



Australian Capital Territory

Retirement Villages Legislation Amendment Act 2019

A2019-10

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Australian Capital Territory

Retirement Villages Legislation Amendment Act 2019

A2019-10

An Act to amend legislation about retirement villages, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Retirement Villages Legislation Amendment Act 2019*.

2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

- (2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.

- (3) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the following legislation:

- [Civil Law \(Sale of Residential Property\) Act 2003](#)
- [Human Rights Commission Act 2005](#)
- [Retirement Villages Act 2012](#)
- [Retirement Villages Regulation 2013](#)
- [Unit Titles \(Management\) Act 2011](#).

Part 2 Civil Law (Sale of Residential Property) Act 2003

4 Definitions for pt 2 Section 7, new definition of *units plan*

insert

units plan—see the *Unit Titles Act 2001*, section 7.

5 Proposed contract etc to be available for inspection Section 10 (1)

after

residential property

insert

(other than a unit in a retirement village)

6 New section 10A

insert

10A Certain documents etc to be available—sale of unit in retirement village

- (1) A seller of a unit in a retirement village commits an offence if all the initial required documents for the unit are not available for inspection by a prospective buyer (or an agent for a prospective buyer) at all reasonable times when an offer to buy the property may be made to the seller.

Maximum penalty: 10 penalty units.

- (2) A seller of a unit in a retirement village must make the later required documents available for inspection by a prospective buyer not later than 14 days before the day the contract is made, unless the prospective buyer agrees otherwise.

- (3) However, if a prospective buyer asks, in writing, to inspect a later required document earlier than required under subsection (2), the seller must make the document available for inspection by the later of—
- (a) the day requested; and
 - (b) 14 days after the request is made.
- (4) The seller of a unit in a retirement village commits an offence if the seller does not make a later required document available for inspection by a prospective buyer (or an agent of the prospective buyer) in accordance with subsection (2) or (3).

Maximum penalty: 10 penalty units.

- (5) Subsections (1) and (4) do not apply in relation to a failure by a seller to make the initial required documents and later required documents (the *relevant required documents*) available for inspection by a prospective buyer if—
- (a) the seller engaged a lawyer to prepare the proposed contract for the sale of the property; and
 - (b) the lawyer did not give the seller all the relevant required documents to which the failure relates; and
 - (c) the seller believed on reasonable grounds that the seller had received all the relevant required documents; and
 - (d) the seller made all the relevant required documents given to the seller by the lawyer available for inspection under subsection (1), (2) or (3).
- (6) An offence against this section is a strict liability offence.
- (7) In this section:

initial required documents, for a unit in a retirement village, means a copy of the following documents mentioned in section 9 (1):

- (a) paragraphs (a) to (c);

- (b) paragraph (e);
- (c) paragraph (g) (i) (A) and (ii);
- (d) paragraphs (i) and (j);
- (e) any other document prescribed by regulation.

later required documents, for a unit in a retirement village, means a copy of—

- (a) the following documents mentioned in section 9 (1):
 - (i) paragraph (d);
 - (ii) paragraph (f);
 - (iii) paragraph (g) (iii);
 - (iv) paragraph (h) (i), (ii) and (v); and
- (b) the unit title certificate for the unit dated not earlier than 3 months before the day the contract for the sale of the unit is made; and
- (c) for the sale of a class B unit in a retirement village—
 - (i) a building and compliance inspection report from an inspection carried out not earlier than 3 months before the day the contract for the sale of the unit is made; and
 - (ii) if the unit has been occupied—a pest inspection report from an inspection carried out not earlier than 3 months before the day the contract for the sale of the unit is made; and
- (d) any other document prescribed by regulation.

7 **Certain conditions to be included in contract**
Section 11 (1) (i)

substitute

- (i) the following required documents for the sale form part of the contract:
 - (i) for the sale of a unit in a retirement village—the initial required documents and the later required documents mentioned in section 10A (7);
 - (ii) in any other case—the required documents mentioned in section 9 (1) (a) to (k).

8 **Buyer to reimburse seller for cost of certain reports**
Section 18 (1)

substitute

- (1) On completion of a contract for the sale of residential property, the seller is entitled to reimbursement from the buyer for the cost of obtaining the following reports for the contract:
 - (a) a building and compliance inspection report required under section 9 (1) (h) (iii) or section 10A (or, if the seller obtained more than 1 report, the first report);
 - (b) a pest inspection report required under section 9 (1) (h) (iv) or section 10A (or, if the seller obtained more than 1 report, the first report).

