in a retirement village are strata titled, the provisions of the *Strata Titles Act 1985* and any relevant by-laws also apply.

The *Aged Care Act 1997* (Commonwealth) applies to residential care services provided under that Act by the administering body of a retirement village.

Division 2 — Advertising and promotion of retirement villages

6. General

All promotional or sales material provided by, or on behalf of, the administering body of a retirement village about that village, whether in written or oral form, must be —

(a) truthful, accurate and unambiguous; and

(b) entirely consistent with the provisions of this Code, the *Retirement Villages Act 1992* and the *Fair Trading Act 2010*.

7. Retirement village developments

(1) The owner of land upon which a retirement village is to be developed must obtain all necessary consents to develop the retirement village from the relevant authorities before any sales promotion of the village is undertaken.

(2) Subclause (1) does not preclude the owner from carrying out a market survey or inviting expressions of interest in the proposed retirement village before any sales promotion.

(3) If the consent to develop a retirement village includes a requirement for certain amenities or services to be provided for the life of the village, that requirement must be included in any promotional or sales material provided to a prospective resident.

8. Proposed amenities and services

If the promotional or sales material provided by, or on behalf of, the administering body of a retirement village makes reference to proposed amenities and services in the village, the promotional or sales material must —

(a) state —

(i) the latest date by which those amenities and services will be provided or made available to the residents of the village; or

(ii) the happening of an event on which the commencement of the provision or availability of those amenities and services depends;

and

(b) state any charges or conditions that apply to the residents' access to, or use of, those amenities or services.

9. Approvals for facilities that provide residential aged care services

The administering body of a retirement village must obtain all necessary consents from the relevant authorities to operate facilities that provide residential care services under the *Aged Care Act 1997* (Commonwealth) before such facilities are promoted as being associated with the retirement village or made available to residents at the retirement village.

10. Access to residential aged care services

If the promotional or sales material provided by, or on behalf of, the administering body of a retirement village makes reference to the availability of residential care services under the *Aged Care Act 1997* (Commonwealth), the statement set out in the *Retirement Villages Regulations 1992* Schedule 2 item 1 must be included in the promotional or sales material.

Division 3 — Prospective resident's right to information before entering into a service contract

11. Before entering into a service contract

(1) The administering body of a retirement village must give the following information or documents in writing to a prospective resident, or a resident, at least 10 working days before that person enters into a service contract with the administering body —

(a) the costs payable under the service contract, including all ongoing village operating costs or charges under the service contract;

(b) details of the services to be provided under the service contract;

(c) details of the notice to be given to, and the costs payable by, the resident to terminate the provision of the services;

(d) a copy of the proposed service contract.

(2) A prospective resident, or a resident, may waive the requirement to comply with subclause (1) if, in the particular circumstances, the prospective resident or the resident is satisfied that adequate notice about the service contract has been provided.

(3) The administering body of a retirement village must not demand or receive a payment for the information or documents provided under subclause (1).

Division 4 — Service contract

12. Legibility and presentation requirements

(1) A service contract must —

(a) be written in plain English; and

(b) be printed in a size not less than 12 point type; and

(c) be set out clearly using —

(i) appropriate headings and subheadings; and

(ii) numbered provisions;

and

(d) include, in a separate section, definitions of words and phrases used in the service contract, including words and phrases used in the service contract and defined in the *Retirement Villages Act 1992*, the *Retirement Villages Regulations 1992* or this Code.

(2) The following statement must be included in a service contract in 16 point type —

Before signing this contract, you are strongly advised to obtain independent legal and financial advice about your rights and duties under the contract.

Rescission of contract

If a resident exercises a right to rescind a residence contract within the cooling-off period under the *Retirement Villages Act 1992* section 14, the service contract, or other collateral contracts, entered into by the resident will also be rescinded by virtue of the *Retirement Villages Act 1992* section 75(3)(a).

If a residence contract is rescinded and, under the *Retirement Villages Act 1992* section 75(3)(a), the service contract and all collateral contracts entered into by the person are rescinded, the person is entitled, subject to the provisions of the *Retirement Villages Act 1992* section 75, to the full repayment of all moneys paid.

13. Services

(1) A service contract must state —

(a) the nature of the services that are, or are to be, provided or made available under the contract to the resident by the administering body; and

(b) any charges or conditions that apply to the resident's access to, or use of, those services; and

(c) the basis for the future determination of the costs of providing those services or making those services available.

(2) A service contract must not provide for a resident to be liable to pay for personal services, other than the reasonable costs incurred by the administering body making the service available to the residents of the village —

(a) for the period after the residence contract has been terminated; or

(b) for the period after the service contract has been terminated; or

(c) for the period after the resident has permanently vacated the residential premises; or

(d) for the period during which the resident temporarily ceased to reside in the residential premises.

(3) In subclause (2) —

personal services means any amenities or services that are provided to a resident by the administering body under a service contract, other than the provision of —

(a) communal amenities in the retirement village; or

(b) village administrative and management services.

Examples of personal services are the provision of meals, laundry services and the cleaning of the resident's residential premises.

Division 5 — Village management

14. Terms used

(1) In this Division —

Australian Accounting Standards means the accounting standards and other requirements issued by the Australian Accounting Standards Board and as in force at the commencement of these regulations;

Australian Accounting Standards Board means the body of that name continued under the *Australian Securities and Investments Commission Act 2001* (Commonwealth);

notes, to a budget or financial statement, means notes containing additional information about the information required to be presented in the budget or statement, in the form of narrative descriptions or disaggregations of items presented;

personal representative, of a resident of a retirement village, includes the resident's attorney, guardian, executor, administrator or trustee in bankruptcy;

registered company auditor means a person registered as an auditor, or taken to be registered as an auditor, under the *Corporations Act 2001* (Commonwealth);

reserve fund means a fund that —

(a) is, or is proposed to be, established for the purpose of accumulating funds to meet the costs of repairs, replacements, maintenance and renovations within a retirement village, regardless of whether or not the money in the fund is held in a separate account; and

(b) if the village is comprised in a strata plan or a survey-strata plan registered under the *Strata Titles Act 1985*, includes any reserve fund established by the relevant strata company under that Act;

secret ballot means the method of voting at a meeting of the residents of a retirement village described in clause 28;

special resolution means a resolution passed at a meeting of the residents of a retirement village in accordance with clause 15(1).

(2) In this Division, ***relevant*** and ***material*** have, unless the contrary intention appears, meanings corresponding to the meanings of those terms in the Australian Accounting Standards.

