

Retirement villages

The following information explains how to apply to the NSW Civil and Administrative Tribunal (NCAT) to resolve a retirement village dispute.

About NCAT

The NSW Civil and Administrative Tribunal (NCAT) is an independent, specialised and accessible service for the fair and timely resolution of disputes according to law.

NCAT can resolve disputes about retirement villages in NSW under the *Retirement Villages Act 1999*.

The Act does not apply to private nursing homes, respite care premises, boarding houses, group homes or Housing NSW accommodation for older people.

What type of disputes can NCAT resolve?

NCAT hears disputes between a retirement village owner or operator and one or more residents.

NCAT can resolve retirement village disputes about:

- Village contracts
- Village rules
- Capital maintenance and replacement
- Recurrent charges
- Annual budgets and accounts
- Payment of money and compensation
- Termination and vacant possession
- Security and safety
- Sale or letting of premises.

Applying to NCAT

Complete the [Retirement Villages Application Form](#) and lodge it with the appropriate fee. Visit the NCAT website for current fees and charges.

Specify the section of the *Retirement Villages Act 1999* and the orders you want NCAT to make.

Refer to the orders table at the end of this fact sheet for the types of orders NCAT can make. You can request more than one order.

Time limits

Retirement village applications must be made to NCAT within a specific time. Time limits vary depending on the type of orders you are asking for. Refer to the orders table for time limits that apply.

What happens next?

After applying to NCAT, your matter will be listed for conciliation and directions.

You and the other parties will receive a notice of hearing from NCAT specifying the day, time and venue of your hearing. Generally the hearing will be held within 4-6 weeks.

Conciliation

Parties will be asked to attempt conciliation to reach an agreement before the direction hearing can take place. Visit the NCAT website to learn more about conciliation.

Directions hearing

Directions hearings are used to identify the issues in dispute, set a timeframe for the final hearing, and to arrange for any further exchange of evidence between parties.

A copy of your application and any attached documents will be available to the other parties. Do not include any confidential information you do not want disclosed.

Evidence and supporting materials

At the final hearing you will need to have evidence to support your case. The type of information and



documents you need to provide will depend on the orders sought.

Take **written proof of the residency** such as:

- A copy of your village contract
- Copies of all correspondence between the parties.

Take documents to prove your argument such as:

- Disclosure statement or promotional material
- A copy of the village rules
- Copies of any accounts
- Copies of minutes of meetings
- Any written statements, statutory declarations from persons who can provide evidence to support your case.

Bring **three copies** of your documents so that there is a copy for you, the Tribunal Member and the other party.

You must comply with any order the Tribunal makes to provide evidence to the other party and the Tribunal prior to the hearing.

Can someone represent me?

NCAT Consumer and Commercial Division hearings are conducted as informally as possible. Parties are encouraged to present their own case.

Visit the NCAT website for more information about representation.

For information and assistance

LawAccess NSW

Phone: 1300 888 529

Website: www.legaid.nsw.gov.au

For free legal information and referrals to other services that provide legal advice and assistance.

NSW Fair Trading

Phone: 13 32 20

Website: www.fairtrading.nsw.gov.au

For information about the rights and responsibilities of residents, prospective residents and operators.

NCAT Consumer and Commercial Division

Phone: 1300 006 228

Website: www.ncat.nsw.gov.au

For information about NCAT's processes and procedures.

ORDERS under the *Retirement Villages Act 1999*

You can apply to NCAT for orders under the *Retirement Villages Act 1999*. The orders below are a guide only. Refer to the relevant sections of the *Retirement Villages Act 1999* for more detailed information.

