

2016

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Justice and Consumer Affairs)

Retirement Villages Amendment Bill 2016

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(Minister for Justice and Consumer Affairs)

Retirement Villages Amendment Bill 2016

A Bill for

An Act to amend the *Retirement Villages Act 2012* and the *Retirement Villages Regulation 2013*

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Retirement Villages Amendment Act 2016*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written
6 notice.

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

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

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see [Legislation Act](#), s 79).

15 **3 Legislation amended**

16 This Act amends the *Retirement Villages Act 2012* and the
17 *Retirement Villages Regulation 2013*.

1 Part 2 Retirement Villages Act 2012

2 4 Meaning of *residence right* 3 Section 8 (1), definition of *residence right*, new 4 paragraph (a) (iiia)

5 *insert*

6 (iiia) under which the person lends money to the operator of
7 the village in consideration for, or in expectation of, the
8 right to occupy the residential premises; or

9 5 Section 8 (1), new note

10 *insert*

11 *Note* The contract that gives rise to a residence right is a *residence contract*,
12 and a residence contract is a *village contract* (see dict).

13 6 Meaning of *registered interest holder* and *registered* 14 *long-term sublessee* 15 Section 12 (1), definition of *registered long-term* 16 *sublessee*

17 *substitute*

18 *registered long-term sublessee*, of residential premises in a
19 retirement village, means a person whose residence contract is in the
20 form of a registered long-term sublease if—

- 21 (a) the sublease includes a provision that entitles the person to at
22 least 50% of any capital gain; or
- 23 (b) the person is otherwise entitled under a contract, an agreement
24 or other arrangement to at least 50% of any capital gain.

1 **7 Section 12 (2)**

2 *substitute*

3 (2) In this section:

4 *registered long-term sublease* means a sublease (however
5 described) registered under the *Land Titles Act 1925* that—

6 (a) has a term of at least 50 years (including any option to renew);
7 or

8 (b) is for the life of the lessee.

9 **8 Advertising or promoting village before development
10 approval given
11 Section 16 (1) (c)**

12 *substitute*

13 (c) development approval has not been received for the
14 development of the retirement village; and

15 (d) the advertisement or other promotion mentioned in
16 paragraph (a) (i) or (ii) does not disclose to a prospective
17 resident that development approval has not been received for
18 development of the retirement village.

19 **9 New section 16 (1A)**

20 *after the note, insert*

21 (1A) A person commits an offence if—

22 (a) the person enters into a village contract for a retirement village
23 with a prospective resident; and

24 (b) the development of the retirement village requires development
25 approval; and

1 (c) development approval has not been received for the
2 development of the retirement village.

3 Maximum penalty: 50 penalty units.

4 **10 Section 22 heading**

5 *substitute*

6 **22 Making certain representations—promotional material**

7 **11 Section 22 (1) (b) (v) and (vi)**

8 *omit*

9 **12 Section 22 (2), note 2**

10 *omit*

11 **13 New section 22A**

12 *insert*

13 **22A Making certain representations—aged care services**

14 (1) The operator of a retirement village commits an offence if the
15 operator makes an express or implied representation (whether oral
16 or in writing) that—

17 (a) the village is an approved provider of residential care within
18 the meaning of the *Aged Care Act 1997* (Cwlth); or

19 (b) residents of the village have priority access to residential care
20 by an approved provider under the *Aged Care Act 1997*
21 (Cwlth).

22 Maximum penalty: 50 penalty units.

1 (2) An offence against subsection (1) is a strict liability offence.

2 *Note 1* Any advertising, promotional or sales material relating to a retirement
3 village must also comply with the *Fair Trading (Australian Consumer*
4 *Law) Act 1992* and the *Competition and Consumer Act 2010* (Cwlth).

5 *Note 2* Section 10 (1), def *retirement village*, par (b) (i) excludes from that
6 definition buildings commonly known as Commonwealth-subsidised
7 hostels and nursing homes.

8 (3) To remove any doubt, an operator does not make a representation
9 for subsection (1) merely by giving an explanation or statement of—

10 (a) how the services of the retirement village differ from
11 residential care services given to a prospective resident under
12 section 23 (General inquiry document) or section 24
13 (Disclosure statement); or

14 (b) the fact that a residential aged care facility is associated with
15 the village.

