



Queensland

Housing Legislation (Building Better Futures) Amendment Act 2017

Act No. 42 of 2017

An Act to amend the Building Act 1975, the Housing Act 2003, the Manufactured Homes (Residential Parks) Act 2003, the Residential Services (Accreditation) Act 2002, the Residential Tenancies and Rooming Accommodation Act 2008 and the Retirement Villages Act 1999 for particular purposes

[Assented to 10 November 2017]



Queensland

Housing Legislation (Building Better Futures) Amendment Act 2017

Contents

		Page
Part 1	Preliminary	
1	Short title	13
2	Commencement	13
Part 2	Amendment of Building Act 1975	
3	Act amended	14
4	Amendment of sch 2 (Dictionary)	14
Part 3	Amendment of Housing Act 2003	
5	Act amended	14
6	Amendment of s 156 (Definitions for div 7)	14
7	Insertion of new pt 10, div 8	15
	Division 8 Transitional provision for Housing Legislation (Building Better Futures) Amendment Act 2017	
	171 Application of amended s 156, def relevant property	15
Part 4	Amendment of Manufactured Homes (Residential Parks) Act 2003	
8	Act amended	16
9	Amendment of s 4 (Objects of Act)	16
10	Amendment of s 6 (Definitions)	16
11	Omission of s 9 (What is a home owners information document)	16
12	Replacement of s 14A (What is a site agreement dispute)	16
	14A What is a residential park dispute	16
13	Amendment of s 16 (Home owner's responsibilities)	18
14	Amendment of s 17 (Park owner's responsibilities)	19
15	Omission of pt 4 (Home owners information document)	19
16	Amendment of s 22 (Variation of special term)	19
17	Amendment of s 25A (Application to tribunal—plain language)	20
18	Amendment of s 25B (Prohibited terms of site agreements and prohibited	

Contents

	park rules)	20
19	Replacement of s 29 (Park owner to give disclosure documents to prospective home owner)	21
	29 Disclosure documents to be given to prospective home owner	21
	29A Waiver of disclosure of documents in default notice period	22
20	Amendment of s 30 (Obtaining independent legal advice about site agreement)	23
21	Amendment of pt 6, div 2, hdg (Termination within 28 days after entering into site agreement)	23
22	Amendment of s 33 (Cooling-off period)	23
23	Amendment of s 34 (Automatic ending of sale agreement)	24
24	Amendment of s 35 (Compensation may be payable to home owner)	26
25	Replacement of s 44 (Assignment to be written)	26
	44 Assignment only by assignment agreement	27
26	Amendment of s 45 (Notice of proposed sale and assignment)	27
27	Insertion of new s 45A	27
	45A Disclosure documents to be given to buyer	27
28	Amendment of s 46 (Obtaining independent legal advice about assignment of seller's interest)	28
29	Insertion of new ss 48A and 48B	28
	48A Buyer to be given disclosure documents before park owner consents	28
	48B Waiver of disclosure of documents in default notice period	28
30	Amendment of s 49 (Consent to assignment of seller's interest)	29
31	Amendment of s 50 (Application to tribunal for order that park owner consent to assignment)	30
32	Insertion of new pt 7, divs 3 and 4	31
	Division 3 Termination of assignment agreement within cooling-off period	
	51A Cooling-off period for assignment agreement	31
	Division 4 Provisions about sale agreement for manufactured home	
	51B Application of division	33
	51C Restriction on sale agreement	33
	51D Automatic ending of sale agreement	33
	51E Contracting out prohibited	35

33	Replacement of s 69 (Notice of increase in site rent)	35
	69 Application of division	35
	69A Basis for site rent increase must be stated in site agreement	36
	69B Restrictions on increasing site rent under site agreement	36
	69C Park owner must nominate general increase day for eligible sites	37
	69D Consulting with interested entities for preparing market valuation	38
	69E Notice of general increase in site rent	38
34	Amendment of s 70 (Home owner may apply to tribunal for order about site rent increase)	40
35	Insertion of new s 70A	41
	70A Tribunal may appoint independent valuer for market review of site rent	41
36	Replacement of pt 11, div 3 (Other way of increasing site rent) .	43
	Division 3 Increase in site rent to cover special costs	
	71 Application of division	44
	71A Notice of special increase in site rent	45
	71B Agreement to proposed increase for upgrade cost . .	46
	71C Dispute resolution and application to tribunal about special increase in site rent	47
	71D Criteria for tribunal to confirm or reduce proposed increase	48
37	Amendment of s 72 (Site rent reduction on application to tribunal by home owner)	49
38	Amendment of s 73 (Utility cost in site rent)	50
39	Amendment of s 74 (Tribunal review of utility cost and reduction in site rent)	50
40	Amendment of s 81 (Consideration of objections by park liaison committee)	51
41	Amendment of s 82 (Application to tribunal about proposal)	52
42	Amendment of s 84 (When proposal takes effect)	54
43	Insertion of new s 86A	55
	86A Preparing, maintaining and implementing emergency plan	55
44	Amendment of s 87 (Emergency access to residential park) . . .	56
45	Insertion of new s 87A	56

Contents

	87A	Park owner not to restrict a visitor of a home owner or other resident	57
46		Amendment of s 89 (Notice board)	58
47		Amendment of s 90 (Maintenance of trees)	59
48		Amendment of s 98 (Alteration or addition to manufactured home)	59
49		Amendment of s 99A (Separate charge by park owner not to be more than cost of supply for use of utility)	60
50		Amendment of s 100 (Establishment of committee)	61
51		Amendment of s 102 (Committee's function)	62
52		Amendment of s 103 (Park owner to respond to complaint or proposal)	62
53		Insertion of new pts 16 and 17	62
	Part 16	Obligations about behaviour of park owners and home owners	
	104	Park owner to respect rights of home owners and other residents	63
	105	Home owners to respect rights of others	64
	Part 17	Resolution of residential park disputes	
	Division 1	Alternative dispute resolution	
	Subdivision 1	Preliminary	
	106	Application and purpose of division	66
	Subdivision 2	Negotiation	
	107	Notice to negotiate resolution of dispute	66
	Subdivision 3	Mediation	
	108	Referral of residential park dispute for mediation ...	67
	109	Right of representation	68
	110	Conference to be held in private	68
	111	Parties to mediation conference	68
	112	Mediation agreements	68
	113	No official record of mediation conference	69
	114	Notifying outcome of mediation	69
	Division 2	Applications to tribunal	
	115	Application for order to resolve residential park dispute	70
	116	Requirements for application	70
	117	Orders of tribunal	71
54		Omission of s 140 (Site agreement dispute)	71
55		Replacement of s 141 (Application to tribunal by group of home owners)	

	71
141	Home owners may act jointly in relation to residential park dispute	72
55A	Amendment of s 166 (Variation of site agreement on assignment to allow site rent to be increased in accordance with market review)	72
56	Insertion of new pt 21, div 4	72
	Division 4 Transitional provisions for Housing Legislation (Building Better Futures) Amendment Act 2017	
176	Definitions for division	73
177	Requirement to give disclosure documents to prospective home owner	73
178	No automatic cooling-off period for compliant existing site agreement	74
179	Cooling-off period for non-compliant existing site agreement	74
180	Requirement to give disclosure documents to buyer	75
181	Notice of increase in site rent under pre-amended section 69	75
182	Restriction on first general site rent increase	76
183	Notice of increase in site rent under pre-amended section 71	77
184	Utility cost notice under pre-amended section 73 . . .	77
185	Application to tribunal about proposal under pre-amended section 82	78
186	Transitional regulation-making power	78
57	Insertion of new sch 1	79
	Schedule 1 Disclosure documents for a site	79
58	Amendment of schedule (Dictionary)	82
Part 5	Amendment of Residential Services (Accreditation) Act 2002	
59	Act amended	85
60	Amendment of s 4 (Meaning of residential service)	85
61	Amendment of s 5 (Meaning of resident)	85
62	Amendment of s 6A (Meaning of aged rental scheme and scheme operator)	86
63	Amendment of s 10 (Application for registration)	86
64	Amendment of s 12 (Registration certificate)	87
65	Replacement of s 19 (Who is an associate)	87
	19 Who is an associate	87

Contents

66	Amendment of s 35 (Requirement to be accredited at level 1) . . .	88
67	Amendment of s 36 (Requirement to be accredited at level 2) . . .	88
68	Amendment of s 38 (Requirement to be accredited at level 3) . . .	89
69	Amendment of s 41 (Meaning of accreditation decision)	89
70	Amendment of s 50 (Renewal of accreditation)	89
71	Amendment of s 69 (Notice of other changes)	89
72	Amendment of s 70 (Death of sole service provider)	90
73	Amendment of s 71 (Dealings with registration or accreditation in first 30 days of the transitional registration period)	91
74	Amendment of s 75 (Requirement for plan)	91
75	Insertion of new s 81A	91
	81A Notification of death of resident	91
76	Amendment of s 179 (Register of residential services)	92
77	Insertion of new s 180A	93
	180A Chief executive may make guidelines	93
78	Insertion of new pt 16	93
	Part 16 Transitional provisions for Housing Legislation (Building Better Futures) Amendment Act 2017	
	205 Application of s 35 if residential service was registered before commencement	94
	206 Application of s 36 if service provider started providing a food service before commencement	94
	207 Application of s 38 if service provider started providing a personal care service before commencement	94
79	Amendment of sch 1 (Reviewable decisions for this Act)	95
80	Amendment of sch 2 (Dictionary)	95
Part 6	Amendment of Residential Tenancies and Rooming Accommodation Act 2008	
81	Act amended	95
82	Insertion of new ch 1, pt 3, div 4	95
	Division 4 Prescribed minimum housing standards	
	17A Prescribed minimum housing standards	96
83	Amendment of s 185 (Lessor's obligations generally)	97
84	Amendment of s 186 (Lessor's obligations for facilities in moveable dwelling parks)	98
85	Amendment of s 187 (Lessor's obligations for moveable dwelling site)	98
86	Amendment of s 247 (Provider's obligations generally)	99

Part 7	Amendment of Retirement Villages Act 1999	
87	Act amended	99
88	Omission of s 13 (What is a public information document)	99
89	Amendment of s 18 (What is a capital replacement fund contribution)	99
90	Insertion of new ss 18A and 18B	100
	18A What is a general services charges fund	100
	18B What is a general services charge	100
91	Replacement of s 20 (What is a maintenance reserve fund contribution)	100
	20 What is a maintenance reserve fund contribution	100
92	Amendment of s 27 (Application for registration of a retirement village scheme)	101
93	Amendment of s 28A (Deregistration of retirement village scheme)	101
94	Amendment of s 35 (Retirement village scheme register)	101
95	Omission of ss 36 and 37	102
96	Replacement of s 38 (Chief executive may apply for order appointing a manager of a retirement village)	102
	38 Chief executive may apply for order appointing a manager of a retirement village	102
97	Insertion of new s 38A	104
	38A Management and administration of retirement village scheme by manager	104
98	Amendment and renumbering of s 40 (Applying to cancel registration)	104
99	Insertion of new ss 40 to 40G	105
	40 Definition for division	105
	40A Notice about cancelling registration	105
	40B Requirement to prepare closure plan	105
	40C Meaning of closure plan	106
	40D Approval of closure plan	106
	40E Revision of approved closure plan	109
	40F Requirement to implement approved closure plan	110
	40G Discontinuing closure of retirement village scheme	111
100	Replacement of s 41 (Cancelling registration)	111
	41 Cancelling registration	111
	41A Application to tribunal for review	112

Contents

101	Insertion of new pt 2, div 5	112
	Division 5 Change of scheme operator	
	41B Definitions for division	112
	41C Notice about change of scheme operator	113
	41D Requirement to prepare transition plan	113
	41E Meaning of transition plan	113
	41F Approval of transition plan	114
	41G Revision of approved transition plan	116
	41H Requirement to implement approved transition plan	117
	41I Discontinuing change of scheme operator	118
	41J Effect of change of scheme operator	118
102	Amendment of s 44 (Person signing residence contract to be given copy)	119
103	Amendment of s 45 (Content of residence contract)	119
	45 Form and content of residence contract	119
104	Amendment of s 53 (Termination by scheme operator)	120
105	Amendment of pt 3, div 5, hdg (Reselling resident's right to reside)	121
106	Amendment of s 56 (Interpretation for div 5)	121
107	Replacement of ss 58 and 59	121
	58 Reinstatement of accommodation unit	121
	59 When reinstatement work must be completed	122
	59A Renovation work by scheme operator	124
108	Omission of ss 61 and 62	125
109	Amendment of s 63 (When former resident's exit entitlement payable)	125
110	Amendment of s 64 (Units not sold within 6 months)	127
111	Amendment of s 65 (Scheme operator to tell resident of all offers for accommodation unit)	127
112	Amendment of s 66 (Accepting offers at less than agreed resale value)	127
	66 Working out exit entitlements	127
113	Amendment of s 67 (Updating agreed resale value)	128
114	Insertion of new s 67A	128
	67A Updating agreed resale value if exit entitlement is payable before right to reside is sold	128
115	Amendment of s 68 (Costs of selling)	129

116	Replacement of s 69 (Limited ground for scheme operator to refuse to accept offer)	129
	69 Limited ground for scheme operator to refuse to accept offer	129
117	Insertion of new ss 70AB–70AD	130
	70AB Submissions to valuer	130
	70AC Matters to be considered by valuers	131
	70AD Valuer may require information from scheme operator	132
118	Replacement of ss 74–83	133
	74 Village comparison documents	133
	75 Prospective costs documents	135
	76 Condition reports at start of residency	135
	77 Condition reports at end of residency	137
119	Replacement of ss 84 and 85	138
	84 Relevant information documents to be given to prospective residents	138
	85 Access to operational documents by residents and prospective residents	140
120	Replacement of s 86 (False or misleading documents)	141
	86 Misleading or deceptive conduct	142
121	Insertion of new s 86A	142
	86A Scheme website	142
122	Amendment of s 93 (Capital replacement fund budget)	143
123	Amendment of s 94 (Payments into capital replacement fund)	143
124	Amendment of s 98 (Amount of maintenance reserve fund)	143
125	Amendment of s 99 (Maintenance reserve fund budget)	143
126	Replacement of pt 5, div 7, hdg (Charges for general services)	145
	Division 7 General services charges fund	
127	Insertion of new s 102AA	145
	102AA General services charges fund	145
128	Amendment of s 102A (General services charges budget)	145
	102A General services charge budget	145
129	Amendment of s 103 (Working out and paying charges for general services for residents)	146
130	Amendment of s 104 (Working out and paying charges for general services for former residents)	147
131	Amendment of s 105 (General services charges for unsold right to reside in accommodation units)	148

Contents

132	Replacement of ss 106 and 107	149
	106 Increasing the total general services charge	149
	107 Allowable increase in total general services charge	150
133	Amendment of s 107A (Considering more cost-effective alternative services)	151
134	Amendment of s 108 (New services to be approved by majority of residents)	151
135	Amendment of s 111 (Scheme operator must keep separate accounts for capital replacement fund and maintenance reserve fund)	152
136	Replacement of s 112 (Quarterly financial statements)	152
	112 Quarterly financial statements	152
	112A Explanation of increase in general service charge	153
137	Amendment of s 113 (Annual financial statements)	153
138	Insertion of new pt 5, div 10	154
	Division 10 Redevelopment of retirement villages	
	113B Definition for division	154
	113C Application of division	154
	113D Requirement to prepare redevelopment plan	155
	113E Meaning of redevelopment plan	156
	113F Approval of redevelopment plan	156
	113G Revision of approved redevelopment plan	159
	113H Requirement to implement approved redevelopment plan	160
	113I Discontinuing running redevelopment of retirement village	160
	113J Application to tribunal for review	161
139	Amendment of s 129B (Residents committee may require scheme operator to attend meeting about budgets)	161
140	Insertion of new pt 8	161
	Part 8 Rights and obligations of scheme operator, residents and others	
	134 Purpose and enforceability of part	162
	135 Scheme operator to respect rights of residents	162
	136 Residents to respect rights of others	164
141	Amendment of s 167 (Application for reference of dispute)	165
142	Replacement of s 170 (Resident may apply for order if given false or misleading documents)	165
	170 Resident may apply for order if scheme operator contravenes	

	particular provisions	165
143	Amendment of s 171 (Former resident may apply for order for payment of exit entitlement)	166
144	Insertion of new s 171A	166
	171A Operator may apply for extension of time to pay exit entitlement	166
145	Amendment of s 191 (Tribunal orders generally)	167
146	Insertion of new s 195	167
	195 Tribunal order under section 171A	167
147	Amendment of s 221 (Evidentiary provisions)	167
147A	Insertion of new s 225	168
	225 Review of operation of s 63(1)(c)	168
148	Insertion of new s 227AA (Approval of forms)	168
	227AA Requirements about approved forms for residence contracts and other documents	169
149	Amendment of s 228 (Regulation-making power)	169
150	Insertion of new pt 15, div 3	169
	Division 3 Transitional provisions for Housing Legislation (Building Better Futures) Amendment Act 2017	
	237H Definitions for division	170
	237I Continued operation of public information documents and particular former provisions	170
	237J Approved form of public information documents	172
	237K Continued operation of former provisions relating to reinstatement work	172
	237L Village comparison documents	173
	237M Prescribed period for repayment of exit entitlement .	173
	237N Updating agreed resale value	173
	237O Quarterly financial statements	174
	237OA Non-application of pt 2, div 5 to existing contracts ..	174
	237P Transitional regulation-making power	174
151	Amendment of schedule (Dictionary)	175

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Housing Legislation (Building Better Futures) Amendment Act 2017*.

2 Commencement

This Act, other than the following provisions, commences on a day to be fixed by proclamation—

- part 3;
- sections 8, 13 and 14;
- section 53, to the extent it inserts new part 16;
- sections 59 to 63;
- sections 66 to 70;
- sections 72 to 74;
- sections 77 to 80;
- part 6;
- section 87;
- section 109(1) and (2);
- section 114;
- section 140;
- section 144;
- section 146;
- section 147A;

- (A) a grant, loan or other financial assistance given by the chief executive, or the QHC, for the purpose of providing a relevant housing service; or
- (B) other relevant receipts; or
- (ii) by the chief executive, or the QHC, for the purpose of providing a relevant housing service; or
- (iii) with other assistance given by the chief executive, or the QHC, for the purpose of providing a relevant housing service.

7 Insertion of new pt 10, div 8

Part 10—

insert—

Division 8 Transitional provision for Housing Legislation (Building Better Futures) Amendment Act 2017

171 Application of amended s 156, def *relevant property*

The commencement of the amendment of section 156, definition *relevant property*, by the *Housing Legislation (Building Better Futures) Amendment Act 2017*, section 6 is taken to have had effect from the commencement of the *Housing and Other Legislation Amendment Act 2013*, section 54.

Note—

The *Housing and Other Legislation Amendment Act 2013*, section 54 inserted section 156.

- (a) a dispute about a proposal for a change in a park rule for which a non-resolution notice has been given or a park liaison committee has made a proposal decision; or
- (b) a dispute between a seller and park owner about the park owner's failure or refusal to consent to the assignment of the seller's interest in a site agreement to a buyer; or
- (c) a dispute between the park owner and home owner under a site agreement about—
 - (i) the parties' rights or obligations under the agreement or this Act; or
 - (ii) another matter provided for under this Act; or
- (d) a dispute about a matter relating to the day-to-day running or operation of a residential park (including a failure to communicate or cooperate in dealing with the matter) between—
 - (i) the park owner; and
 - (ii) either—
 - (A) the home owners committee for the park; or
 - (B) if no home owners committee has been established for the park—a home owner; or
- (e) a dispute between the home owners for 2 or more sites in a residential park about a home owner's rights or obligations under this Act; or
- (f) a dispute, other than a dispute mentioned in paragraph (b), between 2 or more of a seller, buyer and park owner about the seller's, buyer's or park owner's rights or obligations under this Act relating to an assignment or

[s 13]

- proposed assignment of the seller's interest in a site agreement to the buyer; or
- (g) a dispute about whether a person is entitled to have a park owner enter into a site agreement with the person; or
 - (h) a dispute about whether a park owner is entitled to have a person enter into a site agreement with the park owner; or
 - (i) a dispute about whether a seller is entitled to assign the seller's interest in a site agreement to a buyer; or
 - (j) a dispute about whether a buyer is entitled to be assigned a seller's interest in a site agreement.
- (2) For subsection (1), a dispute about a person's obligation includes a complaint that the person has not complied with the obligation.
- (3) Despite subsection (1), neither of the following is a residential park dispute—
- (a) a dispute about whether a person is entitled to have a park owner enter into a site agreement with the person relating to a converted caravan;
 - (b) a dispute about whether a park owner is entitled to have a person enter into a site agreement with the park owner relating to a converted caravan.

