

Passed by both Houses



New South Wales

Retirement Villages Amendment Bill 2018

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2018

Clerk of the Parliaments



New South Wales

Retirement Villages Amendment Bill 2018

Act No , 2018

An Act to amend the *Retirement Villages Act 1999* to give effect to some of the recommendations of the Inquiry into the NSW Retirement Village Sector; and to make consequential amendments to the *Retirement Villages Regulation 2017*.

See also the *Building and Construction Industry Security of Payment Amendment Act 2018*, the *Fair Trading Legislation Amendment (Miscellaneous) Act 2018* and the *Protection of the Environment Operations Amendment (Asbestos Waste) Act 2018*.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Retirement Villages Amendment Act 2018*.

2 Commencement

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

Schedule 1 Amendment of Retirement Villages Act 1999 No 81

[1] Section 20 Copies of certain documents to be available

Insert “resident or” before “prospective resident” wherever occurring in section 20 (1), (3) and (4).

[2] Section 20 (1) (g1)

Insert after section 20 (1) (g):

(g1) the asset management plan for the village referred to in section 101A,

[3] Section 58A Operator to provide safe premises

Omit section 58A (2) (a) and (b). Insert instead:

- (a) ensure that an emergency plan is prepared for the retirement village, and
- (b) ensure that the emergency plan is maintained so that it remains effective, and
- (b1) take reasonable steps to ensure that all residents and staff are familiar with the emergency plan, and

[4] Section 58A (2) (c) and (d)

Omit the paragraphs. Insert instead:

- (c) undertake a safety inspection at least once each calendar year, and make a safety inspection report on the findings of any such inspection, and
- (d) ensure that residents are:
 - (i) notified in writing when a safety inspection is undertaken, and
 - (ii) given access to the safety inspection report if they request it, and

[5] Section 58A (2A)–(2C)

Insert after section 58A (2):

- (2A) An operator commits an offence if the operator contravenes subsection (2) (a).
Maximum penalty: 200 penalty units (in the case of a corporation) or 100 penalty units (in any other case).
Note. Section 189B enables the Secretary to issue guidelines to assist operators in complying with their obligations under subsection (2) (a), (b) and (b1). The Tribunal may take guidelines into account in determining whether there has been compliance with those provisions.
- (2B) The emergency plan for the purposes of subsection (2) (a) and (b) must provide for emergency procedures, including:
 - (a) an effective response to an emergency, and
 - (b) evacuation procedures, and
 - (c) notifying emergency service organisations at the earliest opportunity, and
 - (d) medical treatment and assistance, and
 - (e) effective communication between the operator (or other person authorised by the operator to coordinate the emergency response) and all residents in the village.

- (2C) In preparing and maintaining an emergency plan for the purposes of subsection (2) (a) and (b), the operator of the retirement village must have regard to all relevant matters, including the following:
- (a) the nature of the hazards in the village,
 - (b) the size, location and layout of the village,
 - (c) the number of residents in the village,
 - (d) the evacuation arrangements required for residents with mobility, hearing, visual or other impairments.

[6] Section 58A (3) (a)

Omit “written safety and emergency procedures”. Insert instead “emergency plan”.

[7] Section 58A (3) (d)

Omit the paragraph. Insert instead:

- (d) the manner and form for notifying and giving access to safety inspection reports for the purposes of subsection (2) (d).

[8] Section 58B

Insert after section 58A:

58B Annual emergency evacuation exercises and key safety information display

- (1) The operator of a retirement village must ensure that:
- (a) an evacuation exercise for residents is carried out at least once each calendar year, and
 - (b) key safety information is clearly displayed in communal areas within the retirement village, and
 - (c) key safety information is provided to residents in relation to their residential premises within the retirement village.
- Maximum penalty: 200 penalty units (in the case of a corporation) or 100 penalty units (in any other case).
- Note.** Section 189B enables the Secretary to issue guidelines to assist operators in complying with their obligations under this section. The Tribunal may take guidelines into account in determining whether there has been compliance with this section.
- (2) Each of the following is *key safety information* for the purposes of subsection (1):
- (a) a map indicating the location of assembly areas, exits and fire extinguishers and other emergency equipment for the communal areas and residential premises concerned,
 - (b) instructions concerning the evacuation of residents and staff from the communal areas and residential premises concerned in the event of a fire or other emergency,
 - (c) any other information of a kind prescribed by the regulations.
- (3) The regulations may make provision for or with respect to the following:
- (a) the conduct of evacuation exercises,
 - (b) the display and provision of key safety information.
- (4) A resident of a retirement village who believes in good faith that the operator is contravening subsection (1) may apply to the Tribunal for (and the Tribunal may make) any of the following:

- (a) an order directing the operator to comply with subsection (1),
 - (b) any other order referred to in section 128 (1).
- (5) Nothing in this section limits the obligations of an operator of a retirement village under sections 58 and 58A.

