



Western Australia

# **Retirement Villages Amendment Act 2024**



# Retirement Villages Amendment Act 2024

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Western Australia

# Retirement Villages Amendment Act 2024

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No. 42 of 2024

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**An Act to amend the *Retirement Villages Act 1992* and to make related and consequential amendments to other Acts.**

*[Assented to 13 November 2024]*

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This is the *Retirement Villages Amendment Act 2024*.

### **2. Commencement**

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent (*assent day*);
- (b) Part 2 (but only Division 2) and Part 4 — on the day after assent day;
- (c) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

## **Part 2 — *Retirement Villages Act 1992* amended**

### **Division 1 — Main amendments**

#### **3. Act amended**

This Division amends the *Retirement Villages Act 1992*.

#### **4. Section 3 amended**

- (1) In section 3(1) delete the definition of *premium*.
- (2) In section 3(1) insert in alphabetical order:

*administer* a retirement village includes to manage or operate the retirement village;

*amenity* includes facility;

*authorised deposit-taking institution* has the meaning given in the *Banking Act 1959* (Commonwealth) section 5(1);

*community arrangements statement* means a statement under section 14B;

*exit entitlement* means any amount of money that is, under a residence contract, payable by an operator in connection with a resident permanently vacating residential premises in a retirement village;

*ingoing contribution* —

- (a) means a payment, however described, made by or on behalf of a person in consideration for, or in contemplation of, the person becoming a resident in a retirement village; but
- (b) does not include —
  - (i) a recurrent charge; or
  - (ii) a payment of a prescribed kind;

*judicial member* has the meaning given in the *State Administrative Tribunal Act 2004* section 3(1);

*permanently vacated* has the meaning given in subsection (1A);

*prospective resident information statement* means a statement under section 14C;

*special resolution* means a resolution passed at a meeting of the residents of a retirement village in accordance with section 41G;

- (3) In section 3(1) in the definition of *retirement village scheme* delete “resident or prospective resident of residential premises pays a premium in consideration for, or in contemplation of, admission as a resident under the scheme;” and insert:

person pays an ingoing contribution;

- (4) In section 3(1) in the definition of *service contract* delete the passage that begins with “of — ” and continues to the end of the definition and insert:

of services and amenities in the retirement village;

- (5) After section 3(1) insert:

- (1A) Residential premises in a retirement village are *permanently vacated* —

- (a) if the residence contract with the operator of the retirement village with respect to the premises

requires notice of an intention to vacate the premises — the later of —

- (i) 28 days after the day on which the operator is given the notice in writing (regardless of the period of notice required by the contract); or
  - (ii) when vacant possession of the premises is given to the operator;
- or
- (b) if the residence contract with the operator of the retirement village with respect to the premises does not require notice of an intention to vacate the premises — when vacant possession of the premises is given to the operator.

**5. Section 5 amended**

Delete section 5(2) and insert:

- (2) This Act does not apply in relation to residential premises in a retirement village that are used to provide —
  - (a) residential care as defined in the *Aged Care Act 1997* (Commonwealth) section 41-3; or
  - (b) aged care of a prescribed kind.

**6. Section 6 amended**

In section 6(1) delete “subsection (2) and without affecting the operation of sections 23(4) and 24(6),” and insert:

subsection (2),

**7. Section 8 amended**

After section 8(1)(a) insert:

- (aa) to keep a register of retirement villages;

**8. Section 13 amended**

- (1) Delete section 13(2)(a) and insert:

- (a) a community arrangements statement; and
- (aa) a prospective resident information statement;  
and

- (2) After section 13(2) insert:

- (2A) A paragraph of subsection (2) does not apply in relation to a subsequent residence contract between the person and the owner if there have been no material changes to the document mentioned in the paragraph since the owner last gave the document to that person.

- (3) Delete section 13(4) and (5) and insert:

- (4) A residence contract entered into by a person is taken to include a warranty on the part of the owner of the correctness of the information contained in the most recent community arrangements statement and prospective resident information statement given to that person.

- (4AA) The warranty —

- (a) is subject to any written alteration, made by the owner with the consent of the prospective

resident on or before the signing of the residence contract by the owner, to the most recent community arrangements statement or prospective resident information statement given to that person; and

(b) prevails over any inconsistent contractual term.

(5) A person, including an owner, must not, without the approval of the Commissioner —

(a) make a representation to a person that is inconsistent with information contained in the most recent community arrangements statement or prospective resident information statement given to that person; or

(b) give a person a community arrangements statement or prospective resident information statement that contains information that is inconsistent with a representation made by the owner to that person.

Penalty for this subsection: a fine of \$20 000.

**9. Section 13A inserted**

After section 13 insert:

**13A. Residence contracts enforceable against current operators**

A residence contract entered into with an operator, or a former operator, of a retirement village may be enforced against any operator, for the time being, of the retirement village as if the residence contract had been entered into by that operator.

**10. Section 14A amended**

- (1) Before section 14A(1) insert:

- (1A) In this section —

***village contract*** means —

- (a) a residence contract; or
  - (b) a service contract.
- (2) In section 14A(1) to (4) delete “residence” (each occurrence) and insert:

village

- (3) In section 14A(2) before “a prospective resident” insert:

a resident or

Note: The heading to amended section 14A is to read:

**Residence contracts and service contracts to comply with prescribed requirements**

**11. Sections 14B to 14D inserted**

After section 14A insert:

**14B. Community arrangements statements**

- (1) The purpose of a community arrangements statement is to provide information about the services and amenities, and the residential premises, that are



provided, or made available, to residents of a retirement village (***community arrangements***).

- (2) A community arrangements statement must —
  - (a) be in the approved form; and
  - (b) contain the prescribed information.
- (3) The operator of a retirement village must, within 14 days after the day on which the retirement village is established, and within 14 days after the day on which there is any change in the community arrangements of the retirement village, ensure a current community arrangements statement is continuously available to the public —
  - (a) on a website of the operator or of the retirement village; or
  - (b) if neither the operator nor the retirement village has a website — in the prescribed way.

Penalty for this subsection: a fine of \$20 000.

- (4) The operator must give a person the current community arrangements statement in the prescribed way within 7 days after the day on which the person asks for a community arrangements statement.

Penalty for this subsection: a fine of \$20 000.

- (5) Subsection (4) does not apply if the operator believes on reasonable grounds that the person has not asked for the community arrangements statement for the purpose of considering or deciding whether the person is or might be interested in becoming a resident of the retirement village.

**14C. Prospective resident information statements**

- (1) The purpose of a prospective resident information statement is to give a person a summary of —
  - (a) the estimated costs of the person —
    - (i) entering into occupation of residential premises in a retirement village; and
    - (ii) living in the retirement village; and
    - (iii) permanently vacating the residential premises;
  - and
  - (b) the rights and obligations of a resident under this Act.
- (2) A prospective resident information statement must —
  - (a) be in the approved form; and
  - (b) contain the prescribed information.
- (3) The operator of a retirement village must give a person a prospective resident information statement in the prescribed way —
  - (a) if the operator, within 7 days after the day on which the person asks for the statement, requests, in writing, information from the person reasonably necessary to prepare the statement — within 7 days after the day on which the person gives the operator the information; or
  - (b) otherwise, within 7 days after the day on which the person asks for the statement.

Penalty for this subsection: a fine of \$20 000.

- (4) Subsection (3) does not apply if the operator believes on reasonable grounds that the person has not asked for the prospective resident information statement for the purpose of considering or deciding whether the person is or might be interested in becoming a resident of the retirement village.

**14D. Property condition report at start and end of occupation of residential premises**

- (1) An operator must, within 7 days after the day on which a resident enters into occupation of residential premises under a residence contract —
  - (a) prepare a report describing the condition of the premises; and
  - (b) provide 2 copies of the report to the resident.Penalty for this subsection: a fine of \$5 000.
- (2) A resident given copies of a report under subsection (1)(b) who disagrees with any information in the report must, within 7 days after the day on which the resident receives the copies —
  - (a) mark a copy in a manner that shows the information with which the resident disagrees; and
  - (b) give the copy back to the operator.
- (3) If the resident does not give a copy of the report back to the operator under subsection (2), the resident is taken to accept the contents of the report as a true and accurate description of the condition of the residential premises.
- (4) An operator must, as soon as practicable, and in any event within 14 days, after the day on which a resident

permanently vacates residential premises in a retirement village —

- (a) conduct an inspection of the residential premises; and
- (b) prepare a final report describing the condition of the premises; and
- (c) provide a copy of the report to the resident.

Penalty for this subsection: a fine of \$5 000.