16 **14 General inquiry document**
17 **Section 23 (2), except notes**

18 *substitute*

19 (2) The general inquiry document must comply with any requirement
20 prescribed by regulation.

21 **15 Disclosure statement**
22 **Section 24 (3), and note**

23 *substitute*

24 (3) The disclosure statement must comply with any requirement
25 prescribed by regulation.

26 *Note 1* Power to make a statutory instrument (including a regulation) includes
27 power to make different provision in relation to different matters or
28 different classes of matters (see *Legislation Act*, s 48).

29 *Note 2* If a form is approved under s 263 for this provision, the form must be
30 used.

1 **16 Repaying etc holding deposits and ingoing contributions**
2 **Section 39 (1) (b) (i)**

3 *substitute*

4 (i) does not intend to enter into a residence contract for a
5 reason other than that mentioned in subparagraph (ia); or

6 (ia) does not intend to enter into a residence contract because
7 the prospective resident has been assessed as eligible for,
8 and intends to enter into, residential care within the
9 meaning of the *Aged Care Act 1997* (Cwlth); or

10 **17 New section 39 (3A) to (3D)**

11 *insert*

12 (3A) However, for notice under subsection (1) (b) (i), the operator may
13 keep an amount mentioned in subsection (3B) if—

14 (a) the prospective resident and the operator have entered into a
15 village contract; and

16 (b) the prospective resident gives the notice—

17 (i) after the end of the cooling-off period for the contract;
18 and

19 (ii) before final payment is made under the contract; and

20 (iii) before the settling-in period for the contract begins.

21 *Note* **Cooling-off period**—see s 53.

- 1 (3B) For subsection (3A), the amount is the reasonable costs incurred by
2 the operator in relation to the residential premises for the period—
- 3 (a) starting on the day after the village contract in relation to the
4 premises is entered into; and
- 5 (b) ending on the earliest of the following:
- 6 (i) 14 days after the day the prospective resident gives notice
7 under subsection (1) (b) (i);
- 8 (ii) the day the operator of the retirement village enters into a
9 village contract with an incoming resident in relation to
10 the premises;
- 11 (iii) the day the operator enters into a residential tenancy
12 agreement with an incoming tenant in relation to the
13 premises;
- 14 (iv) the day a person takes up residence in the premises with
15 the operator's consent.

16 **Examples—reasonable costs**

17 legal expenses, commissions, advertising and marketing costs, recurrent charges

18 *Note* An example is part of the Act, is not exhaustive and may extend, but
19 does not limit, the meaning of the provision in which it appears (see
20 [Legislation Act](#), s 126 and s 132).

- 21 (3C) However, the amount mentioned in subsection (3B) must not
22 exceed—
- 23 (a) an amount prescribed by regulation; or
- 24 (b) if no amount is prescribed—\$10 000.

1 (3D) The operator may ask for evidence—

2 (a) for notice given under subsection (1) (b) (ia)—of the
3 prospective resident’s intention; or

4 **Examples**

5 1 statement from a hospital that the person is in hospital waiting for a
6 place in an aged care facility

7 2 evidence that the person has been offered and accepted a place in an
8 aged care facility.

9 *Note* An example is part of the Act, is not exhaustive and may extend,
10 but does not limit, the meaning of the provision in which it
11 appears (see [Legislation Act](#), s 126 and s 132).

12 (b) for notice given under subsection (1) (b) (ii)—that the
13 prospective resident has died.

14 **18 New section 39 (6)**

15 *insert*

16 (6) In this section:

17 *settling-in period*, for a village contract, means the period worked
18 out for the contract under section 71 (Meaning of *end of the*
19 *settling-in period*—div 5.2).

1 **19 Costs of preparation of village contracts**
2 **New section 52 (7)**

3 *insert*

4 (7) In this section:

5 *preparation*, of a village contract, includes the preparation of any
6 agreement or contract that comprises the village contract.

7 **Examples**

8 loan agreement, other residence contract, services contract

9 *Note* An example is part of the Act, is not exhaustive and may extend, but
10 does not limit, the meaning of the provision in which it appears (see
11 [Legislation Act](#), s 126 and s 132).