15. Special resolutions

(1) To pass a special resolution at a meeting of the residents of a retirement village —

(a) the residents must have been given written notice of the meeting under clause 26; and

(b) there must be a quorum present (whether in person or by a vote by proxy) of —

(i) a minimum of 5 residents entitled to vote on the resolution or 30% of the number of residents entitled to vote on the resolution (whichever is the greater); or

(ii) if the retirement village has fewer than 10 occupied residential premises, a majority of residents entitled to vote;

and

(c) the resolution must be carried by at least 75% of the number of residents who —

(i) are present (whether in person or by proxy); and

(ii) are entitled to vote; and

(iii) vote at the meeting.

(2) A special resolution —

(a) may be decided on a show of hands; or

(b) may be conducted by a secret ballot in accordance with clause 28.

Special resolution

A special resolution is a decision made at a meeting of the residents held in accordance with clause 26 on important and significant issues that directly affect the financial or general wellbeing of all the residents in a village.

The administering body must call a meeting at which a special resolution is to be considered within 20 days after being requested to do so (or at a later date if agreed) as specified in clause 26(5). Clause 26(6) requires the administering body to give at least 10 working days written notice of the meeting (except in exceptional or urgent circumstances, when 2 working days written notice may be given).

For a special resolution to pass, clause 15(1) requires a specified quorum of residents to be present at the meeting (either in person or by proxy), and 75% of those residents present, who are entitled to vote and vote, to vote in favour of the resolution. In cases where 2 or more persons occupy the same residential premises, clause 26(12) of the Code provides that each person is entitled to a vote, unless their residence contract specifies otherwise.

Some issues in a retirement village may be dealt with by an ordinary resolution that is passed at a meeting of the residents. Retirement villages legislation does not identify the issues that should be dealt with by ordinary resolution and whether a quorum of residents is required. An ordinary resolution may be passed by a majority (i.e. more than 50% of residents at the meeting in person or by proxy) and may be a method used in a village for making decisions on issues.

The following are matters that must be decided by a special resolution at a meeting of the residents —

(a) approving the application of any budget surplus in the village to a purpose, other than the future operating expenses of the village, generally of benefit to the residents of that village (clause 20);

(b) forming an incorporated association to carry out the function of the residents' committee (clause 24(2)(c));

(c) dissolving a residents' committee (clause 24(5));

(d) removing a member of the residents' committee during the resident's 1 year term (clause 24(6));

(e) collectively applying to the State Administrative Tribunal if a dispute arises between the residents and the administering body regarding an increase in recurrent charges or the imposition of a levy (*Retirement Villages Act 1992* section 57A);

(f) opting out of the requirement that the annual financial statements of the village, presented to residents at the annual meeting, be independently audited for the financial year in which the resolution is passed (clause 19(10)).

Two matters that must be agreed by special resolution of residents and with the agreement of the administering body are —

(a) varying or revoking the residence rules, which cover the rights and obligations of village residents and with which each resident must comply (clause 23); and

(b) varying the dispute resolution processes prescribed in this Code (clause 30).

16. Management procedures and resident consultation

(1) The administering body of a retirement village must —

(a) provide prudent, efficient and economical management of the retirement village, having regard to the terms and conditions of the residence contract and any related contracts; and

(b) establish appropriate procedures for consulting with residents on the future planning and budgeting of the retirement village and any other proposed change to the operating financial arrangements of the village; and

(c) establish appropriate procedures to provide the residents with access to management information relating to the operating financial arrangements of the retirement village; and

(d) establish appropriate procedures for consulting with the residents on the day-to-day running of the retirement village and any issues or proposals raised by the residents; and

(e) establish appropriate procedures for consulting with a residents' committee established under clause 24.

(2) The operating financial arrangements of a retirement village to which subclause (1)(b) and (c) apply include but are not limited to —

(a) amenities or services provided or made available to the residents where any change may involve either increased costs to residents or the reduction or loss of an amenity or service; and

(b) the operating budget for each financial year of the retirement village; and

(c) the reserve fund budget for each financial year of the retirement village; and

(d) the quarterly and annual financial statements for the retirement village; and

(e) any plans for the expansion of, or for substantial alterations to, the retirement village; and

(f) proposals for the upgrading of buildings, fixtures or fittings where the residents or former residents are financing either the whole or a part of the capital or ongoing costs of the work; and

(g) the establishment of, or changes to, the residence rules described in clause 23.

(3) The administering body of a retirement village must —

(a) comply with any reasonable request made by a resident for information on a specific operating financial arrangement or for information about the steps taken to minimise increases in village operating costs and the costs of reserve fund works; and

(b) must make available to be inspected or copied any document that might reasonably be expected to be material to that request.

(4) The administering body must respond to a request referred to in subclause (3)(a) within 10 working days, and in the case of any refusal or inability to comply with that request, give reasons in writing.

17. Village budget

(1) No later than 1 month before the end of each financial year, the administering body of a retirement village must display the following documents (***budget documents***) in a central location in the retirement village and make a copy of the documents available to each resident on request —

(a) a proposed operating budget for the next financial year of the retirement village;

(b) if residents or former residents of the village are contractually obliged to pay money for reserve fund purposes, a proposed reserve fund budget for the next financial year of the retirement village;

(c) the information used in the preparation of the proposed operating and reserve fund budget that might reasonably be expected to be made available to a resident, including but not limited to —

(i) relevant accounts of actual expenditure; and

(ii) information explaining proposed fee changes or changes to the provision or availability of amenities or services.

(2) The administering body of a retirement village must give each resident written notice stating where and when the budget documents will be available.

(3) The proposed operating budget must be presented in a consistent format from one financial year to the next and must include a separate line item that presents, for the financial year, each of the following amounts —

(a) income from residents and former residents in the form of recurrent charges other than as —

(i) rental income; or

(ii) payments to a reserve fund;

(b) income from the administering body in the form of recurrent charges payable under the *Retirement Villages Act 1992* section 23(5) other than as —

(i) rental income; or

(ii) payments to a reserve fund;

(c) rental income used to meet village operating costs;

(d) any other forms of income used to meet village operating costs;

(e) total income;

(f) expenses for employee benefits other than for the training of, or for travel by, staff;

(g) expenses for the training of, or for travel by, staff;

(h) auditor's remuneration (including for both audit and non-audit services provided to the village) to the extent that it is paid for by the residents of the village;

(i) expenses of marketing and advertising the village excluding any amount that a resident or a former resident of the village is contractually obliged to pay for marketing and advertising individual residential premises;

(j) repairs and maintenance expenses funded from recurrent charges other than recurrent charges payable to a reserve fund;

(k) accreditation and membership fees paid to any industry body whose principal purpose is to represent the interests of administering bodies;

(l) insurance expenses;

(m) legal expenses;

(n) finance costs;

(o) fees for the provision of management and administration services to the residents of the village;

(p) material classes of expenditure that are relevant to an understanding of the budget that have not been otherwise separately disclosed under this subclause;

(q) the amount, net of GST, for any budget item that is a GST-taxable supply for which the administering body is entitled to an input tax credit;

(r) total proposed expenditure for the financial year;

(s) expected surplus or deficit for the financial year.