- (5) The resident must be given a reasonable opportunity to be present at the inspection conducted under subsection (4)(a).
- (6) The regulations may prescribe information that must be included in a property condition report under subsection (1) or (4).

**12. Section 14 amended**

After section 14(2) insert:

- (3) This section applies despite, and does not limit any other entitlement to rescind a contract under, the *Sale of Land Act 1970*.

**13. Section 15 amended**

In section 15(2) delete “repayment of a premium or” and insert:

payment of an exit entitlement or repayment of

**14. Section 15A inserted**

After section 15 insert:

**15A. Amendment of memorial**

- (1) An owner of a lot may apply to the Tribunal for, and the Tribunal may make, an order directing the Registrar of Titles to amend the Register under the *Transfer of Land Act 1893* so that a memorial registered under section 15 is no longer registered against the lot.
- (2) The application may (but need not) be made and heard concurrently with an application for an order under Part 3D.
- (3) The Tribunal may make the order only if satisfied that —
  - (a) the lot is not, or from a specified date will not be, used for the purposes of a retirement village; and
  - (b) the value of the land used for the purposes of the retirement village, other than the lot, is sufficient to secure the right of each resident or former resident of the retirement village to the payment of any exit entitlement.
- (4) The Tribunal may amend an order made under this section.
- (5) An order under this section takes effect on the later of the following —
  - (a) the day specified in the order;
  - (b) the day when the order is lodged for registration with the Registrar of Titles —
    - (i) in the form approved by the Registrar of Titles; and

- (ii) accompanied by the fee prescribed under the *Transfer of Land Act 1893*.
- (6) The Tribunal's powers under this section are exercisable only by —
  - (a) a judicial member; or
  - (b) the Tribunal constituted by a judicial member and other members.

**15. Section 17 amended**

- (1) After section 17(1)(d) insert:

- (da) without limiting paragraph (d), the residence contract is terminated by the Tribunal in connection with an order made under section 22; or

- (2) In section 17(2) delete “(c) and (d)” and insert:

(c), (d) and (da)

- (3) After section 17(2) insert:

- (2A) This section does not apply in relation to a residence contract that creates or gives rise to a right to occupy residential premises in a retirement village —
- (a) for a fixed term of 12 months or less; or
  - (b) on the basis of a periodic tenancy (other than a periodic tenancy following a fixed term greater than 12 months).

**16. Section 18 amended**

(1) Before section 18(1) insert:

(1A) In this section —

***operator*** includes a developer, or any other person, involved in the development or construction of a retirement village.

(2) In section 18(1):

(a) delete “Subject to subsection (2), a premium paid to the” and insert:

An ingoing contribution paid to an

(b) in paragraph (a) delete “whose behalf the premium” and insert:

behalf of whom the ingoing contribution

(3) Delete section 18(2A) to (3) and insert:

(2A) An operator commits an offence if —

- (a) an ingoing contribution is paid to the operator; and
- (b) the ingoing contribution is not held in trust or invested as required by subsection (1).

Penalty for this subsection: a fine of \$20 000.

(4) In section 18(4):

(a) delete “prospective resident” (1<sup>st</sup> occurrence) and insert:

person by or on behalf of whom the ingoing contribution  
was paid

(b) delete “disposition of the premium” and insert:

disposition of the ingoing contribution

(c) in paragraph (a) delete “prospective resident’s” and  
insert:

person’s

(d) in paragraph (a) delete “premium must be paid to the  
prospective resident;” and insert:

ingoing contribution must be paid to the person;

(5) Delete section 18(5) and insert:

(5) An operator commits an offence if —

(a) a question affecting entitlement to or  
disposition of the ingoing contribution is  
required by subsection (4) to be determined by  
reference to the residence contract and the  
operator fails to act in accordance with that  
requirement; or



- (b) interest and accretions arising from investment of the ingoing contribution are required by subsection (4)(a) to be paid to the person by or on behalf of whom the ingoing contribution was paid and the interest and accretions are not paid accordingly.

Penalty for this subsection: a fine of \$20 000.

Note: The heading to amended section 18 is to read:

**Ingoing contributions**

**17. Section 19 amended**

- (1) Delete section 19(1) and insert:

- (1) A service contract entered into with an operator, or a former operator, of a retirement village may be enforced against any operator, for the time being, of the retirement village as if the service contract had been entered into by that operator.

- (2) In section 19(2) delete “a service to” and insert:

services or amenities to

- (3) Delete section 19(3) to (5).
- (4) Delete section 19(6)(a) and insert:

- (a) the owner is a party to a contract under which an exit entitlement is payable in relation to the resident; or

- (5) Delete section 19(7).

Note: The heading to amended section 19 is to read:

**Service contracts**

**18. Section 20 amended**

- (1) In section 20(1) delete “repayment of a premium, or part of a premium, under section 19” and insert:

payment of an exit entitlement

- (2) Delete section 20(3) and (4) and insert:

- (3) The charge has priority over all mortgages, charges and encumbrances created or arising in relation to the land after registration of the relevant memorial under section 15.

**19. Section 21 amended**

- (1) In section 21(1) delete “repayment of a premium or part of a premium” and insert:

payment of an exit entitlement

- (2) In section 21(2)(a) delete “recovery of the resident’s premium or part of a premium,” and insert:

payment of the exit entitlement,

- (3) In section 21(3)(d):
- (a) delete “refundable premium or part of a premium” and insert:  
  
exit entitlement
  - (b) delete “premiums or parts of premiums” and insert:  
  
exit entitlements

**20. Sections 21A and 21B inserted**

After section 21 insert:

**21A. Rules of conduct for operators and residents**

- (1) In this section —  
*operator* includes any employee, agent or other person acting on behalf of an operator.
- (2) The regulations may prescribe the following —
  - (a) rules of conduct for operators and residents of retirement villages;
  - (b) requirements for operators regarding professionalism, training, competencies, performance and behaviour in connection with the administration of retirement villages;
  - (c) consequences of (including remedies for) contraventions of regulations under paragraph (a) or (b).

- (3) Without limiting subsection (2)(a) and (b), the regulations may prescribe requirements relating to the following —
  - (a) knowledge about —
    - (i) this Act; and
    - (ii) the provisions of the *Community Titles Act 2018* and the *Strata Titles Act 1985*, and of any other written law, relevant to the administration of retirement villages;
  - (b) conduct in relation to dealings with current or prospective residents of retirement villages (for example, by reference to standards of honesty, fairness and professionalism);
  - (c) conduct in relation to the marketing of retirement villages (including in relation to the use of terminology).
- (4) Without limiting subsection (2)(c), the regulations may prescribe that an operator or resident may apply to the Tribunal for, and that the Tribunal may make —
  - (a) an order to remedy a contravention of the regulations under subsection (2)(a) or (b); and
  - (b) without limiting paragraph (a), an order requiring an operator to take, or refrain from taking, specified action.
- (5) Subsection (2)(c) does not affect section 82(3).

**21B. Financial arrangements and budget obligations**

- (1) The regulations may make provision about the obligations of the operator of a retirement village in relation to the retirement village's budget and financial arrangements.

- (2) Without limiting subsection (1), the regulations may make provision about the following —
- (a) preparation of proposed annual budgets by the operator;
  - (b) expenditure of funds in accordance with an annual budget;
  - (c) preparation of financial statements and related documents;
  - (d) provision of the financial statements and related documents, and other financial information, to residents of the retirement village;
  - (e) consultation with residents regarding the content of the annual budget;
  - (f) accounting for the expenditure of funds and auditing;
  - (g) the provision of information to residents about insurance in relation to the retirement village.

**21. Section 22 amended**

- (1) Before section 22(1) insert:

- (1A) In this section —  
*terminate*, in relation to a retirement village scheme, includes to suspend, or effectively suspend, the retirement village scheme so that all residents are required to relocate, even if only temporarily, from the residential premises occupied by them.