[9] Section 69A

Insert after section 69:

69A Right to request resident's current village contract information meeting

- (1) The operator of a retirement village, if requested in writing by a resident, must:
- (a) meet with the resident at least once each calendar year to explain the resident's current village contract information, and
 - (b) provide a written summary at the meeting of the explanation of the resident's current village contract information.

Note. Section 189B enables the Secretary to issue guidelines to assist operators in complying with their obligations under this section. The Tribunal may take guidelines into account in determining whether there has been compliance with this section.

Maximum penalty: 50 penalty units (in the case of a corporation) or 20 penalty units (in any other case).

- (2) The operator is not required to explain under subsection (1) (a) any information forming part of the resident's current village contract information if the written request for the meeting indicates that the resident has waived an explanation of the information.

Note. However, the operator must still include the information in the written summary provided under subsection (1) (b).

- (3) A resident may, in the written request for the meeting or by a further notice in writing given to the operator, nominate one or more persons to represent the resident at the meeting or to attend the meeting with the resident.
- (4) The operator must ensure that:
- (a) the resident or a nominated representative of the resident is provided with a written reply to a request for a meeting, and
 - (b) if the resident is entitled to a meeting, the meeting is held within 30 days of the request for the meeting being received by the operator.
- (5) An operator commits an offence if the operator contravenes subsection (4) (b).
Maximum penalty: 50 penalty units (in the case of a corporation) or 20 penalty units (in any other case).
- (6) The operator may, in the written reply provided under subsection (4) (a) or by a further notice in writing given to the resident or a nominated representative of the resident, nominate a person to conduct the meeting on behalf of the operator if the person is capable of explaining the resident's current village contract information and answering questions about it.
- (7) A **resident's current village contract information** for the purposes of this section is:
- (a) for a resident who is a registered interest holder—each of the following:
 - (i) the requirements under this Act, the regulations and the village contract for terminating the village contract or selling the residential premises to which the contract relates,
 - (ii) the estimated departure fee (if any) payable by the resident,

- (iii) the resident's liability to pay recurrent charges under section 152,
 - (iv) estimates of any amounts payable by the resident in relation to the sale of the residential premises,
 - (v) the estimated sale price for the residential premises,
 - (vi) the estimated amount that would be payable by the operator to the resident following the sale of the residential premises,
 - (vii) estimates of any other amounts payable by the resident under their village contract (including any amount of capital gain shared with the operator),
 - (viii) any other information concerning the resident's rights or obligations (including after vacating the residential premises) of a kind prescribed by the regulations, or
- (b) for a resident who is not a registered interest holder—each of the following:
- (i) the requirements under this Act, the regulations and the village contract for terminating the village contract,
 - (ii) the estimated departure fee (if any) payable by the resident,
 - (iii) the resident's liability to pay recurrent charges under section 153,
 - (iv) the estimated amount payable by the resident in respect of repairs required to the residential premises in accordance with section 163,
 - (v) the estimated ingoing contribution that would be payable by an incoming resident of the residential premises where this contribution is material to the calculation of estimates under this section,
 - (vi) the estimated amount that would be payable by the operator to the resident following the residential premises being vacated by the resident,
 - (vii) estimates of any other amounts payable by the resident under their village contract (including any amount of capital gain shared with the operator),
 - (viii) any other information concerning the resident's rights or obligations (including after vacating the residential premises) of a kind prescribed by the regulations.
- (8) The operator must ensure that estimated amounts for the purposes of subsection (7) are reasonable estimates that are calculated:
- (a) by reference to a stated date (being either the date of the meeting or a date that is not later than 30 days after the meeting), and
 - (b) as if the stated date was the date on which the resident's right to occupy the residential premises concerned terminated.
- Note.** See sections 180 and 181 for the determination of amounts payable to former occupants.
- (9) An operator commits an offence if the operator provides an estimate for the purposes of subsection (7) that is not reasonable.
Maximum penalty: 200 penalty units (in the case of a corporation) or 100 penalty units (in any other case).
- (10) The regulations may make provision for or with respect to:
- (a) the form of a written summary for the purposes of subsection (1) (b), and