12 **20 Cooling-off period**
13 **Section 53 (1) and (2)**

14 *substitute*

15 (1) A resident of a retirement village may, within the cooling-off period
16 for the resident's village contract, rescind the contract by written
17 notice given to—

18 (a) the other party to the contract; and

19 (b) if the operator is not the other party to the contract—the
20 operator.

21 **21 New section 53 (6)**

22 *insert*

23 (6) In this section:

24 *cooling-off period*, for a village contract, means the period—

25 (a) starting immediately after midnight on—

26 (i) the day the resident receives a copy of the contract signed
27 by the operator; or

1 (ii) for a contract that is, or includes, a residence contract in
2 relation to which the operator is not the other party—the
3 day the residence contract is entered into; and

4 (b) ending at midnight on the 7th business day after that day.

5 *Note* For when an operator must give a resident a copy of a signed village
6 contract, see s 60 (1) and (2).

7 **22 Section 60 heading**

8 *substitute*

9 **60 Operator to give resident or prospective resident copy of**
10 **village contract**

11 **23 Section 60 (1) and (2)**

12 *substitute*

13 (1) The operator of a retirement village commits an offence if—

14 (a) the operator and a resident of the retirement village enter into a
15 village contract; and

16 (b) the contract is entered into by the operator and resident signing
17 the contract in each other's presence; and

18 (c) the operator does not give the resident a copy of the contract
19 within 14 days after it is signed.

20 Maximum penalty: 50 penalty units.

21 (2) The operator of a retirement village commits an offence if—

22 (a) the operator and a resident of the retirement village enter into a
23 village contract; and

24 (b) the contract is entered into by the operator and resident signing
25 the contract other than in each other's presence; and

- 1 (c) the operator does not, within 14 days after the resident signs
2 the contract, give the resident a copy of the contract signed by
3 the operator.

4 Maximum penalty: 50 penalty units.

5 **24 Operator to refund certain payments made by resident**
6 **Section 74 (b)**

7 *substitute*

- 8 (b) any ingoing contribution paid to the operator under the village
9 contract; and

10 **25 Time for making of payments**
11 **Section 75 (1) and (2)**

12 *substitute*

- 13 (1) A refund or a payment under section 74 to a former occupant, other
14 than a former occupant who is a registered interest holder, must be
15 made within—

- 16 (a) 14 days after the day the village contract is ended; or
17 (b) if another period is ordered by the ACAT—the ordered period.

- 18 (2) A refund or a payment under section 74 to a former occupant who is
19 a registered interest holder must be made within 14 days after the
20 earliest of the following:

- 21 (a) the day the operator receives full payment under a residence
22 contract with an incoming resident of the premises;
23 (b) the day the operator enters into a village contract with an
24 incoming resident of the premises;
25 (c) the day the operator enters into a residential tenancy agreement
26 with an incoming tenant of the premises;

- 1 (d) the day a person takes up residence in the premises with the
2 operator's consent;
- 3 (e) if the operator buys the premises from the former occupant—
4 the day the operator completes the purchase.

5 **26 Operator to provide secure premises**
6 **Section 90 (2)**

7 *substitute*

- 8 (2) Without limiting subsection (1), the operator must ensure that—
- 9 (a) all residential premises in the village have enough locks or
10 other security devices necessary to make the premises
11 reasonably secure; and
- 12 (b) the locks and other security devices are in good working order.

13 **27 New section 90 (3A)**

14 *insert*

- 15 (3A) If a tradesperson, or someone else, requires access to residential
16 premises to carry out works, the operator must give reasonable
17 notice of the access needed to each affected resident.

18 **28 Operator to provide safe premises**
19 **New section 91 (2) (ba) to (bc)**

20 *insert*

- 21 (ba) provide emergency assembly point signage consistent with
22 those procedures; and
- 23 (bb) provide signage at key points in the village to assist local
24 emergency and home care service agencies to locate village
25 premises; and
- 26 (bc) give residents an emergency out-of-hours number to contact
27 the operator in case of serious disturbances in the village; and

1 **29 New section 110A**

2 *insert*

3 **110A Operator must keep minutes of meetings with residents**

4 (1) This section applies to the following meetings of a retirement
5 village—

6 (a) an annual management meeting; or

7 (b) a meeting between the operator and the residents of the village
8 convened by the operator, whether under this Act or otherwise.