- (2) In section 22(1) delete “Supreme Court” and insert:

Tribunal

(3) In section 22(2):

(a) delete “The” and insert:

For the purposes of the *State Administrative Tribunal Act 2004* section 36, the

(b) delete “Supreme Court’s” and insert:

Tribunal’s

(4) Delete section 22(3) and insert:

(3) The Tribunal must not approve the termination of a retirement village scheme unless the operator —

(a) gives each resident a plan relating to termination of the scheme (a ***termination plan***) —

(i) in the approved form; and

(ii) containing the prescribed information;  
and

(b) holds a meeting of the residents, at least 1 month after giving each resident the termination plan, to answer residents’ questions, and provide further information, about the plan; and

(c) obtains for each resident, or takes all reasonable steps to assist each resident in obtaining, alternative accommodation —

(i) that is of approximately the same standard as, and requires no greater financial outlay on the part of the

- resident than, the residential premises occupied by the resident; and
  - (ii) that is acceptable to the resident or reasonably ought to be acceptable to the resident.
- (4) If the Tribunal makes an order approving the termination of a retirement village scheme, the Tribunal —
- (a) must fix in the order a date by which each resident must vacate the residential premises occupied by the resident; and
  - (b) may make such other orders as the Tribunal thinks fit, including an order that the operator pay to a resident —
    - (i) the costs of vacating, or relocating from, the residential premises occupied by the resident; or
    - (ii) compensation for the resident's loss of rights under a residence contract or a service contract.
- (5) The Tribunal's powers under this section are exercisable only by —
- (a) a judicial member; or
  - (b) the Tribunal constituted by a judicial member and other members.

**22. Sections 23 and 24 deleted**

Delete sections 23 and 24.

**23. Parts 3A to 3D inserted**

After section 25 insert:

**Part 3A — Leaving a retirement village**

**Division 1 — General**

**26. Term used: resident**

In this Part (and in sections 20 and 21) —  
*resident* includes former resident.

**27. Reinstatement and renovation of residential premises**

(1) In this section —

*capital gain*, in relation to residential premises in a retirement village, means any increase between —

- (a) the ingoing contribution paid by or on behalf of the resident permanently vacating the premises; and
- (b) the ingoing contribution paid, or to be paid, by or on behalf of the next resident to occupy the premises;

*reinstatement*, of a resident's residential premises in a retirement village, means the return of the premises to the condition required by this section;

*renovation*, of residential premises, means improvement of the premises in excess of what is required for reinstatement.

(2) A resident must, on permanently vacating residential premises in a retirement village, leave the premises as nearly as possible in the same condition, fair wear and



tear excepted, as they were in when the resident entered into occupation of the premises.

- (3) In particular, if the resident accepts, or is taken to accept, a property condition report under section 14D as a true and accurate description of the residential premises, the resident must leave the premises as nearly as possible in the same condition, fair wear and tear excepted, as set out in the report.
- (4) The operator of the retirement village may require the resident to pay for reinstatement of the resident's residential premises only if —
  - (a) the resident did not leave the premises in the condition required by this section; and
  - (b) the residence contract between the operator and resident includes a term to the effect that the resident must pay for reinstatement of the premises; and
  - (c) the cost of the reinstatement has been —
    - (i) agreed between the operator and resident; or
    - (ii) determined by the Tribunal.
- (5) The operator of the retirement village may require the resident to pay for renovation of the resident's residential premises only if all of the following apply —
  - (a) the operator and resident agree on a plan for the renovation (a **renovation plan**) on or after the date the residential premises are permanently vacated;
  - (b) the renovation is in accordance with the renovation plan;
  - (c) the residence contract between the operator and resident includes a term to the effect that the

resident is entitled to a share of any capital gain that is at least in proportion to the amount of the renovation required by the operator to be paid for by the resident.

- (6) A renovation plan must —
  - (a) be in the approved form; and
  - (b) contain the prescribed information.
- (7) The operator of a retirement village must not demand or receive payment from a resident for reinstatement or renovation of residential premises otherwise than in accordance with this section.

Penalty for this subsection: a fine of \$20 000.
- (8) The operator or resident may apply to the Tribunal for, and the Tribunal may make, an order in relation to the amount, if any, that the resident is required to pay for reinstatement or renovation of residential premises under this section.

**28. Liability for recurrent charges**

- (1) The liability of a resident to pay recurrent charges arising after the resident has permanently vacated residential premises in a retirement village ends on the earliest of the following —
  - (a) the date on which a new resident becomes liable to pay recurrent charges in respect of the premises;
  - (b) the prescribed date;
  - (c) the date on which the operator is required to pay an exit entitlement in relation to the resident under section 29;
  - (d) the date on which the operator is required to enter into a contract for, and complete, the

purchase of the residential premises under this Part;

- (e) the date agreed between the operator and the resident;
  - (f) the date provided for in the residence contract between the operator and resident.
- (2) The operator must not seek to recover from the residents of the retirement village, by increasing the recurrent charges payable by them or by demanding or receiving from them any additional payment, any amount of recurrent charges —
- (a) arising after a resident has permanently vacated residential premises in a retirement village; and
  - (b) for which the resident is not liable under this section.

Penalty for this subsection: a fine of \$20 000.

## **Division 2 — Exit entitlements**

### **29. Payment of exit entitlements**

- (1) An operator must pay an exit entitlement in relation to a resident —
- (a) on or before the earliest of the following —
    - (i) the date provided for in the residence contract between the operator and resident;
    - (ii) the date that is 7 days after the day on which another person, with the consent of the operator, enters into occupation of the residential premises occupied by the resident following the resident

having permanently vacated those residential premises;

- (iii) the date agreed between the operator and resident (or the person to whom the exit entitlement is payable);
- (iv) the date that is 12 months after the day on which the resident has permanently vacated the residential premises occupied by the resident;
- (v) for a residence contract terminated by the Tribunal — the date that is 10 days after the date fixed by the Tribunal as the date by which the resident must vacate the residential premises;

or

- (b) if the resident grants the operator an extension under subsection (2) —
  - (i) the day after the end of the extended period; or
  - (ii) if the resident revokes the extension more than 3 months before the end of the extended period — the day after the date that is 3 months after the date of revocation.

Penalty for this subsection: a fine of \$20 000.

- (2) A resident may, by notice in writing to the operator —
  - (a) extend the period within which the operator would otherwise be required to pay an exit entitlement; and
  - (b) revoke the extension more than 3 months before the end of the extended period.

- (3) The operator must, at the same time as paying the exit entitlement, give the resident (or the person to whom the exit entitlement is payable) a statement —
  - (a) setting out how the operator calculated the exit entitlement; and
  - (b) containing any other prescribed information.Penalty for this subsection: a fine of \$20 000.
- (4) If an operator calculates, or is required by a residence contract to calculate, an exit entitlement by reference to the ingoing contribution paid, or to be paid, by or on behalf of the next resident to occupy the relevant residential premises, the exit entitlement is to be as agreed or decided under section 37.
- (5) An exit entitlement not paid as required by this section may be recovered as a debt from the operator, for the time being, of the retirement village.
- (6) Subsection (1) does not apply for any period during which the operator has a relevant extension, or an exemption, under Division 4.

**30. Resident's payment of recurrent charges from exit entitlement**

- (1) A resident may, by written notice to the operator of the retirement village, elect to pay, by way of a deduction from the resident's exit entitlement —
  - (a) recurrent charges arising after the resident has permanently vacated residential premises in the village; and
  - (b) interest on recurrent charges that, as a result of the election, are not paid by the resident as liability to pay them arises.

- (2) Unless the relevant residence contract specifies that interest is not payable, the operator may charge the resident the interest at the lowest of the following —
  - (a) the prescribed rate;
  - (b) the rate specified in the contract;
  - (c) the rate agreed between the operator and the resident.
- (3) If a resident elects to pay any recurrent charges under subsection (1), the operator must not demand or receive payment of those charges otherwise than in accordance with that election.

Penalty for this subsection: a fine of \$20 000.

**31. Operator's payment of exit entitlement for aged care**

- (1) The regulations may make provision about payment, at the request of a resident, of some or all of an exit entitlement to a person other than the resident for the purpose of funding the resident's residence, or proposed residence, in an aged care facility.
- (2) Without limiting subsection (1), the regulations may make provision about the following —
  - (a) a resident's entitlement to make a request;
  - (b) how the request may be made and the matters it must address or the information or evidence it must include;
  - (c) an operator's obligation to comply with the request;
  - (d) when and how multiple payments of part an exit entitlement must be made (including in

- advance of an exit entitlement becoming payable in full under section 29);
- (e) the persons to whom payments can be made.

### **Division 3 — Buybacks**

#### **32. Residential premises to which Division applies**

- (1) This Division applies only in relation to —
- (a) residential premises a right to occupation of which is conferred by ownership of shares; or
  - (b) residential premises purchased from the operator subject to a right or option of repurchase; or
  - (c) residential premises purchased subject to conditions restricting the subsequent disposal of the premises; or
  - (d) residential premises prescribed for the purposes of this paragraph.
- (2) In this Division and Division 4, a reference to residential premises is, for residential premises referred to in subsection (1)(a), a reference to the shares that confer the right to occupy the residential premises.