(4) If a proposed reserve fund budget is required by subclause (1)(b), it must be presented in a consistent format from one financial year to the next and must include a separate line item that presents, for the financial year, each of the following amounts —

(a) the opening balance of the reserve fund as at the beginning of the financial year;

(b) income from residents and former residents in the form of recurrent charges that are payable to the reserve fund;

(c) income from the administering body in the form of recurrent charges under the *Retirement Villages Act 1992* section 23(5) that are payable to the reserve fund;

(d) income payable to the reserve fund in the form of amounts deducted from premiums repayable to residents who have permanently vacated the village;

(e) interest earned on money in the reserve fund;

(f) any other income, and the source of that income, used to meet expenditure from the reserve fund;

(g) total reserve fund income;

(h) expenditure in each material class of expenditure from the reserve fund (for example, repairs, replacements, maintenance and renovations of a capital nature);

(i) total reserve fund expenditure;

(j) the closing balance of the reserve fund as at the end of the financial year.

(5) A proposed budget may also include any additional line items, headings and subtotals relevant to an understanding of the financial performance of the retirement village.

(6) A proposed budget must include notes to the budget disclosing —

(a) the method by which the amount of recurrent charges payable by residents and former residents is calculated, including the method by which the amount that is a contribution to a reserve fund is calculated; and

(b) the method by which any amount of recurrent charges payable by the administering body under the *Retirement Villages Act 1992* section 23(5) is calculated, including the

method by which any amount that is a contribution to a reserve fund is calculated; and

(c) separate amounts for the auditor's remuneration according to audit and non-audit services provided to the village; and

(d) for each line item that is derived by apportioning expenses between the village and another entity or entities (including but not limited to, management and administration fees) —

(i) the method of calculation used to apportion the expenses; and

(ii) the separate disclosure of the material items of expenses that comprise the line item that have not been otherwise separately disclosed under this clause;

and

(e) for management and administration fees other than those described in paragraph (d) —

(i) the method of calculation; and

(ii) the separate disclosure of the material items of expenses that comprise the management and administration fees that have not been otherwise separately disclosed under this clause;

and

(f) any other information relevant to an understanding of the proposed budget of the village.

(7) If the administering body administers more than 1 retirement village, the administering body must provide separate budget documents for each village.

(8) The village budget for a financial year must not be finalised until —

(a) each resident has been given a minimum of 10 working days after service of the notice under subclause (2) to consider the budget documents; and

(b) the administering body has held the annual budget meeting of the residents as required under clause 26(1)(b).

18. Quarterly financial statements

(1) No later than 1 month after the end of each quarter of a financial year, the administering body of a retirement village must provide to the residents of the retirement village the following financial statements, including the notes to them —

(a) a statement of income and expenditure;

(b) a reserve fund statement.

(2) A quarterly financial statement under subclause (1) must present fairly the financial performance of the village for the quarter.

(3) A statement of income and expenditure under subclause (1)(a) must present both actual and budget amounts for each line item included in the proposed operating budget under clause 17(3).

(4) A reserve fund statement under subclause (1)(b) must present both actual and budget amounts for each line item included in the proposed reserve fund budget under clause 17(4) (if any).

(5) A quarterly financial statement must also include any additional line items, headings and subtotals relevant to an understanding of the financial performance of the village.

(6) A quarterly financial statement must include notes to the statement disclosing —

(a) the matters described in clause 17(6)(a) to (e); and

(b) reasons for any variations of 10% or more between actual and budgeted expenditure (including reserve fund expenditure); and

(c) any other information relevant to an understanding of the financial performance of the village.

(7) If the administering body administers more than 1 retirement village, the administering body must provide separate quarterly financial statements for each village.

(8) The administering body of a retirement village must —

(a) display the quarterly financial statements in a central location in the retirement village; and

(b) make a copy of the quarterly financial statements available to each resident on request.

19. Annual financial statements

(1) On or before the day on which the administering body of a retirement village gives written notice under clause 26 of an annual meeting to be held under clause 26(1)(a), the administering body must provide to the residents the following financial statements for the previous financial year (the ***annual financial statements***), including the notes to the statements —

(a) a statement of income and expenditure;

(b) a reserve fund statement.

(2) When the administering body provides to the residents the annual financial statements under subclause (1) it must also provide the audit report, if any, issued under subclause (9) for those statements.

(3) The annual financial statements must present fairly the financial performance of the retirement village during the financial year.

(4) A statement of income and expenditure under subclause (1)(a) must present both actual and budget amounts for each line item included in the proposed operating budget under clause 17(3).

(5) A reserve fund statement under subclause (1)(b) must present both actual and budget amounts for each line item included in the proposed reserve fund budget under clause 17(4) (if any).

(6) An annual financial statement may also include any additional line items, headings and subtotals relevant to an understanding of the financial performance of the retirement village.

(7) An annual financial statement must present, for each amount reported for the year to which the statement relates, comparative information for the preceding financial year.

(8) An annual financial statement must include notes to the statement disclosing —

(a) the matters described in clause 17(6)(a) to (e); and

(b) reasons for any variations of 10% or more between actual and budgeted expenditure (including reserve fund expenditure); and

(c) the opening balance of the accumulated surplus or deficit as at the beginning of the financial year; and

(d) the closing balance of the accumulated surplus or deficit as at the end of the financial year after adjustment for the surplus or deficit for the financial year as shown in the statement of income and expenditure; and

(e) any other information relevant to an understanding of the financial performance of the village.

(9) Before the administering body of a retirement village provides to the residents the annual financial statements for a financial year under subclause (1), the administering body must, unless the residents have resolved under subclause (10) that the statements for that year are not required to be audited, ensure that those statements have been audited by, and an audit report has been issued by —

(a) a member of a professional accounting body who holds either —

(i) a Certificate of Public Practice issued by Chartered Accountants Australia and New Zealand; or

(ii) a Public Practice Certificate issued by CPA Australia Ltd or the Institute of Public Accountants;

or

(b) a registered company auditor.

(10) At an annual meeting held under clause 26(1)(a), the residents of a retirement village may decide by special resolution that the annual financial statements of the retirement village, for the financial year in which the resolution is made, are not required to be audited.

(11) If the administering body administers more than 1 retirement village, the administering body must provide separate annual financial statements for each village.

20. Budget surplus

The administering body of a retirement village must apply any surplus in the operating budget of the retirement village towards the future operating expenses of that village, except if the residents, by special resolution, approve the application of the whole or a part of the budget surplus to any other purpose or purposes generally for the benefit of the residents of that retirement village.

