



Retirement Villages (Disputes Panel) Regulations 2006

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 24th day of July 2006

Present:

Her Excellency the Governor-General in Council

Pursuant to section 101 of the Retirement Villages Act 2003, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations

- 1 Title**
These regulations are the Retirement Villages (Disputes Panel) Regulations 2006.

2 Commencement

These regulations come into force on 1 October 2006.

3 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

Act means the Retirement Villages Act 2003

approved person means a person whose name is on the list maintained by the Retirement Commissioner under section 58 of the Act

dispute notice means a dispute notice under section 52 of the Act

disputes panel means a disputes panel appointed under section 59 of the Act

resident has the meaning specified in section 48 of the Act.

- (2) In these regulations, a reference to a numbered form is a reference to the form so numbered in the Schedule.

Commencement of dispute resolution

4 Form of dispute notice

Form 1 may be used to give a dispute notice.

5 Copy of dispute notice must be given to operator

A person (other than an operator) who gives a dispute notice must, as soon as practicable after giving the notice, give a copy of that notice to the operator if the operator is not a respondent to the dispute.

Appointment of disputes panel

6 Notice of appointment of disputes panel

- (1) An operator who appoints a member to a disputes panel must promptly give written notice of the appointment to each party to the dispute (other than the operator).
- (2) The notice of appointment must state the member's name, address, and telephone number and, in the case of a dispute tribunal comprising more than 1 member, the name of the member appointed as chair of the panel.

7 Operator to give Retirement Commissioner documents

- (1) An operator who appoints a member of a disputes panel must promptly give the Retirement Commissioner—
 - (a) a copy of—
 - (i) the dispute notice in respect of which the disputes panel was appointed; and
 - (ii) the disclosure (if any) made by the member under section 61 of the Act; and
 - (iii) the contract for services between the operator and the member; and
 - (iv) the notice of appointment of the member to the disputes panel; and
 - (b) a certificate in accordance with subclause (2).
- (2) The operator must certify in writing to the Retirement Commissioner that—
 - (a) in appointing the member, the operator has complied with the operator's obligations in sections 60 and 62 of the Act; and
 - (b) the operator believes that the member has complied with the disclosure obligation in section 61 of the Act.

8 Copy of dispute notice must be given to member of disputes panel

An operator who appoints a member of a disputes panel must promptly give that member a copy of the dispute notice.

9 Appointment of chair of disputes panel

- (1) If an operator appoints a disputes panel comprising more than 1 member, the operator must appoint one of the members as the chair of the panel.
- (2) Subclause (1) does not apply if the disputes panel is appointed under section 60(4) of the Act.
- (3) The member appointed by the operator, or designated under section 60(4)(c) of the Act, as chair must—
 - (a) make all arrangements for the hearing of the dispute; and
 - (b) preside at any hearing or meeting of the panel.

10 Effect of vacancy in single member disputes panel

If the member of a single member disputes panel dies, resigns, has his or her contract for services terminated, or becomes unavailable for any other reason, the operator must, as soon as practicable after becoming aware of that fact, appoint another disputes panel to resolve the dispute.

*Matters preliminary to hearing by disputes panel***11 Disputes panel may request further particulars**

- (1) If a disputes panel considers that the dispute notice in respect of which it was appointed does not contain sufficient information to fully and fairly inform the panel and the respondent of the issues involved, the panel may require the applicant to give a written statement of further particulars.
- (2) The requirement must be in writing and specify—
 - (a) the further particulars to be provided; and
 - (b) the time (at least 5 working days after the requirement is given to the applicant) within which the statement of further particulars is to be provided.
- (3) If the applicant fails to comply with the requirement within the specified time, and the disputes panel considers the respondent would be prejudiced by that failure, the disputes panel may—
 - (a) refuse to set a time and place for hearing the dispute until the further particulars are provided; or
 - (b) take the steps set out in section 66(1) and (2) of the Act with a view to exercising the power to refuse to hear the dispute under section 66(1)(a) of the Act, if there is undue delay in supplying the further particulars.