- (b) the keeping of records by operators or former operators of retirement villages concerning the calculation of estimated amounts for the purposes of subsection (7).
- (11) The Secretary may, by notice in writing given to an operator of a retirement village (an *estimate calculation notice*), require the operator to provide, within the period specified in the notice, evidence of the reasonableness of any estimate of an amount for the purposes of subsection (7) made for the purposes of a meeting under this section.
- (12) An operator of a retirement village who fails to comply with an estimate calculation notice within the period for compliance specified in the notice is guilty of an offence.
Maximum penalty: 200 penalty units (in the case of a corporation) or 100 penalty units (in any other case).
- (13) Any resident of a retirement village who believes in good faith that the operator is contravening this section may apply to the Tribunal for (and the Tribunal may make) any of the following:
 - (a) an order directing the operator to comply with a provision of this section,
 - (b) any other order referred to in section 128 (1).

[10] Part 6, Division 5A

Insert after Division 5:

Division 5A Rules of conduct for operators

83A Definition

In this Division:

rules of conduct means rules of conduct prescribed by the regulations for the purposes of section 83B.

83B Rules of conduct for operators may be prescribed by regulations

- (1) The regulations may prescribe rules of conduct for operators for or with respect to professionalism, training, competencies, performance and behaviour in connection with the management or operation of retirement villages.
- (2) Without limiting subsection (1), rules of conduct may make provision for or with respect to the following:
 - (a) knowledge about:
 - (i) the provisions of this Act and the regulations, and
 - (ii) the provisions of the *Strata Schemes Management Act 2015* and the regulations under that Act relevant to the management or operation of retirement villages, and
 - (iii) any other law relevant to the management or operation 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),

- (d) internal dispute resolution measures used in retirement villages,
- (e) training and competencies for operators of retirement villages and their staff.

83C Contravention of offence provisions of rules of conduct

An operator must not contravene a provision of the rules of conduct that is identified by the rules as an offence provision.

Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

[11] Section 101A

Insert after section 101:

101A Asset management plans

- (1) An operator of a retirement village must, in accordance with the regulations, ensure that:
 - (a) an asset management plan for the items of capital for which the operator is responsible is prepared, and
 - (b) the asset management plan is kept up to date.

Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

Note. Section 189B enables the Secretary to issue guidelines to assist operators in complying with their obligations under this section. The Tribunal may take guidelines into account in determining whether there has been compliance with this section.

- (2) Without limiting subsection (1), the regulations may make provision for or with respect to:
 - (a) the preparation, duration and revision of asset management plans, and
 - (b) the information to be recorded in asset management plans, including (but not limited to) information concerning any of the following:
 - (i) the costs associated with both the maintenance or replacement of items of capital,
 - (ii) the reasons for decreases or increases in costs associated with both the maintenance or replacement of items of capital,
 - (iii) the frequency with which costs are incurred in respect of items of capital,
 - (iv) the expected lifespans of items of capital and expected maintenance and replacement requirements.

[12] Section 112 Proposed annual budget

Omit “section 118” from section 112 (10) (b).

Insert instead “Subdivision 1 (Auditing of accounts) of Division 6”.

[13] Section 118

Omit the section. Insert instead:

Subdivision 1 Auditing of accounts

Note. Section 189B enables the Secretary to issue guidelines to assist operators in complying with their obligations under this Subdivision. The Tribunal may take guidelines into account in determining whether there has been compliance with this Subdivision.

118 Definition

In this Subdivision:

qualified auditor means a person who is qualified to audit accounts for the purposes of the *Corporations Act 2001* of the Commonwealth.

118A Requirement for annual audits

The operator of a retirement village must ensure the accounts of the village are audited annually in accordance with this Subdivision.

Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in any other case).

118B Who may carry out audits

The auditing of accounts under this Subdivision must be carried out by a qualified auditor whose appointment as the auditor has received the consent (or is taken to have received the consent) of the residents of the retirement village under this Subdivision.