21. Marketing of residential premises

If a resident is required by a residence contract to pay, in whole or in part, the costs incurred by an administering body in marketing or advertising the residential premises that the resident occupies or occupied, the administering body of the retirement village must —

(a) take all reasonable steps to enable the residential premises to be placed on the market as expeditiously as possible; and

(b) commencing 1 month after the residential premises are first placed on the market, provide the resident, or the resident's personal representative, with a monthly written marketing report that details the steps taken to market the premises.

22. Refurbishment of residential premises

(1) In this clause —

refurbishment work means maintenance, repair, replacement or renovation work carried out in respect of residential premises to return the residential premises to a reasonable condition.

(2) If a resident permanently vacates the resident's residential premises and is required under the residence contract to pay for, or contribute to, the cost of refurbishment work to those residential premises, the administering body of a retirement village must —

(a) before the commencement of the refurbishment work, give the former resident or the former resident's personal representative —

(i) a written statement that lists and gives details of each item of refurbishment work that the administering body believes is required to be carried out on the residential premises; and

(ii) if the administering body is arranging for the refurbishment work to be carried out on the residential premises, a written estimate of the cost for each item of work and an indication of the commencement and completion dates of the work including anything that may foreseeably affect those dates; and

(iii) if there is a material change to a statement given under subparagraph (i), or an estimate given under subparagraph (ii), a written notice of that change;

and

(b) before accepting, or making any demand for, payment for the refurbishment work —

(i) ensure the work is completed; and

(ii) give the former resident, or the former resident's personal representative, a fully itemised account for the final cost of the work; and

(iii) provide the former resident, or the former resident's personal representative, with a reasonable opportunity to enter the residential premises in order to inspect the refurbishment work.

(3) The former resident, or the former resident's personal representative, may apply to the State Administrative Tribunal for an order in relation to any refurbishment work that has been, or is proposed to be, carried out on that resident's residential premises, if the person is of the opinion that —

(a) the work was not, when the residential premises were permanently vacated by the former resident, reasonably required to return the residential premises to a condition required by the residence contract; or

(b) the proposed or actual cost of the work is excessive or unreasonable; or

(c) the proportion of the total costs that are to be paid by the former resident, or the former resident's personal representative, is excessive or unreasonable; or

(d) the statement given under subclause (2)(a)(i) describes an amount of work that exceeds the amount of work required to return the residential premises to a reasonable condition; or

(e) the commencement or completion date of the work indicated by the administering body in subclause (2)(a)(ii) is unreasonable; or

(f) the actual time taken to complete the work to the residential premises was unreasonable.

(4) On an application under subclause (3), the State Administrative Tribunal may, in addition to any other decision it has the power to make, make an order —

(a) if work is being carried out on the residential premises, that the work be stopped or that it be completed; or

(b) if work has not been carried out on the residential premises, that the work be commenced; or

(c) that varies the amount that the former resident, or the former resident's personal representative, is required to pay for work carried out, or proposed to be carried out, on the residential premises.

23. Residence rules

(1) The administering body of a retirement village must establish a set of residence rules covering the rights and obligations of the residents of the retirement village.

(2) The residence rules must be clear and consistent with this Code, the *Retirement Villages Regulations 1992* and the *Retirement Villages Act 1992*.

(3) The administering body of a retirement village must consult with the residents of all occupied residential premises in the retirement village, if any, before making, changing or revoking the residence rules.

(4) The residents may, by special resolution, and with the agreement of the administering body, change or revoke the residence rules.

(5) The administering body must not unreasonably withhold agreement to a special resolution passed by the residents under subclause (4).

24. Residents' committee of retirement village residents

(1) The residents of a retirement village may establish a residents' committee whose function is to consult with the administering body on behalf of the residents about the day-to-day running of the retirement village and any issues or proposals raised by the residents.

(2) A residents' committee may be established —

(a) by an election conducted among the residents of a retirement village; or

(b) in the absence of an election conducted under paragraph (a), by an election conducted by the administering body of a retirement village on the request of —

(i) a minimum of 5 residents or 10% of the residents, whichever is the greater; or

(ii) if the village has fewer than 10 occupied residential premises, residents from a majority of the occupied residential premises;

or

(c) subject to clause 25, by forming an association that is to be incorporated under the *Associations Incorporation Act 2015*.

(3) Only 1 residents' committee may be established in a retirement village at any time.

(4) Membership of a residents' committee is available only to the residents of the retirement village for which it is elected.

(5) The residents of a retirement village may dissolve a residents' committee at any time by special resolution.

(6) A member of the residents' committee —

(a) holds office for not more than 1 year, but may be re-elected; and

(b) may be removed at any time by a special resolution.

(7) The residents' committee may —

(a) decide its own procedures; and

(b) form subcommittees and decide a subcommittee's procedures.

(8) Nothing in this clause prevents the residents of a retirement village from establishing other committees, subcommittees or bodies of residents, or from forming other incorporated associations, for purposes other than the carrying out of the function referred to in subclause (1).

(9) Nothing in this clause prevents a resident of a retirement village, who is a member of a residents' committee, from becoming a member of other committees, subcommittees or bodies of residents for other purposes.

(10) Nothing in this clause prevents a residents' committee from providing or organising recreational or other activities for the residents of the retirement village.

(11) A residents' committee may charge a fee for the provision or organisation of recreational and other activities for the residents of the retirement village.

25. Incorporated association formed to carry out function of residents' committee

(1) The residents may only establish a residents' committee under clause 24(2)(c) by special resolution.

(2) The residents of a retirement village must not form an incorporated association under clause 24(2)(c) unless the incorporated association's rules provide —

(a) that an object or purpose of the incorporated association is to consult with the administering body of the retirement village for which it is formed, on behalf of that village's residents, about the day-to-day running of the village and any issues or proposals raised by the residents; and

(b) that a qualification for membership of the incorporated association is for a member to be a resident of the retirement village for which it is formed; and

(c) that the cost of an annual membership subscription is not more than $1.00 per member; and

(d) that a member —

(i) may be elected to hold office; and

(ii) must not hold office for more than 1 year, but may be re-elected; and

(iii) may be removed from holding office at any time, by a special resolution of the members of the incorporated association;

and

(e) that the incorporated association may —

(i) decide its own procedures; and

(ii) form subcommittees and decide a subcommittee's procedures;

and

(f) that the quorum required to constitute a meeting of the incorporated association (whether in person or by proxy) is —

(i) a minimum of 5 members entitled to vote on a resolution or 30% of the number of members entitled to vote on a resolution (whichever is the greater); or

(ii) if the incorporated association has fewer than 10 members, a majority of those members;

and

(g) that, unless otherwise provided in the residence contract, if 2 or more members of the incorporated association occupy the same residential premises in the retirement village, each of them may vote at a meeting of the incorporated association on any matter that requires, or provides for, a vote of the members; and

(h) that voting at a meeting of the incorporated association may be by proxy; and

(i) that voting at a meeting of the incorporated association may be by a secret ballot if more than 1 member or proxy calls for, or supports, a secret ballot in respect of a particular matter to be voted on at the meeting; and

(j) that if a vote is to be taken by a secret ballot at a meeting of the incorporated association, the method used to take the ballot ensures that the votes can be counted without identifying how any member has voted.