13 Amendment of s 16 (Home owner's responsibilities)

Section 16(d)—

omit, insert—

- (d) to comply with the home owner's obligations under section 105;

14 Amendment of s 17 (Park owner's responsibilities)

- (1) Section 17(a), (b) and (c), after 'home owner'—

insert—

or the home owner's tenant

- (2) Section 17—

insert—

(da) to comply with the park owner's obligations under section 104;

- (3) Section 17(da) and (e)—

renumber as section 17(e) and (f).

15 Omission of pt 4 (Home owners information document)

Part 4—

omit.

16 Amendment of s 22 (Variation of special term)

- (1) Section 22(3)—

omit, insert—

- (3) If a party to a site agreement (the *first party*) proposes a variation of a special term of the agreement and the other party does not agree to the variation, the first party may, subject to section 116, apply to the tribunal for an order under subsection (4).

- (2) Section 22(4), 'On application by the other party'—

omit, insert—

If a party applies under subsection (3)

[s 17]

17 Amendment of s 25A (Application to tribunal—plain language)

- (1) Section 25A, heading, from ‘Application’ to ‘language’—

omit, insert—

Plain language for special term of site agreement

- (2) Section 25A(1)—

omit, insert—

- (1) This section applies if a home owner under a site agreement proposes that a special term of the agreement be varied because it is not clearly expressed in plain language and the park owner does not agree about the language, or proposed variation, of the special term.

- (1A) The home owner may, subject to section 116, apply to the tribunal to consider whether the special term is not clearly expressed in plain language.

- (3) Section 25A(2), ‘If the tribunal’—

omit, insert—

If the home owner applies under subsection (2) and the tribunal

- (4) Section 25A(1A) and (2)—

renumber as section 25A(2) and (3).

18 Amendment of s 25B (Prohibited terms of site agreements and prohibited park rules)

- (1) Section 25B(6)—

omit, insert—

- (6) Subsection (7) applies if a home owner under a site agreement considers a special term of the agreement is wholly or partly void under

subsection (5) and the park owner does not agree.

(6A) The home owner may, subject to section 116, apply to the tribunal to consider whether part or all of the special term is void under subsection (5).

(2) Section 25B(7), ‘On application under subsection (6)’—

omit, insert—

If a home owner applies under subsection (7)

(3) Section 25B(6A) and (7)—

renumber as section 25B(7) and (8).

19 Replacement of s 29 (Park owner to give disclosure documents to prospective home owner)

Section 29—

omit, insert—

29 Disclosure documents to be given to prospective home owner

(1) The park owner for a residential park must not enter into a site agreement for a site in the park with a prospective home owner unless the park owner has complied with subsections (2) and (3).

Maximum penalty—200 penalty units.

Note—

For another possible consequence of not complying with this section, see section 33.

(2) Subject to subsection (3), the park owner must give the prospective home owner—

(a) the documents mentioned in schedule 1, part 1 (the *initial disclosure documents*) for the site at least 21 days before entering into the site agreement (the *default notice period*); and

[s 19]

- (b) the following documents (the *supplementary disclosure documents*) for the site at least 14 days before entering into the site agreement (also the *default notice period*)—
 - (i) the documents mentioned in schedule 1, part 2;
 - (ii) 2 copies of a proposed site agreement.
- (3) If, under section 29A, the prospective home owner waives the right to be given the initial disclosure documents and the right to be given the supplementary disclosure documents for the site in the default notice period, the park owner must give the prospective home owner the documents at least 7 days before entering into the site agreement.

29A Waiver of disclosure of documents in default notice period

- (1) The prospective home owner may, by notice to the park owner, waive the right under section 29(2)(a) to be given the initial disclosure documents and the right under section 29(2)(b) to be given the supplementary disclosure documents for the site in the default notice period.
- (2) The notice must—
 - (a) if there is an approved form for the notice—be in the approved form; and
 - (b) state that the prospective home owner—
 - (i) has obtained independent legal advice from a Queensland lawyer about entering into the site agreement for the site; and
 - (ii) agrees to receive the initial disclosure documents less than 21 days but at

least 7 days, and the supplementary disclosure documents less than 14 days but at least 7 days, before entering into the site agreement; and

- (c) be signed by the lawyer and include the lawyer's name and contact details and the date the legal advice was given.

20 Amendment of s 30 (Obtaining independent legal advice about site agreement)

Section 30, 'a site agreement'—

omit, insert—

a site agreement, including independent legal advice mentioned in section 29A(2)(b)(i)

21 Amendment of pt 6, div 2, hdg (Termination within 28 days after entering into site agreement)

Part 6, division 2, heading, from 'Termination' to 'agreement'—

omit, insert—

Termination within cooling-off period

22 Amendment of s 33 (Cooling-off period)

- (1) Section 33(1) and (2)—

omit, insert—

- (1) This section applies if the park owner for a residential park and a prospective home owner for a site enter into a site agreement for the site.
- (2) The home owner may, within the cooling-off period, terminate the site agreement by giving a signed notice of the termination to—
- (a) the park owner; and

[s 23]

- (b) if the home owner has granted a person a security interest in the manufactured home positioned on the site—that person.

(2) Section 33—

insert—

(8) In this section—

cooling-off period means the following period after the day the last person signed the site agreement—

- (a) if the park owner has not given the prospective home owner the disclosure documents for the site as required under section 29—28 days;
- (b) otherwise—7 days.

23 Amendment of s 34 (Automatic ending of sale agreement)

(1) Section 34—

insert—

(4A) Subsection (4B) applies if the home owner has granted a person (a ***financier***) a security interest in the home and the financier has been given notice of the termination of the site agreement under section 33(2) or otherwise knows about the termination.

(4B) The financier must, within 7 days after the ending of the sale agreement under subsection (2), give the park owner a notice stating the amount owing under the security interest.

(2) Section 34(5), from ‘14 days’ to ‘subsection (2)’—

omit, insert—

the refund period

(3) Section 34(5)(a), ‘there is an amount’—

omit, insert—

all or part of the refundable amount is

- (4) Section 34(5)(a), from ‘person’ to ‘(Cwlth)’—

omit, insert—

financier under a security interest in the home

- (5) Section 34—

insert—

(5A) For subsection (5)(a), the amount owing under the security interest is the amount stated in a notice given by the financier to the park owner.

- (6) Section 34(7), definition *refundable amount*, paragraph (b), before ‘the amount’—

insert—

if the park owner did not give the home owner the disclosure documents for the site as required under section 29—

- (7) Section 34(7)—

insert—

refund period means the period—

- (a) if subsection (5)(a) applies, starting—

(i) when the financier gives the park owner the notice as required under subsection (4B); or

(ii) 7 days after the ending of the sale agreement under subsection (2); and

- (b) ending at the end of the day that is 14 days after the ending of the sale agreement under subsection (2).

[s 24]

24 Amendment of s 35 (Compensation may be payable to home owner)

(1) Section 35(1)—

insert—

(aa) the park owner has not given the prospective home owner the disclosure documents for the site as required under section 29; and

(2) Section 35(1)(aa) and (b)—

renumber as section 35(1)(b) and (c).

(3) Section 35(1)—

insert—

(d) the home owner and park owner do not agree about compensation payable to the home owner for the removal and relocation of the home.

(4) Section 35—

insert—

(1A) The home owner may, subject to section 116, apply to the tribunal for an order under subsection (3).

(5) Section 35(5), ‘subsection (4)(b)’—

omit, insert—

subsection (5)(b)

(6) Section 35(1A) to (7)—

renumber as section 35(2) to (8).

25 Replacement of s 44 (Assignment to be written)

Section 44—

omit, insert—

44 Assignment only by assignment agreement

- (1) The seller may assign the seller's interest to the buyer only by written agreement (the *assignment agreement*) with the buyer.
- (2) A term in the assignment agreement is void to the extent it purports to exclude, change or restrict the operation of section 46, 47, 48, 48A or 51A.

26 Amendment of s 45 (Notice of proposed sale and assignment)

Section 45(2)—

omit.

27 Insertion of new s 45A

Part 7, division 2—

insert—

45A Disclosure documents to be given to buyer

- (1) The park owner for a residential park must, within 7 days after receiving the notice mentioned in section 45, give the documents mentioned in schedule 1 for the site to the buyer.

Maximum penalty—20 penalty units.

Note—

See also section 48A under which the park owner is required to give the disclosure documents for the site to the buyer within a stated period before consenting to the assignment of the seller's interest.

- (2) To remove any doubt, it is declared subsection (1) applies even if the park owner intends to refuse, or refuses, to consent to the proposed assignment of the seller's interest.

[s 28]

28 Amendment of s 46 (Obtaining independent legal advice about assignment of seller's interest)

Section 46, 'the seller's interest'—

omit, insert—

the seller's interest, including independent legal advice mentioned in section 48B(2)(b)(i)

29 Insertion of new ss 48A and 48B

Part 7, division 2—

insert—

48A Buyer to be given disclosure documents before park owner consents

The park owner must not consent to the assignment of the seller's interest to the buyer unless the park owner has given the buyer the disclosure documents for the site—

- (a) at least 21 days before giving the consent (the *default notice period*); or
- (b) if under section 48B the buyer waives the right to be given the disclosure documents in the default notice period—at least 7 days before giving the consent.

Maximum penalty—200 penalty units.

Note—

For another possible consequence of not complying with this section, see section 51A.

48B Waiver of disclosure of documents in default notice period

- (1) The buyer may, by notice to the park owner, waive the right under section 48A to be given the disclosure documents for the site in the default notice period.

- (2) The notice must—
- (a) if there is an approved form for the notice—be in the approved form; and
 - (b) state that the buyer—
 - (i) has obtained independent legal advice from a Queensland lawyer about being assigned the seller’s interest in the site agreement for the site; and
 - (ii) agrees to receive the disclosure documents less than 21 days, but at least 7 days, before the park owner consents to the assignment of the seller’s interest to the buyer; and
 - (c) be signed by the lawyer and include the lawyer’s name and contact details and the date the legal advice was given.

30 Amendment of s 49 (Consent to assignment of seller’s interest)

- (1) Section 49(5)(b)(ii)—

omit, insert—

- (ii) that if the seller is dissatisfied with the refusal—
 - (A) the seller must use the dispute resolution procedure under section 107 to try to resolve the dispute with the park owner; and
 - (B) the seller may, subject to section 116, apply to the tribunal for an order that the park owner consent to the assignment.

- (2) Section 49(6)—

omit, insert—

[s 31]

- (6) If, within 28 days after receiving the request, the park owner does not consent to the assignment under subsection (4), or does not refuse to consent to the assignment under subsection (5), the park owner is taken to have refused to consent to the assignment.

31 Amendment of s 50 (Application to tribunal for order that park owner consent to assignment)

- (1) Section 50, heading, from ‘Application’ to ‘assignment’—
omit, insert—

**Dispute resolution and application to tribunal
about refusal to consent to assignment**

- (2) Section 50(1), editor’s note—

omit.

- (3) Section 50(2)—

omit, insert—

- (2) The seller may, subject to section 116, apply to the tribunal for an order (the *assignment order*) that the park owner consent to the assignment of the seller’s interest on a day (the *consent day*) stated in the order.

- (4) Section 50(3), ‘order’—

omit, insert—

assignment order

- (5) Section 50—

insert—

- (3A) Also, if the park owner has not given the buyer the disclosure documents for the site, the tribunal may make an order directing the park owner to give the documents to the buyer at least 7 days before the consent day.

-
- (6) Section 50(4), from ‘makes’ to ‘made,’—
omit, insert—
makes the assignment order, the park owner must
on the consent day
- (7) Section 50(5)—
omit, insert—
(5) If the park owner fails to comply with subsection
(5), the park owner is taken to consent to the
assignment on the consent day.
- (8) Section 50(3A) to (5)—
renumber as section 50(4) to (6).

32 Insertion of new pt 7, divs 3 and 4

Part 7—

insert—

Division 3 Termination of assignment agreement within cooling-off period

51A Cooling-off period for assignment agreement

- (1) This section applies if—
- (a) the seller and buyer have entered into an assignment agreement; and
 - (b) the park owner consents to the assignment of the seller’s interest in the site agreement for the site to the buyer.
- (2) The buyer may, within the cooling-off period, terminate the assignment agreement by giving a signed notice of the termination to—
- (a) the park owner; and

[s 32]

- (b) the seller; and
 - (c) if the buyer has granted a person a security interest in the manufactured home positioned on the site—that person.
- (3) The notice must state the day, within 28 days after the notice is given, the termination takes effect (the *termination day*).
- (4) The buyer may terminate the assignment agreement under subsection (2) even though—
- (a) the buyer has affirmed the agreement; and
 - (b) the agreement and the form of assignment of the seller's interest have been fully executed.
- (5) If the assignment agreement is terminated under subsection (2)—
- (a) the form of assignment of the seller's interest is taken to be revoked; and
 - (b) the buyer is not liable to pay any amount otherwise payable under the agreement by the buyer to the seller.
- (6) If the assignment agreement is terminated under subsection (2), the seller must, within 14 days after the termination day, refund any amount received under the agreement from the buyer.
- Maximum penalty—100 penalty units.
- (7) An amount payable to the buyer under subsection (6) is recoverable as a debt.
- (8) In this section—
- cooling-off period* means the following period after the park owner consents to the assignment of the seller's interest to the buyer—
- (a) if the park owner has not given the buyer the disclosure documents for the site as required under section 48A—28 days;

(b) otherwise—7 days.

Division 4 Provisions about sale agreement for manufactured home

51B Application of division

This division applies if the seller and buyer have entered into an agreement for the sale of the manufactured home positioned on the site to the buyer (the *sale agreement*).

51C Restriction on sale agreement

The seller must not complete the sale agreement unless—

- (a) the park owner—
 - (i) has consented to the assignment of the seller’s interest in the site agreement to the buyer under section 48(2) or 50(5); or
 - (ii) is taken to have consented to the assignment under section 50(6); and
- (b) the buyer has been given the disclosure documents for the site as required under—
 - (i) section 48A(a) or (b); or
 - (ii) an order made under section 50(4).

Maximum penalty—5 penalty units.

51D Automatic ending of sale agreement

- (1) This section applies if the buyer terminates the assignment agreement under section 51A.

[s 32]

- (2) The sale agreement is taken to be at an end on the day the termination of the assignment agreement takes effect.
- (3) Also, on the ending of the sale agreement under subsection (2), ownership of the home reverts to the seller.
- (4) Subsections (2) and (3) apply even though—
 - (a) the buyer has affirmed the sale agreement; and
 - (b) the sale agreement has been fully executed.
- (4A) Subsection (4B) applies if the buyer has granted a person (a *financier*) a security interest in the home and the financier has been given notice of the termination of the assignment agreement under section 51A(2) or otherwise knows about the termination.
- (4B) The financier must, within 7 days after the ending of the sale agreement under subsection (2), give the seller a notice stating the amount owing under the security interest.
- (5) The seller must, within the refund period, pay the refundable amount as follows—
 - (a) first, if all or part of the refundable amount is owing to a financier under a security interest in the home—in payment of the amount owing under the security interest;
 - (b) second, in payment of any balance to the buyer.

Maximum penalty—100 penalty units.

- (5A) For subsection (5)(a), the amount owing under the security interest is the amount stated in a notice given by the financier to the seller.
- (6) In this section—

refundable amount means the amount paid to the

seller, or at the seller's direction, under the sale agreement.

refund period means the period—

- (a) if subsection (5)(a) applies, starting—
 - (i) when the financier gives the seller the notice as required under subsection (4B); or
 - (ii) 7 days after the ending of the sale agreement under subsection (2); and
- (b) ending at the end of the day that is 14 days after the ending of the sale agreement under subsection (2).

51E Contracting out prohibited

A term in the sale agreement is void to the extent it purports to exclude, change or restrict the operation of section 51C or 51D.

33 Replacement of s 69 (Notice of increase in site rent)

Section 69—

omit, insert—

69 Application of division

- (1) This division applies if—
 - (a) a site agreement between the park owner for a residential park and a home owner provides for an increase in the site rent payable under the agreement; and
 - (b) the park owner proposes to increase the site rent as provided for under the site agreement.
- (2) However, this division does not apply if the site rent is proposed to be increased to cover a special

[s 33]

cost.

- (3) The site rent can not be increased as provided for under the site agreement unless the park owner complies with sections 69A to 69E.

Note—

See sections 23 and 24(1).

69A Basis for site rent increase must be stated in site agreement

The park owner must ensure the site agreement states the basis for working out the amount of an increase in the site rent.

Examples of bases for increasing site rent that may be stated in a site agreement—

- a percentage of the site rent worked out by reference to the CPI number for a stated period
- a market review of site rent

69B Restrictions on increasing site rent under site agreement

- (1) The park owner must not work out an increase in the site rent using more than 1 basis at one time.

Example—

A site agreement provides for increases in site rent on the bases of an increase in the CPI number and market review of site rent. An increase in site rent under the agreement based on a market review of site rent could not include an increase in the CPI number even though provided for in the agreement.

- (2) If the site rent has been increased under this division, the park owner must not increase the site rent under this division on any basis provided for in the site agreement within 1 year (the *site rent year*) after the day the site rent was last increased under this division.

Note—

See also section 182.

- (3) For subsection (2), site rent is taken to be increased on the first day the site rent is payable at an increased rate.
- (4) To remove any doubt, it is declared that subsection (2) applies in relation to the site agreement for the site rent year even if the home owner became a party to the agreement in that year.

69C Park owner must nominate general increase day for eligible sites

- (1) The park owner must nominate the same day (the *general increase day*) when the site rent payable under the site agreements for all eligible sites in the residential park will be increased on the same basis (the *relevant basis*).
- (2) A site is an *eligible site* for which the general increase day may be nominated if, under the terms of the site agreement for the site, the site rent may be increased on the relevant basis on or before the general increase day.
- (3) Subsection (4) applies if the general increase day is nominated under subsection (1) for an eligible site and a general increase notice stating the general increase day (the *stated increase day*) is given to the home owner for the site under section 69E.
- (4) The next general increase day that may be nominated under subsection (1) for any eligible site in the residential park must be at least 1 year after the stated increase day.

69D Consulting with interested entities for preparing market valuation

- (1) This section applies if—
 - (a) the site agreement for an eligible site provides for an increase in the site rent on the basis of a market review of site rent; and
 - (b) the park owner proposes to increase the site rent on that basis.
- (2) At least 63 days before the next general increase day for the site, the park owner must consult with, or arrange for a registered valuer to consult with, the interested entities for preparing a written valuation for the market review of site rent (a *market valuation*).
- (3) In this section—

interested entities means—

 - (a) the home owners committee for the residential park; or
 - (b) if no home owners committee has been established for the park, for an increase in site rent intended to apply to—
 - (i) fewer than 9 sites—the home owners for at least 2 of the sites; or
 - (ii) 9 or more sites—the home owners for the number of the sites at least equal to 25% of the number of the sites.

69E Notice of general increase in site rent

- (1) At least 35 days before the general increase day for the eligible sites, the park owner must give the home owner for each eligible site a notice (a *general increase notice*) stating the following—
 - (a) the amount of the proposed increased site rent;

-
- (b) the basis for increasing the site rent;
 - (c) how the amount of the proposed increased site rent has been worked out using the basis;
 - (d) the general increase day;
 - (e) the day the notice is given to the home owner.

Note—

For giving documents, see the *Acts Interpretation Act 1954*, section 39 and the *Electronic Transactions (Queensland) Act 2001*, chapter 2, part 2, division 1.

- (2) For subsection (1)(c), if the proposed increased site rent is based on a market review of site rent—
 - (a) the general increase notice must be accompanied by a market valuation for the market review of site rent prepared by a registered valuer; and
 - (b) the registered valuer must state in the market valuation any connection to, or agreement with, the park owner that may call into question the independence of the valuation.
- (3) The park owner must ensure the general increase notice also states that if the home owner disputes the amount of the proposed increase—
 - (a) the home owner must, within 28 days after receiving the notice, give the park owner a dispute negotiation notice for the dispute; and
 - (b) the home owner must use the dispute resolution procedures under part 17, division 1 to try to resolve the dispute with the park owner; and
 - (c) the home owner may, subject to section 116, apply to the tribunal for an order reducing the amount of, or setting aside, the increase

[s 34]

if the dispute can not be resolved using the dispute resolution procedures.

Maximum penalty—100 penalty units.

- (4) The proposed increased site rent is payable from the general increase day stated in the general increase notice.

34 Amendment of s 70 (Home owner may apply to tribunal for order about site rent increase)

- (1) Section 70, heading, from ‘Home’ to ‘increase’—

omit, insert—

Dispute resolution and application to tribunal about general site rent increase

- (2) Section 70(1)—

omit, insert—

- (1) This section applies if—
- (a) the park owner for a residential park gives a home owner for an eligible site a general increase notice for a proposed increase in site rent; and
 - (b) the home owner disputes the amount of the proposed increase on the basis it is excessive.
- (1A) The home owner must, within 28 days after receiving the general increase notice, give the park owner a dispute negotiation notice for the dispute.
- (1B) The home owner may, subject to section 116, apply to the tribunal for an order under subsection (4).