12 Reply to dispute notice

- (1) A respondent may reply to the dispute notice after the respondent has been given the dispute notice and before the hearing of the dispute.
- (2) A disputes panel may require a respondent to reply to the dispute notice.
- (3) A reply to a dispute notice must—
 - (a) be written; and
 - (b) identify which of the matters set out in the dispute notice the respondent accepts; and

- (c) identify which of the matters set out in the dispute notice the respondent rejects; and
 - (d) if the dispute notice seeks a specified remedy and the respondent thinks the applicant is not entitled to the remedy, state why the respondent thinks that.
- (4) Form 2 may be used to reply to a dispute notice.

13 Disputes panel to consult parties on matters relating to hearing

- (1) Before hearing a dispute, a disputes panel must consult the parties on the most appropriate procedure for resolving the dispute, to—
- (a) ascertain whether the applicant wishes to withdraw the dispute, or whether the applicant and respondent agree not to have a hearing; and
 - (b) obtain the views of the parties on any proposal of the disputes panel not to hear the dispute; and
 - (c) identify the issues in dispute between the parties; and
 - (d) ascertain the evidence to be presented by the parties and the persons who are to give that evidence and the form in which that evidence is to be given; and
 - (e) ascertain the parties' estimates of the time required for the hearing; and
 - (f) obtain agreement, if possible, as to a suitable time and place for the hearing.
- (2) The disputes panel may consult the parties by convening a pre-hearing meeting between the panel and all the parties, or by any other means that enables the panel and all the parties to communicate with each other.
- (3) The disputes panel must ensure that each party has the opportunity to comment on any view on any matter given by any other party during the pre-hearing consultation.
- (4) After consulting the parties to the dispute, the disputes panel may do any or all of the following:
- (a) set a time and place for the hearing of the dispute:
 - (b) decide whether any part of the hearing is—
 - (i) to be held in private; or
 - (ii) not to be published:
 - (c) decide whether any evidence must be given in person or may be given in some other way:

- (d) arrange for the parties to exchange statements of evidence or documents prior to the hearing;
 - (e) allow a party to be represented at the hearing.
- (5) After the pre-hearing consultation, the disputes panel must give written notice to the parties of the matters agreed by them or decided by the disputes panel.

14 Notice of hearing

A notice of the time and place for the hearing of a dispute, and any notice of the time and place for the hearing of an application under these regulations, must contain—

- (a) a statement of particulars that is sufficient to fairly inform the party to whom the notice is given of the substance of the issues to be dealt with at the hearing; and
- (b) a reference to any relevant provision of the Act or of these regulations under which the hearing will be held; and
- (c) a statement of the procedure the disputes panel will adopt at the hearing; and
- (d) a statement warning the party to whom the notice is given that if that party does not attend the hearing, the disputes panel may proceed to determine, dismiss, or adjourn the matter in that party's absence.

15 Withdrawal of dispute

- (1) An applicant may withdraw a dispute notice by giving the disputes panel and the respondent written notice.
- (2) The notice cannot be given after the end of the hearing of the dispute.

Evidence and witnesses

16 Witnesses

- (1) A party may request a person to attend the hearing of a dispute and give evidence.
- (2) The request may be in form 3 and must be given to the witness at least 7 days before the hearing.
- (3) A party that calls a witness to give evidence at the hearing of a dispute must pay the witness fees, allowances, and travelling

expenses, in accordance with the scale set out in the Schedule of the Witnesses and Interpreters Fees Regulations 1974 (SR 1974/124), subject to any order of the disputes panel.

17 Disputes panel may require verification of written evidence

- (1) A disputes panel that has ordered that evidence be given in writing may order that the evidence be verified by statutory declaration under the Oaths and Declarations Act 1957.
- (2) The disputes panel may decline to admit the evidence if it is not verified as ordered.