(3) Nothing in this clause affects the rights and obligations of residents under this Code.

Responsibility of office holders of an incorporated association

If the residents form an incorporated association under clause 24(2)(c) to carry out the function of a residents' committee, the incorporated association is subject to the *Associations Incorporation Act 2015* which governs the manner in which incorporated associations can operate. In particular, the office holders of the incorporated association will be subject to the responsibilities imposed on office holders under that Act.

26. Residents' meetings

(1) The administering body of a retirement village —

(a) must hold an annual meeting of the residents of the retirement village within 5 months after the end of each financial year, at which the business to be transacted must be limited to dealing with matters relating to the presentation of the financial statements and the auditor's report (if any) for the retirement village; and

(b) must hold an annual budget meeting of the residents of the retirement village before the end of each financial year, at which the business to be transacted must be limited to dealing with matters relating to the final budget proposals for the retirement village for the next financial year; and

(c) must hold a meeting of the residents on the reasonable request of a residents' committee established under clause 24; and

(d) must hold a meeting of the residents if requested to do so by —

(i) a minimum of 5 residents or 10% of the residents, whichever is the greater; or

(ii) if the retirement village has fewer than 10 occupied residential premises, residents from a majority of the occupied residential premises;

and

(e) may hold a meeting of the residents at any other reasonable time.

(2) If the administering body administers more than 1 retirement village, the administering body must hold a meeting under subclause (1)(a) and (b) for each village.

(3) If a residents' committee has been established in the retirement village, the residents' committee may of its own volition hold a meeting of the residents of the retirement village for any purpose, other than a meeting that is required to be held by the administering body under subclause (1).

(4) An administering body must not prevent or restrict a residents' committee from holding a meeting of the residents of the village under subclause (3).

(5) If a request for a meeting of the residents is made under subclause (1)(c) or (d), the administering body must hold the meeting within 20 working days after the request is made, or at a later date if agreed to by the residents' committee referred to in subclause (1)(c) or the majority of the residents who requested the meeting under subclause (1)(d), as the case may be.

(6) Subject to subclause (7), the administering body or the residents' committee must give each resident at least 10 working days written notice of a meeting to be held under subclause (1) or (3).

(7) The administering body of a retirement village may, in extraordinary or urgent circumstances, hold a meeting of the residents by giving written notice of the meeting to the residents if the period of notice is —

(a) reasonable in the circumstances; and

(b) not less than 2 working days.

(8) A notice given under subclause (6) or (7) must set out —

(a) the time and place of the meeting; and

(b) the business to be transacted at the meeting, including any matter that is to be decided by a special resolution.

(9) If requested to do so by a majority of the residents present at a meeting of residents, the administering body must, within 2 working days after the request, give written notice to all the residents of any special resolution passed at the meeting.

(10) If a special resolution is passed at a meeting of residents and no request is made for the administering body to give written notice to all the residents of any special resolution passed at the meeting, the person who chairs the meeting must provide the administering body with the name and contact details of a person who has a copy of the special resolution.

(11) If an administering body receives a request from a resident for a copy of a special resolution that is passed by the residents at a meeting of the residents, the administering body must —

(a) if the administering body has a copy of the special resolution, give the resident a copy of the special resolution; or

(b) if the administering body does not have a copy of the special resolution, give the resident the name and contact details provided under subclause (10).

(12) Unless otherwise provided in the residence contract, if 2 or more residents occupy the same residential premises in the retirement village, each of them may vote at a meeting of the residents on any matter that requires, or provides for, a vote of the residents.

(13) A meeting of the residents under this Code must not be held simultaneously with a meeting held under another law, such as —

(a) a meeting held under the *Strata Titles Act 1985* if the retirement village is comprised in a strata plan or survey-strata plan registered under that Act; or

(b) a meeting held under the *Associations Incorporation Act 2015*.

(14) At a meeting of the residents under this clause voting may be by a secret ballot.

(15) Subject to any other written law, an administering body may —

(a) be present at a meeting of the residents at which a special resolution is to be held; and

(b) be heard on any matter that is to be decided at the meeting.

(16) If, under subclause (15), an administering body is present at a meeting of the residents, the administering body may remain at the meeting unless the residents decide by a majority that the administering body must leave the meeting.

27. Proxy voting

(1) In this clause —

close associate, in relation to an administering body, means any of the following —

(a) if the administering body is an individual —

(i) the spouse, de facto partner, parent, child or sibling of the administering body;

(ii) the parent, child or sibling of the spouse or de facto partner of the administering body;

(iii) a body corporate, if the administering body or a person referred to in subparagraph (i) or (ii) is a director or secretary of the body corporate or a person involved in the management of the body corporate;

(b) if the administering body is a body corporate —

(i) a director or secretary of the body corporate or of a related body corporate;

(ii) a person involved in the management of the body corporate or of a related body corporate;

(iii) the spouse, de facto partner, parent, child or sibling of a person referred to in subparagraph (i) or (ii);

(iv) the parent, child or sibling of the spouse or de facto partner of a person referred to in subparagraph (i) or (ii);

(v) a related body corporate;

proxy notice means a notice referred to in subclause (2);

related body corporate has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

voting resident means a resident of a retirement village, or the resident's personal representative, who is entitled to vote at a meeting of the residents.

(2) A voting resident may, by notice in writing signed by the resident, appoint a proxy to vote on behalf of the voting resident by way of a proxy vote at a meeting of the residents specified in the notice.

(3) The appointment of the proxy is valid only if the proxy notice is given to the chairperson of the meeting at which the proxy is to vote before any vote is taken at that meeting.

(4) A proxy vote can only be in respect of 1 meeting.

(5) A voting resident may not appoint any of the following persons as a proxy unless the voting resident is a relative of the proxy —

(a) a representative of the administering body of the retirement village;

(b) a close associate of the administering body of the retirement village;

(c) a person nominated as a proxy by the administering body of the retirement village.

(6) A proxy notice may, but is not required to, be in the form for the appointment of a proxy set out in Appendix 2.