Note—

Under section 141, a group of home owners may make a joint application in relation to a residential park dispute arising out of the same or similar facts or circumstances.

- (3) Section 70(2), from ‘On application’ to ‘notice’—

omit, insert—

If the home owner applies under subsection (3)

- (4) Section 70(4), ‘subsection (2)(a)’—

omit, insert—

subsection (4)(a)

- (5) Section 70(5), ‘subsection (4)’—

omit, insert—

subsection (6)

- (6) Section 70(6), definition *CPI*—

omit.

- (7) Section 70(1A) to (6)—

renumber as section 70(2) to (8).

35 Insertion of new s 70A

Part 11, division 2—

insert—

70A Tribunal may appoint independent valuer for market review of site rent

- (1) This section applies if—
- (a) the park owner for a residential park gives a home owner a general increase notice for a proposed increase in the site rent based on a market review of site rent; and
 - (b) the home owner applies to the tribunal under section 70(3).

[s 35]

- (2) The tribunal may appoint an appropriately qualified and independent registered valuer to help the tribunal in relation to the application including, for example, by—
 - (a) giving the tribunal a written valuation for a market review of site rent; or
 - (b) giving expert evidence in a proceeding for the application.
- (3) The tribunal may appoint a valuer under subsection (2) if satisfied—
 - (a) at least 1 of the following applies—
 - (i) consultation for preparing a market valuation for the market review of site rent was not carried out as required under section 69D or was not adequate;
 - (ii) the general increase notice was not accompanied by a market valuation for the market review of site rent under section 69E(2);
 - (iii) the general increase notice or market valuation accompanying the notice (the *relevant market valuation*) does not clearly provide for how the increased site rent has been worked out;
 - (iv) the site rent is proposed to be increased other than in accordance with the relevant market valuation;
 - (v) the relevant market valuation does not reflect a reasonable market review of site rent in the circumstances, including, for example, because the basis or methodology for the review is not reasonable; and
 - (b) for a general increase notice for the same general increase day given to the home

owners for at least 5 sites in the residential park (the *notified sites*)—the home owners for the threshold number of the notified sites have applied to the tribunal under section 70(3).

- (4) If the tribunal appoints a valuer under subsection (2), the park owner must pay the valuer's costs of helping the tribunal, including—
 - (a) the costs of preparing a written valuation, if any, required by the tribunal; and
 - (b) the fees and allowances for giving evidence, if required, in a proceeding.
- (5) However, subsection (4) applies only if before appointing the valuer, the tribunal—
 - (a) advises the park owner of the amount the park owner is likely to be required to pay under subsection (4); and
 - (b) gives the park owner the opportunity to be heard on the matter of appointing the valuer.
- (6) In this section—

threshold number, of the notified sites, means the lesser of the following—

 - (a) the number at least equal to 25% of the number of the notified sites;
 - (b) 20.

36 Replacement of pt 11, div 3 (Other way of increasing site rent)

Part 11, division 3—

omit, insert—

Division 3 Increase in site rent to cover special costs

71 Application of division

- (1) This division applies if—
 - (a) the park owner for a residential park proposes to increase the site rent payable under a site agreement for a site; and
 - (b) the proposed increase in site rent is necessary to cover any of the following types of costs (each a *special cost*) that the park owner has incurred, or expects to incur, for a particular purpose—
 - (i) significant increased operational costs in relation to the park, including, for example, significant increases in rates, taxes or utility costs for the park (an *operational cost*);
 - (ii) the cost of significant repairs in relation to the common areas or communal facilities in the park that the park owner could not reasonably have foreseen (a *repair cost*);
 - (iii) the cost of significant upgrades to the common areas or communal facilities in the park (an *upgrade cost*); and
 - (c) the proposed increase in site rent is not based wholly or partly on—
 - (i) a market review of site rent; or
 - (ii) any other basis as provided for in the site agreement on which the site rent may be increased under division 2.
- (2) This division applies whether or not the site agreement provides for an increase in the site rent to cover the special cost.
- (3) The site rent can not be increased to cover the special cost unless the park owner complies with section 71A(1).

Note—

See sections 23 and 24(1).

71A Notice of special increase in site rent

- (1) The park owner must give the home owner for the site a notice (the *special increase notice*) stating the following—
 - (a) the type of the special cost and the purpose (the *stated purpose*) for which it has been, or is expected to be, incurred;
 - (b) the total amount of the special cost incurred, or expected to be incurred, and the proportion of the total amount proposed to be included in the site rent;
 - (c) the amount of the proposed increased site rent including the proportion of the special cost mentioned in paragraph (b);
 - (d) how the proposed amount relating to the proportion of the special cost has been worked out;
 - (e) the day, at least 2 months after the notice is given, the increased site rent is first payable (the *special increase day*);
 - (f) for a notice relating to a repair cost or upgrade cost—the period for which the proposed increased site rent will be payable to cover the cost;
 - (g) that the home owner must, within 28 days after receiving the notice, give the park owner a written response agreeing to or disputing the proposed increase;
 - (h) the day the notice is given to the home owner.
- (2) If the home owner agrees in writing to the

[s 36]

proposed increase, whether under subsection (1)(g) or otherwise, the proposed increased site rent—

- (a) is first payable on the special increase day; and
 - (b) for a proposed increase to cover a repair cost or upgrade cost—stops being payable when the period mentioned in subsection (1)(f) ends.
- (3) If the home owner does not give a response under subsection (1)(g) or otherwise agree in writing to the proposed increase, the home owner is taken to dispute the proposed increase.

71B Agreement to proposed increase for upgrade cost

- (1) This section applies if—
 - (a) the park owner gives a special increase notice to the home owners for at least 4 sites in the park (the *notified sites*) for a proposed increase in site rent to cover an upgrade cost for the same stated purpose; and
 - (b) the home owners for the number of the sites at least equal to 75% of the number of the notified sites agree in writing to the proposed increase, whether under section 71A(1)(g) or otherwise.
- (2) Despite section 71A(1)(g) and (3), the home owners for all of the notified sites are taken to have agreed to the proposed increase in site rent.
- (3) If a home owner for a notified site has not agreed in writing to the proposed increase in site rent, section 71A(2) applies as if the home owner had agreed in writing to the proposed increase.

71C Dispute resolution and application to tribunal about special increase in site rent

- (1) This section applies if—
 - (a) the park owner for a residential park gives the home owner for a site in the park a special increase notice for a proposed increase in site rent for a stated purpose; and
 - (b) the home owner gives a response under section 71A(1)(g) disputing the proposed increase or is taken to dispute the proposed increase under section 71A(3); and
 - (c) the home owner is not taken to have agreed to the proposed increase under section 71B(2).
- (2) The park owner may, subject to section 116, apply to the tribunal for an order about the proposed increase.
- (3) If subsection (1) applies in relation to the home owners for 2 or more sites in the park for a proposed increase in site rent for the same stated purpose (the *affected home owners*), the park owner must name all the affected home owners as respondents to the application to the tribunal.
- (4) If the park owner applies under subsection (2), the tribunal, in deciding the application, may have regard to—
 - (a) a matter mentioned in section 70(5)(d) to (k); and
 - (b) anything else the tribunal considers relevant.
- (5) Also, the tribunal may make any of the following orders—
 - (a) an order confirming the proposed increase on the conditions, if any, the tribunal considers appropriate;

[s 36]

- (b) an order reducing the amount of the proposed increase by a stated amount;
 - (c) an order setting aside the proposed increase;
 - (d) another order the tribunal considers appropriate.
- (6) If the tribunal makes an order for increased site rent under subsection (5)(a) or (b), the order must also state—
- (a) the day from when the increased site rent is first payable; and
 - (b) if the increased site rent is to cover a repair cost or an upgrade cost—the period for which the increased site rent will be payable to cover the cost.

71D Criteria for tribunal to confirm or reduce proposed increase

The tribunal may make an order for a proposed increase in site rent under section 71C(5)(a) or (b) if satisfied of the following matters—

- (a) the proposed increase has not been included wholly or partly in an increase of site rent under—
 - (i) the site agreement; or
 - (ii) an order under section 70(4); or
 - (iii) an agreement mentioned in section 71A(2); or
 - (iv) a previous order under section 71C(5);
- (b) for a proposed increase to cover an operational cost—that if the site rent is not increased as proposed, the residential park will not be commercially viable without significantly reducing the park owner's

capacity to carry out the park owner's responsibilities under section 17;

- (c) for a proposed increase to cover a repair cost—
 - (i) the matter mentioned in paragraph (b); and
 - (ii) the park owner could not reasonably have obtained insurance to cover the cost.

37 Amendment of s 72 (Site rent reduction on application to tribunal by home owner)

- (1) Section 72, heading, from 'on' to 'home owner'—

omit, insert—

for failure of communal facility or service etc.

- (2) Section 72(1), from 'On application' to 'satisfied'—

omit, insert—

This section applies if the home owner under a site agreement considers the site rent should be reduced because 1 of the following applies and the park owner does not agree to the reduction

- (3) Section 72(1)(a) and (b), ' ; or'—

omit, insert—

;

- (4) Section 72—

insert—

(1A) The home owner may, subject to section 116, apply to the tribunal for an order reducing the site rent under subsection (3).

(1B) If the home owner applies under subsection (2), the tribunal may make an order reducing the site rent by an amount the tribunal considers

[s 38]

appropriate if the tribunal is satisfied of a matter mentioned in subsection (1)(a) to (c).

(5) Section 72(2), from ‘The tribunal’ to ‘subsection (1)’—

omit, insert—

For making an order under subsection (3), the tribunal may have regard to any of the following documents

(6) Section 72(1A) to (2)—

renumber as section 72(2) to (4).

38 Amendment of s 73 (Utility cost in site rent)

Section 73(2)(d)—

omit, insert—

(d) if the home owner disputes the utility cost—

- (i) the home owner must, within 28 days after receiving the notice, give the park owner a dispute negotiation notice for the dispute; and
- (ii) the home owner must use the dispute resolution procedures under part 17, division 1 to try to resolve the dispute with the park owner; and
- (iii) the home owner may, subject to section 116, apply to the tribunal for an order reducing the site rent if the dispute can not be resolved using the dispute resolution procedures.

39 Amendment of s 74 (Tribunal review of utility cost and reduction in site rent)

(1) Section 74, heading, from ‘Tribunal’ to ‘rent’—

omit, insert—

**Dispute resolution and tribunal review of
utility cost and site rent reduction**

(2) Section 74(1)(a)—

omit, insert—

(a) the home owner under a site agreement and the park owner disagree about whether the park owner should have given a utility cost notice under section 73(2); or

(3) Section 74(2), ‘may apply’—

omit, insert—

may, subject to section 116, apply

(4) Section 74(3)—

omit, insert—

(3) The home owner mentioned in subsection (1)(b)—

(a) must, within 28 days after receiving the utility cost notice, give the park owner a dispute negotiation notice for the dispute; and

(b) may, subject to section 116, apply to the tribunal for an order under subsection (4).

(5) Section 74(4), ‘On application by the home owner’—

omit, insert—

If the home owner applies to the tribunal under subsection (2) or (3)(b)

40 Amendment of s 81 (Consideration of objections by park liaison committee)

(1) Section 81—

insert—

(2A) If the park liaison committee proposes to make a

[s 41]

decision under subsection (1) or (2) that would be contrary to an objection made under section 79, the committee must—

- (a) invite the objectors to attend a meeting of the committee; and
- (b) at the meeting—
 - (i) tell the objectors of the proposed decision; and
 - (ii) allow the objectors to make representations about the proposed decision; and
- (c) consider any representations made at the meeting before making the decision.

(2) Section 81(3), ‘this section’—

omit, insert—

subsections (1) and (2) (each a ***proposal decision***)

(3) Section 81(2A) and (3)—

renumber as section 81(3) and (4).

41 Amendment of s 82 (Application to tribunal about proposal)

(1) Section 82, heading, ‘Application’—

omit, insert—

Dispute resolution and application

(2) Section 82(1)—

omit, insert—

(1) This section applies if—

- (a) there is a dispute about a proposal to change a park rule for a residential park for which the park owner has given each objector a non-resolution notice; or

-
- (b) the park owner or a home owner for a residential park is dissatisfied with a proposal decision of a park liaison committee.
- (1A) If an objector intends to continue to dispute the proposal, the objector must, within 7 days after receiving the non-resolution notice, apply to the registrar under section 108(1) to refer the dispute for mediation.
- (1B) If the park owner or home owner intends to dispute the proposal decision, the park owner or home owner must, within 7 days after receiving notice of the decision under section 81(4), apply to the registrar under section 108(1) to refer the dispute for mediation.
- (3) Section 82(2), ‘The park owner or home owner may apply’—
omit, insert—
An objector, the park owner or home owner may, subject to section 116, apply
- (4) Section 82(3), from ‘The application’ to ‘give’—
omit, insert—
An application made to the tribunal under subsection (4) must include
- (5) Section 82(4), after ‘application’—
insert—
to the tribunal
- (6) Section 82(5), ‘subsection (2)’—
omit, insert—
subsection (4)
- (7) Section 82(1A) to (5)—
renumber as section 82(2) to (7).

[s 42]

42 Amendment of s 84 (When proposal takes effect)

(1) Section 84(3)—

omit, insert—

(3) If non-resolution notices about the proposal are given to each of the objectors and no application is made under section 82(2) to refer a dispute about the proposal to mediation, the proposal takes effect—

- (a) 7 days after the day the last of the objectors receives a non-resolution notice; or
- (b) if a later day is stated in the proposal—on the later day.

(2) Section 84(4)(b)—

omit, insert—

(b) no application is made under section 82(3) to refer a dispute about the proposal decision to mediation;

(3) Section 84—

insert—

(4A) If a dispute about a proposal or a proposal decision for a proposal is referred to mediation under section 82(2) or (3), the proposal takes effect—

- (a) if mediation of the dispute results in a mediation agreement that the proposal or the proposal as changed is reasonable—on the day stated in the agreement; or
- (b) if the dispute is not resolved by the mediation and no party to the dispute has applied to the tribunal under section 82(4) within 7 days after the mediation is finished—at the end of that period.

(4) Section 84(4A) and (5)—

renumber as section 84(5) and (6).

43 Insertion of new s 86A

Part 14, division 1—

insert—

86A Preparing, maintaining and implementing emergency plan

- (1) The park owner for a residential park must ensure an emergency plan is prepared for the park, providing for the following—
 - (a) emergency procedures, including—
 - (i) an effective response to an emergency; and
 - (ii) procedures for evacuating home owners and other residents from the park; and
 - (iii) notifying emergency service organisations at the earliest opportunity; and
 - (iv) arranging for medical treatment and assistance; and
 - (v) effective communication between the person authorised by the park owner to coordinate the emergency response and the home owners and other residents of the park;
 - (b) testing of the emergency procedures, including the frequency of testing;
 - (c) information, training and instruction to the home owners and other residents of the park about implementing the emergency procedures;

[s 44]

(d) another relevant matter prescribed by regulation.

Maximum penalty—20 penalty units.

(2) The park owner must—

(a) maintain the emergency plan for the residential park so that the plan remains effective; and

(b) implement the emergency plan in the event of an emergency.

Maximum penalty—20 penalty units.

(3) In this section—

emergency service organisation means—

(a) the Queensland Ambulance Service; and

(b) the Queensland Fire and Emergency Service; and

(c) the Queensland Police Service.

44 Amendment of s 87 (Emergency access to residential park)

(1) Section 87(1), after ‘that’—

insert—

at all times

(2) Section 87(2), definition *emergency worker*, paragraph (b), ‘Rescue’—

omit, insert—

Emergency

45 Insertion of new s 87A

Part 14, division 1—

insert—

87A Park owner not to restrict a visitor of a home owner or other resident

- (1) The park owner for a residential park must not restrict a visitor in visiting a home owner or other resident at the site or in a common area in the park, if the visitor—
 - (a) is providing, or intending to provide, a health or community service to the home owner or other resident; and
 - (b) is suitably qualified to provide the service.

Maximum penalty—20 penalty units.

- (2) The park owner for a residential park must not restrict a visitor, other than a visitor mentioned in subsection (1), in visiting a home owner or other resident at the site or in a common area in the park, unless the park owner has a reasonable excuse.

Example of a reasonable excuse—

A park owner may have a reasonable excuse to restrict a visitor in visiting a home owner or other resident if the visitor was interfering with the reasonable peace, comfort or privacy of another home owner or resident of the park.

Maximum penalty—20 penalty units.

- (3) In this section—

health or community service means a service that is, or purports to be, a service for maintaining, improving, restoring or managing a person's health or general wellbeing.

Examples of health or community services—

- medical services
- ambulance services
- community care services, including, for example, providing meals, personal care or domestic assistance

[s 46]

- welfare services, including, for example, counselling
- delivering medicine or other goods or providing transport to a person incidental to another health or community service

site, in relation to a home owner or other resident of a residential park, means the site in the residential park where the home owner or other resident lives.

suitably qualified person, to provide a health or community service, means having, or appearing to have, the qualifications, experience or standing suitable for providing the service.

Examples of persons who may be suitably qualified to provide a health or community service—

- a medical practitioner
- an ambulance officer
- a community nurse
- a social worker

visitor, for a home owner or other resident of a residential park, means a person who—

- (a) has the consent of the home owner or other resident to enter the site or the common areas in the residential park; or
- (b) intends to provide a health or community service in situations where consent can not be reasonably obtained from the home owner or other resident.

46 Amendment of s 89 (Notice board)

Section 89(4)—

omit, insert—

- (4) The park owner must make all reasonable attempts to display on the notice board—

- (a) either—
 - (i) the park rules as currently in force; or
 - (ii) information about how and where a home owner may obtain a copy of the park rules as currently in force, free of charge; and
- (b) information of the type prescribed under subsection (3) during the prescribed period for displaying information of that type.

Maximum penalty—5 penalty units.

47 Amendment of s 90 (Maintenance of trees)

- (1) Section 90—

insert—

- (2A) If a home owner considers the park owner has not maintained a tree as required under subsection (1) and the park owner does not agree, the home owner may, subject to section 116, apply to the tribunal for an order under subsection (4).

- (2) Section 90(2A) and (3)—

renumber as section 90(3) and (4).

48 Amendment of s 98 (Alteration or addition to manufactured home)

- (1) Section 98—

insert—

- (3A) If the home owner considers the park owner has unreasonably refused to give consent under subsection (2) to a proposed alteration or addition to the home, the home owner may, subject to section 116, apply to the tribunal for an order under subsection (5).

[s 49]

- (2) Section 98(4), ‘require’—
omit, insert—
make an order requiring
- (3) Section 98(5), ‘subsection (4)’—
omit, insert—
subsection (5)
- (4) Section 98(3A) to (5)—
renumber as section 98(4) to (6).

49 Amendment of s 99A (Separate charge by park owner not to be more than cost of supply for use of utility)

- (1) Section 99A(1)(a)—
omit, insert—
 - (a) under a site agreement or another agreement or arrangement, a home owner for a site in a residential park is required to pay the park owner or a third party for the use by the home owner of a utility at the site; and
- (2) Section 99A(2), ‘an amount’—
omit, insert—
, or arrange for the home owner to be charged, an amount (a *prohibited amount*)
- (3) Section 99A(2), ‘authority’—
omit, insert—
entity
- (4) Section 99A—
insert—
 - (3) For subsection (2), the park owner charging the home owner, or arranging for the home owner to be charged, an amount for the use of the utility

includes—

- (a) the park owner directing the home owner to pay the amount to a third party; and
 - (b) the park owner agreeing or arranging with a third party for the home owner to be charged the amount and the park owner or third party charging the home owner the amount for the purpose of that agreement or arrangement.
- (4) Without limiting subsection (2), a prohibited amount includes the following amounts charged, or purported to be charged—
- (a) an amount for reading a meter for the use of the utility;
 - (b) another amount for administration relating to the supply, or on-supply, of the utility to the site, including, for example, an amount relating to obtaining for the home owner a State government concession or rebate for the supply or on-supply of the utility.

- (5) In this section—

relevant supply entity means the entity that has charged, or may charge, the park owner for supplying the utility to—

- (a) the site; or
- (b) the residential park for on-supply to the site.

supplied, to a site, includes supplied to the residential park for on-supply to the site.

third party means an entity other than the relevant supply entity.

50 Amendment of s 100 (Establishment of committee)

- (1) Section 100—

insert—

[s 51]

(2A) The park owner for a residential park must not restrict the home owners for the park from establishing a home owners committee.

Maximum penalty—20 penalty units.

(2) Section 100(2A) to (5)—
renumber as section 100(3) to (6).