Adjournments

18 Adjournments

A disputes panel may adjourn a hearing on any conditions it thinks just.

Hearings

19 Hearings usually to be in public

- (1) The hearing of a dispute must be conducted in public.
- (2) However, on its own initiative or the oral or written application of a party to the dispute, the disputes panel may do any or all of the following, after having due regard to the interests of the parties and the public interest:
 - (a) order that all or part of the hearing be held in private;
 - (b) order a person (other than a party or representative of a party) to leave the hearing;
 - (c) make an order prohibiting publication of any description of all or part of the proceedings at a hearing, except a decision of the panel.
- (3) Despite such a prohibition, the disputes panel may permit a description of all or part of the proceedings to be included in a genuine professional or technical publication.
- (4) If the disputes panel has made an order prohibiting publication of any description of all or part of the proceedings at a hearing, neither of the following may contain information likely to identify a resident party to the proceedings or a witness:
 - (a) a description of a decision of the panel in those proceedings or that part:

- (b) a description permitted under subclause (3).

Conduct of hearing

20 Manner in which hearing to be conducted

- (1) Subject to the Act and these regulations, a disputes panel must conduct a dispute resolution hearing in a manner that is most likely to ensure the fair and expeditious resolution of the dispute.
- (2) A disputes panel must determine a dispute according to the general principles of the law relating to the matter and the substantial merits and justice of the case.
- (3) Subject to section 67(4) of the Act and these regulations, every party to a dispute is entitled to call evidence, and to examine, cross-examine, and re-examine witnesses.

21 Procedure if neither party appears

- (1) If neither party appears at the time and place set for the hearing of a dispute, the disputes panel may order the dispute notice to be struck out.
- (2) The disputes panel may reinstate the dispute notice if a party—
 - (a) applies in writing for the reinstatement within 5 working days of the disputes panel giving notice of the striking out; and
 - (b) shows good cause for the reinstatement.

22 Procedure if only applicant appears

If the applicant appears and the respondent does not, the applicant must prove his or her claim in the dispute so far as the burden of proof lies on him or her.

23 Procedure if both parties appear

- (1) This regulation applies if both the applicant and the respondent appear at the hearing.
- (2) The disputes panel must start hearing the dispute in accordance with subclauses (3) to (5).
- (3) The applicant must state his or her case and adduce evidence in support of it.

- (4) When the applicant has closed his or her case, the respondent must state his or her case and may adduce evidence in support of it.
- (5) After the evidence has been taken, the respondent may address the disputes panel generally on the case, and then the applicant may address the disputes panel in reply.
- (6) This regulation applies subject to any agreement of the parties or decision of the panel.

Disposal of dispute

24 If disputes panel refuses to hear dispute

- (1) A disputes panel that refuses to hear or to continue to hear a dispute must give notice in form 4 within 5 working days of the refusal to the following:
 - (a) the parties;
 - (b) the operator (if the operator is not a party to the dispute);
 - (c) the Retirement Commissioner;
 - (d) the statutory supervisor (if any) and the dispute is one which the operator is required to notify the statutory supervisor of under section 55 of the Act.
- (2) The notice must state the disputes panel's reasons for refusing to hear or continue hearing the dispute.
- (3) If the disputes panel has made an award of costs under section 66(5) of the Act, the notice must contain the panel's order in respect of the award.
- (4) If the disputes panel refuses to hear or continue hearing the dispute because it considers it should be heard by a court of law, the panel must, within 5 working days of the refusal, file, in the nearest District Court,—
 - (a) a reference to the District Court in form 5; and
 - (b) a copy of the notice referred to in subclause (1); and
 - (c) the dispute notice; and
 - (d) a copy of—
 - (i) any written order made in relation to the conduct of the dispute by the disputes panel; and
 - (ii) any written evidence received by the disputes panel in the course of any hearing of the dispute.