(7) A person appointed as the proxy of a voting resident cannot vote on behalf of the voting resident if the voting resident personally votes on the matter or matters concerned.

(8) A person must not be appointed as the proxy of more than 5 voting residents in a retirement village.

(9) At any time before the exercise of a proxy vote by a person appointed as the proxy of a voting resident, the voting resident may revoke the appointment by giving written notice to —

(a) the proxy; and

(b) the chairperson of the meeting at which the proxy was to vote.

28. Voting by secret ballot

(1) If more than 1 resident or proxy at a meeting of the residents calls for, or supports, a secret ballot in respect of a particular matter to be voted on at the meeting, the vote must be taken by a secret ballot.

(2) If a vote is to be taken by a secret ballot at the meeting, the method used to take the ballot must ensure that the votes can be counted without identifying how any resident has voted.

Conduct of a secret ballot

Once a residents' committee is established the residents should decide what procedures will apply if a vote is to be taken by a secret ballot. If there is no residents' committee this issue could be dealt with in the rules of a retirement village, or on a case by case basis, whenever a meeting of residents is to be held.

If a vote at a meeting of residents is to be taken by a secret ballot there are a variety of options by which the vote can be conducted. For example, a more formal approach would be to contract out the process to the Electoral Commission. Alternatively, votes could be taken less formally by casting a vote on a written ballot paper or by using an electronic voting process (or a combination of these processes).

The Code does not mandate a process; however, to assist residents to work out the process that they may wish to use for taking a vote by a secret ballot, a simple process is provided by way of example below.

Example of taking a vote by a secret ballot

The chairperson of the meeting calls for nominations for the position of 'returning officer'. If more than 1 person is nominated, the returning officer may be selected by a majority of residents on a show of hands. If there are an equal number of votes cast, the chairperson may be given the deciding vote. If only 1 person is nominated, then subject to their consent the person may be appointed by a person entitled to vote at the meeting moving their appointment and a second person entitled to vote seconding their appointment.

The role of the 'returning officer' is usually to distribute ballot papers to persons eligible to vote at the meeting and to count the ballot papers to determine how many residents voted in favour of a motion, how many voted against the motion and how many abstained from voting. To the extent that any votes are rejected votes, the number of these would also be recorded together with a reason given for the rejections. The returning officer would then inform the chairperson of the outcome for communication to the resident body.

The role of the chairperson is usually to explain the process and answer any questions about it. For example, the chairperson may read out the motion to be voted on and explain the options for completing the ballot paper. If the ballot papers are blank then the chairperson might read out the motion and then indicate that each resident is to record a 'yes' or a 'no' on the ballot paper. A written copy of the motion may also be provided to each resident. The chairperson may also explain where residents are to put their votes once completed and also what will happen to the votes after the meeting has closed (i.e. they may be kept for a specified period and then destroyed).

Alternatively, if ballot papers have been printed prior to the meeting, then the chairperson may read out the motion to be voted on and the list of alternatives printed on the ballot paper from which each resident is to select their preferred option.

Ordinarily it is also the responsibility of the chairperson to ensure that the Minutes of the Meeting have accurately recorded the process undertaken for the secret ballot and its outcomes.

Division 6 — Dispute resolution

29. Terms used

In this Division —

approved form means a form approved by the Commissioner for dispute resolution purposes;

retirement village dispute means a dispute that occurs in a retirement village between a resident and the administering body of a retirement village, or between residents of a retirement village, but does not include a dispute that may be determined by the State Administrative Tribunal under the *Retirement Villages Act 1992*;

special resolution has the meaning given in clause 14(1).

30. Village dispute resolution process

(1) A resident who considers that a retirement village dispute has arisen must —

(a) serve written notice to all other parties to the dispute setting out the matters in dispute and calling on the other parties to rectify or otherwise attempt to settle those matters; and

(b) advise the administering body of the retirement village that the dispute has arisen.

(2) If a notice under subclause (1)(a) is served —

(a) the administering body of the retirement village must nominate a suitable person or body, who is acceptable to all the parties to the dispute, to assist the parties to resolve the dispute; and

(b) the parties served with a written notice under subclause (1)(a) must respond to the notice within 10 working days after service of the notice, and give reasons in writing if any of the complaint matters are rejected.

(3) The parties to the dispute are to —

(a) meet in the retirement village, or at any other place as mutually agreed, no later than 20 working days after service of the notice under subclause (1)(a) or, if mutually agreed to by the parties to the dispute, at a later date; and

(b) attempt to resolve the matters that are in dispute.

(4) Before the meeting held under subclause (3), the parties to the dispute must disclose to each other all documents and information that might reasonably be expected to be material to the resolution of the matters in dispute.

(5) A resident who is a party to the dispute may be supported by another person at any stage in the dispute resolution process if each party to the dispute is given prior notice of the name of that person.

(6) Other than for the resolution of the matters in dispute, anything said, done or produced by a party to the dispute during the village dispute resolution process must not be used for any purpose or disclosed or communicated to another person, except with the agreement of that party.

(7) The administering body of a retirement village must advise any resident who is a party to the dispute of available avenues for the further review of any matter that remains in dispute, including the right to apply for the matter to be mediated under clause 31.

(8) The village dispute resolution process set out in this clause may be varied if the variation is agreed to by the administering body and passed by a special resolution at a meeting of the residents.

(9) The administering body of a retirement village or the residents, as the case may be, must not unreasonably withhold agreement to any proposed variation to the dispute resolution process.

(10) The administering body must, in the circumstances described in subclause (11), make available to the residents a document that sets out the following —

(a) the dispute resolution process;

(b) any variations made to it under subclause (9).

(11) An administering body must provide to a resident the document described in subclause (10) if —

(a) advised by a resident under subclause (1)(b) that a retirement village dispute has arisen; or

(b) requested to do so by the resident.

31. Mediation of dispute

(1) A party to a retirement village dispute may apply to the Commissioner, in the approved form, to have the dispute referred to mediation, unless the matters in dispute —

(a) are the subject of an arbitration proceeding that has commenced; or

(b) have been the subject of an award (interim or final) in an arbitration proceeding; or

(c) are before, or have been decided by, a court or the State Administrative Tribunal or other tribunal of competent jurisdiction.

(2) The Commissioner may refuse to accept the application if —

(a) no attempt has been made to resolve the retirement village dispute using the village dispute resolution process set out in clause 30; or

(b) the Commissioner considers that the matters in dispute could be adequately dealt with in some other way, including by negotiation by the Commissioner under the *Retirement Villages Act 1992* section 8(1)(d); or

(c) a party to the dispute has not agreed to have the retirement village dispute dealt with by mediation under this clause; or

(d) the Commissioner considers that the application should not be accepted for another reason.