51 Amendment of s 102 (Committee's function)

Section 102—

insert—

- (2) The park owner must not restrict—
- (a) a home owners committee from performing the committee's function under subsection (1); or
 - (b) a home owner who is a member of a home owners committee from performing the member's functions as a member of the committee.

Maximum penalty for subsection (2)—20 penalty units.

52 Amendment of s 103 (Park owner to respond to complaint or proposal)

Section 103, 'section 102(b)'—

omit, insert—

section 102(1)(b)

53 Insertion of new pts 16 and 17

After section 103—

insert—

Part 16 **Obligations about behaviour of park owners and home owners**

104 Park owner to respect rights of home owners and other residents

- (1) The park owner for a residential park must respect the rights of home owners and other residents of the park.
- (2) Without limiting subsection (1), the park owner—
 - (a) must not unreasonably interfere with, or allow interference with, the reasonable peace, comfort or privacy of a home owner or other resident; and
 - (b) must take reasonable steps to ensure a home owner or other resident, or the guest of a home owner or other resident, does not interfere with the reasonable peace, comfort or privacy of another home owner or resident; and
 - (c) must use the park owner’s best endeavours to ensure each home owner or other resident lives in an environment free from harassment and intimidation; and
 - (d) must not unreasonably restrict the right of a home owner or other resident to autonomy over their personal, financial or other matters or possessions; and
 - (e) must not unreasonably restrict a home owner or other resident from exercising self-reliance in matters relating to their personal, domestic or financial affairs; and

[s 53]

- (f) must, within 21 days after receiving relevant correspondence from the home owner or other resident, or a representative of a home owner or other resident (each a *correspondent*), give the correspondent a complete response to the relevant correspondence.
- (3) However, if under subsection (2)(f), the park owner gives a correspondent a complete response to relevant correspondence (the *previous response*), the park owner is not required to give the correspondent another complete response addressing the same, or substantially the same, complaint, proposal or question addressed in the previous response.
- (4) In this section—
- complete response*, to relevant correspondence, means a written response addressing each complaint, proposal and question in the relevant correspondence.
- relevant correspondence* means a written complaint, proposal or question about the operation of the park.
- representative*, of a home owner or other resident, means an entity—
- (a) established to represent the interests of the home owner, resident or home owners and residents generally; and
- (b) that is authorised by the home owner or resident to give relevant correspondence to the park owner.

105 Home owners to respect rights of others

- (1) A home owner for a residential park must respect the rights of other residents of the park and other

persons in the park.

- (2) Without limiting subsection (1), a home owner—
 - (a) must not unreasonably interfere with, or allow interference with, the reasonable peace, comfort or privacy of another resident; and
 - (b) must respect the right of the park owner, park manager or a representative of the park owner or park manager to work in an environment free from harassment and intimidation; and
 - (c) must not act in a way that adversely affects the occupational health and safety of a person working in the residential park.
- (3) A home owner for a residential park must also ensure, as far as reasonably practicable, the home owner's tenant or guest complies with subsection (2)(a) to (c).
- (4) In this section—

representative, of a park owner or park manager, means—

 - (a) if the park owner or park manager is a corporation—an executive officer, employee or agent of the corporation; or
 - (b) if the park owner or park manager is an individual—an employee or agent of the individual.

Part 17

Resolution of residential park disputes

Division 1 Alternative dispute resolution

Subdivision 1 Preliminary

106 Application and purpose of division

This division applies to the parties to a residential park dispute and provides for the procedures the parties may use to try to resolve the dispute.

Subdivision 2 Negotiation

107 Notice to negotiate resolution of dispute

- (1) A party to a residential park dispute (the *first party*) may give the other party to the dispute a notice (a *dispute negotiation notice*)—
 - (a) stating the matters in dispute; and
 - (b) nominating a time on a stated day (the *nominated time*) at least 14 days but no more than 28 days after the notice is given for the parties to meet at a stated place (the *nominated place*) to negotiate a resolution of the dispute.
- (2) If the first party gives a dispute negotiation notice, the other party must, within 7 days after receiving the notice, give the first party a written response agreeing to meet the first party—
 - (a) at the nominated time or on another day at another time within 7 days of the nominated time; and
 - (b) at the nominated place or another place as agreed.

- (3) The parties must meet and try to resolve the dispute by negotiation—
 - (a) at the nominated time, or on another day at another time agreed by the parties that is within 7 days after the nominated day and time; and
 - (b) at the nominated place or another place agreed by the parties.
- (4) If the parties meet under subsection (3), the parties may agree to meet at other times to try to resolve the dispute by negotiation.

Subdivision 3 Mediation

108 Referral of residential park dispute for mediation

- (1) A party to a residential park dispute may apply to the registrar to refer the dispute for mediation under this subdivision.
- (2) However, a party to a residential park dispute (other than a dispute mentioned in section 14A(1)(a)) may apply under subsection (1) to have the dispute referred for mediation only if—
 - (a) the party has attempted to resolve the dispute by negotiation under section 107; and
 - (b) the dispute has not been resolved.
- (3) Within 14 days after receiving an application under subsection (1), the registrar must—
 - (a) appoint a mediator to mediate the residential park dispute; and
 - (b) give written notice to the parties to the dispute of—

[s 53]

- (i) the mediator who is to mediate the dispute; and
 - (ii) the time, date and place of the conference (*mediation conference*) to be conducted by the mediator.
- (4) The notice must be given at least 7 days before the mediation conference.

109 Right of representation

At a mediation conference, a party to the residential park dispute may be represented by a lawyer or an agent unless the mediator is satisfied the party should not be represented.

110 Conference to be held in private

A mediation conference is not open to the public.

111 Parties to mediation conference

- (1) A mediator may allow a person who is not a party to the residential park dispute to take part in a mediation conference if the mediator is satisfied the person has a sufficient interest in the resolution of the dispute.
- (2) However, the person does not become a party to the dispute.

112 Mediation agreements

- (1) This section applies if the parties to a residential park dispute reach a mediated agreement on the dispute.
- (2) The mediator must record the agreement (the *mediation agreement*) in writing and have it signed by or for the parties.

113 No official record of mediation conference

- (1) A person must not make a record of anything said at a mediation conference.

Maximum penalty—40 penalty units.

- (2) However, the mediator does not contravene subsection (1) if the mediator—
 - (a) makes notes during the mediation conference the mediator considers appropriate and destroys them at the end of the mediation; or
 - (b) records an agreement under section 112(2).

114 Notifying outcome of mediation

- (1) As soon as practicable after the mediation ends, the mediator must give the registrar and the parties to the residential park dispute—
 - (a) if the parties have reached a mediated agreement on the dispute—a copy of the signed mediation agreement; or
 - (b) otherwise—a written certificate about the outcome of the mediation.
- (2) A certificate mentioned in subsection (1)(b)—
 - (a) must not state anything about the extent to which a party participated or refused to participate in the mediation; but
 - (b) may state that a party did not attend the mediation conference.

Division 2 Applications to tribunal

115 Application for order to resolve residential park dispute

A party to a residential park dispute may, subject to section 116, apply to the tribunal for an order to resolve the dispute.

116 Requirements for application

- (1) This section applies if a party to a residential park dispute may apply to the tribunal under this Act for an order in relation to the dispute.
- (2) However, this section does not apply in relation to an application to the tribunal authorised under an exempt provision.
- (3) A party to a residential park dispute (other than a dispute mentioned in section 14A(1)(b)) may apply to the tribunal only if—
 - (a) the dispute has been referred for mediation under section 108; and
 - (b) 1 of the following applies—
 - (i) the parties to the dispute can not reach a mediation agreement;
 - (ii) a party to the dispute does not attend, or withdraws from, the mediation conference for the dispute;
 - (iii) the dispute is not settled within 4 months after the dispute is referred for mediation;
 - (iv) the parties reach a mediation agreement and the party making the application claims the other party has not complied with the agreement—
 - (A) within the time stated in the agreement; or

-
- (B) if no time is stated, within 2 months after the agreement is signed.
- (4) A party to a residential park dispute mentioned in section 14A(1)(b) may apply to the tribunal only if—
- (a) the party has attempted to resolve the dispute by negotiation under section 107; and
 - (b) the dispute has not been resolved.
- (5) In this section—
- exempt provision* means section 38(1), 39(4), 52(3), 53(5), 55(2) or 94(4).

117 Orders of tribunal

If a party to a residential park dispute applies to the tribunal for an order in relation to the dispute, the tribunal may make the following orders—

- (a) an order the tribunal is authorised to make in relation to the application under another provision of this Act;
- (b) any other order the tribunal considers appropriate to resolve the dispute.

54 Omission of s 140 (Site agreement dispute)

Section 140—

omit.

55 Replacement of s 141 (Application to tribunal by group of home owners)

Section 141—

omit, insert—

[s 55A]

141 Home owners may act jointly in relation to residential park dispute

- (1) This section applies if a home owner who is a party to a residential park dispute (the *individual dispute*) may do any of the following things in relation to the dispute—
 - (a) carry out negotiations under section 107;
 - (b) take part in mediation;
 - (c) apply to the tribunal for an order.
- (2) The members of a group of home owners for the residential park may do the thing jointly in relation to a residential park dispute arising out of facts or circumstances that are the same as, or similar to, the facts or circumstances of the individual dispute.

55A Amendment of s 166 (Variation of site agreement on assignment to allow site rent to be increased in accordance with market review)

Section 166(4)(a), from ‘a copy’ to ‘45(2)’—

omit, insert—

the disclosure documents for the site to the buyer under section 45A(1)

56 Insertion of new pt 21, div 4

Part 21—

insert—

Division 4

Transitional provisions for Housing Legislation (Building Better Futures) Amendment Act 2017

176 Definitions for division

In this division—

amended Act means this Act as in force from the commencement.

amending Act means the *Housing Legislation (Building Better Futures) Amendment Act 2017*.

corresponding provision, for a pre-amended provision, means a provision in the amended Act that corresponds to the pre-amended provision.

pre-amended, for a provision of this Act, means the provision as in force immediately before the commencement.

pre-amended Act means this Act as in force immediately before the commencement.

previous disclosure documents means the documents mentioned in pre-amended section 29(1)(a) and (b).

177 Requirement to give disclosure documents to prospective home owner

- (1) This section applies if—
 - (a) before the commencement, the park owner for a residential park gave a prospective home owner for a site the previous disclosure documents for the site under pre-amended section 29; and
 - (b) immediately before the commencement, the park owner and prospective home owner had not entered into, but had intended to enter into, a site agreement for the site.
- (2) On the commencement—
 - (a) section 29(2)(a) and (3), to the extent it relates to waiving the right to be given the

[s 56]

initial disclosure documents, does not apply to the park owner; and

- (b) section 29(2)(b) and (3) applies to the park owner as if each reference in the provisions to the supplementary disclosure documents for the site were a reference to the previous disclosure documents for the site.
- (3) For subsection (2)(b), a reference in a previous disclosure document to a pre-amended provision may, if the context permits, be taken to be a reference to the corresponding provision for the pre-amended provision.

178 No automatic cooling-off period for compliant existing site agreement

- (1) This section applies if—
 - (a) within the 7 days before the commencement, the park owner for a residential park and a prospective home owner for a site entered into a site agreement for the site; and
 - (b) the park owner gave the prospective home owner the previous disclosure documents for the site at least 7 days before entering into the site agreement.
- (2) The home owner may not terminate the site agreement under section 33.

179 Cooling-off period for non-compliant existing site agreement

- (1) This section applies if—
 - (a) within the 28 days before the commencement, the park owner for a residential park and a prospective home

owner for a site entered into a site agreement for the site; and

- (b) the park owner did not give the prospective home owner the previous disclosure documents for the site at least 7 days before entering into the site agreement.
- (2) On the commencement, pre-amended section 33 continues to apply in relation to the site agreement as if the amending Act had not been enacted.

180 Requirement to give disclosure documents to buyer

- (1) This section applies if, before the commencement—
- (a) a seller proposed to assign the seller's interest in a site agreement for a site to a buyer; and
 - (b) the park owner under the site agreement gave the buyer the documents mentioned in pre-amended section 45(2)(a) to (c); and
 - (c) the park owner had not consented to the assignment.
- (2) The park owner is taken to have given the buyer the disclosure documents for the site.
- (3) For subsection (2), a reference in a document mentioned in pre-amended section 45(2)(b) or (c) to a pre-amended provision may, if the context permits, be taken to be a reference to the corresponding provision for the pre-amended provision.

181 Notice of increase in site rent under pre-amended section 69

- (1) This section applies if, within the 28 days before

[s 56]

the commencement—

- (a) the park owner for a residential park gave a home owner a notice about an increase in site rent under pre-amended section 69(2); and
 - (b) the home owner considered the amount of the increase excessive; and
 - (c) the home owner did not apply to the tribunal under pre-amended section 70(2) for an order about the increase.
- (2) On the commencement, pre-amended sections 69 and 70 continue to apply in relation to the increase in the site rent as if the amending Act had not been enacted.

182 Restriction on first general site rent increase

- (1) This section applies if—
 - (a) in the year before the commencement, site rent under a site agreement was increased under pre-amended section 69; and
 - (b) the increase has not been set aside by an order of the tribunal; and
 - (c) the site rent has not been increased under part 11, division 2.
- (2) The park owner under the site agreement must not increase the site rent under part 11, division 2 on any basis provided for in the site agreement within 1 year after the day the site rent was last increased under pre-amended section 69.
- (3) Section 69(3) applies as if the reference in that provision to sections 69A to 69E included a reference to this section.

183 Notice of increase in site rent under pre-amended section 71

- (1) This section applies if, within the 2 months before the commencement—
 - (a) the park owner for a residential park gave a home owner a notice proposing an increase in site rent under pre-amended section 71(3); and
 - (b) either—
 - (i) the home owner gave the park owner a response under pre-amended section 71(5) indicating the home owner did not agree to the proposed increase; or
 - (ii) the home owner did not give the park owner a response under pre-amended section 71(5); and
 - (c) the park owner did not apply to the tribunal under pre-amended section 71(8) for an order about the increase.
- (2) On the commencement, pre-amended sections 70(3)(d) to (l) and 71 continue to apply in relation to the proposed increase in the site rent as if the amending Act had not been enacted.

184 Utility cost notice under pre-amended section 73

- (1) This section applies if, within the 28 days before the commencement—
 - (a) the park owner for a residential park gave a home owner a utility cost notice about a utility cost under pre-amended section 73(2); and
 - (b) the home owner disputed the utility cost stated in the notice; and

[s 56]

- (c) the home owner did not apply to the tribunal under pre-amended section 74(3) for an order about reducing the site rent.
- (2) On the commencement, pre-amended sections 73 and 74 continue to apply in relation to the utility cost and reducing the site rent as if the amending Act had not been enacted.

185 Application to tribunal about proposal under pre-amended section 82

- (1) This section applies if, within the 7 days before the commencement—
 - (a) either—
 - (i) an objector had been given a non-resolution notice under pre-amended section 80(6) in relation to a proposal; or
 - (ii) a home owner or park owner had under pre-amended section 81(3) been given notice of a decision of a park liaison committee under section 81(1) or (2) in relation to a proposal and was dissatisfied with the decision; and
 - (b) the objector, home owner or park owner did not apply to the tribunal under pre-amended section 82(2) and (3) for an order declaring the proposal to be reasonable or unreasonable.
- (2) On the commencement, pre-amended sections 82 and 84 continue to apply in relation to the proposal as if the amending Act had not been enacted.

186 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may

make provision of a saving or transitional nature about a matter for which—

- (a) it is necessary to make provision to allow or facilitate the transition from the operation of the pre-amended Act to the operation of the amended Act; and
 - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the day this section commences.
 - (3) A transitional regulation must declare it is a transitional regulation.
 - (4) This section and any transitional regulation expire 1 year after the day this section commences.

57 Insertion of new sch 1

Before the schedule—

insert—

Schedule 1 Disclosure documents for a site

sections 29(2)(a) and (b)(i) and 45A(1)

Part 1 Initial disclosure documents

- 1 a document stating—
 - (a) the amount of site rent that is, or is to be, payable for the site; and

[s 57]

- (b) the amount of site rent that has been payable for the site in the last 3 years, including the amount of any increase and the date the increase took effect; and
 - (c) the next general increase day for site rent for the site; and
 - (d) other information (if any) prescribed by regulation that is relevant for a prospective home owner entering into a site agreement or a seller assigning the seller's interest in a site agreement to a buyer
- 2 the park rules for the residential park in which the site is located
- 3 a proposal (if any) for a change in the park rules not finally dealt with under part 13, division 2

Part 2 Other documents for prospective home owners or buyers

- 4 a document in the approved form providing for the following information—
- (a) the address and real property description of the residential park in which the site is located;
 - (b) the park owner's name and business address;
 - (c) the park manager's name and business address;
 - (d) details of the communal facilities;

-
- (e) details of any authority, however described, issued under a law of the State necessary for the operation of the park;
 - (f) the rights of a home owner to terminate a site agreement within the cooling-off period under section 33;
 - (g) the rights of a buyer to terminate an assignment agreement within the cooling-off period under section 51A;
 - (h) the basic responsibilities of park owners and home owners mentioned in part 3, including the obligations under part 16;
 - (i) how site rent may be varied under part 11;
 - (j) how a residential park dispute may be resolved under part 17;
 - (k) how a home owner's interest in a site agreement may be assigned under part 7;
 - (l) the rights of a park owner or home owner to terminate a site agreement under part 6, division 3;
 - (m) a recommendation that a person seek independent legal advice before—
 - (i) entering into a site agreement; or
 - (ii) agreeing to an assignment of a home owner's interest in a site agreement to the person

Part 3

Other documents for buyers

[s 58]

- 5 for a proposed assignment of the seller's interest in a site agreement for the site—a copy of the site agreement

58 Amendment of schedule (Dictionary)

- (1) Schedule, definitions *disclosure documents*, *home owners information document* and *site agreement dispute*—
omit.
- (2) Schedule—
insert—

assignment agreement see section 44(1).

basis, for increasing site rent payable under a site agreement, means the basis for working out the amount of the increase in the site rent as stated in the site agreement.

CPI means the all groups consumer price index for Brisbane published by the Australian statistician.

default notice period—

- (a) for giving the initial disclosure documents—see section 29(2)(a); or
- (b) for giving the supplementary disclosure documents—see section 29(2)(b); or
- (c) for giving the disclosure documents under part 7, division 2—see section 48A(a).

disclosure documents means—

- (a) for a site for which a prospective home owner proposes to enter into, or has entered into, a site agreement—the documents mentioned in schedule 1, parts 1 and 2 and 2 copies of a proposed site agreement for the site; or

- (b) for a site for which a seller proposes to assign, or has assigned, the seller's interest in a site agreement—the documents mentioned in schedule 1 for the site.

dispute negotiation notice see section 107(1).

eligible site see section 69C(2).

general increase day see section 69C(1).

general increase notice see section 69E(1).

initial disclosure documents, for a site, see section 29(2)(a).

market valuation see section 69D(2).

mediation means mediation under part 17, division 1, subdivision 3.

mediation agreement see section 112(2).

mediation conference see section 108(3)(b)(ii).

mediator means a person who is—

- (a) accredited as a mediator under the *Dispute Resolution Centres Act 1990*, section 27AB; or
- (b) approved as a mediator under the *Queensland Civil and Administrative Tribunal Act 2009*, section 79(1)(e); or
- (c) approved as a mediator under the *Uniform Civil Procedure Rules 1999*; or
- (d) approved as a mediator by the Bar Association of Queensland or the Queensland Law Society Incorporated.

operational cost see section 71(1)(b)(i).

proposal decision see section 81(4).

Queensland Ambulance Service means the Queensland Ambulance Service under the *Ambulance Service Act 1991*.

[s 58]

Queensland Fire and Emergency Service means the Queensland Fire and Emergency Service under the *Fire and Emergency Services Act 1990*.

registered valuer means a valuer registered under the *Valuers Registration Act 1992*.

registrar means the principal registrar under the *Queensland Civil and Administrative Tribunal Act 2009*.

repair cost see section 71(1)(b)(ii).

residential park dispute see section 14A.

sale agreement, for part 7, division 4, see section 51B.

security interest, in a manufactured home, means a security interest registered for the home under the *Personal Property Securities Act 2009* (Cwlth).

special cost see section 71(1)(b).

special increase notice see section 71A(1).

stated purpose see section 71A(1)(a).

supplementary disclosure documents, for a site, see section 29(2)(b).

upgrade cost see section 71(1)(b)(iii).

(3) Schedule—

number as schedule 2.

Part 5 **Amendment of Residential Services (Accreditation) Act 2002**

59 **Act amended**

This part amends the *Residential Services (Accreditation) Act 2002*.