- (5) As soon as practicable after filing the reference, the disputes panel must give the parties a copy of the reference endorsed with the court reference number assigned to the reference.
- (6) If the disputes panel refuses to hear or continue hearing a dispute on the ground in section 66(1)(c) of the Act, the disputes panel must give the operator notice in form 6 within 5 working days. The operator must act on the notice promptly after receiving it.

25 Decision of disputes panel

- (1) As soon as practicable after a disputes panel makes a dispute resolution decision on a dispute (including an order to strike out the dispute notice), the panel must give notice of its decision, and any order the panel has made, to—
 - (a) the parties; and
 - (b) the operator (if the operator is not a party); and
 - (c) the Retirement Commissioner.
- (2) The notice of decision must be given in form 7.
- (3) If the disputes panel has made an award of costs and expenses, the notice must contain the panel's order in respect of the award.
- (4) The date of the notice is the date of the disputes panel's decision.

Records of disputes

26 Retirement Commissioner to hold records of disputes

- (1) After disposing of a dispute (including by refusing to hear the dispute), each member of the disputes panel must promptly give the Retirement Commissioner all papers, documents, and other material received or generated by the member as a member of the panel.
- (2) If the disputes panel's decision in the dispute is subject to appeal, subclause (1) does not apply until the appeal is disposed of.
- (3) Subclause (1) does not apply to—
 - (a) the contract for services between the member and the operator; or
 - (b) any documents of an administrative nature relating to the performance of the member's obligations under the contract; or

- (c) a document filed in the District Court, or given to a party to the dispute or the operator, because the panel refused to hear or continue hearing the dispute.
- (4) The Retirement Commissioner must hold securely all papers, documents, and other material received from the members of the panel.

General provisions

27 Majority decisions of disputes panel

If a disputes panel comprises 3 or more members, the decision of the majority of those members is the decision of the panel.

28 Applications

- (1) A written application described in regulation 19(2) or regulation 21(2) to a disputes panel must be made in form 8.
- (2) A disputes panel that receives a written or oral application must—
 - (a) arrange a time and place at which the panel will consider the application; and
 - (b) give notice of that time and place to all the parties in accordance with regulation 14.
- (3) The disputes panel may consider an application by any means that allows all the parties and the members of the disputes panel to communicate simultaneously with each other, including by telephone conference call.
- (4) At its consideration of an application, the disputes panel must allow the parties to address the panel on the application.

29 Order of disputes panel on application

If a disputes panel makes an order on an application, the panel must promptly give written notice of the order to the parties.

30 Information given to disputes panel must be copied to parties

If any party to a dispute makes an application or serves a notice or provides any other information to the disputes panel appointed in respect of the dispute, the party must also promptly give a copy to every other party to the dispute.

**Schedule
Forms**

r 3(2)

Form 1

r 4

Dispute notice under the Retirement Villages Act 2003

Name of retirement village:

Address of retirement village:

Name of operator of retirement village:

Name of applicant:

I am a *resident/*former resident/*operator of the retirement vil-
lage.

*Delete as appropriate.

I give notice of a dispute about *the operator/*a resident/*another
resident of the village/*a person in the village whose name and
address is: [*state name and address of each other person the dispute
is about*].

*Delete as appropriate.

The dispute is about the following matters: [*state what decision or
decisions of the operator, or matters, you dispute*].

The grounds of my dispute are: [*state grounds*].

The efforts that have been made to resolve the dispute are: [*state
efforts*].

Note

If there is insufficient space on this form, you can attach further
sheets.

.....
Signature of applicant
(or agent)

.....
Date

This dispute notice is filed by [*full name*], whose address for service
is [*address*].

r 12(4)

Form 2

Reply to dispute notice under the Retirement Villages Act 2003

- Name of retirement village:
- Address of retirement village:
- Name of operator of retirement village:
- Name of applicant:
- Name of respondent replying:
- Names of all other respondents (if any):

I am a respondent in this dispute and I make the following reply to the dispute notice.