9 (2) The operator of the retirement village must keep minutes of the
10 meeting.

11 *Note* If minutes or other records kept by the operator of a retirement village
12 contain personal information, the operator must comply with the
13 Australian Privacy Principles under the *Privacy Act 1988* (Cwlth) in
14 relation to that information.

15 (3) The operator must—

16 (a) make the minutes available for inspection by residents at the
17 retirement village; and

18 (b) for minutes in relation to a meeting held on a regular basis—
19 arrange for the minutes to be adopted at the following meeting.

20 (4) The operator may keep the minutes in an electronic form.

21 **30 Definitions—div 7.2**
22 **Section 135 (1), definition of *capital item*, paragraph (a)**

23 *after*

24 means

25 *insert*

26 all or any part of

1 **31 Section 135 (1), definition of *capital item*,**
2 **paragraph (a) (iii)**

3 *omit*

4 any part of

5 **32 Resident may carry out urgent work**
6 **Section 139 (2)**

7 *substitute*

8 (2) The operator of the retirement village must reimburse the resident
9 for the reasonable costs incurred by the resident in carrying out the
10 work.

11 **33 Section 139 (3)**

12 *omit*

13 a reasonable time of the resident seeking

14 *substitute*

15 21 days after the resident seeks

16 **34 Section 150**

17 *substitute*

18 **150 Recurrent charges amended otherwise than by fixed**
19 **formula**

20 (1) This section applies to the amendment of recurrent charges payable
21 under a village contract if the contract provides that the recurrent
22 charges are to be amended otherwise than in accordance with a fixed
23 formula.

24 *Note* Amendment of recurrent changes otherwise than in accordance with this
25 Act is an offence (see s 152).

- 1 (2) The operator of a retirement village must give a resident of the
2 village written notice of a proposed amendment of recurrent charges
3 under this section at least 60 days before the day the proposed
4 amendment takes effect.
- 5 (3) The notice must—
- 6 (a) state the amount of the proposed recurrent charges; and
- 7 (b) state the date it is intended that the proposed recurrent charges
8 are to be payable; and
- 9 (c) include details of any action taken to minimise the proposed
10 amendment of recurrent charges; and
- 11 (d) state that the amendment will take effect only if the residents
12 affected by the proposed amendment consent to the
13 amendment or the ACAT orders that it take effect; and
- 14 (e) include anything else prescribed by regulation.
- 15 (4) A notice may—
- 16 (a) cancel an earlier notice under this section; or
- 17 (b) provide for a lesser increase than the increase stated in an
18 earlier notice.
- 19 (5) A notice that provides for a lesser increase than the increase stated
20 in an earlier notice is taken to have been given on the day the earlier
21 notice was given.
- 22 (6) However, the 30-day period mentioned in section 153 (2) (Residents
23 consent to amendment) begins, in relation to a later notice, on the
24 day the later notice is actually given.
- 25 (7) If the operator operates more than 1 retirement village, the operator
26 must deal with each village separately under this section.

1 **35 Recurrent charges amended otherwise than by fixed**
2 **formula—exceeding variation in CPI**
3 **Section 151**

4 *omit*

5 **36 Amending certain recurrent charges otherwise than in**
6 **accordance with Act**
7 **Section 152 (1) (a) to (c), except penalty**

8 *substitute*

9 (a) a village contract provides that recurrent charges payable under
10 the contract are to be amended as set out in section 150
11 (Recurrent charges amended otherwise than by fixed formula);
12 and

13 (b) the operator increases the recurrent charges; and

14 (c) the increase is—

15 (i) beyond the upper limit (if any) stated in the contract; or

16 (ii) not in accordance with section 150.