60 **Amendment of s 4 (Meaning of *residential service*)**

(1) Section 4(5)(i)—

omit, insert—

(i) a service that—

(i) is conducted with the assistance of funding given by the State; and

(ii) uses the funding to provide supported accommodation to persons who are, or are at risk of becoming, homeless;

(2) Section 4—

insert—

(6) In this section—

supported accommodation means temporary accommodation, provided with case management, to assist persons to transition from, or avoid, homelessness.

61 **Amendment of s 5 (Meaning of *resident*)**

(1) Section 5(a), ‘only or main’—

omit.

(2) Section 5(b)(iii)—

omit, insert—

[s 62]

- (iii) an associate of the service provider; or
- (iv) a relevant employee.

(3) Section 5—

insert—

(2) In this section—

relevant employee, in relation to a service, means a person who—

- (a) is employed in the service by the service provider; and
- (b) has a principal place of residence that is not 1 or more rooms in the service.

62 Amendment of s 6A (Meaning of *aged rental scheme* and *scheme operator*)

(1) Section 6A(3)(a)(ii), ‘units directly’—

omit, insert—

units, or arranges for those units to be let,

(2) Section 6A(3)(a)(iii)—

insert—

Example of a scheme operator arranging for the provision of a food service or personal care service—

The scheme operator engages another person to provide a food service or personal care service to residents who pay for the service.

63 Amendment of s 10 (Application for registration)

Section 10(3)—

insert—

Examples of relevant information—

If the applicant was previously a service provider whose registration was cancelled—

- (a) how the applicant has addressed the reasons for the cancellation of the registration (the *reasons*); and
- (b) why the proposed residential service should be registered despite the reasons.

64 Amendment of s 12 (Registration certificate)

(1) Section 12(1)—

insert—

- (aa) the name of any associates of the service provider;
- (ca) the maximum number of residents permitted to occupy the registered premises under the prescribed building requirements;

(2) Section 12(1)(aa) to (d)—

renumber as section 12(1)(b) to (f).

65 Replacement of s 19 (Who is an associate)

Section 19—

omit, insert—

19 Who is an associate

- (1) A person is an associate of a service provider for a residential service if the person makes decisions, in the course of the service, that influence—
- (a) the operation of the service; or
 - (b) the health, safety or other interests of residents in the service.

Examples—

- 1 a person employed by the service provider to—
- (a) negotiate and enter into agreements with residents on the service provider's behalf; or
 - (b) make house rules for a registered premises; or

[s 66]

- (c) manage a personal care service provided to residents in the service; or
 - (d) manage the medication of residents in the service; or
 - (e) manage the finances, or financial transactions, of residents in the service
- 2 for a service provider that is a corporation, an executive officer of the corporation who takes part in the management of the service
- (2) A person is not an associate of a service provider merely because the person does either or both of the following—
- (a) collects rent from residents in the service;
 - (b) cleans or maintains the registered premises or facilities in the registered premises.
- (3) A person is an associate of a service provider who is an applicant if the person proposes, on the granting of the relevant application, to make decisions mentioned in subsection (1).

66 Amendment of s 35 (Requirement to be accredited at level 1)

Section 35(1)(a), ‘6 months’—

omit, insert—

3 months

67 Amendment of s 36 (Requirement to be accredited at level 2)

Section 36(1)(a), ‘6 months’—

omit, insert—

3 months

68 Amendment of s 38 (Requirement to be accredited at level 3)

Section 38(1)(a), ‘6 months’—

omit, insert—

3 months

69 Amendment of s 41 (Meaning of *accreditation decision*)

Section 41(b), after ‘accreditation’—

insert—

, or renewal of accreditation,

70 Amendment of s 50 (Renewal of accreditation)

(1) Section 50—

insert—

(5A) The chief executive may renew the accreditation on conditions the chief executive considers appropriate.

(2) Section 50(5A) to (8)—

renumber as section 50(6) to (9).

71 Amendment of s 69 (Notice of other changes)

(1) Section 69—

insert—

(1A) An associate of a service provider for a registered service must give the chief executive a notice, in the approved form, within 30 days after becoming aware there is a change in the associate’s criminal history, unless the associate has a reasonable excuse.

Maximum penalty—100 penalty units.

[s 72]

- (2) Section 69(2), ‘Subsection (1)(a) does’—
omit, insert—

Subsections (1)(a) and (2) do

- (3) Section 69(1A) to (3)—
renumber as section 69(2) to (4).

72 Amendment of s 70 (Death of sole service provider)

- (1) Section 70(3)(a) and (b)—
omit, insert—

- (a) the chief executive deciding the personal representative is not a suitable person; or
- (b) any earlier change of the person registered as the service provider, or cancellation of the registration, under this Act; or
- (c) any extension, or earlier ending, of the transitional registration period under this section.

- (2) Section 70—
insert—

(3A) If the chief executive decides the personal representative is not a suitable person, the chief executive may, for the purpose of this section, substitute the personal representative with either of the following persons (each the *substitute*)—

- (a) an associate of the service provider;
- (b) another person the chief executive is satisfied is a suitable person.

- (3) Section 70(4), after ‘representative’—
insert—

or the substitute

- (4) Section 70(6), after ‘representative’—

insert—

, or a substitute,

73 Amendment of s 71 (Dealings with registration or accreditation in first 30 days of the transitional registration period)

(1) Section 71(2) and (3), after ‘representative’—

insert—

or the substitute

(2) Section 71—

insert—

(6) In this section—

substitute see section 70(3A).

74 Amendment of s 75 (Requirement for plan)

Section 75, ‘start conducting’—

omit, insert—

conduct

75 Insertion of new s 81A

Part 5, division 3—

insert—

81A Notification of death of resident

(1) This section applies to a service provider for a residential service that is accredited at level 3 if a resident in the service dies.

(2) The service provider must give the chief executive a notice, in the approved form, within 7 days after becoming aware of the death, unless the service provider has a reasonable excuse.

[s 76]

Maximum penalty—50 penalty units.

76 Amendment of s 179 (Register of residential services)

(1) Section 179(2)(a)—

insert—

(ia) the telephone number or email address of the service provider for the service; and

(2) Section 179—

insert—

(2A) However, information (*sensitive information*) about a service, mentioned in subsection (2), must not be shown on the register if the chief executive decides that the sensitive information should not be shown because—

(a) the service is conducted to provide accommodation to persons who are, or are at risk of becoming, homeless because of domestic violence directed at the person; or

(b) it is in the interests of the wellbeing and safety of residents in the service not to do so.

(2B) The chief executive may include other relevant information, that is not sensitive information, on the register in place of sensitive information.

Example—

The chief executive may include the business address of the service provider on the register in place of the address of the registered premises.

(3) Section 179(2)(a)(ia) to (iii)—

renumber as section 179(2)(a)(ii) to (iv).

(4) Section 179(2A) to (4)—

renumber as section 179(3) to (6).

77 Insertion of new s 180A

Part 12, division 3—

insert—

180A Chief executive may make guidelines

- (1) The chief executive may make guidelines to inform persons about—
 - (a) the attitude the chief executive is likely to adopt on a particular matter; or
 - (b) how the chief executive administers this Act; or
 - (c) matters that may help persons comply with their responsibilities, or lawfully and appropriately exercise powers, under this Act.

Example—

the chief executive might make a guideline to assist service providers to meet accreditation criteria

- (2) A guideline may be replaced or amended by a later guideline made under this section.
- (3) The chief executive must publish the guidelines on the department's website.
- (4) Also, the chief executive must, if asked by a person, give the person a copy of a guideline, or an extract from a guideline, free of charge.

78 Insertion of new pt 16

After section 204—

insert—

Part 16

Transitional provisions for Housing Legislation (Building Better Futures) Amendment Act 2017

205 Application of s 35 if residential service was registered before commencement

- (1) This section applies to a residential service registered before the commencement.
- (2) The reference to '3 months' in section 35(1)(a) is taken to be a reference to '6 months'.

206 Application of s 36 if service provider started providing a food service before commencement

- (1) This section applies to a residential service if the service provider started providing a food service, in the course of the residential service, before the commencement.
- (2) The reference to '3 months' in section 36(1)(a) is taken to be a reference to '6 months'.

207 Application of s 38 if service provider started providing a personal care service before commencement

- (1) This section applies to a residential service if the service provider started providing a personal care service, in the course of the residential service, before the commencement.
- (2) The reference to '3 months' in section 38(1)(a) is taken to be a reference to '6 months'.

79 Amendment of sch 1 (Reviewable decisions for this Act)

Schedule 1, entry for service provider for a residential service, column 2, after fourth dot point—

insert—

- to renew the accreditation of the service on a condition (s 50(6))

80 Amendment of sch 2 (Dictionary)

(1) Schedule 2, definition *Supported Accommodation Assistance Program*—

omit.

(2) Schedule 2—

insert—

domestic violence see the *Domestic and Family Violence Protection Act 2012*, section 8.

Part 6 Amendment of Residential Tenancies and Rooming Accommodation Act 2008

81 Act amended

This part amends the *Residential Tenancies and Rooming Accommodation Act 2008*.

82 Insertion of new ch 1, pt 3, div 4

Chapter 1, part 3—

insert—

Division 4 Prescribed minimum housing standards

17A Prescribed minimum housing standards

- (1) A *prescribed minimum housing standard* means a standard prescribed by a regulation.
- (2) A regulation may prescribe minimum housing standards for—
 - (a) a residential premises let, or to be let, under a residential tenancy agreement; or
 - (b) a rental premises; or
 - (c) inclusions for premises; or
 - (d) facilities in a moveable dwelling park (*park facilities*).
- (3) A prescribed minimum housing standard may be for any matter relating to the premises, inclusions or park facilities, including, for example, the following—
 - (a) sanitation, drainage, cleanliness and repair of the premises, inclusions or park facilities;
 - (b) ventilation and insulation;
 - (c) protection from damp and its effects;
 - (d) construction, condition, structures, safety and situation of the premises, inclusions or park facilities;
 - (e) the dimensions of rooms in the premises;
 - (f) privacy and security;
 - (g) provision of water supply, storage and sanitary facilities;
 - (h) laundry and cooking facilities;
 - (i) lighting;
 - (j) freedom from vermin infestation;
 - (k) energy efficiency.
- (4) If a regulation made under subsection (2) makes

provision in relation to a matter and provision is also made in relation to that matter by, or under, any Act, the regulation—

- (a) if not inconsistent with the Act, must be observed in addition to that Act; and
- (b) if inconsistent with the Act, is, to the extent of the inconsistency, of no force or effect and that Act prevails.

Example of inconsistency between a prescribed minimum housing standard and an Act—

A prescribed minimum housing standard, that purports to require a lessor to keep residential premises and inclusions clean after the start of a tenancy, is inconsistent with the obligations of a tenant under section 188(2).

- (5) A regulation may also prescribe how compliance with minimum housing standards is to be monitored and enforced.
- (6) In this section—

premises means premises mentioned in subsection (2)(a) or (b).

83 Amendment of s 185 (Lessor's obligations generally)

- (1) Section 185(2)—

insert—

- (e) the premises and inclusions otherwise comply with any prescribed minimum housing standards applying to the premises or inclusions.

- (2) Section 185(3)—

insert—

- (e) must ensure the premises and inclusions otherwise comply with any prescribed

[s 84]

minimum housing standards applying to the premises or inclusions.

84 Amendment of s 186 (Lessor's obligations for facilities in moveable dwelling parks)

(1) Section 186(3)—

insert—

(ca) the facilities otherwise comply with any prescribed minimum housing standards applying to the facilities; and

(2) Section 186(3)(ca) and (d)—

renumber as section 186(3)(d) and (e).

(3) Section 186(4)—

insert—

(ca) ensure the facilities otherwise comply with any prescribed minimum housing standards applying to the facilities; and

(4) Section 186(4)(ca) and (d)—

renumber as section 186(4)(d) and (e).

85 Amendment of s 187 (Lessor's obligations for moveable dwelling site)

(1) Section 187(2), from 'must ensure'—

omit, insert—

must ensure—

(a) the premises are clean and are a fit site for a moveable dwelling; and

(b) the premises otherwise complies with any prescribed minimum housing standards applying to the premises.

(2) Section 187(3)(a)—

omit, insert—

- (a) must ensure—
 - (i) the premises remain a fit site for a moveable dwelling; and
 - (ii) the premises otherwise complies with any prescribed minimum housing standards applying to the premises; and

86 Amendment of s 247 (Provider’s obligations generally)

Section 247(1)—

insert—

- (h) to ensure the rental premises and inclusions otherwise comply with any prescribed minimum housing standards for the rental premises or inclusions.

Part 7 Amendment of Retirement Villages Act 1999

87 Act amended

This part amends the *Retirement Villages Act 1999*.

88 Omission of s 13 (What is a *public information document*)

Section 13—

omit.

89 Amendment of s 18 (What is a *capital replacement fund contribution*)

- (1) Section 18, ‘the new resident’s’—

omit, insert—

[s 90]

a resident's

(2) Section 18, 'public information document'—

omit, insert—

resident's residence contract

90 Insertion of new ss 18A and 18B

Part 1—

insert—

18A What is a *general services charges fund*

A *general services charges fund* is a fund established under section 102AA for general services.

18B What is a *general services charge*

A *general services charge* is a charge payable by a resident in a retirement village, of an amount decided by the scheme operator under the resident's residence contract, for the general services supplied to residents in the village for a financial year.

91 Replacement of s 20 (What is a *maintenance reserve fund contribution*)

Section 20—

omit, insert—

20 What is a *maintenance reserve fund contribution*

A *maintenance reserve fund contribution* is an amount payable by a resident to the scheme operator, under the resident's residence contract, as a contribution to the maintenance reserve fund.

92 Amendment of s 27 (Application for registration of a retirement village scheme)

Section 27(2)(b)—

omit, insert—

- (b) a copy of the village comparison document for the scheme; and

93 Amendment of s 28A (Deregistration of retirement village scheme)

- (1) Section 28A(1), from ‘that’—

omit, insert—

that either—

- (a) a scheme operator is implementing an approved closure plan for a retirement village scheme; or
- (b) a retirement village scheme is no longer operating.

- (2) Section 28A(2), from ‘from’—

omit, insert—

from—

- (a) if subsection (1)(a) applies—the day that, under the approved closure plan, the scheme will stop operating; or
- (b) if subsection (1)(b) applies—30 days after the deregistration notice is given to the scheme operator.

94 Amendment of s 35 (Retirement village scheme register)

- (1) Section 35(2)(a)(ii)—

omit, insert—

[s 95]

- (ii) the village comparison document and notices about material changes to information in the village comparison document given under section 74(5);
 - (iii) if former section 36 applies to the scheme operator under section 237I—the public information document and notices about inaccuracies in the public information document given under former section 36;
- (2) Section 35(2)(c), ‘section 113(3)’—
omit, insert—
section 113(4)
- (3) Section 35—
insert—
 - (6) In this section—
former see section 237H.

95 Omission of ss 36 and 37

Sections 36 and 37—
omit.

96 Replacement of s 38 (Chief executive may apply for order appointing a manager of a retirement village)

Section 38—
omit, insert—

38 Chief executive may apply for order appointing a manager of a retirement village

- (1) The chief executive may apply to the District Court for a management order if the chief executive reasonably believes—

- (a) the scheme operator has not complied with section 40A(2), 40B(1), 40F(1) or (2), 41C(2), 41D(1), 41H(1) or (2), 113D or 113H(1) or (2); or
 - (b) the order is otherwise necessary to protect the interests of residents of a particular retirement village.
- (2) In urgent circumstances—
 - (a) the application may be made ex parte; and
 - (b) the management order may be made on an interim basis.
- (3) If the court makes a management order, it may, at any time, make any ancillary order it considers necessary to support the management order.
- (4) A manager appointed under a management order must, at the request of the chief executive, report to the chief executive about how the manager has exercised, or will exercise, functions of the scheme operator under the order.

Maximum penalty—100 penalty units.
- (5) If a manager is appointed under a management order to exercise a function of a scheme operator, this Act applies to the exercise of the function as if the manager were the scheme operator.
- (6) In this section—

management order means an order appointing a stated person, as manager of a retirement village, to exercise—

 - (a) all the functions of the scheme operator; or
 - (b) stated functions of the scheme operator; or
 - (c) all the functions, other than stated functions, of the scheme operator.

[s 97]

97 Insertion of new s 38A

Part 2, division 3—

insert—

38A Management and administration of retirement village scheme by manager

- (1) An expense incurred by a manager in, or an amount charged by a manager for, exercising functions of a scheme operator must be paid from—
 - (a) the general services charges fund; or
 - (b) another fund from which the scheme operator would have been able to pay the expense if the manager had not been appointed.
- (2) The State is not liable for—
 - (a) an expense incurred by a manager in exercising functions of a scheme operator; or
 - (b) any liability of a scheme operator if a manager is appointed to exercise functions of the scheme operator.
- (3) To remove any doubt, it is declared that the exercise of a function of a scheme operator by a manager is not a service for the purpose of section 108.
- (4) In this section—

manager means a manager appointed under section 38.

98 Amendment and renumbering of s 40 (Applying to cancel registration)

- (1) Section 40(3) and (4)—

omit.

-
- (2) Section 40—
renumber as section 40H.

99 Insertion of new ss 40 to 40G

Part 2, division 4—

insert—

40 Definition for division

In this division—

residents meeting notice see section 40B(1)(b).

40A Notice about cancelling registration

- (1) This section applies if a scheme operator proposes to close a retirement village scheme.
- (2) The operator must give the chief executive notice about the proposal in the approved form.
Maximum penalty—100 penalty units.
- (3) For subsection (1), a scheme operator proposes to close a retirement village scheme if the scheme operator proposes to—
 - (a) wind down the retirement village scheme; or
 - (b) stop operating the retirement village scheme, including temporarily.

40B Requirement to prepare closure plan

- (1) The scheme operator must, within 28 days of giving a notice under section 40A(2) (the *notice period*) or any extension of the notice period granted under subsection (3), give each resident of the retirement village—
 - (a) a proposed closure plan for the retirement village scheme; and

[s 99]

- (b) a notice (a *residents meeting notice*), in the approved form, that states—
 - (i) if the proposed closure plan is not approved under section 40D(1)(a), within a stated reasonable period that is not less than 21 days after the giving of the residents meeting notice, the scheme operator may apply to the chief executive for approval of the proposed closure plan under section 40D(1)(b); and
 - (ii) if the chief executive approves the proposed closure plan under section 40D(1)(b), a resident may apply to the tribunal for a review of the decision under section 41A.

Maximum penalty—100 penalty units.

- (2) The scheme operator may, within the notice period, apply to the chief executive for an extension of the notice period.
- (3) The chief executive may grant the extension if the chief executive is satisfied it is not reasonably practicable for the scheme operator to comply with subsection (1) within the notice period.

40C Meaning of *closure plan*

- (1) A *closure plan*, for a retirement village scheme, is a written plan about closing the retirement village scheme.
- (2) A closure plan for a retirement village scheme must be in the approved form and state the matters prescribed by regulation.

40D Approval of closure plan

- (1) A proposed closure plan may be approved—

- (a) by the residents, by a special resolution at a residents meeting; or
 - (b) on application under subsection (3), by the chief executive.
- (2) If the proposed closure plan is approved under subsection (1)(a), the scheme operator must give the chief executive a copy of the approved closure plan within 14 days of the vote.
- (3) The scheme operator may apply to the chief executive for approval of a proposed closure plan if—
- (a) the residents, by special resolution at a residents meeting, vote against the approval of the proposed closure plan; or
 - (b) the proposed closure plan is not approved under subsection (1)(a) within the period stated in the residents meeting notice.
- (3A) Before deciding the application, the chief executive must—
- (a) give each resident of the retirement village a written notice stating that—
 - (i) the scheme operator has applied for approval of the proposed closure plan; and
 - (ii) the resident may make submissions to the chief executive about the proposed closure plan in a stated way and by a stated day; and
 - (b) if a resident of the retirement village requests a copy of the proposed closure plan—give a copy of the proposed closure plan to the resident; and
 - (c) have regard to any submissions made to the chief executive by the residents in the stated way and by the stated day.

[s 99]

- (4) After receiving an application for approval of a proposed closure plan, the chief executive must decide—
 - (a) to approve the plan; or
 - (b) to give the scheme operator a written direction to take action, or particular action, to revise the plan.
- (4A) The chief executive's decision must be made within 90 days of the later of—
 - (a) the day the application is received; or
 - (b) if the chief executive reasonably requires further information for the purpose of making the decision and asks the scheme operator for the further information—the day the information is given.
- (5) The chief executive may approve the proposed closure plan only if the chief executive is satisfied the plan provides for a clear, orderly and fair process for the closure of the retirement village scheme.
- (6) If the chief executive approves the proposed closure plan, the chief executive must give—
 - (a) written notice of the decision to the scheme operator; and
 - (b) a QCAT information notice for the decision to each resident.
- (7) Before giving a direction under subsection (4)(b), the chief executive must—
 - (a) give the operator a written notice stating—
 - (i) that the chief executive proposes to give the operator a direction to take action, or particular action, to revise the proposed closure plan (the *proposed action*); and

-
- (ii) the particulars of the action to be taken;
and
 - (iii) the reasons for the proposed action;
and
 - (iv) that the operator may make written submissions to the chief executive about the proposed action before a stated day; and
- (b) have regard to any written submissions made to the chief executive by the operator before the stated day.
- (8) If the chief executive gives a direction under subsection (4)(b), the chief executive must also give the operator a QCAT information notice for the decision.
- (9) If the chief executive fails to decide the application in the time required under subsection (4A), the chief executive is taken to have approved the proposed closure plan.