Village contract

Section	Orders	Who can apply?	Time limit
24(4)	Payment to former occupant if resident occupies residence without entering a contract (including payment of interest at a rate to be determined by the regulations)	Former occupant	-
25(2)	Inconsistency between a village contract and disclosure statement	Resident	-
28(4)	Reimbursement of fees paid to legal or other adviser where adviser required by village operator to be used	Resident, prospective resident or administrator or executor of his/her estate	-
30(3)	Payment of all or part resident's legal costs of obtaining certificate of independent advice on variation or new contract	Resident, administrator or executor of their estate	After 28 days of serving of legal practitioner's account on operator
33(1)	Rescission of village contract on non-provision of disclosure statement or if information in it is false and misleading in a material particular	Person to whom or on whose behalf information was provided	Within 3 months after occupying residential premises in village
35(2) & (3)	Dispute regarding terms of a new service contract if old one rescinded by resident	Resident or operator	-
36(3)	For the delivery up of title or share documents by rescinding party	Operator or rescinding party	No earlier than 1 month after service of rescission notice
36(8)(a)	An order for compensation, adjustment or accounting where rescinding party has received the benefit of possession of the residential premises	Resident or operator	Up to 3 months after date of rescission
36(8)(b)	Payment of damages, costs, expenses arising out of a breach of term, condition or warranty contained or implied in the contract	Resident or operator	Up to 3 months after date of rescission
37(3)	An order for compensation adjustment or accounting having regard to benefits received by a rescinding party	Resident or operator	Up to 3 months after date of rescission
41A(5)(a)	An order permitting the addition removal or alteration of specified fixtures or fittings on or within a resident's premises	Resident	-
41A(5)(b) & (c)	An order permitting the making of specified renovations or varying the conditions to which the operator's consent is subject	Resident	-
43(7)	Where terms of village contract are void due to contradiction of the Act or any other Act or law	Resident	-
44D(3)	An order that payment be made within a specified time under the settling in period arrangement (if that payment is not made with timeframes set out)	Former occupant or operator	-
82(1)	Directing operator to enter into a village contract with relative of resident <i>Note: applies only to non-owner resident</i>	Relative of resident	After operator refuses to enter into village contract
82(4)	Tribunal may set terms of village contract between operator and relative of resident and order then to enter into same	Operator or resident	-
123(1)	An order that the village contract is harsh, oppressive, unconscionable or unjust	Resident	-

Section	Orders	Who can apply?	Time limit
128(1)(b)	An order varying or setting aside a provision of a village contract than conflicts with the Act or the regulations	Operator or resident	-
128(1)(c)(i)	An order restraining any action in breach of any village contract	Resident/s or operator	-
128(1)(c)(ii)	An order that requires performance of any village contract	Resident/s or operator	-

Village rules

Section	Orders	Who can apply?	Time limit
52(2)	An order enforcing, prohibiting or modifying proposed amendment to village rules *	Operator	-
53(3)	An order for amendment to approved annual budget where change of village rules imposes cost on operator *	Operator	Up to 30 days after notification of refusal to consent
54(1)(a)	Dispute concerning legal validity of a village rule *	Operator or resident	-
54(1)(b)	An order setting aside or modifying a village rule that is harsh, unconscionable or oppressive *	Operator or resident	-
128(1)(c)(i)	An order restraining any action in breach of any village rule	Resident/s or operator	-
128(1)(c)(ii)	An order that requires performance of any village rule	Resident/s or operator	-

* Does not apply to strata or community scheme villages

Capital maintenance and replacement

Section	Orders	Who can apply?	Time limit
95(3)	Operator to reimburse the resident for costs in carrying out urgent capital maintenance or replacement	Resident	-
96(1)	Operator to carry out specified maintenance of an item of capital within the time specified in the order, or to replace a specified item of capital within the time specified in the order	Resident	-
96(2)	Resident to reimburse the operator for the cost of maintenance or replacement of item of capital where the operator is of the opinion that the resident caused the damage	Operator	-
99(7)	Order that distribution of funds in the Capital Work Funds not be distributed as per the residents agreed proposal	Operator	-

Recurrent charges

Section	Orders	Who can apply?	Time limit
62(1)(c)	Reduction in recurrent charges payable due to reduction or withdrawal of services or facilities by operator or permitted by operator	Resident	-
62(1)(d)	Payment to the Tribunal of whole or part of recurrent charges until facilities or services are reinstated	Resident	-
107(5)	Operator to provide information about variation to recurrent charges	Resident	No earlier than 14 days after date of request by Residents Committee under section 107(4)
108(1)	An order in respect of a proposed variation of recurrent charges	Operator	Up to 30 days after date of notification of refusal to consent or, if residents do not notify, up to 14 days after expiry of period under section 107(2)

Section	Orders	Who can apply?	Time limit
109(1)	Refund of overpaid recurrent charges	Resident	No later than 12 months after the increase in the charges came into effect
111(2)	Order for abatement or non-abatement of recurrent charges	Operator or resident	-
116(4)	Refund of recurrent charges where operator expends same otherwise than in accordance with the proposed annual budget or if operator has failed to supply a proposed annual budget for current financial year	Resident	-
128(1)(g)	Payment of all or part of any recurrent charges payable by a resident to the Tribunal until whole or part of any village contract has been performed or any application for compensation determined	Operator or resident/s	-
128(1)(h)	An order requiring payment out of recurrent charges paid to the Tribunal toward cost of remedying a breach of a contract or towards cost of compensation	Resident or operator	-
151(2)	An order apportioning recurrent charges between optional services and general services where resident absent from village for 28 consecutive days (does not include let or sub-let)	Operator, resident or former occupant	-