**9 Compensation to buyer for false report etc
Section 19 (1) (b)**

substitute

- (b) a statement or report mentioned in section 9 (1) (h) (ii), (iii) or (iv) or in section 10A (7), definition of ***later required documents***, paragraph (a) (iv), (c) (i) or (ii), is made available to the buyer; and

Part 3 Human Rights Commission Act 2005

10 When may someone complain about a service for older people? Section 41 (b) (iii)

substitute

- (iii) the *Retirement Villages Act 2012*;
- (iv) any other standard prescribed by regulation; or

11 Commission's obligation to be prompt and efficient New section 45 (2) (da)

insert

- (da) if the complaint relates to a service provided by the operator of a retirement village under the *Retirement Villages Act 2012* and the commission decides not to refer the complaint for conciliation—tell the complainant, in writing, that the complaint will not be referred for conciliation and include a retirement village referral statement with the notice; and

12 New division 4.2B

insert

Division 4.2B Certain older people service complaints to ACAT

53F Definitions—div 4.2B

In this division:

person complained about means the operator of a retirement village under the *Retirement Villages Act 2012*, section 7.

retirement village complaint—see section 53G.

53G Application—div 4.2B

This division applies to an older person service complaint that relates to a service provided by the operator of a retirement village under the *Retirement Villages Act 2012* (a *retirement village complaint*).

53H Retirement village complaints—referral

- (1) This section applies if—
 - (a) either—
 - (i) a complainant is given a retirement village referral statement under section 45 (2) (da) (Commission’s obligation to be prompt and efficient); or
 - (ii) a statement under section 82A (1) (Closing retirement village complaints) is included in a final report in relation to a complaint; and
 - (b) within 60 days after the day the statement is given, the complainant requires the commission to refer the complaint to the ACAT.
- (2) The commission must—
 - (a) refer the complaint to the ACAT; and
 - (b) tell the complainant and the person complained about, in writing, about the referral.

Note The commission must also close the complaint (see s 78 (2) (d)).

53I Retirement village complaints—late application in exceptional circumstances

- (1) This section applies if—
 - (a) a complainant has been given a statement under section 45 (2) (da) (Commission’s obligation to be prompt and efficient) or section 82A (1) (Closing retirement village complaints); and
 - (b) the complainant has not required the commission to refer the complaint to the ACAT within 60 days after the day the statement is given to the complainant.
- (2) The complainant may apply to the ACAT for the complaint to be heard by the ACAT.
- (3) The ACAT may grant the application only if satisfied on reasonable grounds that exceptional circumstances prevented the complainant from requiring the complaint to be referred to the ACAT within the 60-day period.
- (4) If the ACAT grants the application, the complaint is, for this Act, taken to have been referred to the ACAT.

53J Retirement village complaints—parties to ACAT proceeding

The following are parties to a complaint referred to the ACAT under this division:

- (a) the complainant;
- (b) the person complained about;
- (c) if, on application by the commission, the ACAT joins the commission as a party to the complaint—the commission.

53K Retirement village complaints—ACAT jurisdiction

The ACAT has the same jurisdiction in relation to a retirement village complaint referred to the ACAT under this division as that provided for in the *Retirement Villages Act 2012*, section 177 (ACAT jurisdiction).

53L Retirement village complaints—commission to give information etc to ACAT

The commission must give the ACAT (if asked by it) any information or copies of documents in relation to a complaint referred to the ACAT under this division, other than—

- (a) a communication or document to which section 66 (Admissibility of evidence) applies; or
- (b) information, a document or something else relevant to a consideration in relation to a complaint given to the commission under section 73 (Power to ask for information, documents and other things); or
- (c) information given to the commission under section 74 (Requiring attendance etc).

53M Retirement village complaints—ACAT orders

- (1) This section applies if—
 - (a) the commission refers a complaint to the ACAT under this division; and
 - (b) the ACAT is satisfied that the person complained about engaged in an unlawful act.
- (2) The ACAT may make 1 or more of the orders mentioned in the *Retirement Villages Act 2012*, section 181 (ACAT orders).

53N Retirement village complaints—no monetary limit on jurisdiction of ACAT

The ACAT is not, in exercising the jurisdiction conferred on it by this division, limited in the amount of money that it may order to be paid.

53O Retirement village complaints—other options for dispute resolution

Nothing in this division requires a complainant to attempt to resolve a complaint under the *Retirement Villages Act 2012* before making a complaint under this Act.

**13 Conciliated agreements
Section 62 (3) (b) and (4)**

after

discrimination complaint

insert

or retirement village complaint

**14 When complaints can be closed
Section 78 (2) (d)**

after

discrimination complaint

insert

or retirement village complaint

15 New section 82A

insert

82A Closing retirement village complaints

- (1) The final report in relation to a retirement village complaint must include a retirement village referral statement.

Note **Retirement village referral statement**—see s 88A.

- (2) However, subsection (1) does not apply if—
- (a) the parties to the complaint have made a conciliation agreement in relation to the complaint; or
 - (b) the complainant has withdrawn the complaint.
- (3) This section is additional to the other requirements of this Act for a final report.