40E Revision of approved closure plan

- (1) The chief executive may, on the chief executive's own initiative or on the application of the scheme operator, give the scheme operator a written direction to take action, or particular action, to revise an approved closure plan.
- (2) The chief executive may approve the revised closure plan only if the chief executive is satisfied the revised closure plan provides for a clear, orderly and fair process for the closure of the retirement village scheme.
- (3) If the chief executive approves the revised closure plan, the chief executive must give—
 - (a) written notice of the decision to the scheme operator; and

[s 99]

- (b) a QCAT information notice for the decision to each resident.
- (4) Before giving a direction under subsection (1) to a scheme operator on the chief executive's own initiative, the chief executive must—
- (a) give the operator a written notice stating—
 - (i) that the chief executive proposes to give the operator a direction to take action, or particular action, to revise the approved closure plan (the *proposed action*); and
 - (ii) the particulars of the action to be taken; and
 - (iii) the reasons for the proposed action; and
 - (iv) that the operator may make written submissions to the chief executive about the proposed action before a stated day; and
 - (b) have regard to any written submissions made to the chief executive by the operator before the stated day.
- (5) If the chief executive gives a direction under subsection (1) to a scheme operator on the chief executive's own initiative, the chief executive must also give the operator a QCAT information notice for the decision.

40F Requirement to implement approved closure plan

- (1) A scheme operator must, when closing a retirement village scheme, comply with an approved closure plan for the retirement village scheme.

Maximum penalty—100 penalty units.

-
- (2) The scheme operator must, at the request of the chief executive, notify the chief executive about how the approved closure plan is being implemented by the scheme operator.

Maximum penalty—100 penalty units.

40G Discontinuing closure of retirement village scheme

- (1) This section applies if—
- (a) a scheme operator has given a notice to the chief executive under section 40A(2); and
 - (b) the scheme operator decides not to proceed with the closure of the retirement village scheme.
- (2) The operator must give the chief executive, and each resident of the retirement village, notice (a *notice of discontinuation*) of the decision in the approved form.

Maximum penalty—100 penalty units.

- (3) If the operator gives a notice of discontinuation to the chief executive, any approved closure plan, for the closure of the retirement village scheme, is no longer approved.

100 Replacement of s 41 (Cancelling registration)

Section 41—

omit, insert—

41 Cancelling registration

- (1) Subsection (2) applies if—
- (a) the scheme operator asks the chief executive to cancel the registration of the retirement village scheme under section 40H; and

[s 101]

- (b) if a statutory charge existed over the retirement village land—the chief executive has released the charge; and
 - (c) the chief executive is satisfied—
 - (i) the scheme operator has implemented the approved closure plan for the retirement village scheme; and
 - (ii) cancelling the registration of the retirement village scheme is appropriate.
- (2) The chief executive may—
- (a) cancel the registration of the scheme; and
 - (b) record the cancellation in the register.

41A Application to tribunal for review

A person who has been given a QCAT information notice under this division may apply, as provided under the QCAT Act, to the tribunal for a review of the decision.

101 Insertion of new pt 2, div 5

Part 2—

insert—

Division 5 Change of scheme operator

41B Definitions for division

In this division—

existing scheme operator see section 41C(1).

new scheme operator see section 41C(1).

41C Notice about change of scheme operator

- (1) This section applies if a scheme operator (the *existing scheme operator*) proposes to transfer control of a retirement village scheme's operation to another person (the *new scheme operator*).
- (2) The existing scheme operator must give the chief executive notice about the proposal in the approved form.

Maximum penalty—100 penalty units.

41D Requirement to prepare transition plan

- (1) The existing scheme operator must, within 28 days of giving a notice under section 41C(2) (the *notice period*) or any extension of the notice period granted under subsection (3), give the chief executive a proposed transition plan for the change of scheme operator.

Maximum penalty—100 penalty units.

- (2) The existing scheme operator may, within the notice period, apply to the chief executive for an extension of the notice period.
- (3) The chief executive may grant the extension if the chief executive is satisfied it is not reasonably practicable for the existing scheme operator to comply with subsection (1) within the notice period.

41E Meaning of *transition plan*

- (1) A *transition plan*, for a retirement village scheme, is a written plan about transitioning control of the scheme's operation from the existing scheme operator to the new scheme operator.
- (2) A transition plan for a retirement village scheme

[s 101]

must be in the approved form and state the matters prescribed by regulation.

41F Approval of transition plan

- (1) After receiving the proposed transition plan, the chief executive must decide—
 - (a) to approve the proposed transition plan; or
 - (b) to give the existing scheme operator a written direction to take action, or particular action, to revise the proposed transition plan.
- (1A) The chief executive's decision must be made within 90 days of the later of—
 - (a) the day the proposed transition plan is received; or
 - (b) if the chief executive reasonably requires further information for the purpose of making the decision and asks the existing scheme operator or the new scheme operator for the further information—the day the information is given.
- (2) The chief executive may approve the proposed transition plan only if the chief executive is satisfied the plan provides for a clear, orderly and fair process for transitioning control of the scheme's operation from the existing scheme operator to the new scheme operator.
- (3) For the purpose of deciding whether or not to approve the proposed transition plan, the chief executive may—
 - (a) give a copy of the plan to a person whom the chief executive reasonably considers has an interest in the transitioning of the control of the scheme's operation; and

- (b) receive and consider submissions from the person about the transitioning of the control of the scheme's operation.
- (4) If the chief executive approves the proposed transition plan, the chief executive must give—
 - (a) written notice of the decision to the existing scheme operator and the new scheme operator; and
 - (b) a QCAT information notice for the decision to each resident.
- (5) Before giving a direction under subsection (1)(b), the chief executive must—
 - (a) give the operator a written notice stating—
 - (i) that the chief executive proposes to give the operator a direction to take action, or particular action, to revise the proposed transition plan (the ***proposed action***); and
 - (ii) the particulars of the action to be taken; and
 - (iii) the reasons for the proposed action; and
 - (iv) that the operator may make written submissions to the chief executive about the proposed action before a stated day; and
 - (b) have regard to any written submissions made to the chief executive by the operator before the stated day.
- (6) If the chief executive gives a direction under subsection (1)(b), the chief executive must also give the operator a QCAT information notice for the decision.
- (7) If the chief executive fails to decide whether or

[s 101]

not to approve the proposed transition plan in the time required under subsection (1A), the chief executive is taken to have approved the proposed transition plan.

41G Revision of approved transition plan

- (1) The chief executive may, on the chief executive's own initiative or on the application of the existing scheme operator, give the existing scheme operator a written direction to take action, or particular action, to revise an approved transition plan.
- (2) The chief executive may approve the revised transition plan only if the chief executive is satisfied the revised transition plan provides for a clear, orderly and fair process for the transitioning of the control of the scheme's operation from the existing scheme operator to the new scheme operator.
- (3) If the chief executive approves the revised transition plan, the chief executive must give—
 - (a) written notice of the decision to the existing scheme operator and the new scheme operator; and
 - (b) a QCAT information notice for the decision to each resident.
- (4) Before giving a direction under subsection (1) to the existing scheme operator on the chief executive's own initiative, the chief executive must—
 - (a) give the operator a written notice stating—
 - (i) that the chief executive proposes to give the operator a direction to take action, or particular action, to revise

-
- the approved transition plan (the *proposed action*); and
- (ii) the particulars of the action to be taken; and
 - (iii) the reasons for the proposed action; and
 - (iv) that the operator may make written submissions to the chief executive about the proposed action before a stated day; and
- (b) have regard to any written submissions made to the chief executive by the operator before the stated day.
- (5) If the chief executive gives a direction under subsection (1) to the existing scheme operator on the chief executive's own initiative, the chief executive must also give the operator a QCAT information notice for the decision.

41H Requirement to implement approved transition plan

- (1) The existing scheme operator and new scheme operator must, when transitioning control of the scheme's operation from the existing scheme operator to the new scheme operator, comply with an approved transition plan for the retirement village scheme.

Maximum penalty—100 penalty units.

- (2) The existing scheme operator and new scheme operator must, at the request of the chief executive, notify the chief executive about how the approved transition plan is being implemented.

Maximum penalty—100 penalty units.

41I Discontinuing change of scheme operator

- (1) This section applies if—
 - (a) an existing scheme operator has given a notice to the chief executive under section 41C(2); and
 - (b) the existing scheme operator and the new scheme operator decide not to proceed with the transfer of the control of the retirement village scheme's operation.
- (2) The existing scheme operator must give the chief executive notice (a *notice of discontinuation*) of the decision in the approved form.

Maximum penalty—100 penalty units.

- (3) If the existing scheme operator gives a notice of discontinuation to the chief executive, any approved transition plan, about the transitioning of the control of the retirement village scheme's operation from the existing scheme operator to the new scheme operator, is no longer approved.

41J Effect of change of scheme operator

- (1) This section applies if control of a retirement village scheme's operation is transferred (the *transfer*) from an existing scheme operator to a new scheme operator.
- (2) Within 14 days after the transfer takes effect, the new scheme operator must give, to each resident of the retirement village, a notice stating—
 - (a) the scheme operator for the retirement village scheme has changed; and
 - (b) the name, address and telephone number of the new scheme operator; and
 - (c) the date the transfer took effect.

Maximum penalty—10 penalty units.

-
- (3) Without limiting part 3, division 6, on and from the date the transfer takes effect the new scheme operator—
- (a) is the scheme operator for the retirement village scheme; and
 - (b) obtains the benefits, and is subject to the obligations, of the previous scheme operator in relation to a residence contract associated with the retirement village scheme.

102 Amendment of s 44 (Person signing residence contract to be given copy)

Section 44(b)—

omit.

103 Amendment of s 45 (Content of residence contract)

- (1) Section 45, heading—

omit, insert—

45 Form and content of residence contract

- (2) Section 45(1), after ‘includes details’—

insert—

, including the details prescribed by regulation,

- (3) Section 45(1)(p)—

omit, insert—

- (p) the funds the scheme operator is required to keep;
- (q) the retirement village facilities;
- (r) the retirement village land;
- (s) whether the resident and the scheme operator are to share any capital gain or capital loss after the resident’s right to reside

[s 104]

in the unit is terminated and, if so, how it is to be shared;

(t) another matter prescribed by regulation.

(4) Section 45(1), penalty—

omit.

(5) Section 45(2) and (3)—

omit, insert—

(2) A regulation may prescribe a term that must be included in a residence contract (a ***required term***) or that must not be included in a residence contract (a ***prohibited term***).

(3) A scheme operator must not enter into a residence contract that—

(a) is not in the approved form; or

Note—

See section 227AA(2).

(b) does not include details required under subsection (1); or

(c) does not include a required term; or

(d) includes a prohibited term.

Maximum penalty—100 penalty units.

(4) A provision of a residence contract is of no effect to the extent it—

(a) includes a prohibited term; or

(b) purports to restrict or exclude the operation of a provision of this Act; or

(c) is otherwise inconsistent with this Act.

104 Amendment of s 53 (Termination by scheme operator)

Section 53(3)—

insert—

- (d) the operator is implementing an approved closure plan.

105 Amendment of pt 3, div 5, hdg (Reselling resident's right to reside)

Part 3, division 5, heading, after 'Reselling'—

insert—

and valuing

106 Amendment of s 56 (Interpretation for div 5)

Section 56(1)—

insert—

reinstatement work means replacements or repairs that are reasonably necessary to reinstate a former resident's accommodation unit to the condition required under section 58(1).

107 Replacement of ss 58 and 59

Sections 58 and 59—

omit, insert—

58 Reinstatement of accommodation unit

- (1) When ceasing occupation of the accommodation unit at the end of the residency, the former resident must leave it in the same condition as it was in when the former resident started occupation of it, apart from—
 - (a) fair wear and tear; and
 - (b) renovations and other changes to the condition of the unit carried out with the agreement of the resident and the scheme operator.

[s 107]

- (2) If the former resident does not comply with subsection (1), the scheme operator may carry out reinstatement work and claim the cost of the work from the former resident.
- (3) If a relative of the former resident has a right under section 70B(5) to enter into a residence contract for the accommodation unit with the scheme operator and advises the scheme operator, under section 70B(5)(d), that the relative wants to enter into the residence contract—
 - (a) the scheme operator may claim the cost of reinstatement work from the relative under subsection (2) as if the relative were the former resident; and
 - (b) the scheme operator must ensure the reinstatement work is done with as little inconvenience to the relative as is reasonably possible.
- (4) This section does not apply—
 - (a) to a current residence contract within the meaning of section 237H; or
Note—
See section 237K.
 - (b) if the former resident's right to reside in the retirement village was terminated under section 53(3)(d).
- (5) In this section—
fair wear and tear includes a reasonable amount of wear and tear associated with the use of items commonly used in a retirement village.

59 When reinstatement work must be completed

- (1) This section applies to reinstatement work that—

- (a) the former resident and the scheme operator agree will be carried out by the operator; or
 - (b) a relative of the former resident mentioned in section 58(3) and the scheme operator agree will be carried out by the operator; or
 - (c) the scheme operator carries out under section 58(2); or
 - (d) the tribunal orders to be carried out by the operator.
- (2) For reinstatement work mentioned in subsection (1)(a) to (c), the scheme operator must ensure the work is completed by—
- (a) if the scheme operator and the former resident or relative agree on a time—the agreed time; or
 - (b) if paragraph (a) does not apply and the scheme operator also carries out renovation work under section 59A—the later of the following times—
 - (i) 90 days after the vacation date;
 - (ii) the time by which the renovation work must be completed under section 59A; or
 - (c) otherwise—90 days after the vacation date.
- (3) For reinstatement work mentioned in subsection (1)(d), the scheme operator must ensure the reinstatement work is completed within the period fixed by the tribunal.
- (4) This section does not apply—
- (a) to a current residence contract within the meaning of section 237H; or

Note—

See section 237K.

[s 107]

- (b) if the former resident's right to reside in the retirement village was terminated under section 53(3)(d).
- (5) In this section—
- vacation date***, of an accommodation unit in a retirement village, means—
- (a) for a former resident whose relative has a right to reside in the accommodation unit under section 70B(2)—the date the relative's right to reside in the accommodation unit under that subsection ends; or
 - (b) otherwise—the date the former resident vacates the accommodation unit.

59A Renovation work by scheme operator

- (1) This section applies if the scheme operator proposes to carry out renovation work in or affecting the former resident's accommodation unit.
- (2) Before starting the renovation work, the operator must agree with the former resident on a date by which the renovation work will be finished.
- (3) A dispute about the date by which the renovation work will be finished is a retirement village dispute.
- (4) The operator must ensure the renovation work is completed by the agreed date.

Note—

See section 171 about failure to comply with this subsection.

- (5) The cost of the renovation work must be paid by—

-
- (a) if the residence contract provides that the former resident and the scheme operator are to share any capital gain on the sale of the former resident's interest in the unit—the former resident and the scheme operator in the same proportion the capital gain is to be shared; or
- (b) otherwise—the operator.
- (6) This section does not apply to a current residence contract within the meaning of section 237H.

Note—

See section 237K.

- (7) In this section—
- agreed date***, for completing renovation work, includes the date ordered by the tribunal in its decision on a retirement village dispute mentioned in subsection (3).
- renovation work*** means replacements or repairs other than reinstatement work.

108 Omission of ss 61 and 62

Sections 61 and 62—

omit.

109 Amendment of s 63 (When former resident's exit entitlement payable)

- (1) Section 63(1) and (2)—

omit, insert—

- (1) The scheme operator must pay the exit entitlement of the former resident to the person entitled to receive it on or before the earliest of the following days—

[s 109]

- (a) the day it must be paid under the former resident's residence contract;
- (b) the day that is 14 days after the settlement day;
- (c) the day that is 18 months after the termination date or any later day fixed by the tribunal by an order under section 171A.

Maximum penalty—540 penalty units.

- (2) The scheme operator may pay the exit entitlement at any time on or after the termination date and before the time payment is required under subsection (1) if the operator and the former resident agree on the resale value of the right to reside.
 - (2A) To remove any doubt, it is declared that, for subsection (2), the operator and the former resident are taken to have agreed on the resale value of the right to reside if there is an agreed resale value under section 60(3), 67(4) or 67A(4).
 - (2B) If the former resident has died, a requirement under subsection (1) to pay the exit entitlement by a particular day (the *due day*) is taken to be a requirement to pay the exit entitlement by the later of—
 - (a) the due day; or
 - (b) the day that is 14 days after the operator is shown the probate of the former resident's will or letters of administration of the former resident's estate.
- (2) Section 63(2A) to (4)—
renumber as section 63(3) to (6).
- (3) Section 63(1)—
insert—

- (d) if the former resident's right to reside in the retirement village was terminated under section 53(3)(d)—14 days after an agreed resale value of the right to reside is determined in accordance with section 60.

110 Amendment of s 64 (Units not sold within 6 months)

Section 64—

insert—

- (3) This section does not apply if the former resident's right to reside in the retirement village was terminated under section 53(3)(d).

111 Amendment of s 65 (Scheme operator to tell resident of all offers for accommodation unit)

Section 65—

insert—

- (4) This section does not apply if the former resident's right to reside in the retirement village was terminated under section 53(3)(d).

112 Amendment of s 66 (Accepting offers at less than agreed resale value)

- (1) Section 66, heading—

omit, insert—

66 Working out exit entitlements

- (2) Section 66—

insert—

- (3) If a former resident's right to reside in the retirement village was terminated under section 53(3)(d), the former resident's exit entitlement is to be worked out as if the right to reside was sold

[s 113]

at the agreed resale value.

113 Amendment of s 67 (Updating agreed resale value)

(1) Section 67, heading, after ‘value’—

insert—

every 3 months

(2) Section 67(1)(a), from ‘unit’—

omit, insert—

unit—

(i) is not sold within 3 months after the termination date; or

(ii) was terminated under section 53(3)(d); and

(3) Section 67—

insert—

(5) However, subsection (4) does not apply if—

(a) the former resident’s right to reside in the accommodation unit was terminated under section 53(3)(d); and

(b) the valuation obtained under subsection (3) is less than the previous agreed resale value of the right to reside in the accommodation unit determined in accordance with this section or section 60.

114 Insertion of new s 67A

Part 3—

insert—

67A Updating agreed resale value if exit entitlement is payable before right to reside is sold

(1) This section applies if—

-
- (a) a scheme operator is required under section 63(1)(c) to pay an exit entitlement before a former resident's right to reside in a particular accommodation unit is sold; and
 - (b) the operator and the former resident have not otherwise agreed on the value of the right to reside for the purpose of calculating the amount of the exit entitlement.
- (2) The operator must obtain a valuation of the right to reside from a valuer before, but not more than 14 days before, the day the operator is required to pay the exit entitlement.
- (4) A valuation obtained under subsection (2) is taken to be the agreed resale value of the right to reside.

115 Amendment of s 68 (Costs of selling)

Section 68—

insert—

- (5) This section does not apply if the former resident's right to reside in the retirement village was terminated under section 53(3)(d).

116 Replacement of s 69 (Limited ground for scheme operator to refuse to accept offer)

Section 69—

omit, insert—

69 Limited ground for scheme operator to refuse to accept offer

A scheme operator may refuse to accept an offer to purchase a right to reside in an accommodation unit if—

- (a) the operator reasonably believes—

[s 117]

- (i) the prospective resident is not within the age limits for residents stated in the village comparison document; or
- (ii) the type of unit to which the right to reside relates is unsuitable for the prospective resident; or

Example for subparagraph (ii)—

The accommodation is an independent living unit and the prospective resident needs help with personal care not normally provided by the scheme operator.

- (b) the right to reside was terminated under section 53(3)(d).

117 Insertion of new ss 70AB–70AD

Part 3, division 5—

insert—

70AB Submissions to valuer

- (1) This section applies if a valuer is required, under this division or a residence contract, to value the resale value of a resident's, or a former resident's, right to reside in an accommodation unit in a retirement village.
- (2) The valuer must advise the scheme operator and resident or former resident (each a *party*) that the parties may give the valuer a submission about the valuation of the resale value by a stated date decided by the valuer (the *submission date*).
- (3) If a party does not give a submission to the valuer by the submission date, the party is taken to have not made a submission for the purposes of this section or section 70AC(2)(a).
- (4) A party who gives a submission to the valuer must also give a copy of the submission to the other party by the submission date.