Annual budgets and accounts

Section	Orders	Who can apply?	Time limit
113	Operator to supply a proposed annual budget or approved annual budget	Resident	No earlier than 59 days immediately prior to commencement of the financial year and any time until the end of the financial year
115(1)	An order in respect of the proposed annual budget for the next financial year	Operator or resident	After resident do not consent to the proposed annual budget
120B(3)	An order that the distribution of funds in the annual accounts not be distributed as per the resident agreed proposal	Operator	-

Payment of money and compensation

Section	Orders	Who can apply?	Time limit
17	Operator to pay compensation to the resident if the service or facility concerned is not provided or made available	Resident	-
21(4)	Refund of 'waiting list fee'	Person who paid it	-
23(5)	Refund of 'holding deposit' or 'ingoing contribution'	Prospective resident or administrator or executor of their estate	-
33(3)	Compensation on rescission of a village contract due to false and misleading information in disclosure statement	Person to whom or on whose behalf the information was provided	Within 3 months after occupying residential premises in village
36(2)(a)	Repayment of all money paid by or on behalf of the resident under a residence contract that has been rescinded by resident	Rescinding party	After the expiration of 1 month from service of rescission notice
36(5)	Payment of fees or costs associated with rescission of a residence contract by resident	Rescinding party	-
62(1)(b)	Payment of compensation for reduction or withdrawal of services or facilities by operator or permitted by operator to be reduced or withdrawn	Resident	-

Section	Orders	Who can apply?	Time limit
66	Compensation for breach by village operator of resident's right to quiet enjoyment, interference with resident's autonomy, inhibition of resident exercising self-reliance, harassment or intimidation of resident or non-enforcement of village rules	Resident	-
67(4)(a)	Compensation for breach by operator of access provisions to residential premises	Resident	-
128(e)	Order for payment of money	Resident or operator	-
128(f)	Order for compensation	Resident or operator	-
141(3)	Payment of compensation (including compensation for loss of recurrent charges) to the operator for any loss caused to the operator by failure to deliver vacant possession	Operator	-
148(2)	Compensation for failure by an operator to deal with goods otherwise than in accordance with Tribunal orders or regulations [†]	Any person	-
180(4)	Operator to pay any payment required to be made to former occupant/s who were registered interest holders (such payment may include interest at rate determined by regulations) [#]	Former occupant	After operator has not made payment in accordance with section 180(2) or if the amount of payment is not calculated in accordance with the Act or any relevant village contract or the conduct of the operator has unfairly had a negative financial impact
181(5)(a) & (b)	Extension of time for payment to former occupants who were not registered interest holders of refund of ingoing fees or order for instalments [†]	Operator	No earlier than 1 month before expiry of period in section 181(2)(f) and no later than 14 days after expiry of this period
181(7)	For refund of non-owner former occupant's ingoing contribution that is required to be made under village contract (including interest at rate to be determined by the regulations) [†]	Former occupant	-
182(1)(a)	For operator to pay any payment required to be made to executor or administrator of former occupant's estate under this Division	Operator	Up to 14 days after due date for payment

[†] Only applies to non-owner resident

[#] Only applies to owner resident (including owner as defined in section 150(1)(b))

Termination and vacant possession

Section	Orders	Who can apply?	Time limit
82(2)	Order for relative of resident to deliver vacant possession [†]	Operator	After relative refused to enter village contract and refuses to deliver vacant possession
82(7)	Order for delivery of vacant possession by a person who has been living with the resident who has vacated the premises where that person is not a relative as defined in the Act [†]	Operator	After the person refuses to deliver vacant possession
132(3)	An order determining condition of premises (after service of Notice of Termination on grounds due to condition etc. of premises) <i>Note: Also operates as section 111 application</i>	Operator or resident	Up to 7 days after date of notification of differing opinion as to condition of premises
133(1)	Order for termination and vacant possession on grounds of unsuitability of premises due to resident's physical or mental	Operator or resident	-