17 **37 Residents consent to amendment**
18 **Section 153 (1)**

19 *omit*

20 section 151 (Recurrent charges amended otherwise than by fixed
21 formula—exceeding variation in CPI)

22 *substitute*

23 section 150 (Recurrent charges amended otherwise than by fixed
24 formula)

1 **38 Section 153 (2)**

2 *omit*

3 section 151

4 *substitute*

5 section 150

6 **39 Section 153 (2), new note**

7 *insert*

8 *Note* Consent by residents to the amendment of recurrent charges under a
9 village contract is not consent to spending stated in a proposed annual
10 budget for the village (see s 162 (9)).

11 **40 ACAT orders—recurrent charges**
12 **Section 154 (4)**

13 *omit*

14 **41 Proposed annual budget**
15 **Section 159 (1) (a)**

16 *substitute*

17 (a) on a day, at least 30 days before the beginning of the financial
18 year to which the budget relates, agreed to by the operator and
19 the residents; or

20 (aa) if no day is agreed—at least 60 days before the beginning of
21 the financial year to which the budget relates; or

1 **42 Residents' consent to spending**
2 **Section 162 (9)**

3 *substitute*

- 4 (9) To remove any doubt, consent by residents to the amendment of
5 recurrent charges under a village contract is not consent to spending
6 stated in a proposed annual budget for the village under this section.

7 **43 Any surplus to be carried over**
8 **Section 173 (1) (b)**

9 *substitute*

- 10 (b) the residents consent to a proposal that the operator of the
11 village distribute the whole or any part of the surplus to the
12 operator and existing residents.

13 **44 New section 173 (2A)**

14 *insert*

- 15 (2A) A proposal under subsection (1) (b) must provide for the distribution
16 to be made to the operator and existing residents in the same
17 proportion as their contribution to the surplus.

18 **45 Section 174A**

19 *substitute*

20 **174A Meaning of *resident*—pt 8**

21 For this part (except division 8.1A), *resident*, of a retirement village,
22 includes a former occupant of the retirement village.

23 *Note* ***Resident*** is defined for the Act in the dictionary.

1 **46 New division 8.1A**

2 *insert*

3 **Division 8.1A Dispute resolution—disputes**
4 **committee**

5 **175A Disputes committee**

6 (1) The operator of a retirement village must establish a committee
7 (a *disputes committee*) to resolve disputes that arise between
8 residents and the operator.

9 (2) The disputes committee must consist of the following members:

10 (a) a member appointed by residents;

11 (b) a member appointed by the operator;

12 (c) a chair agreed upon by the members mentioned in
13 paragraphs (a) and (b) to be independent.

14 **175B Dispute between operator and resident—notice to dispute**
15 **committee**

16 (1) If a resident or the operator of a retirement village claims that a
17 dispute has arisen between the resident and the operator, the resident
18 or operator may give written notice of the dispute to the disputes
19 committee for the retirement village.

20 (2) To remove any doubt, a dispute mentioned in subsection (1)
21 includes a dispute about whether the operator is discharging the
22 operator's obligations under section 99 (2) (b) (Operator to respect
23 rights of residents).

24 *Note* The health services commissioner can deal with complaints about
25 services for older people, including services provided by operators of
26 retirement villages (see *Human Rights Commission Act 2005*, s 25).

1 **175C Disputes committee—decision**

- 2 (1) The disputes committee must, within 30 days after receiving notice
3 of a dispute—
- 4 (a) resolve the dispute and tell the parties, in writing, of the
5 decision; or
- 6 (b) if the committee decides that the dispute is unable to be
7 resolved by the committee (including if the dispute is
8 unsuitable to be considered by the committee) but is
9 reasonably likely to be resolved by mediation—arrange for
10 mediation of the dispute; or
- 11 (c) if the committee decides that the dispute is unable to be
12 resolved by the committee and is not reasonably likely to be
13 resolved by mediation—tell the parties that the dispute is
14 unresolved.
- 15 (2) If the dispute is resolved by the disputes committee or by mediation,
16 the parties must take all reasonable steps to give effect to the
17 decision or agreement.

18 **175D Costs of dispute resolution**

- 19 (1) The costs of establishing and maintaining the dispute resolution
20 process for a retirement village under this division must be funded
21 from recurrent charges.
- 22 (2) Any other costs of a dispute taken to the disputes committee must be
23 paid by the person incurring the costs.