*I accept the following matters set out in the dispute notice: [*state matters in the dispute notice that are accepted*].

*Delete as appropriate.

*I do not accept the following matters set out in the dispute notice: [*state matters in the dispute notice that are rejected*].

*Delete as appropriate.

*I do not consider the applicant is entitled to the remedy sought in the dispute notice on the following grounds: [*state grounds*].

*Delete as appropriate.

Note

If there is insufficient space on this form, you can attach further sheets.

.....
Signature of respondent
(or agent)

.....
Date

This reply to the dispute notice is filed by [*full name*], whose address for service is [*address*].

Form 3

r 16(2)

Request to witness to attend hearing of disputes panel under Retirement Villages Act 2003

- Name of applicant in dispute:
Name of respondent in dispute:
Names of other respondents (if any):
Date of dispute notice:

To: [name and address of witness]

A disputes panel appointed under the Retirement Villages Act 2003 is holding a hearing into a dispute notice given by the applicant. The hearing will be held on [state day, date, and time of hearing] at the following place: [state place].

As *the applicant/*a respondent to the dispute, I want you to attend the hearing to give evidence.

*Delete as appropriate.

I therefore request that you attend the hearing to give evidence and bring with you the following, which may be evidence in the hearing: [state any documents or things to be brought to the hearing].

Signature

Date

Note

A party who calls a witness to give evidence at the hearing of a dispute must pay that witness fees, allowances, and travelling expenses in accordance with the scale set out in the Schedule of the Witnesses and Interpreters Fees Regulations 1974 (SR 1974/124), subject to any order of the disputes panel.

r 24(1)

Form 4

Notice that disputes panel under Retirement Villages Act 2003 refuses to hear dispute

Name of applicant in dispute:

Name of each respondent in dispute:

Date of dispute notice:

To the parties

The disputes panel appointed under the Retirement Villages Act 2003 to hear the dispute referred to in the dispute notice has refused on [state date of panel's refusal] to hear, or to continue to hear, the dispute on the grounds that—

- *the dispute is frivolous/vexatious/an abuse of process.
- *the dispute should be heard by a court of law.
- *the panel should not hear it for the following reason: [specify reason].

*Delete as appropriate.

[Include the following section only where the panel has commenced hearing the dispute and has made a costs award.]

The disputes panel awards costs of \$[state amount] to [state name of party] for the hearing of the dispute up to the point of the panel's refusal.

.....
*Single member/*Chair of disputes panel

.....
Date

*Delete as appropriate.

Note to parties

If the disputes panel has refused to hear this dispute on the ground that the dispute is frivolous or vexatious or an abuse of process, the dispute process is at an end.

Form 4—*continued*

If the disputes panel has refused to hear this dispute on the ground that it should be heard by a court of law, the panel will file the dispute notice and other documents in the District Court nearest to the retirement village, and will send you the court reference number. It is then up to you to progress the hearing in that court. The District Court will hear the dispute as if it were a disputes panel.

If the disputes panel has refused to hear this dispute for another reason, the operator of the retirement village is required to appoint another disputes panel to hear the dispute promptly.

Any costs awarded by the panel for the hearing up to the point of the panel's refusal must be paid within 28 days.

r 24(4)

Form 5

Reference of dispute under Retirement Villages Act 2003 to District Court

Details of applicant in dispute

Name:

Address:

Postal address (if different):

Telephone:

Details of each respondent in dispute

Name:

Address:

Postal address (if different):

Telephone:

On [*state date of refusal*] the disputes panel appointed under the Retirement Villages Act 2003 to hear a dispute notice given by the applicant on [*state date of notice*] refused to hear (or to continue to hear) the dispute on the grounds that the dispute should be heard by a court of law.