#### **33. Buyback of residential premises that are owned**

- (1) The operator of a retirement village must enter into a contract for the purchase of a resident's residential premises in a retirement village, and complete the purchase, as required by this Division.
- Penalty for this subsection: a fine of \$20 000.
- (2) Subsection (1) does not apply —
- (a) if the residential premises are sold to a person other than the operator before the day on which

the operator is required to complete the purchase; or

- (b) for any period during which the operator has a reasonable excuse.

- (3) Without limiting subsection (2)(b), the operator has a reasonable excuse —

- (a) for any period during which the operator has a relevant extension, or an exemption, under Division 4; and
- (b) for any extended period ordered by the Tribunal under section 44; and
- (c) for any period during which the operator cannot enter into the contract, or complete the purchase, because of an act or omission of the resident.

**34. Requirements for buyback**

- (1) The operator must enter into the contract and complete the purchase within the time required under section 35.
- (2) The contract must comply with section 36.
- (3) The purchase price under the contract is the value of the residential premises as agreed or decided under section 37.

**35. Timing of purchase**

- (1) The operator must enter into the contract in sufficient time for the purchase to be completed under subsection (2).
- (2) The operator must complete the purchase under the contract on or before the day after the period of 12 months beginning on the day on which the resident has permanently vacated the residential premises.



**36. Terms of contract**

- (1) The regulations may provide for terms that —
  - (a) must be included in the contract (a *required term*); or
  - (b) must not be included in the contract (a *prohibited term*).
- (2) The contract must —
  - (a) be in the approved form; and
  - (b) include each required term; and
  - (c) not include any prohibited term; and
  - (d) comply with any other prescribed requirements; and
  - (e) otherwise be in the terms, consistent with this Act, that are —
    - (i) agreed between the operator and resident; or
    - (ii) determined by the Tribunal.
- (3) The operator or resident may apply to the Tribunal for, and the Tribunal may make, an order determining terms of the contract.

**Division 4 — Miscellaneous**

**37. Valuations — exit entitlements and buybacks**

- (1) For the purposes of Divisions 2 and 3, an exit entitlement, or the value of residential premises in a retirement village, is —
  - (a) the exit entitlement, or value, agreed between the operator and the resident; or

- (b) if the operator and the resident cannot, within the prescribed time, agree — the exit entitlement, or value, determined by a licensed valuer (as defined in the *Land Valuers Licensing Act 1978* section 4) who meets the requirements of this section.
- (2) The licensed valuer —
  - (a) must have appropriate experience or expertise; and
  - (b) must not have a pecuniary or other interest that could be reasonably regarded as capable of affecting the licensed valuer's ability to determine, in good faith, the exit entitlement or value of the residential premises.
- (3) The licensed valuer must be appointed by —
  - (a) agreement between the operator and the resident; or
  - (b) if the operator and the resident cannot, within the prescribed time, agree — the Commissioner.
- (4) The operator or the resident may apply to the Tribunal for a review of a decision by the Commissioner to appoint a licensed valuer.
- (5) The regulations may make provision in relation to valuations for the purposes of this section.
- (6) The operator and the resident are to pay the costs of the licensed valuer's determination in equal shares.

**38. Extensions — exit entitlements and buybacks**

- (1) The Commissioner may, on application made by an operator in the approved form and within the prescribed time, extend, by up to 12 months, the period

within which the operator would otherwise have to comply with —

- (a) the requirement to pay an exit entitlement in relation to a particular resident under Division 2; or
  - (b) the requirement to enter into a contract for, and complete, the purchase of residential premises in relation to a particular resident under Division 3.
- (2) The Commissioner —
  - (a) must, when granting an extension, specify a later date on or before which the operator must comply with the requirement; and
  - (b) may, if satisfied that any condition to which the extension is subject has not been complied with, bring forward the later date by written notice to the operator.
- (3) The operator must comply with the requirement on or before the date so specified or brought forward.  
Penalty for this subsection: a fine of \$20 000.
- (4) The Commissioner —
  - (a) may grant an extension unconditionally or subject to conditions; and
  - (b) may, by written notice to the operator, vary the conditions to which an extension is subject.
- (5) Without limitation, the conditions to which an extension may be subject include conditions —
  - (a) requiring part payment, or payment in instalments, of an amount in advance of the specified date; and
  - (b) requiring payment of interest at the prescribed rate.

- (6) An operator must comply with any condition of an extension.
- Penalty for this subsection: a fine of \$20 000.
- (7) The Commissioner may only grant an operator an extension if the Commissioner —
- (a) has not previously granted the operator an extension in respect of the requirement in relation to the particular resident; and
  - (b) is satisfied that exceptional circumstances make it unreasonable for the operator to have to comply with the requirement.
- (8) Without limiting the matters the Commissioner may consider in deciding whether to grant an extension, or to impose or vary conditions of an extension, the Commissioner must consider the following —
- (a) the operator's financial capacity to comply with the requirement;
  - (b) the impact, including the financial impact, on residents of the retirement village (and, for a resident who has died, on the beneficiaries of the resident's estate);
  - (c) whether the operator or the particular resident has unreasonably delayed —
    - (i) the entry into occupation of the relevant premises by the next resident; or
    - (ii) the sale of the premises;
  - (d) submissions, if any, made to the Commissioner by the operator or the particular resident;
  - (e) any other prescribed matter.
- (9) The operator may apply to the Tribunal for a review of a decision by the Commissioner —
- (a) not to grant an extension; or

- (b) to impose or vary conditions of an extension; or
  - (c) to bring forward the later date on or before which the operator must comply with the requirement.
- (10) The particular resident may apply to the Tribunal for a review of a decision by the Commissioner —
  - (a) to grant an extension; or
  - (b) to impose or vary conditions of an extension.

**39. Exemptions — exit entitlements and buybacks**

- (1) The Commissioner may, on application made by an operator in the approved form, exempt, for up to 5 years, the operator from —
  - (a) any requirement to pay an exit entitlement under Division 2; or
  - (b) any requirement to enter into a contract for, and complete, the purchase of residential premises under Division 3.
- (2) The Commissioner —
  - (a) must, when granting an exemption, specify later dates on or before which the operator must comply with any requirements that would otherwise apply, or have applied, during the period of the exemption; and
  - (b) may, if satisfied that any condition to which the exemption is subject has not been complied with, bring forward a later date by written notice to the operator.
- (3) The operator must comply with the requirements on or before the dates so specified or brought forward.  
Penalty for this subsection: a fine of \$20 000.

- (4) The Commissioner —
  - (a) may grant an exemption unconditionally or subject to conditions; and
  - (b) may, by written notice to the operator, vary the conditions to which an exemption is subject.
- (5) An operator must comply with any condition of an exemption.  
Penalty for this subsection: a fine of \$20 000.
- (6) The Commissioner may only grant an operator an exemption if the Commissioner is satisfied that the exemption is in the public interest.
- (7) Without limiting the matters the Commissioner may consider in deciding whether to grant an exemption, or to impose or vary conditions of an exemption, the Commissioner must consider the following —
  - (a) the number of residential premises in the retirement village;
  - (b) the nature of the residents' interests in the land of the retirement village (for example, as owners or lessees);
  - (c) whether residents are required to reinstate or renovate residential premises;
  - (d) whether the operator makes a profit from fees or charges payable by residents;
  - (e) whether the operator's assets and ability to generate income are likely to be sufficient to comply with any requirements that would otherwise apply during the period of the exemption;

- (f) submissions, if any, made to the Commissioner by the operator or residents;
  - (g) any other prescribed matter.
- (8) The operator may apply to the Tribunal for a review of a decision by the Commissioner —
  - (a) not to grant an exemption; or
  - (b) to impose or vary conditions of an exemption; or
  - (c) to bring forward a later date on or before which the operator must comply with a requirement that would otherwise apply, or have applied, during the period of the exemption.
- (9) A resident may apply to the Tribunal for a review of a decision by the Commissioner —
  - (a) to grant an exemption; or
  - (b) to impose or vary conditions of an exemption.

**40. Resident's remedies for contraventions of Part**

- (1) A resident may apply to the Tribunal for, and the Tribunal may make, an order requiring an operator to comply with any requirement in this Part.
- (2) The Tribunal's power to make the order is not affected by —
  - (a) the commencement of proceedings against the operator for an offence under this Part; or
  - (b) the conviction of the operator in proceedings for the offence.