24 **47 Division 8.2 heading**

25 *substitute*

26 **Division 8.2 Dispute resolution—ACAT**

- 1 **48** **Section 176 heading**
- 2 *substitute*
- 3 **176** **Dispute between operator and resident—application to**
- 4 **ACAT**
- 5 **49** **Section 178**
- 6 *substitute*
- 7 **178** **Informal resolution of dispute**
- 8 (1) Nothing in division 8.1A (Dispute resolution—disputes committee)
- 9 or this division—
- 10 (a) requires a resident or the operator of a retirement village to
- 11 attempt to resolve a dispute under either or both of those
- 12 divisions; or
- 13 (b) prevents a resident and the operator of a retirement village
- 14 from attempting to resolve a dispute in another way agreed
- 15 between the parties.
- 16 (2) Also, nothing in division 8.1A requires a resident or the operator of
- 17 a retirement village to attempt to resolve a dispute under that
- 18 division before applying to the ACAT for an order in relation to the
- 19 dispute.
- 20 (3) However, any term of a village contract that provides that the parties
- 21 to the contract must attempt to resolve disputes between them by a
- 22 process other than the process provided for under this Act is void.
- 23 *Note* The *ACT Civil and Administrative Tribunal Act 2008*, s 35 provides for
- 24 the ACAT to, before the hearing of an application, order mediation if
- 25 the ACAT considers that the matter is suitable for mediation and is
- 26 reasonably likely to be resolved by mediation.

1 **50 ACAT orders**
2 **Section 181 (2), new note**

3 *insert*

4 *Note* The *ACT Civil and Administrative Tribunal Act 2008*, s 35 provides for
5 the ACAT, before the hearing of an application, to order mediation if
6 the ACAT considers that the matter is suitable for mediation and is
7 reasonably likely to be resolved by mediation.

8 **51 Recurrent charges for general services—registered**
9 **interest holders**
10 **New section 210 (4) and (5)**

11 *insert*

- 12 (4) If the departure fee payable by a resident under the village contract
13 is worked out in relation to the incoming resident's ingoing
14 contribution, for subsection (3) (b)—
- 15 (a) the operator's share is taken to be the percentage of the capital
16 gain equal to the percentage of the incoming resident's ingoing
17 contribution in relation to which the departure fee is worked
18 out; and
- 19 (b) the former occupant's share is taken to be the remaining
20 percentage.

- 1 (5) Subsection (4) applies despite any provision in the village contract
2 about how the former occupant and the operator of the retirement
3 village are to share in the capital gain.

4 **Example**

5 Lewis has moved from the retirement village operated by Henry into an aged care
6 facility. Lewis's village contract states that he is entitled to 100% of the capital
7 gain. However, under his contract, Lewis is liable to pay a departure fee worked
8 out as 25% of an incoming resident's ingoing contribution. Therefore, Henry's
9 share of the capital gain is taken to be 25% and he is liable to pay 25% of the
10 recurrent charges for general services, and Lewis is liable to pay the remaining
11 75%.

12 *Note* An example is part of the Act, is not exhaustive and may extend, but
13 does not limit, the meaning of the provision in which it appears (see
14 [Legislation Act](#), s 126 and s 132).

15 **52 Payments to former occupants who were not registered**
16 **interest holders**
17 **Section 238 (2)**

18 *substitute*

- 19 (2) The operator of a retirement village must make any refund of the
20 ingoing contribution needed to be made to the former occupant
21 under the village contract not later than the earliest of the following:
- 22 (a) the day for payment stated in the village contract;
- 23 (b) the day for payment agreed between the operator and former
24 occupant;
- 25 (c) the day that is 14 days after the day the operator receives full
26 payment under the residence contract of an incoming resident
27 of the premises;
- 28 (d) the day that is 14 days after the day the operator enters into a
29 residential tenancy agreement with an incoming tenant of the
30 premises;

- 1 (e) the day that is 14 days after the day a person takes up residence
2 in the premises with the operator's consent;
- 3 (f) if the ACAT ended the residence contract—the day that is
4 1 month after the day the contract ended;
- 5 (g) if the former occupant delivered up vacant possession of the
6 premises to the operator after receiving notice of the operator's
7 intention to apply to the ACAT for an order ending the
8 residence contract—the day that is 1 month after the day
9 vacant possession was delivered;
- 10 (h) the day that is 6 months after the day the former occupant
11 otherwise delivered up vacant possession of the premises to the
12 operator.
- 13 (2A) The operator commits an offence if the operator does not comply
14 with subsection (2).
- 15 Maximum penalty: 50 penalty units.