Section	Orders	Who can apply?	Time limit
	incapacity [†]		
134(1)	Order for termination and vacant possession due to breach by resident of village contract or village rule [†]	Operator	No later than 28 days after service of termination notice
134(2)	Order for termination and vacant possession due to breach by resident of village contract or village rule [†]	Resident	No later than 28 days after service of termination notice
135(1)	Order for termination and vacant possession on grounds that resident is likely to intentionally or recklessly cause or permit serious damage to any part of village or injury to operator, employee or other resident [†]	Operator	Up to 30 days after alleged incident became known to operator
136(1)	An order for termination and vacant possession if substantial works in village required same or use of land required for other purpose [†]	Operator	At least 12 months after notice of termination has been given by the applicant, DAs approved and alternative accommodation found or made available
137(2)	Payment of an occupation fee specified by the Tribunal for the period for which the order for possession is suspended [†]	Resident or operator	-
140(1)	Request issue of warrant for possession	Operator	Up to 30 days after date fixed for vacation by earlier Tribunal order
143(1)	An order that the residential premises has been abandoned [†]	Operator	-
161(1)	An order reducing or waiving a former occupant's liability for departure fee after former occupant has permanently vacated	Former occupant	-
163(6)(a) & (b)	Determining dispute regarding repairs to premises required by operator after vacant possession given [†]	Former occupant	Up to 3 months after date of receipt of claim
165(2)	Determining dispute regarding cost of refurbishment after vacant possession given (if residence contract was in force prior to commencement of this Act) [†]	Former occupant or operator	-

[†] Only applies to non-owner resident

Sale or letting of premises

Section	Orders	Who can apply?	Time limit
171(4)(b)	An order that the operator is not obliged to enter into a service contract with a proposed purchaser [#]	Operator	No later than 14 days after being notified by vendor that a contract for sale has been entered into and after advising vendor of refusal by operator
172(1)	An order directing the operator to enter into a service contract [#]	Vendor	After expiration of 14 days of notification to vendor of contract for sale being entered into
172(2)	Operator to enter into a service contract with a purchaser that is substantially in the same form as the sample contract [#]	(Vendor) resident	-
173(3) & (4)	An order setting terms of service contract to be entered into [#]	Ancillary order under sections 171(4) & 172(2)	-

Section	Orders	Who can apply?	Time limit
173(5)	Operator to pay compensation to vendor and/or purchaser for delay and inconvenience for failing to enter into a service contract with purchaser substantially in accordance with the sample contract [#]	Ancillary order if application made by resident vendor under section 172(2)	Only if Tribunal makes an order pursuant to section 172(2) for the operator to enter into the service contract with the purchaser
174(6)(b)	For a declaration that the operator is not obliged to consent to the letting or sub-letting of the residential premises by the resident [#]	Operator	No later than 7 days after receiving written details of proposed tenant as required by section 174(4)

[#] Only applies to owner resident (including owner as defined in section 150(1)(b))

Security and safety

Section	Orders	Who can apply?	Time limit
58(4)	That the residential premises have locks or other security devices in good working order	Resident	-
58A(4)	An order relating to the safety of the village if the resident believes in good faith that it is not safe	Resident	-
59(3)	That a village emergency system (requested by special resolution) be provided or arranged	Resident	-

Other orders

Section	Orders	Who can apply?	Time limit
18(6)	Operator to provide general inquiry document or disclosure statement	Prospective resident	No earlier than 14 days after date of request for disclosure statement
20(4)	Provision of other disclosure documents	Prospective resident or person acting on behalf of prospective resident	-
62(1)(a)	Reinstatement of service or facility that has been withdrawn or reduced by an operator or permitted to be withdrawn/reduced	Resident	-
67(3)	Authorising entry of operator or other person to the residential premises	Operator	-
67(4)(b)	Operator to comply with access restrictions to the residential premises	Resident	-
69(2)	Operator to supply resident with a copy of information held by the operator about the resident	Resident	-
70(4)	Determination as to which body or committee is the Residents Committee if there are competing bodies/committees	Operator or resident	-
72(4)	Operator involved in the management of the village to meet with the Residents Committee	Resident	After a reasonable request to meet with the Residents Committee is not complied with
83(3)	Resident to not interfere or permit interference with the peace, comfort and privacy of another resident, not to harass or intimidate operator and employees/agent, to refrain from acting in a matter adversely affecting occupational health and safety of persons working in village	Operator	-
122(1)	An order resolving any dispute between owner and operator	Operator or resident (resident's nominated representative may apply)	-

Section	Orders	Who can apply?	Time limit
128(1)(a)	An order directing compliance with the Act or the regulation	Resident/s or operator	-
128(1)(l)	An order prescribed by the regulations for the purposes of section 128 of the Act	Resident/s or operator	-