## **Part 3B — Capital items**

### **41. Terms used**

In this Part —

***capital item*** —

(a) includes —

- (i) any building or structure in a retirement village; and
- (ii) any plant, machinery or equipment used in the administration of the retirement village; and
- (iii) any part of the infrastructure of the retirement village;

but

(b) does not include —

- (i) anything owned by a resident; or
- (ii) common property as defined by the *Community Titles Act 2018* section 3(1) or the *Strata Titles Act 1985* section 3(1); or
- (iii) the following, but only if provided for the exclusive use of a resident and required under a residence contract to be maintained, repaired or replaced by the resident —
  - (I) fittings;
  - (II) fixtures;
  - (III) contents of residential premises;

***capital maintenance*** —

- (a) means works carried out for the purpose of repairing or maintaining a capital item; but



- (b) does not include anything prescribed by the regulations;

***capital replacement*** —

- (a) means works carried out for the purpose of replacing a capital item; but
- (b) does not include —
  - (i) capital maintenance; or
  - (ii) anything else prescribed by the regulations.

**41A. Capital items generally**

- (1) The operator of a retirement village must maintain each capital item in the village in a reasonable condition having regard to the following —
  - (a) the age of the item;
  - (b) the prospective life of the item;
  - (c) the money paid to the operator by the residents under residence contracts and service contracts (including ingoing contributions).

Penalty for this subsection: a fine of \$20 000.

- (2) The operator may replace a capital item if it is not practical to maintain it.
- (3) The operator must carry out capital maintenance, or capital replacement, in relation to a capital item within a reasonable time after becoming aware of the need for the capital maintenance or capital replacement.

Penalty for this subsection: a fine of \$20 000.

- (4) A resident must notify the operator of the need for capital maintenance, or capital replacement, in relation to a capital item in the resident's residential premises as soon as the resident becomes aware of the need for the capital maintenance or capital replacement.

**41B. Plans for capital maintenance and capital replacement**

- (1) The operator of a retirement village must, in accordance with the regulations, prepare, and keep up to date, a plan for capital maintenance and capital replacement.

Penalty for this subsection: a fine of \$20 000.

- (2) The regulations may make provision about plans for capital maintenance and capital replacement.
- (3) Without limiting subsection (2), the regulations may make provision about the following —
- (a) the preparation, content, duration and revision of plans for capital maintenance and capital replacement;
  - (b) notifying, or consulting or engaging with, residents about the matters referred to in paragraph (a);
  - (c) the information to be recorded in plans for capital maintenance and capital replacement, including information concerning any of the following —
    - (i) the costs associated with capital maintenance or capital replacement;
    - (ii) the reasons for decreases or increases in costs associated with capital maintenance or capital replacement;
    - (iii) the frequency with which costs are incurred in respect of capital items;
  - (d) the capital items for which a plan for capital maintenance and capital replacement must be prepared.

- (4) Subsection (1) does not apply to the operator of a retirement village if there are no capital items in the retirement village.

**41C. Capital maintenance**

- (1) The operator of a retirement village must maintain a fund for capital maintenance (a *capital maintenance fund*).

Penalty for this subsection: a fine of \$20 000.

- (2) The operator must ensure the capital maintenance fund is held —

- (a) in an account with an authorised deposit-taking institution; or
- (b) as otherwise prescribed.

Penalty for this subsection: a fine of \$20 000.

- (3) The operator must ensure the following are paid into the capital maintenance fund —

- (a) any amount of recurrent charges that is, or is required to be, allocated to pay for capital maintenance under a budget prepared for the retirement village (including any budget required under section 21B);
- (b) any other amount a resident is required to pay in connection with capital maintenance;
- (c) without limitation, any amount that is, or is required by a residence contract between a resident and operator to be —
  - (i) paid by the resident in connection with entering into occupation of, or permanently vacating, residential premises in the retirement village; and
  - (ii) allocated to pay for capital maintenance;

- (d) any interest received from investment of the fund.

Penalty for this subsection: a fine of \$20 000.

- (4) The operator must not use money from the capital maintenance fund otherwise than to pay for capital maintenance.

Penalty for this subsection: a fine of \$20 000.

- (5) This section does not apply to the operator of a retirement village if there are no capital items in the retirement village.

**41D. Capital replacement**

- (1) The operator of a retirement village must not —
  - (a) use, or set aside, any amount of recurrent charges paid by a resident to pay for capital replacement; or
  - (b) demand or receive from a resident any other fee or charge to pay for capital replacement.

Penalty for this subsection: a fine of \$20 000.

- (2) Subsection (1)(b) does not prohibit an operator from demanding or receiving any amount that is required by a residence contract between the resident and operator to be —
  - (a) paid by the resident in connection with entering into occupation of, or permanently vacating, residential premises in the retirement village; and
  - (b) allocated to pay for capital replacement.

**41E. Excessive or insufficient money in capital maintenance fund**

- (1) The Commissioner, or the residents of a retirement village, may apply to the Tribunal for, and the Tribunal may make, an order that, having regard to the operator's obligations under section 41A and the content of any plan for capital maintenance and capital replacement under section 41B, the money in the capital maintenance fund referred to in section 41C —
  - (a) exceeds what is necessary for capital maintenance; or
  - (b) is insufficient for capital maintenance.
- (2) An order under subsection (1)(a) is to direct that an amount that exceeds what is necessary for capital maintenance is, if paid by (or deriving from money paid by) the residents of the retirement village, to be paid to the residents in the proportion determined by the Tribunal.
- (3) An order under subsection (1)(b) is to direct the operator of the retirement village to ensure that the money in the capital maintenance fund is sufficient for capital maintenance.
- (4) An order under this section may specify —
  - (a) the amount that is excessive or insufficient; and
  - (b) a date by which an operator is required to comply with the order; and
  - (c) any other ancillary matter.
- (5) The residents of a retirement village may only make an application under this section if authorised to do so by a special resolution passed at a residents' meeting.

## **Part 3C — Residents' participation**

### **41F. Residents' meetings**

- (1) The regulations may make provision about meetings of the residents of a retirement village.
- (2) Without limiting subsection (1), the regulations may make provision about the following —
  - (a) the functions of meetings, including the conferral of functions on meetings;
  - (b) when meetings may or must be held;
  - (c) notice of meetings;
  - (d) meeting procedures, including quorum requirements;
  - (e) attendance and voting at meetings, including —
    - (i) entitlement to attend or vote at meetings; and
    - (ii) procedures for voting; and
    - (iii) proxies and remote attendance;
  - (f) matters or requirements in relation to special resolutions.

### **41G. Special resolutions**

- (1) To pass a special resolution at a meeting of the residents of a retirement village subsections (2) and (3) must be complied with.
- (2) First, there must be a quorum present (whether in person or by remote communication or by proxy) of —
  - (a) if the retirement village has fewer than 10 occupied residential premises — a majority of residents entitled to vote on the resolution; or

- (b) otherwise, the greater of the following —
  - (i) 5 residents entitled to vote;
  - (ii) 30% of the number of residents entitled to vote.
- (3) Second, the resolution must be carried by at least 75% of the number of residents who —
  - (a) are present (whether in person or by remote communication or by proxy); and
  - (b) are entitled to vote; and
  - (c) vote on the resolution.

**41H. Residents' committee**

- (1) The residents of a retirement village may establish a residents' committee whose function is to consult with the operator on behalf of the residents about —
  - (a) the day-to-day running of the retirement village; and
  - (b) any issues or proposals raised by the residents.
- (2) A residents' committee may be established by an election conducted among the residents of a retirement village.
- (3) In the absence of an election conducted under subsection (2), a residents' committee may be established by an election conducted by the operator on the request of —
  - (a) if the retirement village has fewer than 10 occupied residential premises — residents from a majority of the occupied residential premises;  
or

- (b) otherwise, at least the greater of the following —
    - (i) 5 residents;
    - (ii) 10% of the residents.
- (4) Only 1 residents' committee may be established in a retirement village at any time.
- (5) Membership of a residents' committee is available only to the residents of the retirement village in which it is established.
- (6) A residents' committee may be, but is not required to be, an association incorporated under the *Associations Incorporation Act 2015*.
- (7) If more than 1 body or committee, regardless of its name, purports to be the residents' committee in a particular retirement village, the operator or a resident of the village, or the Commissioner, may apply to the Tribunal for, and the Tribunal may make, an order determining which body or committee, if any, is the residents' committee for the village.
- (8) A member of the residents' committee —
  - (a) holds office for not more than 1 year, but may be re-elected; and
  - (b) may be removed at any time by a special resolution.
- (9) Subject to the regulations, the residents' committee may —
  - (a) decide its own procedures; and
  - (b) form subcommittees and decide a subcommittee's procedures.



- (10) The regulations may make provision about residents' committees, including the election, functions and procedures of residents' committees and sub-committees.