(3) Within 10 working days after receiving the application, the Commissioner must —

(a) if the Commissioner decides to refuse to accept the application, give each party to the dispute written notice of the decision, the reasons for the decision and the right of review under subclause (4); or

(b) appoint a mediator to mediate the retirement village dispute and give written notice to the parties to the dispute of —

(i) the appointed mediator; and

(ii) the time, date and place for the holding of the mediation.

(4) If a party to a dispute is given written notice of the Commissioner's decision to refuse to accept the application under subclause (3)(a), the party may, within 28 days after the decision was made, apply to the Commissioner for a review of that decision.

(5) The notice under subclause (3)(b) must —

(a) be given at least 5 working days before the mediation is to take place; and

(b) if given to a party other than the party who made the application under subclause (1), include a copy of the application.

(6) A party to a retirement village dispute cannot be compelled to attend mediation.

(7) If a person who is given a notice under subclause (3)(b) notifies the Commissioner that the person does not wish to attend the mediation, the Commissioner must advise the appointed mediator and the other parties to the dispute of this fact.

(8) If the Commissioner is notified by a party to the dispute that the mediator appointed under subclause (3)(b) is not the preferred mediator, the Commissioner may —

(a) appoint another mediator who is acceptable to all the parties; and

(b) issue an amended notice under subclause (3)(b).

(9) The mediator may permit a party to be represented or assisted in the mediation of the retirement village dispute by an agent, other than a lawyer, if the mediator is satisfied that —

(a) the party is unable to attend, or cannot properly participate in, the proceedings personally, whether on account of illness or otherwise; and

(b) the agent has sufficient knowledge of the matters in dispute to represent the party effectively; and

(c) no other party will be unfairly disadvantaged by the fact that the agent is allowed to so act.

(10) If the parties reach a mediated agreement on the retirement village dispute, the mediator is to —

(a) record the agreement in writing and have it signed by or for the parties as soon as practicable after the mediation ends; and

(b) give a copy of the signed agreement to the parties and the Commissioner as soon as practicable after it is signed.

(11) If, at any time during the course of mediation, the mediator is of the opinion that the parties are not likely to settle the retirement village dispute, the mediator must —

(a) conclude the mediation; and

(b) notify the Commissioner that the mediation has been unsuccessful.

(12) Evidence of anything said, done or produced at a mediation is not admissible in a court or before a person or body authorised by law to hear evidence, except with the agreement of the parties to the mediation.

(13) The mediator or a party, or an agent of a party, must not make a record of, or disclose or communicate to another person, anything said, done or produced at a mediation.

(14) The mediator does not contravene subclause (13) if —

(a) the mediator makes notes during the mediation that the mediator considers appropriate and destroys them at the end of the mediation; or

(b) the mediator records and provides a copy of a mediated agreement under subclause (10).

(15) Any party may, by written notice (the ***withdrawal notice***) given to the Commissioner, withdraw from the mediation before or after the mediation has commenced.

(16) The Commissioner must advise the appointed mediator and the other parties to the retirement village dispute of the withdrawal as soon as practicable after receipt of the withdrawal notice.

32. Costs associated with dispute resolution process

(1) If the administering body of a retirement village incurs costs as a result of nominating an employee of the administering body under clause 30(2)(a) to deal with a retirement village dispute, those costs must be borne by the administering body.

(2) Subject to subclause (1), the costs incurred by any party as a result of complying with the retirement village dispute resolution process under clause 30 must be shared equally between each of the parties to the retirement village dispute.

(3) If the administering body of a retirement village incurs a share of costs under subclause (2), it must not recover any of that share from any resident or former resident (whether or not a party to a dispute).

33. Costs associated with Commissioner-appointed mediation

(1) If the administering body of a retirement village incurs costs as a result of the mediation of a dispute set out in clause 31, the administering body must not recover those costs from a resident or a former resident.

(2) Unless the Commissioner decides otherwise, the costs of the mediation of a dispute under clause 31 must be shared equally between each of the parties to the dispute.

It is recognised that in any communal living situation, such as a retirement village where amenities are shared, disputes between residents and the administering body, or between residents, may occur from time to time. The Code places particular emphasis on providing easy access to an informal and inexpensive process to resolve disputes. The prevention of disputes through open communication and the provision of information, and democratic decision-making, is always preferable.

Many disputes are due to simple misunderstandings or lack of suitable information. Every attempt should be made by those involved in a dispute to resolve it between themselves. It may be useful to discuss the problem with a friend or advocate (for example, a member of the residents' committee) before using the dispute processes available under the Code.

If the dispute cannot be resolved within the retirement village, either party can seek the assistance of the Commissioner. The Commissioner can provide information and mediation services to either party to assist in the resolution of the dispute or refer the matter to an independent external mediator.

Division 7 — Termination of residence contracts

34. Notice of intention to terminate

(1) The administering body of a retirement village must give a resident at least 10 working days written notice of its intention to apply to the State Administrative Tribunal for an order to terminate a residence contract under the *Retirement Villages Act 1992* section 58 or 59.

(2) The notice given under subclause (1) must —

(a) if the application is to be made under the *Retirement Villages Act 1992* section 58, specify the reasons why the residential premises occupied by the resident are unsuitable for occupation by the resident; and

(b) if the application is to be made under the *Retirement Villages Act 1992* section 59 —

(i) specify the breach of the residence contract or residence rules, as the case may be; and

(ii) give the resident a reasonable and specified time to rectify a breach that may be rectified;

and

(c) clearly state that the residence contract cannot be terminated without an order by the State Administrative Tribunal; and

(d) advise the resident of the resident's right to occupy the residential premises until the State Administrative Tribunal fixes a termination date.

Retirement villages are clearly marketed by the industry as permanent accommodation for their residents. Accordingly, a residence contract may be terminated only in a limited number of circumstances, as set out in the residence contract or the *Retirement Villages Act 1992*.

The administering body of a retirement village cannot terminate a residence contract on its own; that is, without the agreement of the resident. However, a resident or the administering body may apply to the State Administrative Tribunal to terminate a residence contract under circumstances as specified in the *Retirement Villages Act 1992*.

Termination by a resident

The manner in which a resident may terminate a residence contract after the expiration of the cooling-off period is as set out in the contract or the *Retirement Villages Act 1992*.

Termination by the State Administrative Tribunal

As set out in the *Retirement Villages Act 1992* Part 4 Division 5, an administering body may apply to the State Administrative Tribunal to terminate a residence contract on the grounds that —

- the resident's physical or mental health is such as to make the residential premises unsuitable for occupation by the resident (*Retirement Villages Act 1992* section 58); or
- the resident has breached the residence contract or the residence rules (*Retirement Villages Act 1992* section 59); or
- the resident has intentionally or recklessly caused or permitted, or is likely to intentionally or recklessly cause or permit, serious damage to the residential premises or injury to the administering body, an employee of the administering body or another resident (*Retirement Villages Act 1992* section 62); or
- the administering body would, in the special circumstances of the case, suffer undue hardship if the residence contract were not terminated (*Retirement Villages Act 1992* section 63).