16 New section 88A

in part 4, insert

88A Retirement village referral statements

A **retirement village referral statement** is a statement in a notice in relation to a retirement village complaint to the effect that—

- (a) the commission has closed the complaint; and
- (b) the complainant may ask the commission to refer the complaint to the ACAT within 60 days after the day the notice is given to the complainant; and
- (c) after the 60-day period, the complainant may apply to the ACAT under section 53I (Retirement village complaints—late application in exceptional circumstances) for the complaint to be heard.

Note The commission must refer the complaint to the ACAT if the complainant asks it to refer the complaint within the 60-day period (see s 53H).

17 Dictionary, new definitions

insert

operator, of a retirement village—see the *Retirement Villages Act 2012*, section 7.

person complained about, for division 4.2B (Certain older people service complaints to ACAT)—see section 53F.

retirement village complaint, for division 4.2B (Certain older people service complaints to ACAT)—see section 53G.

retirement village referral statement—see section 88A.

Part 4 Retirement Villages Act 2012

18 Residents committees and organisations Section 103 (1) and (2)

substitute

- (1) The residents of a retirement village may consent to the establishment of a residents committee for the village.
- (2) The residents committee for a retirement village—
 - (a) if the retirement village is subject to a units plan—is the executive committee of the owners corporation for the units plan; or
 - (b) in any other case—must be elected by the residents.

19 New section 103 (11)

insert

- (11) In this section:

executive committee, of an owners corporation—see the *Unit Titles (Management) Act 2011*, dictionary.

20 Membership of residents committee New section 104 (5)

insert

- (5) This section does not apply to a residents committee for a retirement village that is subject to a units plan.

**21 Meetings of residents
Section 112 (3)**

substitute

- (3) If 2 or more residents occupy the same residential premises in the village—
- (a) each of them may attend a meeting mentioned in subsection (1);
but
 - (b) only 1 of them may vote on a matter mentioned in subsection (1).
- (3A) Despite subsection (3), the residents of a retirement village may, by special resolution at a meeting, consent to each resident occupying the same residential premises having a separate vote at the meeting, on a matter mentioned in subsection (1).
- (3B) Subsections (3) and (3A) do not apply to the residents of a retirement village that is subject to a units plan.

Note For voting procedures for residents of a retirement village that is subject to a units plan, see the [Unit Titles \(Management\) Act 2011](#), sch 3, s 3.22.

22 Section 112 (4)

omit

must not

substitute

may

**23 Proxies
Section 116 (3), note**

omit

24 New section 116 (7)

insert

- (7) This section does not apply to residents of a retirement village that is subject to a units plan.

Note For proxy votes for residents of a retirement village that is subject to a units plan, see the [Unit Titles \(Management\) Act 2011](#), sch 3, s 3.26.

**25 Certain limitations on proxies
New section 117 (4)**

insert

- (4) This section does not apply to residents of a retirement village that is subject to a units plan.

Note For proxy votes for residents of a retirement village that is subject to a units plan, see the [Unit Titles \(Management\) Act 2011](#), sch 3, s 3.26.

**26 Definitions—div 7.2
Section 135 (1), definition of *capital item*,
paragraph (a) (iii)**

substitute

- (iii) any part of a building or structure in the village, including any part of a building or structure in a community area, amenity area, service area or access area; and

27 Section 135 (1), definition of *capital replacement*, paragraph (b)

substitute

(b) does not include—

- (i) capital maintenance; or
- (ii) replacing a part of a capital item (unless replacing the part substantially improves, adds to or alters the capital item).

28 New section 136A

insert

136A Capital maintenance and replacement guidelines

- (1) The Minister may make guidelines in relation to this division.
- (2) Without limiting subsection (1), a guideline may make provision in relation to the following:
 - (a) the operation of this division;
 - (b) the classification of, including the distinction between, capital maintenance and capital replacement.
- (3) A guideline is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

**29 Amendment of recurrent charges
Section 148 (2) (a)**

omit

12-month period

substitute

financial year

**30 Recurrent charges amended otherwise than by fixed formula
Section 150 (2)**

substitute

- (2) The operator of a retirement village must give a resident of the village written notice of a proposed amendment of recurrent charges under this section—
- (a) on a day, at least 30 days before the day the proposed amendment takes effect, agreed to by the operator and the residents; or
 - (b) if no day is agreed—at least 60 days before the day the proposed amendment takes effect; or
 - (c) if a regulation prescribes another time—at the prescribed time.

**31 Proposed annual budget
New section 159 (3A)**

insert

- (3A) If the retirement village is subject to a units plan, the operator must ensure that a copy of the general fund budget for a financial year, required for the annual general meeting of the owners corporation under the *Unit Titles (Management) Act 2011*, section 75, is given to the residents of the village at the same time as the copy of the proposed annual budget for the year.