## **Part 3D — Modifications of retirement villages**

### **41I. Terms used: modification and modification plan**

In this Part —

***modification***, of a retirement village, means the following —

- (a) redevelopment of the land used for the retirement village, including —
  - (i) a change to the boundaries of the land (including by subdivision and excision); and
  - (ii) the construction, demolition or change of use of a building or structure (including residential premises); and
  - (iii) the expansion or reduction of greenspace or parkland;
- (b) a change to the services or amenities that are provided, or made available, to residents by the operator, including by way of the following —
  - (i) a reduction or an increase in, or the withdrawal of, the services or amenities;
  - (ii) the provision of new services or amenities;
- (c) anything else prescribed as a modification;

***modification plan*** has the meaning given in section 41N.

**41J. Prohibition on modifications**

An operator must not carry out a modification of a retirement village.

Penalty: a fine of \$20 000.

**41K. Exception to prohibition: prescribed modifications**

An operator does not commit an offence under section 41J if the modification is —

- (a) of a prescribed kind; or
- (b) carried out in prescribed circumstances.

**41L. Exception to prohibition: disclosed modifications**

An operator does not commit an offence under section 41J if the nature and extent of the modification was disclosed to each resident before the resident's entry into a residence contract with the operator.

**41M. Exception to prohibition: non-detrimental modifications**

An operator does not commit an offence under section 41J if the modification —

- (a) does not reduce the range or quality of services or amenities provided, or made available, to residents; and
- (b) does not result in any additional cost to residents.

**41N. Exception to prohibition: modifications in accordance with approved modification plans**

- (1) An operator does not commit an offence under section 41J if subsections (2) to (5) are complied with.

- (2) First, the operator must, in accordance with the regulations, give each resident a plan relating to the modification (a *modification plan*) —
  - (a) in the approved form; and
  - (b) containing the prescribed information.
- (3) Second, the modification plan must be approved by —
  - (a) a special resolution passed at a residents' meeting; or
  - (b) an order under section 41O(1).
- (4) Third, if the modification plan requires a resident to vacate residential premises in the retirement village —
  - (a) the resident must consent to vacating the residential premises; or
  - (b) the Tribunal must have made an order under section 41O(4) declaring that the resident has unreasonably withheld consent.
- (5) Fourth, the operator must carry out the modification in accordance with the approved modification plan.
- (6) Regardless of the terms of any residence contract or service contract, an operator does not breach the contract by carrying out the modification if subsections (2) to (5) are complied with.

**41O. Tribunal orders relating to modification plans**

- (1) An operator may apply to the Tribunal for, and the Tribunal may make, an order approving a modification plan.

- (2) The Tribunal must not make an order under subsection (1) unless —
  - (a) the modification plan —
    - (i) is in the approved form; and
    - (ii) contains the prescribed information;and
  - (b) a special resolution to approve the plan —
    - (i) has not been passed at a residents' meeting within the prescribed time; or
    - (ii) is voted on at a residents' meeting but does not pass;and
  - (c) the Tribunal is satisfied that, in the circumstances of the case —
    - (i) the failure to pass the special resolution is unreasonable; or
    - (ii) it is otherwise appropriate to make the order.
- (3) The Tribunal may approve a modification plan with any amendments specified in the order (and in that case the approved modification plan is the plan as amended by the order).
- (4) An operator may apply to the Tribunal for, and the Tribunal may make, an order declaring that a resident has unreasonably withheld consent to vacating residential premises in a retirement village as required by a modification plan.

- (5) If the Tribunal makes an order under subsection (4), the Tribunal —
- (a) must fix in the order a date by which the resident must vacate the residential premises occupied by the resident; and
  - (b) may make such other orders as the Tribunal thinks fit, including an order that the operator pay to the resident —
    - (i) the costs of vacating, or relocating from, the residential premises occupied by the resident; or
    - (ii) compensation for the resident's loss of rights under a residence contract or a service contract.

**41P. Tribunal orders to remedy operator's contraventions of Part**

A resident may apply to the Tribunal for, and the Tribunal may make —

- (a) an order to remedy a contravention of this Part by an operator; and
- (b) without limiting paragraph (a), an order requiring an operator to take, or refrain from taking, specified action.

**41Q. Applications for Tribunal orders**

An application for an order under this Part may (but need not) be made and heard concurrently with an application for —

- (a) any other order under this Part; or
- (b) an order under section 15A.

**24. Section 41R inserted**

At the beginning of Part 4 Division 1 insert:

**41R. Dispute resolution otherwise than by Tribunal**

- (1) The regulations may make provision about the resolution of disputes —
  - (a) between a resident and the operator of a retirement village; or
  - (b) between residents of a retirement village.
- (2) Without limiting subsection (1), the regulations may establish a procedure that may or must be followed to resolve a dispute.
- (3) The Commissioner may appoint a mediator to resolve a dispute —
  - (a) on the Commissioner's own initiative; or
  - (b) on application by a party to the dispute.
- (4) The Commissioner may require a party to a dispute to attend the mediation.
- (5) A person must comply with the requirement.  
Penalty for this subsection: a fine of \$5 000.
- (6) The parties to a dispute must participate in a dispute resolution procedure, or a mediation, in good faith.
- (7) The regulations may make provision about mediations.

**25. Section 42 deleted**

Delete section 42.

**26. Section 52 deleted**

Delete section 52.

**27. Section 57A amended**

Delete section 57A(3).

**28. Sections 78 and 78A inserted**

After section 77 insert:

**78. Operators to provide Commissioner information for register of retirement villages**

- (1) The operator of a retirement village must provide the Commissioner all of the following information in the approved form —
  - (a) the name and address of the retirement village;
  - (b) the number of residential premises in the retirement village;
  - (c) whether the residential premises in the retirement village are —
    - (i) occupied in pursuance of a residential tenancy agreement or any other lease or licence; or
    - (ii) occupied under a right conferred by ownership of shares; or
    - (iii) purchased from the operator subject to a right or option of repurchase; or
    - (iv) purchased subject to conditions restricting the subsequent disposal of the premises; or

- (v) occupied under any other scheme or arrangement prescribed for the purposes of the definition of *retirement village scheme* in section 3(1);
  - (d) the number of the relevant retirement village memorial;
  - (e) the retirement village's current community arrangements statement;
  - (f) any other prescribed information.
- (2) The operator must provide the information within 14 days after the day of —
  - (a) establishment of the retirement village; and
  - (b) any change to the information (or, in the case of a community arrangements statement, any change in the community arrangements of the retirement village).

Penalty for this subsection: a fine of \$5 000.

**78A. Commissioner to keep and publish register of retirement villages**

- (1) The Commissioner must keep a register of the information provided to the Commissioner under section 78.
- (2) The Commissioner may —
  - (a) determine the form in which the register is kept; and
  - (b) publish any information in the register in the manner determined by the Commissioner.
- (3) Without limiting subsection (2)(b), the Commissioner may publish, on a website maintained by the Commissioner, community arrangements statements that are provided to the Commissioner.



**29. Section 79 amended**

In section 79 delete the Table and insert:

**Table**

s. 6(3)	s. 13(2), (3) and (5)
s. 14A(2)	s. 14B(3), (4) and (5)
s. 14C(3)	s. 14D(1) and (4)
s. 15(1), (4) and (5)	s. 16(1) and (2)
s. 18(2A) and (5)	s. 25(1)
s. 27(7)	s. 28(2)
s. 29(1) and (3)	s. 30(3)
s. 33(1)	s. 38(3) and (6)
s. 39(3) and (5)	s. 41A(1) and (3)
s. 41B(1)	s. 41C(1), (2), (3) and (4)
s. 41D(1)	s. 41J
s. 41N(5)	s. 75F(2)
s. 75H(3) and (5)	s. 75(6)
s. 78(2)	Sch. 1 cl. 15(2)

**30. Section 82 amended**

After section 82(2)(c) insert:

- (d) advertising or marketing of retirement villages;

**Division 2 — Other amendments**

**31. Act amended**

This Division amends the *Retirement Villages Act 1992*.

**32. Section 3 amended**

- (1) In section 3(1) delete “Act, unless the contrary intention appears — ” and insert:

Act —

- (2) In section 3(1) delete the definition of *administering body*.
- (3) In section 3(1) insert in alphabetical order:

***approved form*** means the form approved by the Commissioner under section 8(2);

***operator***, in relation to a retirement village —

- (a) means the person by or on behalf of whom the retirement village is administered; and
- (b) includes a person, other than a resident, who is the owner of land used for the purposes of the retirement village;

***Tribunal*** means the State Administrative Tribunal;

- (4) In section 3(1) in the definition of *retirement village scheme* or *scheme* delete “or *scheme*”.