53 Section 240

17 *substitute*

240 Payments to executors and administrators

- 19 (1) This section applies if, because of the death of a former occupant of
20 residential premises in a retirement village, a payment under this
21 division must be made to the executor or administrator of the former
22 occupant's estate.
- 23 (2) The operator of the village must sight a grant of administration in
24 relation to the estate before making a payment.
- 25 (3) However, if the operator is unable to find out the identity of the
26 executor or administrator—
- 27 (a) the operator may apply to the ACAT for an order directing the
28 operator to deal with the money as stated in the order; and

- 1 (b) the operator does not incur any liability in relation to the
2 operator's dealing with the money in accordance with the
3 order.
- 4 (4) In this section:
- 5 *grant of administration* means—
- 6 (a) grant of probate, or of letters of administration, under the
7 *Administration and Probate Act 1929*; or
- 8 (b) a grant of an order to collect and administer under [that Act](#),
9 section 88; or
- 10 (c) an election to administer under [that Act](#), section 87C; or
- 11 (d) a corresponding grant or election under a law in force in a State
12 or another Territory.

13 **54 Priority of interests**
14 **Section 247 (c)**

- 15 *substitute*
- 16 (c) any entitlement of a resident or former occupant of the
17 retirement village arising from a village contract in relation to
18 which a charge over the land has been created under this part
19 and registered under the *Land Titles Act 1925*;
- 20 (ca) any other entitlement of a resident or former occupant of the
21 retirement village arising from a village contract in relation to
22 which a charge over the land has been created under this part;

55 New part 21*insert***Part 21 Transitional—Retirement Villages
Amendment Act 2016****520 Meaning of *commencement day*—pt 21**

In this part:

commencement day means the day the *Retirement Villages Amendment Act 2016*, section 3 commences.**521 Holding deposits paid before the commencement day**

Section 39 (3A) to (3D) (Repaying etc holding deposits and ingoing contributions) does not apply in relation to an amount paid by a prospective resident to the operator of a village before the commencement day.

522 Existing villages rules to be consistent

- (1) This section applies if, on the commencement day, the village rules of a retirement village are inconsistent with this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

1 (2) The operator of the retirement village must propose amendments to
2 ensure that the rules are consistent with this Act.

3 *Note 1* See s 83 for proposing amendments of the village rules. A proposed
4 amendment is not made unless the residents consent to the amendment
5 (see s 83 (3)).

6 *Note 2* A village rule has no effect to the extent that it is inconsistent with this
7 Act or another territory law (see s 79).

8 *Note 3* Application may be made to the ACAT for an order about the legal
9 validity of a village rule in force in the village (see s 86).

10 **523 Priority of interests created before commencement day**

11 (1) This section applies to an entitlement mentioned in section 247 (c)
12 (Priority of interests) for which a charge was created before the
13 commencement day.

14 (2) The entitlement does not have priority over an entitlement
15 mentioned in section 247 (ca).

16 **524 Expiry—pt 21**

17 This part expires 12 months after the commencement day.

18 *Note* Transitional provisions are kept in the Act for a limited time.
19 A transitional provision is repealed on its expiry but continues to have
20 effect after its repeal (see Legislation Act, s 88).

21 **56 Dictionary, definition of *CPI***

22 *omit*

23 **57 Dictionary, new definition of *disputes committee***

24 *insert*

25 *disputes committee*—see section 175A.

