



New South Wales

Retirement Villages Amendment Act 1998 No 61

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Retirement Villages Amendment Act 1998 No 61

Act No 61, 1998

An Act to amend the *Retirement Villages Act 1989* in relation to the continuation of residents' rights and resolution of budgetary disputes; and for other purposes. [Assented to 30 June 1998]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Retirement Villages Amendment Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Retirement Villages Act 1989 No 74

The *Retirement Villages Act 1989* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 5A

Insert after section 5:

5A Application of Act where premises are no longer a retirement village

- (1) This Act extends to:
 - (a) a retired person who, under a residence contract, continues to occupy residential premises in a complex that was a retirement village when the resident entered into the residence contract (even if it is no longer a retirement village), and
 - (b) a person who administers those residential premises or on whose behalf they are administered.
- (2) For that purpose:
 - (a) a reference in this Act to a resident of a retirement village includes a reference to a person described in subsection (1) (a), and
 - (b) a reference in this Act to the administering authority of a retirement village includes a reference to a person described in subsection (1) (b), and
 - (c) the regulations may prescribe such other modifications to this Act.

[2] Section 14 Application to Tribunal relating to disputes—general

Insert “(other than a dispute about the proposed budget for the operation of the village)” after “dispute” in section 14 (1) (a).

[3] Section 14A

Insert after section 14:

14A Application to Tribunal relating to disputes about proposed budget

- (1) A resident, or the administering authority, may apply to the Tribunal for the purpose of resolving a budget impasse.
- (2) For the purposes of this section, a budget impasse occurs if the residents in a retirement village fail to agree to a proposed budget:
 - (a) after all budget consultation processes under any applicable code have been complied with in relation to the budget, or
 - (b) if there are no such processes—after the budget has been the subject of reasonable consultation between the residents and the administering authority, and after the residents have had a reasonable time in which to consider it.
- (3) For the purpose of determining an application made under this section, the Tribunal must have regard to the expenses incurred in operating the village in current and previous years.
- (4) For the purpose of determining an application made under this section, the Tribunal may have regard to the following:
 - (a) the general market level of residents' fees paid at similar retirement villages in the locality of the retirement village concerned or a similar locality.
 - (b) the level and cost of services and facilities desired by the residents,
 - (c) the level and cost of services and facilities provided by the administering authority,
 - (d) the services proposed to be provided in the disputed budget and the proposed allocation of residents' fees to those services,

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- (e) the accommodation provided in the village and the state of repair and general condition of the village,
 - (f) the extent to which the present budget impasse is a continuation of previous budget impasses and the consequences of those previous impasses,
 - (g) any other relevant matter.

The determination of the application must accord with the contractual obligations of the administering authority to provide services and facilities.

- (5) If an application is made under this section, the Tribunal may do one or more of the following:
 - (a) give procedural directions to the parties under section 100 of the *Residential Tenancies Act 1987* to facilitate agreement between the parties concerning the proposed budget (including directions to prepare new costings for services and to meet and discuss disputed matters),
 - (b) make recommendations to the parties about the budget impasse (including recommendations about the cost and type of the services to be provided, the residents' fees proposed and the proposed allocation of those fees to those services),
 - (c) to the extent that any applicable code requires a budget to be agreed to by the residents of the village before the budget can operate—approve, for the purposes of satisfying that requirement, a fair and reasonable budget,
 - (d) having regard to its determinations and recommendations about the matter—make an order that the residents' fees must not exceed an amount specified by the Tribunal.
- (6) An order of the Tribunal made under subsection (5) (d):
 - (a) fixes the maximum residents' fees payable by residents whose residence contracts give the administering authority a discretion in setting residents' fees, and
 - (b) has effect for the period specified in the order, being a period not longer than 12 months.

- (7) The Tribunal cannot make an order under subsection (5) (d) fixing the maximum fees of residents whose residence contracts specify the residents' fees that are payable (including by reference to a fixed formula).
- (8) An order of the Tribunal made under subsection (5) (d):
- (a) is not an order for the payment of money within section 112 of the *Residential Tenancies Act 1987*, and
 - (b) is not an order for the purposes of section 115 of the *Residential Tenancies Act 1987*, breach of which results in an offence under section 125 of that Act.
- (9) If the Tribunal gives directions or makes recommendations for further action under subsection (5), it may adjourn the proceedings under section 91 of the *Residential Tenancies Act 1987* for a report from the parties and, if necessary, take further action under subsection (5) when proceedings resume.
- (10) If a proposed budget the subject of an application made under this section provides for an increase in residents' fees, the onus is on the administering authority to satisfy the Tribunal that the increase is reasonable and necessary.
- (11) In this section:
residents' fees means fees and charges that are periodically payable by residents under their residence contract and that go towards the operating costs of the retirement village, but do not include contributions levied under the *Strata Schemes Management Act 1996* or the *Community Land Management Act 1989*.

[4] Schedule 1 Savings and transitional provisions

Omit "this Act" from clause 2 (1). Insert instead:

the following Acts:

this Act

Retirement Villages Amendment Act 1998

Schedule 1, clause 2 (2)

Omit “the commencement of this Schedule”.

Insert instead “the date of assent to the Act concerned”.

[6] Schedule 1, clause 3

Insert after clause 2:

3 Provision consequent on enactment of Retirement Villages Amendment Act 1998

Section 5A, as inserted by the *Retirement Villages Amendment Act 1998*, only applies to residential premises the subject of that section that cease to be a retirement village after the commencement of that section.

[Minister’s second reading speech made in—
Legislative Assembly on 29 April 1998
Legislative Council on 3 June 1998]