**32 Residents' consent to spending
New section 162 (8A)**

insert

- (8A) The requirements in this section are in addition to the requirements that the operator of a retirement village that is subject to a units plan must comply with under the *Unit Titles (Management) Act 2011*, section 17 (Owners corporation—general meetings) in relation to a general meeting of the owners corporation for the village.

33 Section 175

substitute

175 Other options for dispute resolution

Nothing in this part requires a resident to attempt to resolve a dispute under this Act before making a complaint under the *Human Rights Commission Act 2005*.

**34 Dispute between operator and resident—notice to dispute committee
Section 175B, note**

substitute

Note The disability and community services commissioner can deal with complaints about services for older people (including a complaint about a service provided by the operator of a retirement village) under the *Human Rights Commission Act 2005*, s 42. A retirement village complaint that leads to a conciliation agreement is enforceable as if it were an order of the ACAT (see *Human Rights Commission Act 2005*, s 62)

**35 Informal resolution of dispute
Section 178 (2), new note**

insert

Note A resident need not use the dispute resolution procedures in this division before pursuing a retirement village complaint under the [Human Rights Commission Act 2005](#) (see s 175).

Part 5 Retirement Villages Regulation 2013

36 Special resolution—notice Schedule 4, new section 4.8 (2A)

insert

- (2A) However, for a vote under the [Act](#), section 112 (3A), at least 14 days written notice of the meeting must be given to each resident of the village.

Note Under the [Act](#), s 112 (3A), residents of a village may vote at a meeting to allow each resident occupying the same residential premises to have a separate vote at the meeting.

37 Special resolution—quorum Schedule 4, section 4.10 (2)

substitute

- (2) A quorum is made up by 1 of the following:
- (a) for a village that is subject to a units plan—a minimum of 1/3 of the qualified voters in the units plan;
 - (b) for a village that has fewer than 10 occupied residential premises—the qualified voters from a majority of the occupied premises;
 - (c) in any other case—a minimum of 5 qualified voters, or 1/2 of qualified voters (whichever is the greater).

Part 6 Unit Titles (Management) Act 2011

38 General fund—budget New section 75 (5)

insert

- (5) An owners corporation is not required to obtain approval for the general fund budget in the time mentioned in this section if—
- (a) the annual general meeting is for an owners corporation of a retirement village; and
 - (b) a copy of the general fund budget for a financial year is given to the residents of the village at the same time as the proposed annual budget under the *Retirement Villages Act 2012*, section 159 (Proposed annual budget) is given to the residents of the village; and
 - (c) the owners corporation by ordinary resolution, approves the general fund budget in the time mentioned in the *Retirement Villages Act 2012*, section 162 (6).

39 Owners corporation may amend rules New section 108 (2A)

insert

- (2A) In particular, the owners corporation of a retirement village may amend its rules to make provision in relation to any of the following:
- (a) people other than residents or employees of the retirement village living in the village;
 - (b) visitors, including overnight or short-stay guests;
 - (c) the making of noise;
 - (d) the parking of motor vehicles;

- (e) the disposal of garbage;
- (f) the keeping of pets;
- (g) gardening and landscaping;
- (h) the use and operation of services or facilities (including restrictions on their use);
- (i) security in the retirement village;
- (j) the external appearance of residents' premises.

**40 Notice of general meetings
Schedule 3, new section 3.6 (3)**

insert

- (3) However, if the notice of the annual general meeting is for a units plan that is a retirement village—
 - (a) subsection (2) does not apply; and
 - (b) the executive committee of the owners corporation must give the notice in the time mentioned in the *Retirement Villages Act 2012*, section 159 (1) (Proposed annual budget).

**41 Requirements for notice of general meetings
Schedule 3, new section 3.7 (3) (c)**

insert

- (c) if the notice is for the annual general meeting of a units plan that is a retirement village—the proposed annual budget and the statements required under the *Retirement Villages Act 2012*, section 159.

**42 Quorum at a general meeting—owners corporation with 3 or more members
Schedule 3, section 3.9 (1) (a)**

substitute

- (a) a quorum (a *standard quorum*) made up by 1 of the following:
- (i) for a units plan that is a retirement village—people entitled to vote (on the motion) in relation to not less than $\frac{1}{3}$ the total number of units;
 - (ii) in any other case—people entitled to vote (on the motion) in relation to not less than $\frac{1}{2}$ the total number of units; or

43 Dictionary, new definition of *retirement village*

insert

retirement village—see the [Retirement Villages Act 2012](#), section 10.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 29 November 2018.

2 Notification

Notified under the [Legislation Act](#) on 11 April 2019.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Retirement Villages Legislation Amendment Bill 2019, which originated in the Legislative Assembly as the Retirement Villages Legislation Amendment Bill 2018 and was passed by the Assembly on 2 April 2019.

Clerk of the Legislative Assembly

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