1 **58 Dictionary, definition of *resident*, paragraph (b) (vi)**

2 *substitute*

3 (vi) for part 8 (except division 8.1A)—see section 174A;

1 **Part 3 Retirement Villages**
2 **Regulation 2013**

3 **59 New section 6A**

4 *in part 3, insert*

5 **6A General inquiry document—Act, s 23 (2)**

6 The general inquiry document must include a brief explanation of
7 the following about the retirement village to which it relates:

- 8 (a) the residential premises, services and facilities of the
9 retirement village;
- 10 (b) the main differences between a retirement village and a
11 residential aged care facility and how the services of the
12 retirement village differ from residential care within the
13 meaning of the *Aged Care Act 1997* (Cwlth), section 41-3;
- 14 (c) if the village contract provides for departure fees—the
15 departure fees;
- 16 (d) if the operator has a policy about access by residents to home
17 care services—the policy.

18 *Note* Departure fees include deferred fees under the *Fair Trading (Retirement*
19 *Villages Industry) Code of Practice 1999* (NI1999-277).

60 Section 7

substitute

7 Disclosure statement—Act, s 24 (3)

(1) The disclosure statement must include the following information about the retirement village to which it relates:

(a) details of particular residential premises in the retirement village, including fees and charges payable in relation to the premises;

(b) the proximity of the village to services, for example, hospitals, shopping centres and public transport;

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

(c) information about whether the operator operates a residential aged care facility;

(d) a statement of how the services of the retirement village differ from residential care within the meaning of the [Aged Care Act 1997](#) (Cwlth), section 41-3;

(e) details about the ownership of the village, including whether a resident can own residential premises in the village;

(f) if a village contract for the retirement village includes provisions for sharing a capital gain between the operator and a resident—details of the provisions;

(g) information about the management of the village;

(h) whether the village has a residents committee and, if so, information about the committee;

(i) the financial management of the village, including details about the village's income and expenditure;

- 1 (j) information about the village's safety, including information
2 about its security and emergency systems;
- 3 (k) the extent to which the operator has complied with legislation
4 applying to the village, including the Act and the *Planning and*
5 *Development Act 2007*;
- 6 (l) village contracts the prospective resident will need to enter into
7 to become a resident;
- 8 (m) the village rules;
- 9 (n) the facilities available to residents;
- 10 (o) services provided by the operator;
- 11 (p) costs associated with entering into a residence contract with the
12 operator;
- 13 (q) a statement that a former occupant of residential premises in
14 the village is not liable to refurbish (or pay the cost of
15 refurbishment of) the premises;
- 16 (r) if the operator has a policy about access by residents to home
17 care services—details of the policy;
- 18 (s) information about any waiting list for the village and any
19 waiting list fee payable;
- 20 (t) a statement to the effect that, to the best of the operator's
21 knowledge, the information in the disclosure statement is true.
- 22 (2) The disclosure statement must be signed and dated by the operator.
- 23 (3) In this section:
- 24 *refurbishment*—see [the Act](#), section 218.

61 New section 24A

insert

24A Works that are capital maintenance—Act, s 135 (1), def capital maintenance, par (b)

The following works are prescribed:

(a) work done to prevent or repair the following in relation to a capital item:

(i) a defect in the item, other than—

(A) a defect covered by a warranty or consumer guarantee; or

(B) a defect known to the operator when the item was acquired;

(ii) damage to the item;

(iii) deterioration of the item;

Examples

painting, repaving, plumbing

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

(b) replacing a capital item that is not a fixture, other than a vehicle;

(c) replacing part of a capital item necessary for the proper operation of the item.

1 **62 Schedule 1, new section 1.1A**

2 *in part 1.1, insert*

3 **1.1A Time for payment of ingoing contribution instalments**

4 (1) This section applies if a village contract provides that the ingoing
5 contribution must be paid in instalments at intervals stated in the
6 contract.

7 (2) The village contract must state the day that the balance of the
8 ingoing contribution is payable.

9 **63 Schedule 2, new section 2.11**

10 *insert*

11 **2.11 Current value of premises**

12 A village contract must not include a provision that requires a
13 former occupant to pay the difference between—

14 (a) any value determined for, or assigned to, the occupant's
15 residential premises (by the operator or otherwise) before a
16 village contract with a prospective resident in relation to the
17 premises is entered into; and

18 (b) the amount paid by a prospective resident under a village
19 contract for the premises.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 3 May 2016.

2 Notification

Notified under the [Legislation Act](#) on 2016.

3 Republications of amended laws

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