- (5) A party who receives a copy of a submission may give the valuer a written response to the submission.
- (6) The response must be given by a stated date decided by the valuer (the *response date*) that is reasonable in the circumstances.
- (7) If a party does not give a response to the valuer by the response date, the party is taken to have not made a response for the purposes of this section or section 70AC(2)(a).

70AC Matters to be considered by valuers

- (1) This section applies if a valuer is required, under this division or a residence contract, to value the resale value of a resident's, or a former resident's, right to reside in an accommodation unit in a retirement village.
- (2) The valuer—
 - (a) must have regard to submissions and responses from the scheme operator, and the resident or former resident, under section 70AB; and
 - (b) must conduct the valuation on the basis that the retirement village is operating, and will continue to operate, normally; and
 - (c) must have regard to the amount of the exit fee payable by, and the capital gain sharing arrangements applying to, the resident or former resident; and
 - (d) must not have regard to a different exit fee that would be payable by, or different capital gain sharing arrangements that would apply to, any person who purchased the right to reside in the retirement village from the resident or former resident.

[s 117]

(3) In this section—

capital gain sharing arrangements means the provisions of the residence contract that state how the resident or former resident, and the scheme operator, are to share any capital gain on the sale of the resident or former resident's interest in the accommodation unit.

70AD Valuer may require information from scheme operator

- (1) This section applies if a valuer is required, under this division or a residence contract, to value the resale value of a resident's, or a former resident's, right to reside in an accommodation unit in a retirement village.
- (2) The valuer may, by written notice, require the scheme operator to give the valuer stated information about the retirement village, the accommodation unit or the residence contract that the valuer reasonably needs to carry out the valuation.
- (3) If the scheme operator does not give the stated information to the valuer by the day (the *due day*) 14 days after the notice is given to the scheme operator, the valuer must give the operator, and the resident or former resident, written notice of the operator's non-compliance with the requirement (a *non-compliance notice*)—
 - (a) within 7 days of the due day; but
 - (b) only if the operator has not given the stated information by the day the non-compliance notice is given.
- (4) If the resident or former resident is given a non-compliance notice, a retirement village dispute exists between the scheme operator and the resident or former resident.

118 Replacement of ss 74–83

Sections 74 to 83—

omit, insert—

74 Village comparison documents

- (1) The purpose of a village comparison document is to give general information about a retirement village scheme to potential residents of the retirement village, including information about—
 - (a) available types of accommodation, facilities and services; and
 - (b) amounts payable by or to residents, the scheme operator and other persons.
- (2) A village comparison document must—
 - (a) be in the approved form; and

Note—

See section 227AA(2).

- (b) contain the information prescribed by regulation.
- (3) On registration of a retirement village scheme, the document lodged with the application for registration under section 27(2)(b) becomes the village comparison document for the scheme.
- (4) Immediately after becoming aware of a material change to any of the information in the village comparison document for a scheme, the scheme operator must amend the document so it contains the correct information.

Maximum penalty—50 penalty units.

- (b) contain the information prescribed by regulation.
- (5) Within 28 days after amending a village comparison document because of a material change to any of the information in the document, the scheme operator must give the chief executive written notice of the amendment.

[s 118]

Maximum penalty—540 penalty units.

- (6) The scheme operator for a retirement village scheme must—
- (a) publish the village comparison document on the scheme's website so the document, or a link to the document, appears prominently on each page of the website that contains, or has a link to, marketing material for the scheme; and
 - (b) ensure any promotional material for the scheme that is given to a person, other than as part of a general distribution of the material in a mail-out or other way, is accompanied by a copy of the village comparison document for the scheme; and
 - (c) give a copy of the village comparison document for the scheme to a prospective resident within 7 days of receiving a request from the prospective resident.

Maximum penalty—

- (a) for paragraphs (a) and (b)—50 penalty units; or
 - (b) for paragraph (c)—120 penalty units.
- (7) Subsection (6)(b) and (c) does not apply to a person to whom a copy of the village comparison document for the scheme has previously been given if there have been no material changes to the document since the copy was given to the person.
- (8) In this section—
- give* includes send by email, facsimile or other electronic means.

75 Prospective costs documents

(1) The purpose of a prospective costs document is to give to a prospective resident of a retirement village a summary of the estimated costs of moving into, living in and leaving the retirement village.

(2) A prospective costs document must—

(a) be in the approved form; and

Note—

See section 227AA(2).

(b) contain the information prescribed by regulation.

(3) If a prospective resident asks a scheme operator for a prospective costs document, the operator must prepare and give to the prospective resident a prospective costs document within 7 days after receiving from the prospective resident any information that the operator needs to complete the document.

Maximum penalty—120 penalty units.

(4) Subsection (3) does not apply to a person to whom a prospective costs document has previously been given if there have been no material changes to the information required to be included in the document since it was last given to the person.

(5) In this section—

give includes send by email, facsimile or other electronic means.

76 Condition reports at start of residency

(1) The scheme operator for a retirement village scheme must not permit a prospective resident to start occupying an accommodation unit under a residence contract unless the operator has—

[s 118]

- (a) under subsection (2), inspected the unit and completed a report in the approved form describing its condition; and

Note—

See section 227AA(2).

- (b) signed the report; and
- (c) given a copy of the signed report to the prospective resident.

Maximum penalty—20 penalty units.

- (2) The scheme operator must carry out the inspection and complete the report—
 - (a) in the way prescribed by regulation; and
 - (b) in the presence of the prospective resident or a person acting on behalf of the prospective resident.
- (3) However, subsection (2)(b) does not apply if the prospective resident has consented in writing to the inspection and report completion being carried out in his or her absence.
- (4) Within 7 days after starting to occupy the accommodation unit under the residence contract, the resident must—
 - (a) sign the report; and
 - (b) if the resident does not agree with the report—show the parts of the report the resident disagrees with by marking the copy in an appropriate way; and
 - (c) return the copy to the operator.
- (5) However, if the operator has not given the resident a copy of the report before the resident starts to occupy the accommodation unit under the residence contract, subsection (4) applies as if a reference to occupying the unit were a reference to receiving the copy.

-
- (6) If the resident returns the copy of the report to the operator under subsection (4), the operator must make a copy of the report and return it to the resident within 14 days.

Maximum penalty—20 penalty units.

- (7) The operator must keep, at least until 2 years after the resident's termination date under section 56—
- (a) the signed copy of the report returned to the operator by the resident; or
 - (b) if the resident does not return a signed copy—another copy of the report.

Maximum penalty—20 penalty units.

77 Condition reports at end of residency

- (1) Within 14 days after a resident's termination date under section 56, the scheme operator must—
- (a) inspect the former resident's accommodation unit and complete a report in the approved form describing its condition; and

Note—

See section 227AA(2).

- (b) sign the report; and
- (c) give a copy of the signed report to the former resident.

Maximum penalty—20 penalty units.

- (2) The former resident must—
- (a) sign the report; and
 - (b) if the former resident does not agree with the report—show the parts of the report the former resident disagrees with by marking the copy in an appropriate way; and

[s 119]

(c) return the copy to the operator.

- (3) If the former resident returns the copy of the report to the operator under subsection (2), the operator must make a copy of the report and return it to the former resident within 14 days.

Maximum penalty—20 penalty units.

- (4) The scheme operator must keep, at least until 2 years after the resident's termination date under section 56—

- (a) the signed copy of the report returned to the operator by the former resident; or
(b) if the former resident does not return a signed copy—another copy of the report.

Maximum penalty—20 penalty units.

119 Replacement of ss 84 and 85

Sections 84 and 85—

omit, insert—

84 Relevant information documents to be given to prospective residents

- (1) A scheme operator must not enter into a residence contract for the village with a person unless, at or before the prescribed time under subsection (5), the scheme operator has given the person a copy of each of the following documents—
- (a) the residence contract;
- (b) the village comparison document for the scheme;
- (c) a prospective costs document for the residence contract;
- (d) any by-laws for the village in force under section 130;

(e) any other document prescribed by regulation.

Maximum penalty—200 penalty units.

(2) If there is a change, other than a minor change, in any of the information given to a person in a document under subsection (1) before the operator and the person enter into the contract, the scheme operator must give the details of the change to the person at or before the prescribed time under subsection (5).

Maximum penalty—200 penalty units.

(3) A person may give a scheme operator a waiver under which the person agrees to receive a document mentioned in subsection (1), or details of a change mentioned in subsection (2), less than 21 days before the person enters into the contract.

(4) The waiver must—

(a) be in the approved form; and

(b) state that, on a stated day, the person obtained legal advice from a Queensland lawyer about entering into the contract; and

(c) be signed by the person and the lawyer.

(5) The prescribed time by which a scheme operator must give a document or details relating to a residence contract to a person under subsection (1) or (2) is—

(a) 21 days before the operator and the person enter into the contract; or

(b) if the person gives the operator a waiver under subsections (3) and (4) for the contract—

(i) the time stated in the waiver as the time by which the person agrees to receive the document or details; or

[s 119]

- (ii) if no time is stated in the waiver—immediately before the operator and the person enter into the contract.
- (6) For a residence contract consisting of more than 1 written contract, a reference in this section to entering into a residence contract is a reference to entering into any of the contracts.
- (7) In this section—
 - minor change*, in information given to a person in a document under subsection (1), means—
 - (a) a correction of a minor error; or
 - (b) another change that is not a change of substance and does not adversely affect the person’s interests.

85 Access to operational documents by residents and prospective residents

- (1) A regulation may prescribe the documents (*operational documents*), relating to the operation of a retirement village scheme, that may be accessed under this section.
- (2) A resident or prospective resident may ask the scheme operator to allow the person to inspect, or take a copy of, an operational document.
- (3) The request must—
 - (a) be written; and
 - (b) state—
 - (i) the person’s name; and
 - (ii) whether the person is a resident or a prospective resident; and
 - (iii) a reasonable time, at least 7 days after the request is given to the scheme

operator, for the person's access to the document; and

- (c) be accompanied by any fee prescribed by regulation.
- (4) Subject to subsections (5) and (6), the scheme operator must comply with the request.
Maximum penalty—120 penalty units.
- (5) The scheme operator must not give the person any personal information about another person.
- (6) The scheme operator is not required to comply with the request so far as it relates to an operational document if—
 - (a) within 30 days before the request was made, the scheme operator complied with another request by the person to inspect, or take a copy of, the same operational document; and
 - (b) there have been no material changes to the document since the operator complied with the other request.
- (7) In this section—

personal information means information or an opinion that—

 - (a) the operator has gained or brought into existence in the course of the operation of the scheme; and
 - (b) is about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

120 Replacement of s 86 (False or misleading documents)

Section 86—

omit, insert—

[s 121]

86 Misleading or deceptive conduct

- (1) This section applies to a person who is—
 - (a) a scheme operator; or
 - (b) a representative of a scheme operator.
- (2) The person must not, in relation to the operation of a retirement village scheme, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

Example of conduct that is misleading or deceptive or is likely to mislead or deceive—

Giving false or misleading information (orally or in writing) to—

- (a) the chief executive; or
- (b) a resident or prospective resident.

Maximum penalty—200 penalty units.

- (3) In this section—

representative, of a scheme operator, means—

 - (a) an employee or agent of the scheme operator; and
 - (b) if the scheme operator is a corporation—an executive officer of the scheme operator.

121 Insertion of new s 86A

Part 4—

insert—

86A Scheme website

- (1) The scheme operator for a retirement village scheme must maintain a website for the scheme.
- (2) A website maintained under subsection (1) may relate to more than 1 scheme.

122 Amendment of s 93 (Capital replacement fund budget)

Section 93—

insert—

(1A) The budget must be in the approved form.

Note—

See section 227AA(2).

123 Amendment of s 94 (Payments into capital replacement fund)

Section 94(1)(d)(ii), after ‘public information document’—

insert—

in effect under section 237I

124 Amendment of s 98 (Amount of maintenance reserve fund)

(1) Section 98(4)—

omit.

(2) Section 98(7), ‘subsection (6)’—

omit, insert—

subsection (5)

(3) Section 98(8), ‘subsection (5)’—

omit, insert—

subsection (4)

(4) Section 98(5) to (8)—

renumber as section 98(4) to (7).

125 Amendment of s 99 (Maintenance reserve fund budget)

(1) Section 99(1)—

omit, insert—

[s 125]

(1) The scheme operator must adopt a budget for the maintenance reserve fund (a ***maintenance reserve fund budget***) for each financial year that—

(a) is in the approved form; and

Note—

See section 227AA(2).

(b) subject to subsection (2), is consistent with, and implements any recommendations in, the quantity surveyor's report obtained under section 98(1).

Maximum penalty—200 penalty units.

(1A) Subsection (1)(b) does not apply to the scheme operator to the extent of any part of the maintenance reserve fund budget that has been agreed to by the residents by special resolution at a residents meeting.

(2) Section 99(2), 'For subsection (1), the'—

omit, insert—

The

(3) Section 99(3), after 'The residents committee'—

insert—

or a resident

(4) Section 99(3), after 'give the residents committee'—

insert—

or resident

(5) Section 99(5)—

insert—

Maximum penalty—200 penalty units.

(6) Section 99(6), 'for the general services charges'—

omit.

- (7) Section 99(7), ‘Subsection (6)’—
omit, insert—

Subsection (7)

- (8) Section 99(1A) to (7)—
renumber as section 99(2) to (8).

126 Replacement of pt 5, div 7, hdg (Charges for general services)

Part 5, division 7, heading—

omit, insert—

**Division 7 General services charges
fund**

127 Insertion of new s 102AA

Part 5, division 7, before section 102A—

insert—

102AA General services charges fund

- (1) A scheme operator must establish and keep a fund for general services.
- (2) The scheme operator must not use an amount standing to the credit of the fund for a purpose other than providing general services.

Maximum penalty—540 penalty units.

128 Amendment of s 102A (General services charges budget)

- (1) Section 102A, heading—

omit, insert—

102A General services charge budget

- (2) Section 102A(1)—

[s 129]

omit, insert—

(1) The scheme operator must adopt a budget (the ***general services charge budget***) for each financial year for the general services charges fund.

(1A) The budget must be in the approved form.

Note—

See section 227AA(2).

(3) Section 102A(2), ‘For subsection (1), the general services charges’—

omit, insert—

The general services charge

(4) Section 102A(3), ‘charges’—

omit, insert—

charge

(5) Section 102A(6) and (7)—

omit, insert—

(6) At the end of a financial year for which a general services charge budget is adopted, any surplus or deficit in the fund must be carried forward and taken into account in adopting the general services charge budget for the next financial year.

(7) Subsection (7) applies despite section 106.

(6) Section 102A(1A) to (7)—

renumber as section 102A(2) to (8).

129 Amendment of s 103 (Working out and paying charges for general services for residents)

(1) Section 103, heading, ‘charges for general services’—

omit, insert—

general services charges

-
- (2) Section 103(1), ‘public information document’—
omit, insert—
contract
- (3) Section 103(3), ‘the charge for general services’—
omit, insert—
a general services charge
- (4) Section 103(6), ‘the charge for a general service’—
omit, insert—
a general services charge
- (5) Section 103(6), ‘for the service’—
omit, insert—
for general services
- (6) Section 103(7)—
omit, insert—
- (7) The scheme operator must not include, or provide for, in a general services charge an amount or component, however described, that is payable for or towards—
- (a) costs awarded by the tribunal against the scheme operator; or
- (b) legal costs incurred by the scheme operator in relation to a retirement village issue.
- Maximum penalty—200 penalty units.

130 Amendment of s 104 (Working out and paying charges for general services for former residents)

- (1) Section 104, heading, ‘charges for general services’—
omit, insert—
general services charges and maintenance reserve fund contributions

[s 131]

- (2) Section 104(1), ‘resident’s proportion of charges for general services after’—

omit, insert—

part of the general services charge and maintenance reserve fund contribution for a financial year relating to the period from when

- (3) Section 104(2)(a), ‘charges for general services’—

omit, insert—

relevant part of the general services charge and maintenance reserve fund contribution for a financial year

- (4) Section 104(2)(b) and (3)(a), ‘charges for general services’—

omit, insert—

general services charge and maintenance reserve fund contribution for a financial year

131 Amendment of s 105 (General services charges for unsold right to reside in accommodation units)

- (1) Section 105, heading, after ‘General services charges’—

insert—

and maintenance reserve fund contributions

- (1A) Section 105(1), after ‘charges’—

insert—

and maintenance reserve fund contributions

- (1B) Section 105(2)—

omit, insert—

- (2) The scheme operator must pay the amounts payable under subsection (1) into the general services charges fund and maintenance reserve fund respectively.

- (2) Section 105—

insert—

(3) In this section—

accommodation unit means—

- (a) a part of a retirement village in which a resident has an exclusive right to reside; or
- (b) a part of a retirement village—
 - (i) that is under construction or being renovated; and
 - (ii) in which a resident will have an exclusive right to reside when the construction or renovation is completed.

132 Replacement of ss 106 and 107

Sections 106 and 107—

omit, insert—

106 Increasing the total general services charge

- (1) This section limits the amount (the ***total general services charge***), fixed by the scheme operator of a retirement village under section 102A in the general services charge budget for a financial year, that is to be raised by imposing a general services charge on each resident in the village for the financial year.
- (2) A scheme operator must not fix a total general services charge for a financial year at an amount that is an increase on the amount of the total general services charge for the previous financial year of more than the CPI percentage increase.

Maximum penalty—200 penalty units.

- (3) Subsection (2) does not apply to the operator to the extent the increase in the total general services charge—

[s 132]

- (a) has been agreed to by the residents by special resolution at a residents meeting; or
 - (b) is allowed under section 107.
- (4) In this section—

CPI means the all groups consumer price index for Brisbane published by the Australian statistician.

CPI percentage increase, for a financial year, means the percentage increase between—

- (a) the CPI published for the third quarter of the financial year before the previous financial year; and
- (b) the CPI published for the third quarter of the previous financial year.

Example—

Under subsection (2), a scheme operator must not fix a total general services charge for the 2018–2019 financial year at an amount that is an increase on the amount of the total general services charge for the 2017–2018 financial year of more than the CPI percentage increase.

The relevant CPI percentage increase is the percentage increase between the CPI published for the third quarter of the 2016–2017 financial year and the CPI published for the third quarter of the 2017–2018 financial year.

107 Allowable increase in total general services charge

For section 106(3)(b), an increase in the total general services charge for a financial year is allowed to the extent it is attributable to—

- (a) an increase in rates, taxes or charges levied under an Act in relation to the retirement village land or its use; or

- (b) an increase in the salary or wages of a person engaged in the retirement village's operation and payable under an award, certified agreement or other industrial instrument made, approved, certified or continued in force under the *Industrial Relations Act 2016* or a Commonwealth Act; or
- (c) an increase in insurance premiums, or insurance excesses paid, in relation to the retirement village or its use; or
- (d) an expense incurred by a manager, or an amount charged by a manager, that must be paid from the general services charges fund under section 38A(2)(a).

133 Amendment of s 107A (Considering more cost-effective alternative services)

Section 107A, 'the charge for'—

omit, insert—

the amount included in a general services charge that relates to the provision of

134 Amendment of s 108 (New services to be approved by majority of residents)

Section 108(2)(c)—

omit, insert—

- (c) another service, if the residence contract of each of the residents states that the service was proposed to be supplied.

[s 135]

135 Amendment of s 111 (Scheme operator must keep separate accounts for capital replacement fund and maintenance reserve fund)

Section 111, before ‘capital’—

insert—

general services charges fund,

136 Replacement of s 112 (Quarterly financial statements)

Section 112—

omit, insert—

112 Quarterly financial statements

- (1) A resident may ask the scheme operator for a quarterly financial statement for—
 - (a) 1 or more completed quarters of the current financial year; or
 - (b) 1 or more quarters of the last 2 completed financial years.
- (2) Within 28 days after receiving the request, the scheme operator must give the resident a quarterly financial statement for each quarter that—
 - (a) lists, for the quarter, the income of, and expenditure from—
 - (i) the capital replacement fund; and
 - (ii) the maintenance reserve fund; and
 - (iii) the general services charges fund; and
 - (b) has been audited or is in a form that is capable of being audited; and
 - (c) is in the approved form.

Note—

See section 227AA(2).

Maximum penalty—100 penalty units.

-
- (3) This section does not prevent the scheme operator giving a resident a quarterly financial statement for a quarter other than a quarter mentioned in subsection (1).

112A Explanation of increase in general service charge

- (1) This section applies if there is an increase in the expenditure involved in providing a general service that varies from the expected expenditure for the general service in the general services charge budget.
- (2) The residents committee may ask the scheme operator for an explanation for the increase.
- (3) As soon as practicable after receiving the request, the scheme operator must give the committee a document that explains the increase.