Under the *Retirement Villages Act 1992* section 57, a resident may apply to the State Administrative Tribunal for an order in respect of a dispute with the administering body as to whether the resident should be transferred to another kind of accommodation in the village. The State Administrative Tribunal may make an order that —

- restrains the administering body from transferring the resident to another kind of accommodation in the village; or
- requires the resident to transfer, or the administering body to transfer the resident, to another kind of accommodation in the village; or
- terminates the residence contract of the resident.

Notice of termination

As required under the *Retirement Villages Act 1992* sections 58 and 59, the State Administrative Tribunal must not make an order terminating a residence contract on medical grounds or for a breach of the residence contract or residence rules, unless satisfied that the administering body has complied with the procedures in clause 34 of the Code or the contract for giving notice of the intention to terminate the contract.

The *Retirement Villages Act 1992* section 61 gives the State Administrative Tribunal the power to waive the requirement to give this notice if considered appropriate to do so having regard to any special circumstances of a particular case.

Payments on termination

If the State Administrative Tribunal has terminated a residence contract, the State Administrative Tribunal is to fix a date by which the resident must vacate the residential premises.

When ordering the termination of a residence contract, the State Administrative Tribunal may make any order for the payment or refund of money by the administering body to the resident or by the resident to the administering body.

Division 8 — Service of documents

35. Service of documents

(1) In this clause —

personal representative has the meaning given in clause 14.

(2) Any written notice, correspondence or other document that must be given under this Code to a resident of a retirement village must be —

(a) delivered by hand to —

(i) the resident; or

(ii) the resident's mailbox; or

(iii) the resident's personal representative;

or

(b) addressed to the resident and sent by post to —

(i) the residential premises occupied by the resident; or

(ii) if the resident has temporarily or permanently vacated the residential premises, another address as notified by the resident to the administering body of the retirement village; or

(iii) the address of the resident's personal representative.

(3) Any written notice, correspondence or other document that must be given under this Code to the administering body of a retirement village must be —

(a) delivered by hand to —

(i) the administering body's usual place of business on any working day; or

(ii) the administering body's mailbox;

or

(b) addressed to the administering body and sent by post to the administering body's usual place of business.

(4) Subject to any evidence to the contrary, any written notice, correspondence or other document referred to in this clause that is sent by post is taken to have been given to the person to whom it is addressed at the time at which the written notice, correspondence or other document would be delivered in the ordinary course of post.

Appendix 1 — Checklist for prospective resident

It is important for you to carefully read and consider the following questions before deciding to enter any retirement village. If, after reading through the list, you are uncertain as to any aspects of the village, or its suitability for you, seek further advice.

1. Have I fully discussed my decision to enter a retirement village with my family, friends or adviser?
2. Can I afford to move into the village I have chosen and meet the current and future ongoing costs of living in this village? What are the financial consequences for me if I wish to move out of the village? Have I sought independent advice from a licensed financial adviser on these matters?
3. If I am considering moving to a retirement village because the housework, gardening and general maintenance have become too much, have I fully considered other options? For example, obtaining home help or handyperson help, or moving to a smaller unit in the same neighbourhood.
4. If I am considering moving to a retirement village because my partner has died, have I given myself enough time to grieve before I make a major lifestyle change?
5. Have I received adequate information about the retirement village I have chosen? Have I shown the documents to a solicitor? Am I satisfied that I fully understand the contract that I am signing?
6. Am I comfortable that the lifestyle of the village, including communal living, social activities and ethos of the village will suit me? Have I spoken to any residents of the village?
7. Will the village and my unit be readily accessible if I become disabled and need a wheelchair or walking aid? What alternatives do I have if I am no longer able to live alone?
8. Does the village provide personal care or nursing care, an emergency call system and other amenities that are likely to meet my present or future needs?

9. Have I looked at a number of villages to compare the amenities (for example, recreational, transport, gardens etc.) and financial arrangements?
10. Is the village I have chosen accessible to my friends and family?
11. Can I take my own furniture to the village and, if so, will it be suitable?
12. Will the village allow me to keep my pet?
13. Before I sign the contract, have I received and considered all the information required to be given to me under the *Interim Code of Fair Practice for Retirement Villages 2018* and the *Retirement Villages Act 1992*?

Appendix 2 — Form of appointment of proxy

[cl. 27(6)]

I, ...
(*insert name*)

being a resident of / the personal representative of ..... ,
(*insert name of resident*)

a resident of (*delete whichever is not applicable*)

.....

.....

.....
(*insert address in village*)

appoint

.....
(*insert name of proxy holder*)

of

.....

.....

.....
(*insert address of proxy holder*)

as my proxy to vote on my behalf at the meeting of the residents/meeting of incorporated association (*delete whichever is not applicable*) on .....
(*insert date of meeting*)

I authorise my proxy to vote on my behalf in respect of (*delete whichever is not applicable*) —

- All matters raised at the meeting that require, or provide for, a vote of the residents, at my proxy's discretion.
- The following matters only —

  .....

  .....

Fair Trading (Retirement Villages Interim Code) Regulations 2018
Schedule 1 Interim Code of Fair Practice for Retirement Villages 2018
Appendix 2 Form of appointment of proxy

.....

.....

.....

(*specify the matters and any limitations on the manner in which you want your proxy to vote*)

.....
Signature of resident / resident's personal representative
(*delete whichever is not applicable*)

Signed this ..... day of ..... 20 .....

Notes:

1. A person who may be appointed as a proxy includes a spouse or other relative, another resident, friend or other person, but no person may hold more than 5 proxies at the same time.
2. This Code does not allow a person who is a representative or close associate of the administering body, or a person nominated by the administering body, to hold or exercise a proxy on behalf of a resident, unless the resident is a relative of such a person.
3. This appointment is effective if it is completed and given to the chairperson of the meeting at which the proxy is to vote before any vote is taken.
4. This form does not authorise voting on a matter if the person appointing the proxy is present at the relevant meeting and personally votes on the matter.
5. This appointment terminates after the meeting at which the proxy is authorised to vote.
6. The resident who made this appointment may, at any time before the exercise of a proxy vote, revoke the appointment by giving written notice to —
   - the person appointed as the resident's proxy; and
   - the chairperson of the meeting at which the proxy was to vote.

N. HAGLEY, Clerk of the Executive Council.