2013

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

RETIREMENT VILLAGES AMENDMENT REGULATION 2013 (No 1)

SUBORDINATE LAW No. SL2013-21

EXPLANATORY STATEMENT

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RETIREMENT VILLAGES AMENDMENT REGULATION 2013 (No 1)

Overview of the Regulation

The *Retirement Villages Act 2012* ('the Act') and the *Retirement Villages Regulation 2013* ('the Regulation') commenced on 4 March 2013.

The Act and Regulation bring into the ACT regulatory requirements for the retirement village industry which are based on the NSW requirements.

The *Retirement Villages Amendment Regulation 2013 (No 1)* ('the Amendment Regulation') makes four amendments to the Regulation.

Payroll tax

The amendments ensure that the regulations have the same operative effect as the equivalent provision in NSW, which provides that payroll tax must not be financed by way of recurrent charges unless (i) the wages paid by the operator are more than the threshold amount in the *Payroll Tax Act 2007* (NSW); or ii) before the commencement of the clause, the residents consented to the financing of payroll tax from recurrent charges and continued to provide consent.

Paragraph ii) allows for larger for-profit retirement village operators who own more than one retirement village to recover the costs of payroll tax from the recurrent charges of residents of each retirement village on an apportionment basis. This is where the wages paid by the operator in relation to each village are less than the threshold amount but where the wages paid in relation to all the villages collectively operated by the operator attract payroll tax.

Payroll tax can only be financed by way of recurrent charges under this arrangement, where residents consented prior to the commencement of the *Retirement Villages Act 2012* and *Retirement Villages Regulation 2013* (4 March 2013) and continue to give consent.

Strict liability offences

The first of the amendments removes references to offences in the Regulation being offences of strict liability. The effect of this amendment will be that to prosecute a retirement village operator in relation to the two relevant offences in the Regulation, there must be a finding of intent.

Technical amendment

The Amendment Regulation corrects a technical oversight in a transitional regulation providing for increases in recurrent charges prior to commencement of the Act.

Budget disagreement

The Code of Practice provided for resolution of a budget impasse by the budget referee appointed by the Fair Trading Commission. It is likely therefore that existing residence

contracts make reference to the resolution of such disputes by the budget referee under the Code.

A new transitional regulation is inserted into the Regulation to provide that a resident or operator can apply to the ACAT under section 163 where a budget cannot be agreed to, even though an existing contract may provide for resolution of such a dispute by the budget referee under the repealed Code.

CLAUSE NOTES

Clause 1   Name of regulation

This clause names the regulation as the *Retirement Villages Amendment Regulation 2013 (No 1).*

Clause 2   Commencement

This clause provides for the commencement of the regulation on the day after its notification.

Clause 3   Legislation amended

This clause provides that the regulation amends the *Retirement Villages Regulation 2013*.

Clause 4   Section 36 (1) (d)

This clause ensures that section 36(1)(d) of the *Retirement Villages Regulation 2013* has the same operative effect as section 26(d) of the NSW *Retirement Villages Regulation 2009*.

The clause allows larger for-profit operators who own more than own village to recover the costs of payroll tax from residents' recurrent charges on an apportionment basis where the wages paid for each village are below the threshold amount.

This only applies where the residents under such an arrangement had, prior to the commencement of the *Retirement Villages Act 2012* and *Retirement Villages Regulation 2013*, provided consent for payroll tax to be financed by way of recurrent charges and continue to provide consent.

Clause 5   Section 50 (2)

This clause omits reference to the offence against section 50(1) as being an offence of strict liability.

Section 6   Section 52 (3)

This clause omits reference to the offence against section 52(2) as being an offence of strict liability.

Section 7   Part 20

As section 100 is no longer necessary (as a result of the amendments to section 36(1)(d)), it is omitted. As section 100 is the only provision in part 20 of the *Retirement Villages Regulation 2013*, the part is omitted.

Section 8   Schedule 5, modification 5.1, section 503W (2)

Section 503W of the *Retirement Villages Regulation 2013* provides for the application of section 148(2) of the *Retirement Villages Act 2012* to amendments of recurrent charges in the 12 months before the commencement of the Act.

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This clause corrects a technical oversight in section 503W(2) by substituting reference to the date the contract was last amended with a reference to the date that the recurrent charges payable under the contract were last amended.

Section 9   Schedule 5, modification 5.1, new section 503XA

Section 503ZB of the *Retirement Villages Regulation 2013* provides for termination of existing residence contracts. Under the repealed Code of Practice, the Fair Trading Commissioner could appoint a contract referee to terminate a residence contract on certain grounds. Section 503ZB provides that the termination procedures in part 9 of the *Retirement Villages Act 2012* are to apply to existing residence contracts and that a reference to the contract referee is taken to be a reference to the ACAT.

This clause inserts a similar clause relating to circumstances where the retirement village operator and residents cannot agree to a budget. Under the repealed Code of Practice, the Fair Trading Commissioner could appoint a budget referee to resolve a budget impasse.

New section 503XA provides that a budget referee provision applying to an existing residence contract before commencement ceases to apply on commencement and that section 163 of the Act applies.

If a budget referee clause is included in an existing contract it ceases to operate, and instead, section 163 of the Act applies to the contract.

Any reference to a budget referee is taken to be a reference to the ACAT and a procedure involving the resolution of a budget disagreement by a budget referee is, on the commencement day, take to be a reference to the procedures in section 163 of the Act.