Maximum penalty—100 penalty units.

137 Amendment of s 113 (Annual financial statements)

- (1) Section 113(1)(c)—

omit, insert—

- (c) income and expenditure of the general services charges fund for the financial year;

- (2) Section 113—

insert—

- (1A) The financial statement must be in the approved form.

Note—

See section 227AA(2).

- (3) Section 113(1A) to (3)—

renumber as section 113(2) to (4).

[s 138]

138 Insertion of new pt 5, div 10

Part 5—

insert—

Division 10 Redevelopment of retirement villages

113B Definition for division

In this division—

residents meeting notice see section 113D(b).

113C Application of division

- (1) This division applies if a scheme operator proposes to redevelop a retirement village (a *running redevelopment*) without—
 - (a) winding down the retirement village scheme for the retirement village; or
 - (b) stopping the retirement village scheme from operating, including temporarily.
- (2) However, this division does not apply to a running redevelopment if every resident of the retirement village was given written notice of the running redevelopment, before he or she became a resident, in a document mentioned in section 84(1).
- (3) In this section—

redevelopment, of a retirement village, includes—

 - (a) the construction or demolition of an accommodation unit; and
 - (b) the construction or demolition, or the expansion or reduction in size or area, of a building or structure located in the

retirement village, other than works of a minor nature; and

Example of works of a minor nature—

the construction or demolition of a shed or similar structure

- (c) the expansion or reduction in size or area of the retirement village; and
- (d) a change of the use, other than a minor change, of a building or structure located in the retirement village; and

Example of a minor change of use—

a change of use of a shed or similar structure

- (e) another matter prescribed by regulation.

113D Requirement to prepare redevelopment plan

The scheme operator must give each resident of the retirement village—

- (a) a proposed redevelopment plan relating to the running redevelopment; and
- (b) a notice (a *residents meeting notice*), in the approved form, that states—
 - (i) if the proposed redevelopment plan is not approved under section 113F(1)(a), within a stated reasonable period that is not less than 21 days after the giving of the residents meeting notice, the scheme operator may apply to the chief executive for approval of the proposed redevelopment plan under section 113F(1)(b); and
 - (ii) if the chief executive approves the proposed redevelopment plan under section 113F(1)(b), a resident may

[s 138]

apply to the tribunal for a review of the decision under section 113J.

Maximum penalty—100 penalty units.

113E Meaning of *redevelopment plan*

- (1) A *redevelopment plan*, for a retirement village, is a written plan about the running redevelopment of the retirement village.
- (2) A redevelopment plan for a retirement village must be in the approved form and state the matters prescribed by regulation.

113F Approval of redevelopment plan

- (1) A proposed redevelopment plan may be approved either—
 - (a) by the residents, by a special resolution at a residents meeting; or
 - (b) on application under subsection (3), by the chief executive.
- (2) If the proposed redevelopment plan is approved under subsection (1)(a), the scheme operator must give the chief executive a copy of the approved redevelopment plan within 14 days of the vote.
- (3) The scheme operator may apply to the chief executive for approval of a proposed redevelopment plan if—
 - (a) the residents, by special resolution at a residents meeting, vote against the approval of the proposed redevelopment plan; or
 - (b) the proposed redevelopment plan is not approved under subsection (1)(a) within the period stated in the residents meeting notice.
- (3A) Before deciding the application, the chief

executive must—

- (a) give each resident of the retirement village a written notice stating that—
 - (i) the scheme operator has applied for approval of the proposed redevelopment plan; and
 - (ii) the resident may make submissions to the chief executive about the proposed redevelopment plan in a stated way and by a stated day; and
 - (b) if a resident of the retirement village requests a copy of the proposed redevelopment plan—give a copy of the proposed redevelopment plan to the resident; and
 - (c) have regard to any submissions made to the chief executive by the residents in the stated way and by the stated day.
- (4) After receiving an application for approval of a proposed redevelopment plan, the chief executive must decide—
- (a) to approve the plan; or
 - (b) to give the scheme operator a written direction to take action, or particular action, to revise the plan.
- (4A) The chief executive’s decision must be made within 90 days of the later of—
- (a) the day the application is received; or
 - (b) if the chief executive reasonably requires further information for the purpose of making the decision and asks the scheme operator for the further information—the day the information is given.
- (5) The chief executive may approve the proposed

[s 138]

redevelopment plan only if the chief executive is satisfied the plan provides for a clear, orderly and fair process for the running redevelopment.

- (6) If the chief executive approves the proposed redevelopment plan, the chief executive must give—
 - (a) written notice of the decision to the scheme operator; and
 - (b) a QCAT information notice for the decision to each resident.
- (7) Before giving a direction under subsection (4)(b), the chief executive must—
 - (a) give the operator a written notice stating—
 - (i) that the chief executive proposes to give the operator a direction to take action, or particular action, to revise the proposed redevelopment plan (the ***proposed action***); and
 - (ii) the particulars of the action to be taken; and
 - (iii) the reasons for the proposed action; and
 - (iv) that the operator may make written submissions to the chief executive about the proposed action before a stated day; and
 - (b) have regard to any written submissions made to the chief executive by the operator before the stated day.
- (8) If the chief executive gives a direction under subsection (4)(b), the chief executive must also give the operator, and each resident, a QCAT information notice for the decision.
- (9) If the chief executive fails to decide the

application in the time required under subsection (4A), the chief executive is taken to have approved the proposed redevelopment plan.

113G Revision of approved redevelopment plan

- (1) The chief executive may, on the chief executive's own initiative or on the application of the scheme operator, give the scheme operator a written direction to take action, or particular action, to revise an approved redevelopment plan.
- (2) The chief executive may approve the revised redevelopment plan only if the chief executive is satisfied the revised redevelopment plan provides for a clear, orderly and fair process for the running redevelopment.
- (3) If the chief executive approves the revised redevelopment plan, the chief executive must give—
 - (a) written notice of the decision to the scheme operator; and
 - (b) a QCAT information notice for the decision to each resident.
- (4) Before giving a direction under subsection (1) to a scheme operator on the chief executive's own initiative, the chief executive must—
 - (a) give the operator a written notice stating—
 - (i) that the chief executive proposes to give the operator a direction to take action, or particular action, to revise the approved redevelopment plan (the *proposed action*); and
 - (ii) the particulars of the action to be taken; and

[s 138]

- (iii) the reasons for the proposed action;
and
 - (iv) that the operator may make written submissions to the chief executive about the proposed action before a stated day; and
- (b) have regard to any written submissions made to the chief executive by the operator before the stated day.
- (5) If the chief executive gives a direction under subsection (1) to a scheme operator on the chief executive's own initiative, the chief executive must also give the operator, and each resident, a QCAT information notice for the decision.

113H Requirement to implement approved redevelopment plan

- (1) A scheme operator must, when carrying out a running redevelopment of a retirement village, comply with an approved redevelopment plan for the running redevelopment.

Maximum penalty—100 penalty units.

- (2) The scheme operator must, at the request of the chief executive, notify the chief executive about how an approved redevelopment plan is being implemented by the scheme operator.

Maximum penalty—100 penalty units.

113I Discontinuing running redevelopment of retirement village

- (1) This section applies if—
- (a) a scheme operator has complied with section 113D in relation to a running redevelopment; and

-
- (b) the scheme operator decides not to proceed with the running redevelopment.
- (2) The operator must give the chief executive, and each resident of the retirement village, notice (a *notice of discontinuation*) of the decision in the approved form.
- Maximum penalty—100 penalty units.
- (3) If the operator gives a notice of discontinuation to the chief executive, or 1 or more residents of the retirement village, any approved redevelopment plan, for the running redevelopment of the retirement village, is no longer approved.

113J Application to tribunal for review

A person who has been given a QCAT information notice under this division may apply, as provided under the QCAT Act, to the tribunal for a review of the decision.

139 Amendment of s 129B (Residents committee may require scheme operator to attend meeting about budgets)

Section 129B(1)(c), ‘charges for general services’—
omit, insert—

the general services charges fund

140 Insertion of new pt 8

After part 7—

insert—

Part 8

Rights and obligations of scheme operator, residents and others

134 Purpose and enforceability of part

- (1) This part states requirements relating to the behaviour of scheme operators and residents, or former residents, of retirement villages.
- (2) A dispute about the person's rights and obligations under this part is a retirement village dispute.

135 Scheme operator to respect rights of residents

- (1) A scheme operator of a retirement village must respect the rights of residents of the retirement village.
- (2) Without limiting subsection (1), the scheme operator—
 - (a) must not unreasonably interfere with, or allow interference with, the reasonable peace, comfort or privacy of a resident; and

Example—

It may be reasonable for a scheme operator to interfere with a resident's access to a communal facility to make repairs to the facility.

- (b) must take reasonable steps to ensure a resident or a resident's guest does not interfere with the reasonable peace, comfort or privacy of another resident; and
- (c) must use the scheme operator's best endeavours to ensure each resident lives in an environment free from harassment and intimidation; and
- (d) must not restrict the right of a resident to autonomy over the resident's personal, financial or other affairs or possessions; and
- (e) must not restrict a resident from exercising self-reliance in matters relating to the

resident's personal, domestic or financial affairs; and

- (f) must, within 21 days after receiving relevant correspondence from a resident or former resident, or the representative of a resident or former resident, give the resident, former resident or representative a complete response to the relevant correspondence.
- (3) Nothing in this section prevents the scheme operator, or another person, from entering the resident's accommodation unit—
- (a) if the operator reasonably believes the health or safety of a person in the accommodation unit is at risk; or
 - (b) in order to carry out urgent repairs; or
 - (c) otherwise in an emergency; or
 - (d) if the entry is authorised under a law.
- (4) In this section—

complete response, to relevant correspondence, means a written response addressing each complaint, proposal and question in the relevant correspondence.

relevant correspondence means a written complaint, proposal or question about the operation of the retirement village.

representative, of a resident or former resident, means an entity—

- (a) established to represent the interests of—
 - (i) the resident or former resident; or
 - (ii) residents or former residents generally; and

[s 140]

- (b) that is authorised by the resident or former resident to give relevant correspondence to the scheme operator.

136 Residents to respect rights of others

- (1) A resident of a retirement village must respect the rights of other residents of the retirement village and other persons in the retirement village.
- (2) Without limiting subsection (1), a resident of a retirement village—
 - (a) must not unreasonably interfere, or unreasonably cause or permit interference, with the peace, comfort or privacy of another resident; and
 - (b) must respect the rights of the scheme operator and the scheme operator's representatives to work in an environment free from harassment and intimidation; and
 - (c) must not act in a way that adversely affects the occupational health and safety of a person who is—
 - (i) working in the retirement village; and
 - (ii) employed, or otherwise authorised to work in the retirement village, by the scheme operator.
- (3) In this section—

representative, of a scheme operator, means—

 - (a) if the scheme operator is a corporation—an executive officer, employee or agent of the corporation; or
 - (b) if the scheme operator is an individual—an employee or agent of the individual.

141 Amendment of s 167 (Application for reference of dispute)

Section 167—

insert—

- (2) Also, a party to a building work dispute may apply to the tribunal even if the parties to the dispute have not first attempted to resolve the dispute under section 154 or referred the dispute to a mediation process under part 9.

- (3) In this section—

building work dispute means a retirement village dispute about reinstatement work or renovation work under part 3, division 5.

142 Replacement of s 170 (Resident may apply for order if given false or misleading documents)

Section 170—

omit, insert—

170 Resident may apply for order if scheme operator contravenes particular provisions

- (1) This section applies if—
 - (a) a scheme operator of a retirement village contravenes section 84 or 86; and
 - (b) a resident of the retirement village is materially prejudiced by the contravention.
- (2) The resident may apply to the tribunal for an order to have the resident's residence contract set aside.
- (3) Subsection (2) applies even if the resident was a prospective resident at the time of the contravention.

[s 143]

143 Amendment of s 171 (Former resident may apply for order for payment of exit entitlement)

(1) Section 171(1)(a), ‘section 58(2),’—

omit, insert—

former section 58(2) or section 59A(4),

(2) Section 171—

insert—

(3) In this section—

former section 58(2) means section 58(2) as in force immediately before the commencement and applied in relation to a current residence contract under section 237K.

144 Insertion of new s 171A

Part 10, division 3—

insert—

171A Operator may apply for extension of time to pay exit entitlement

(1) A scheme operator may apply to the tribunal for an order extending the time by which the operator must pay the exit entitlement of a former resident under section 63(1)(c).

(2) The tribunal may make an order fixing a later day by which the payment is required under section 63(1)(c) if satisfied—

(a) the operator is unlikely to be able to sell the right to reside in the former resident’s accommodation unit before the day payment is required under section 63(1)(c); and

(b) if the order is not made, the operator is likely to suffer undue financial hardship; and

-
- (c) the order would not be unfair to the former resident, having regard to any submissions made by the former resident about hardship he or she is likely to suffer if the order is made.

145 Amendment of s 191 (Tribunal orders generally)

- (1) Section 191(4), ‘resident’—

omit, insert—

person

- (2) Section 191(4), ‘or 171’—

omit, insert—

, 171 or 171A

146 Insertion of new s 195

Part 11—

insert—

195 Tribunal order under section 171A

- (1) This section applies if a scheme operator applies for a tribunal order under section 171A.
- (2) Without limiting section 191, the tribunal may make an order that the operator pay the exit entitlement by instalments on stated days.

147 Amendment of s 221 (Evidentiary provisions)

Section 221—

insert—

- (5) A copy of a condition report stating the condition of a stated accommodation unit is evidence of the condition of the unit—

[s 147A]

- (a) if the report is signed by the resident—when the report was signed; or
 - (b) otherwise—when the report was made.
- (6) However, if the report is signed by the resident and marked to show the resident’s disagreement with the report, the report is evidence of the condition of the unit only as far as its contents are unmarked.

147A Insertion of new s 225

After section 224—

insert—

225 Review of operation of s 63(1)(c)

- (1) A review of the operation of section 63(1)(c) must be conducted, under this section, to determine the impact of the provision on the following persons—
 - (a) residents;
 - (b) former residents;
 - (c) the families of residents or former residents;
 - (d) scheme operators.
- (2) The review must be conducted by a panel of not more than 4 appropriately qualified persons appointed by the Minister.
- (3) The Minister must prepare, and give to the panel, terms of reference to guide the conduct of the review.
- (4) The review must start no later than 2 years after the commencement.

148 Insertion of new s 227AA (Approval of forms)

After section 227—

insert—

227AA Requirements about approved forms for residence contracts and other documents

- (1) Without limiting section 227, a form may be approved for use as a residence contract or other document that—
 - (a) applies to documents of that type generally; or
 - (b) is limited in its application by reference to stated matters.
- (2) A requirement in this Act for a document to be in the approved form does not apply if there is no approved form at the time the document is adopted, entered into or otherwise used under this Act.

149 Amendment of s 228 (Regulation-making power)

Section 228—

insert—

- (3) A regulation may impose a requirement about the provision of equipment in a retirement village for public safety.

150 Insertion of new pt 15, div 3

Part 15—

insert—

Division 3 Transitional provisions for Housing Legislation (Building Better Futures) Amendment Act 2017

237H Definitions for division

In this division—

amended Act means this Act as in force from the commencement.

amendment Act means the *Housing Legislation (Building Better Futures) Amendment Act 2017*.

current public information document—

- (a) means a public information document that was in effect immediately before the commencement; and
- (b) includes any amendment of the document made after the commencement.

current residence contract—

- (a) means a residence contract that was in effect immediately before the commencement; and
- (b) includes any amendment of the contract made after the commencement.

former means as in force immediately before the commencement.

pre-amended Act means this Act as in force immediately before the commencement.

237I Continued operation of public information documents and particular former provisions

- (1) This section provides for—
 - (a) the continued effect of current public information documents; and
 - (b) the continued operation of particular provisions of the pre-amended Act relating to public information documents.
- (2) While a current residence contract remains in force, the current public information document

relating to the contract continues in effect for the purpose of this section.

- (3) Despite its repeal by the amendment Act, former section 36 continues to apply to a scheme operator in relation to the public information document mentioned in subsection (2) that relates to the operator's scheme.
- (4) However, a scheme operator may not amend the public information document in a way that may materially affect the interests of a resident of the retirement village except to the extent permitted under an approved closure plan or approved redevelopment plan.
- (5) Despite its amendment or repeal by the amendment Act, each of the following provisions continues to apply in relation to a current residence contract while the contract remains in force—
 - (a) former section 18;
 - (b) former section 20;
 - (c) former sections 36 and 37;
 - (d) former section 45(3);
 - (e) former sections 74 to 83;
 - (f) former section 103(1);
 - (g) former section 108(2)(c).
- (6) For that purpose—
 - (a) a reference in a provision mentioned in subsection (5) to a public information document is taken to be a reference to the public information document mentioned in subsection (2); and
 - (b) a reference in a provision mentioned in subsection (5) to a provision of this Act

[s 150]

includes a reference to the relevant former provision.

Example for paragraph (b)—

The reference in former section 37(2) to section 36 is a reference to former section 36.

- (7) Part 5, division 10 does not apply to a running redevelopment if every resident of the retirement village was given written notice of the running redevelopment, before he or she became a resident, in—
- (a) a current public information document; or
 - (b) a document mentioned in section 84(1).

237J Approved form of public information documents

- (1) The power under section 227 to approve forms includes power to approve a form for use as a public information document under this division.
- (2) From the commencement, a current approved form for a public information document continues in effect under section 227 until it ceases to be the approved form under that section.
- (3) In this section—

current approved form means an approved form for a public information document in effect under section 227 immediately before the commencement.

237K Continued operation of former provisions relating to reinstatement work

- (1) This section provides for the continued operation of the following provisions of the pre-amended Act—
 - (a) former section 58;

- (b) former section 59;
 - (c) former section 61;
 - (d) former section 62.
- (2) Despite its amendment or repeal by the amendment Act, each provision mentioned in subsection (1) continues to apply in relation to a current residence contract to which part 3, division 5 applies.

237L Village comparison documents

- (1) This section applies to a retirement village scheme registered before the commencement.
- (2) The scheme operator must prepare a village comparison document for the scheme.

237M Prescribed period for repayment of exit entitlement

- (1) This section applies to the exit entitlement payable in relation to a residence contract for which the resident's right to reside was terminated before the commencement.
- (2) Section 63, as in force from the commencement, applies in relation to the contract as if the reference in section 63(1)(c) to the termination date were a reference to the day this section commences.

237N Updating agreed resale value

Despite its amendment by the amendment Act, former section 67 continues to apply in relation to a residence contract for which the termination date was before the commencement.

237O Quarterly financial statements

- (1) This section applies in relation to a request under section 112(1) for a quarterly financial statement for—
 - (a) a financial quarter ending before the commencement; or
 - (b) the current financial quarter at the time of the commencement.
- (2) So far as it relates to the general services charges fund, the request is taken to be a request for a list, for the quarter, of the expenditure involved in providing each general service.

237OA Non-application of pt 2, div 5 to existing contracts

Part 2, division 5 does not apply to the transfer of control of a scheme's operation under a contract executed before the commencement.

237P Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature about a matter for which—
 - (a) it is necessary to make provision to allow or facilitate the transition from the operation of the pre-amended Act to the operation of the amended Act; and
 - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the day this section commences.
- (3) A transitional regulation must declare it is a transitional regulation.

- (4) This section and any transitional regulation expire 1 year after the day this section commences.

151 Amendment of schedule (Dictionary)

- (1) Schedule, definitions *public information document* and *reinstatement work*—

omit.

- (2) Schedule—

insert—

approved closure plan means a closure plan approved for the scheme under section 40D or 40E.

approved redevelopment plan means a redevelopment plan approved for the scheme under section 113F or 113G.

approved transition plan means a transition plan approved by the chief executive under section 41F or 41G.

closure plan see section 40C.

condition report means a report that, under section 76 or 77, is prepared, signed by a scheme operator and given to a resident or former resident.

existing scheme operator, for part 2, division 5, see section 41C(1).

general services charge see section 18B.

general services charges fund see section 18A.

new scheme operator, for part 2, division 5, see section 41C(1).

prospective costs document, for a prospective resident, means a document complying with section 75(2) containing information relevant to the prospective resident entering into a residence

contract.

redevelopment plan see section 113E.

reinstatement work, for part 3, division 5, see section 56(1).

residents meeting notice—

(a) for part 2, division 4, see section 40B(1)(b);
or

(b) for part 5, division 10, see section 113D(b).

running redevelopment see section 113C(1).

transition plan see section 41E.

village comparison document, for a scheme, means the following document as amended from time to time—

(a) for a scheme to which section 237L applies, the document prepared under that section;

(b) otherwise, the document that becomes the village comparison document for the scheme under section 74(3).

wind down, in relation to a retirement village scheme, means gradually reduce the retirement village's operations ahead of the cessation of the retirement village's operations.

© State of Queensland 2017