118C Annual consent by residents for appointment of auditor

- (1) The operator of a retirement village must seek the consent of the residents of the village to the appointment of a person who is a qualified auditor as the auditor of the accounts of the village in the following way:
 - (a) the appointment consent may be sought together with the consent for a proposed annual budget (or an amended annual budget) or separately,
 - (b) the operator must give each resident a written notice (a **consent request notice**) stating the following:
 - (i) the name of the person proposed for appointment,
 - (ii) the qualifications of the person,
 - (iii) the address of the person,
 - (iv) the proposed period of appointment,
 - (c) if audit fees are to be paid by the residents, the fees must be included in the consent request notice and itemised in the proposed annual budget (if any),
 - (d) the consent request notice may be included in the notice required by section 112 (4) if the appointment consent is sought together with the consent for a proposed annual budget (or an amended annual budget),
 - (e) if the appointment consent is sought together with the consent for a proposed annual budget (or an amended annual budget), the appointment consent must be sought by means of a separate vote to the consent for the budget.
- (2) The consent must be sought each calendar year unless consent is given for a longer period of appointment (not exceeding 3 years).
- (3) Within 30 days after receiving a consent request notice, the residents of the retirement village must:
 - (a) meet, consider and vote on:
 - (i) the proposed appointment of the person as the auditor, and
 - (ii) if the proposed period of appointment is more than 1 year—the proposed period, and
 - (b) give the operator notice in writing (a **consent response notice**) that the residents consent, or do not consent, to:

- (i) the appointment of the person as the auditor, and
- (ii) if the residents consent to the appointment but not the proposed period of appointment—the period of appointment to which the residents consent.

Note. Section 114 also provides for the residents of a retirement village to meet, consider and vote on a proposed annual budget within 30 days of a request for consent to the proposed budget.

- (4) If the residents of a retirement village do not consent to the appointment of the person as the auditor:
 - (a) the residents must, by notice in writing given to the operator, propose a qualified auditor as an alternative person on whom the residents have agreed by a vote for appointment, and
 - (b) if the alternative person is appointed, the audit fees of the auditor must be paid by the residents as part of the annual budget.
- (5) A notice under subsection (4) may be given:
 - (a) in the consent response notice, or
 - (b) in a further notice in writing given to the operator, but only if:
 - (i) the intention to provide the further notice is indicated in the consent response notice, and
 - (ii) the further notice is provided within 30 days after the consent response notice is given to the operator.
- (6) The residents of a retirement village are taken to have consented to the appointment of the following person as auditor of the accounts of the village:
 - (a) the person proposed by the operator (but only for a period of 1 year if a longer period was proposed by the operator), if the residents do not advise the operator of the village of their decision as required by subsection (3) (b) or (4),
 - (b) the person proposed by the residents, if the operator of the village agrees to the appointment of an alternative person proposed by the residents under subsection (4).

118D Tribunal may consent to appointment of auditor if disagreement

- (1) An operator of a retirement village who does not agree to the appointment as an auditor of an alternative person proposed under section 118C by the residents of the village may apply to the Tribunal to resolve the dispute over who should be appointed as the auditor.
- (2) The Tribunal may resolve the dispute by consenting to the appointment of either:
 - (a) the person proposed for appointment by the operator, or
 - (b) the person proposed for appointment by the residents.
- (3) However, the Tribunal may consent to the appointment of the person proposed by the operator only if the Tribunal considers that there are exceptional circumstances for doing so.
- (4) The consent of the Tribunal to an appointment of an auditor has effect for the purposes of this Subdivision as if it were consent given by the residents of the retirement village.

118E Quarterly accounts

- (1) Within 28 days after the end of the quarter to which the quarterly accounts relate, or such other period as may be prescribed by the regulations, the operator of a retirement village must provide the Residents Committee (if any) with a copy of the quarterly accounts of the income and expenditure of the village.
Maximum penalty: 20 penalty units.
- (2) If, more than 28 days after the end of the quarter to which the quarterly accounts relate, a resident of the retirement village requests that the operator of the retirement village provide a copy of the quarterly accounts of the income and expenditure for the retirement village, the operator must provide a copy of the accounts to the resident within 7 days after receiving the request.
- (3) The quarterly accounts are not required to be audited.

Subdivision 2 General

[14] Section 119A Accounts not required to be audited in certain cases

Omit “section 118 (1)” from section 119A (1). Insert instead “section 118A”.