**33. Section 8 amended**

After section 8(1) insert:

- (2) The Commissioner may approve forms for use under this Act.

**34. Section 9 amended**

In section 9(6) delete “Notwithstanding” and insert:

Despite

**35. Section 13 amended**

In section 13(4) delete “will be” and insert:

is

**36. Section 15 amended**

- (1) In section 15(1) after “for” insert:

the purposes of

- (2) In section 15(4) delete “retirement village land” and insert:

land used for the purposes of a retirement village

- (3) In section 15(6) delete “land in” and insert:

land used for the purposes of

- (4) In section 15(8) delete “as” and insert:

for the purposes of

**37. Section 18 amended**

In section 18(4)(b) delete “will be” and insert:

is

**38. Section 19 amended**

In section 19(6) delete “in” and insert:

used for the purposes of

**39. Section 21 amended**

- (1) In section 21(3) delete “order for the enforcement of” and insert:

order for enforcement of

- (2) In section 21(4)(b) and (5) delete “order for enforcing” (each occurrence) and insert:

order for enforcement of

**40. Section 22 amended**

In section 22(2) delete “will be” and insert:

is

**41. Section 44 amended**

In section 44(1) delete “Notwithstanding” and insert:

Despite

**42. Section 57A amended**

In section 57A(5) delete “Nothing in this section limits” and insert:

This section does not limit

**43. Section 60 amended**

In section 60(2) delete “Nothing in this section affects” and insert:

This section does not affect

**44. Section 75A amended**

In section 75A in the definition of *assets*:

(a) delete “in the” (each occurrence) and insert:

used for the purposes of the

(b) delete “held” (each occurrence) and insert:

used

**45. Section 77C amended**

In section 77C(1)(a) delete “form approved by the Commissioner” and insert:

approved form

**46. Section 77 amended**

In section 77(3) delete “may not” and insert:

cannot

**47. Schedule 1 Division 3 inserted**

At the end of Schedule 1 insert:

**Division 3 — Provisions relating to *Retirement Villages Amendment Act 2024***

**6. Term used: amending Act**

In this Division —

***amending Act*** means the *Retirement Villages Amendment Act 2024*.

**7. Transitional regulations**

- (1) In this clause —  
*publication day*, for transitional regulations, means the day on which those regulations are published on the WA legislation website;  
*specified* means specified or described in transitional regulations;  
*transitional matter* means a matter or issue of a transitional, savings or application nature;  
*transitional regulations* means regulations made under subclause (2).
- (2) Regulations may prescribe anything required, necessary or convenient to be prescribed in relation to a transitional matter in connection with the enactment of, or any amendment made by, the amending Act.
- (3) Without limiting subclause (2), transitional regulations may provide for specified provisions of this Act or another written law —
- (a) not to apply to, or in relation to, a specified matter or thing; or
  - (b) to apply with specified modifications to, or in relation to, a specified matter or thing.
- (4) Without limiting subclause (2), transitional regulations may provide that an amendment made by the amending Act extends to a specified matter or thing that was in existence before the amendment comes into operation.
- (5) Without limiting subclause (2), transitional regulations may provide —
- (a) that a premium paid before an amendment made by the amending Act comes into operation is, on that coming into operation, taken to be an ingoing contribution; and

- (b) that a premium, or part of a premium, repayable under a contract entered into before an amendment made by the amending Act comes into operation is, on that coming into operation, taken to be an exit entitlement; and
  - (c) for any other matter in connection with premiums, ingoing contributions and exit entitlements.
- (6) Without limiting subclause (2), transitional regulations may make provision about the application of an amendment made by the amending Act to persons who had permanently vacated residential premises in a retirement village before the amendment comes into operation.
- (7) If transitional regulations provide that a specified state of affairs is taken to have existed, or not to have existed, on and after a day that is earlier than publication day but not earlier than the day on which the relevant provision of the amending Act came into operation, the regulations have effect according to their terms.
- (8) If transitional regulations contain a provision referred to in subclause (7), the provision does not operate so as to —
  - (a) affect in a manner prejudicial to a person (other than the State or an authority of the State) the rights of that person existing before publication day; or
  - (b) impose liabilities on a person (other than the State or an authority of the State) in respect of an act done or omission made before publication day.

**8. References to administering bodies taken to be references to operators**

A reference in any of the following to an administering body under this Act is taken to be a reference to an operator —

- (a) a written law, including, in particular —
  - (i) regulations under this Act; and
  - (ii) any applicable code;



- (b) an instrument under a written law;
- (c) any other document (including a contract).

**9. Inserted provisions, and regulations under them, extend to existing arrangements**

- (1) Section 6(2) does not have effect in relation to a provision of this Act that is inserted by the amending Act (an *inserted provision*).
- (2) Accordingly, an inserted provision extends to a retirement village, or a contract, agreement, scheme or arrangement, that was in existence before that provision comes into operation.
- (3) Regulations made under an inserted provision extend to a retirement village, or a contract, agreement, scheme or arrangement, that was in existence before the regulations come into operation.
- (4) This clause applies except to the extent that the regulations provide otherwise.

**10. Amendments do not affect existing proceedings**

Despite the other provisions of this Division (including, in particular, clause 9), an amendment made to this Act by the amending Act does not apply to proceedings, including criminal proceedings, that were commenced, but not finally determined, before the amendment comes into operation.

**48. Various references to “administering body” amended**

- (1) In the provisions listed in the Table:
  - (a) delete “administering body” (each occurrence) and insert:  
  
operator

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- (b) delete “administering body’s” (each occurrence) and insert:

operator’s

- (c) delete “administering bodies” (each occurrence) and insert:

operators

**Table**

s. 3(1) def. of <i>premium</i>	s. 3(1) def. of <i>recurrent charge</i>
s. 3(1) def. of <i>residence rules</i>	s. 3(1) def. of <i>retirement village scheme</i> par. (c)
s. 3(1) def. of <i>service contract</i>	s. 5(2)
s. 8(1)(d)	s. 13(3)
s. 17(2)(b)	s. 18(1) to (5)
s. 19(1), (4) and (6)(b) and (c)	s. 20(5)
s. 21(2)(a)	s. 23(1) def. of <i>permanently vacated</i> par. (a) and (d)
s. 23(5) and (6)	s. 24(2) to (4) and (6)(a), (7) and (9)
s. 25(1)	s. 48

s. 55(2)(a) and (b)	s. 56(3)(a) and (b)
s. 57A(1)	s. 57(1)(a), (2)(a)(i) and (ii), (4) and (6)(b)
s. 58(1), (2), (3)(b) and (5)	s. 59(1), (2) and (4)
s. 62(1), (2)(b) and (3)	s. 63(1) and (2)(b)
s. 64(1)(b), (2) and (3)	s. 65
s. 67(1) and (2)	s. 68(1)
s. 69(1) to (3)	s. 70(1) to (4)
s. 75A def. of <i>assets</i>	s. 75A def. of <i>functions</i>
s. 75B(1)(a) to (c), (3), (4), (5)(a) to (c) and (7)	s. 75D(1) def. of <i>other persons</i> par. (a) to (c)
s. 75D(2)	s. 75E(1)(b) and (c) and (3)
s. 75F(2) to (5)	s. 75G(1) def. of <i>external administrator</i>
s. 75G(2) and (4)	s. 75H(2) to (5)
s. 75(6)	s. 76(2)(a)
s. 77C(1)(b)(i)	Sch. 1 cl. 3(1)(a)
Sch. 1 cl. 4(2)(a)(i)	

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Note: The headings to the amended sections listed in the Table are to read as set out in the Table.

**Table**

<b>Amended section</b>	<b>Section heading</b>
s. 25	<b>Operator not to require payment in respect of prescribed matters</b>
s. 48	<b>Reference of certain matters concerning operators</b>
s. 69	<b>Right of operator to compensation if resident abandons premises</b>
s. 75H	<b>Operator to cooperate with statutory manager</b>

- (2) In the heading to Part 3 delete “**administering bodies**” and insert:

**operators**

**49. Various references to gender amended**

Amend the provisions listed in the Table as set out in the Table.