Under section 66(3) of the Retirement Villages Act 2003, the disputes panel refers the dispute to the District Court for hearing in accordance with section 66(4) of the Act.

This referral is accompanied by a copy of the disputes panel’s notice of its refusal to hear the dispute, the dispute notice, copies of any written order made by the disputes panel in relation to the conduct of the dispute, and any written evidence received by the disputes panel in the court of any hearing of the dispute.

.....
*Single member/*Chair of disputes panel

.....
Date

*Delete as appropriate.

This referral is filed by [*state full name(s) of members of panel*], the member/s of a disputes panel appointed under the Retirement Villages Act 2003, whose contact address is: [*state contact address*].

Form 6

r 24(6)

Notice requiring operator to appoint new disputes panel

Name of applicant in dispute:

Name of each respondent in dispute:

To the operator of the [state name of retirement village] retirement village

On [state date] the disputes panel appointed under the Retirement Villages Act 2003 to hear the dispute referred to in the dispute notice given by the applicant on [state date] refused to hear or to continue to hear the dispute on the grounds that the panel should not hear it for the following reason:

[specify reason].

Under section 66(6) of the Retirement Villages Act 2003 and regulation 24(6) of the Retirement Villages (Disputes Panel) Regulations 2005, you must promptly appoint another disputes panel to hear the dispute.

.....
*Single member/*Chair of disputes panel

.....
Date

*Delete as appropriate.

r 25(2)

Form 7

Decision of disputes panel

Name of applicant in dispute:

Name of each respondent in dispute:

Date of dispute notice:

The disputes panel appointed under the Retirement Villages Act 2003 to resolve the dispute between the applicant and each respondent has decided on the dispute as follows:

Matters in dispute

[Set out as in the dispute notice.]

Findings on material issues of fact

[Set out panel's findings.]

Panel's decision

The disputes panel—

*finds *fully/*partly in favour of the applicant and makes the following orders:

[set out panel's orders under section 69(1) and/or section 70(1) of the Retirement Villages Act 2003].

*Delete as appropriate.

*finds in favour of the *respondent/*respondents and dismisses the dispute.

*Delete as appropriate.

*finds *fully/*partly in favour of [state name of each relevant respondent] and makes the following orders:

[set out panel's orders relating to each respondent named, under section 69(1) and/or section 70(1) of the Retirement Villages Act 2003].

*Delete as appropriate.

*awards \$[state amount] costs and expenses to [state person] payable by [state party].

*Delete as appropriate.

*[complete only if operator is not a party to the dispute] awards against [state party] to the operator of the [name of retirement village] retirement village \$[state amount] for the costs incurred by the disputes panel in conducting the disputes resolution.

*Delete as appropriate.

Form 7—continued

Reasons for decision

[Set out panel’s reasons.]

.....
*Single member/*Chair of disputes panel

.....
Date of decision
*Delete as appropriate.

Note to parties

You have the right to appeal against the decision of the disputes panel (or of the District Court sitting as a disputes panel) under section 75 of the Retirement Villages Act 2003. An appeal must be filed in the appropriate court within 20 working days of the panel’s decision.

Any costs and expenses awarded by the disputes panel must be paid within 28 days.

r 28(1)

Form 8

Application to disputes panel

Name of applicant in dispute:

Name of each respondent in dispute:

Date of dispute notice:

I,*the applicant/*a respondent, apply to the disputes panel for the following order relating to the hearing of the dispute:

[state order sought].

*Delete as appropriate.

This application is made on the following grounds:

[state grounds].

.....
Signature

.....
Date

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations come into force on 1 October 2006.

They deal with matters relating to the resolution by disputes panels of disputes involving residents of retirement villages, including the following matters:

- notification of disputes:
- appointment of members of disputes panels:
- procedures for resolution of disputes:
- functions of the Retirement Commissioner.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 27 July 2006.

These regulations are administered by the Department of Building and Housing.