[15] Section 119B Quarterly accounts not required to be given to residents in certain circumstances

Omit “section 118 (3)” from section 119B (1). Insert instead “section 118E (1)”.

[16] Section 189B

Insert after section 189A:

189B Secretary may issue guidelines for compliance with certain provisions

- (1) The Secretary may issue guidelines, not inconsistent with this Act or the regulations, to assist operators of retirement villages in complying with their obligations under the following provisions of this Act:
 - (a) section 58A (2) (a), (b) and (b1),
 - (b) section 58B (Annual emergency evacuation exercises and key safety information display),
 - (c) section 69A (Right to request resident’s current village contract information meeting),
 - (d) section 101A (Asset management plans),
 - (e) Subdivision 1 (Auditing of accounts) of Division 6 of Part 7.
- (2) The guidelines:
 - (a) may be amended, revoked or replaced, and
 - (b) are to be published in the Gazette.
- (3) The Tribunal may take into account guidelines that relate to a provision of this Act in determining whether or not the operator of a retirement village has complied with the provision.

[17] Section 197B

Insert after section 197A:

197B Provision, sharing and publication of relevant village information

- (1) The regulations may make provision for or with respect to:
 - (a) the provision of relevant village information to the Secretary, and
 - (b) the publication of relevant village information, and
 - (c) the exchange and sharing of relevant village information by government agencies.
- (2) Nothing in this section authorises the regulations to provide for the publication, exchange or sharing of relevant village information in a way that contravenes the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.
- (3) In this section:

government agency means:

 - (a) a public authority constituted by or under an Act, or
 - (b) a NSW Government agency, or
 - (c) a Public Service agency, or
 - (d) a council (within the meaning of the *Local Government Act 1993*) or other local authority, or
 - (e) a State owned corporation.

relevant village information means each of the following:

 - (a) the name, address and contact details for a retirement village and its operator,
 - (b) information about a Residents Committee of a retirement village,
 - (c) the number of units in a retirement village,
 - (d) the resident right types in a retirement village,
 - (e) any enforcement or disciplinary action taken against the operator of a retirement village,
 - (f) any complaints received by the Secretary about a retirement village or its operator,
 - (g) information about complaints handled internally by the operator of a retirement village,
 - (h) information concerning village contracts or pricing,
 - (i) demographic information about residents and staff of a retirement village,
 - (j) any other information about the management and operation of a retirement village.

[18] Section 203 Regulations

Insert at the end of section 203 (2) (c):

- , and
- (d) the mediation of disputes arising under this Act, including:
 - (i) the selection and qualifications of mediators, and
 - (ii) providing for when mediation is mandatory, and

- (iii) payments for mediation sessions, and
- (iv) participation in, and the conduct of, mediation sessions, and
- (v) the use of statements and documents from mediation sessions as evidence in legal proceedings, and
- (vi) obligations of confidentiality in connection with mediation sessions, and
- (vii) limiting the civil liability of mediators for acts or omissions that were done or omitted to be done in good faith for the purposes of mediation sessions.

[19] Section 203 (3)

Omit the subsection. Insert instead:

- (3) The regulations may create an offence punishable by a penalty not exceeding:
 - (a) in the case of a corporation—100 penalty units, and
 - (b) in any other case—50 penalty units.

[20] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

any Act that amends this Act

Schedule 2 Consequential amendment of Retirement Villages Regulation 2017

[1] Schedule 5 Penalty notice offences

Omit the matters relating to section 118 (1) and (3) of the *Retirement Villages Act 1999* in **Offences under the Act**.

[2] Schedule 5

Insert in appropriate order in **Offences under the Act**:

Section 58A (2A)	2,200 (in the case of a corporation) or 1,100 (in any other case)
Section 58B (1)	2,200 (in the case of a corporation) or 1,100 (in any other case)
Section 69A (1)	550 (in the case of a corporation) or 220 (in any other case)
Section 69A (5)	550 (in the case of a corporation) or 220 (in any other case)
Section 69A (12)	2,200 (in the case of a corporation) or 1,100 (in any other case)
Section 118A	2,200 (in the case of a corporation) or 1,100 (in any other case)
Section 118E (1)	440

[3] Schedule 5

Insert in appropriate order in **Offences under the Act**:

Section 101A (1)	2,200 (in the case of a corporation) or 1,100 (in any other case)
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