**Table**

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
s. 3(1) def. of <i><b>resident</b></i> par. (b)	his or her	that person’s
s. 9(3)(e)	his or her	the party’s or the resident’s
s. 10	his or her	the Commissioner’s

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
s. 13(6)(b)	representation was to his or her belief a true representation;	person believed the representation was true;
s. 19(5)(b)	his or her	the resident's
s. 64(3)(a)(ii)	his or her	the resident's
s. 66(2)	his or her	the person's
s. 75(8)	him or her after the property purchased by him or her has been registered in his or her name, then that person, subject to the tender to him or her	that person after the property purchased by that person has been registered in that person's name, then that person, subject to the tender to that person
s. 75(8)(a)	his or her nominee, are presented to him or her	the former owner's nominee, are presented to that person
s. 75(8)(b)	his or her nominee any relevant certificate of title in his or her possession or under his or her	the former owner's nominee any relevant certificate of title in that person's possession or under that person's
s. 77C(5)	his or her	an

**50. Various penalties amended**

Amend the provisions listed in the Table as set out in the Table.

**Table**

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
s. 6(3)	Penalty:	Penalty for this subsection: a fine of
s. 11A(1)	Penalty:	Penalty for this subsection: a fine of
s. 13(2)	Penalty:	Penalty for this subsection: a fine of
s. 13(3)	Penalty:	Penalty for this subsection: a fine of
s. 13(4A)	Penalty:	Penalty for this subsection:
s. 13(5)	Penalty:	Penalty for this subsection: a fine of
s. 14A(2)	Penalty:	Penalty for this subsection:
s. 15(1)	Penalty:	Penalty for this subsection: a fine of
s. 15(4)	Penalty:	Penalty for this subsection: a fine of
s. 15(5)	Penalty:	Penalty for this subsection: a fine of
s. 16(1)	Penalty:	Penalty for this subsection: a fine of
s. 16(2)	Penalty:	Penalty for this subsection: a fine of
s. 18(2A)	Penalty:	Penalty for this subsection:
s. 18(3)	Penalty:	Penalty for this subsection:

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
s. 18(5)	Penalty:	Penalty for this subsection:
s. 23(6)	Penalty:	Penalty for this subsection:
s. 24(9)	Penalty:	Penalty for this subsection:
s. 25(1)	Penalty:	Penalty for this subsection:
s. 66(1)	Penalty:	Penalty for this subsection: a fine of
s. 75F(2)	Penalty:	Penalty for this subsection:
s. 75H(3)	Penalty:	Penalty for this subsection:
s. 75H(5)	Penalty:	Penalty for this subsection:
s. 75(6)	Penalty:	Penalty for this subsection: a fine of
s. 76(2)	Penalty:	Penalty for this subsection:
s. 76(4)	Penalty:	Penalty for this subsection:
s. 77B(2)	Penalty:	Penalty for this subsection:
s. 77B(3)	Penalty:	Penalty for this subsection:
s. 77C(5)	Penalty:	Penalty for this subsection:
Sch. 1 cl. 4(5)	Penalty:	Penalty for this subclause:

**51. Various references to proceedings amended**

Amend the provisions listed in the Table as set out in the Table.

**Table**

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
s. 9(1), (2) and (4)	institute (each occurrence)	commence
s. 9(4)	instituted	commenced
s. 9(5)	instituting	commencing
s. 13(6)	any proceedings taken	proceedings
s. 19(6)	will not lie	cannot be commenced
s. 21(2)(a)	brought	commenced
s. 55(2)(b)	proceeding under this section.	proceedings.
s. 56(3)(b)	proceeding under this section.	proceedings.
s. 66(3)	brought	commenced
s. 75B(4)	the proceeding	proceedings
s. 75D(5)	the proceeding	proceedings
s. 76(3) and (5)	any proceeding taken (each occurrence)	proceedings



Note: The headings to the sections listed in the Table are to read as set out in the Table.

**Table**

<b>Amended section</b>	<b>Section heading</b>
s. 9	<b>Commissioner may commence or defend proceedings for party</b>
s. 80	<b>Time for commencing proceedings</b>

**52. Various references to “shall” amended**

Amend the provisions listed in the Table as set out in the Table.

**Table**

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
s. 6(3)	shall	must
s. 9(2)	shall not shall be	must not is
s. 9(3)(a)	shall, on behalf of the resident of the retirement village, have	has, on behalf of the resident of the retirement village,
s. 9(3)(c)	shall	must
s. 9(3)(d)	shall belong and shall be paid shall be borne	are to is payable are to be borne
s. 9(4) and (5)	shall, in the absence of proof to the contrary, be accepted as (each occurrence)	is, in the absence of proof to the contrary,

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<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
s. 9(6)	shall order that the proceedings shall	must order that the proceedings are to
s. 9(7)	shall	are to
s. 11(2)	nothing in this section shall relieve	this section does not relieve
s. 12(1) and (2)	shall (each occurrence)	must
s. 13(1) to (3) and (5)	shall (each occurrence)	must
s. 15(1), (3), (4), (7) and (8)	shall (each occurrence)	must
s. 15(2)	shall not	cannot
s. 16(1) and (2)	shall (each occurrence)	must
s. 18(1) and (4)	shall (each occurrence)	must
s. 19(3)	shall	must
s. 52	shall	must
s. 56(4)	shall have	has
s. 57(3)	shall	must
s. 58(4)	shall	must

<b>Provision</b>	<b>Delete</b>	<b>Insert</b>
s. 59(3)	shall	must
s. 62(2)(a)	shall	must
s. 63(2)(a)	shall	must
s. 65	No proceedings in any shall	Proceedings in a cannot
s. 66(1)	shall	must
s. 68(2)	shall be	is
s. 69(2)	shall	must
s. 75(3)(b)	shall be	are
s. 75(5)	shall	must
s. 75(7)	shall have effect notwithstanding that nothing in this section shall derogate	has effect even if  this section does not derogate
s. 75(8)	shall — shall not be	must — is not
s. 83(1) and (2)	shall (each occurrence)	must

**53. Various references to State Administrative Tribunal amended**

- (1) In the provisions listed in the Table delete “State Administrative” (each occurrence).

**Table**

s. 9(3)(c) and (e) and (6)	s. 17(1)(d)
s. 19(2)	s. 44(1)
s. 48	s. 52(1)
s. 54	s. 55(1) to (3)
s. 56(1) to (4)	s. 57A(2) and (4)
s. 57(1) to (4) and (6)	s. 58(1) to (5)
s. 59(1) to (4)	s. 61
s. 62(1) and (2)	s. 63(1) and (2)
s. 64(1) to (3)	s. 66(1)
s. 67(2)	s. 68(1) and (2)
s. 69(3)	s. 70(1) to (4)
s. 75B(1), (5), (6) and (9)	s. 75D(2) and (4)
s. 75E(1) and (2)	s. 75I(1) and (3)
s. 75(4)	

Note: The headings to the amended sections listed in the Table are to read as set out in the Table.

**Table**

<b>Amended section</b>	<b>Section heading</b>
s. 52	<b>Limits on order by Tribunal</b>
s. 54	<b>Jurisdiction of Tribunal if title to land in question</b>
s. 55	<b>Disputes in relation to residence contracts</b>
s. 61	<b>Tribunal may waive defect in notice of intention to terminate</b>
s. 62	<b>Tribunal may terminate residence contract if resident causes serious damage or injury</b>
s. 63	<b>Tribunal may terminate residence contract if operator would otherwise suffer undue hardship</b>
s. 75B	<b>Tribunal may appoint statutory manager on application of Commissioner</b>
s. 75I	<b>Tribunal may require reports and recommendations from statutory manager</b>

- (2) In the heading to Part 4 Division 5 delete “**State Administrative**”.

**54. Various references to “where” amended**

In the provisions listed in the Table:

- (a) delete “Where” (each occurrence) and insert:

If

- (b) delete “where” (each occurrence) and insert:

if

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**s. 54**

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**Table**

s. 13(3) and (4)	s. 15(3) and (7)
s. 19(3) and (3)(a)	s. 48
s. 56(1)	s. 75(8)
s. 77(2)	

**Part 3 — *Duties Act 2008* amended**

**55. Act amended**

This Part amends the *Duties Act 2008*.

**56. Section 112 amended**

After section 112(5) insert:

- (5A) Duty is not chargeable on a transaction required by the *Retirement Villages Act 1992* Part 3A Division 3 or 4.

**Part 4 — *Rates and Charges (Rebates and Deferments)*  
Act 1992 amended**

**57. Act amended**

This Part amends the *Rates and Charges (Rebates and Deferments) Act 1992*.

**58. Section 29A amended**

- (1) In section 29A(1) delete the definition of *administering body*.
- (2) In section 29A(1) insert in alphabetical order:

*operator*, in relation to a retirement village, has the meaning given to that term in the *Retirement Villages Act 1992* section 3(1);

- (3) In section 29A(3) delete “administering body” and insert:

operator

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