



New South Wales

Retirement Villages Amendment Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Retirement Villages Act 1999* (the *principal Act*) as follows:

- (a) to provide for the circumstances in which the statement of approved expenditure in relation to a retirement village may be amended in order to authorise further expenditure,
- (b) to make it clear that any liability to pay recurrent charges for personal services (except for those already provided) ceases, in the case of a resident who has moved out or died, when the resident moves out or when the operator of the retirement village is notified of the resident's death,
- (c) to clarify the operation of the principal Act in relation to the assignment of residence contracts and the rights of residents or former occupants to sublet premises,
- (d) to bring forward the due date for the review of the principal Act,
- (e) to make other miscellaneous amendments of a minor or machinery nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Retirement Villages Act 1999* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] and [10] will ensure that a former resident owner of premises in a retirement village (or the estate of such a person) may let or sublet the premises without first having to hand back possession of the premises to the village operator.

Schedule 1 [3] substitutes section 117 of the principal Act to provide that, if the residents of a retirement village do not consent to the statement of approved expenditure (ie the village budget) being amended by the operator, the operator may apply to the Consumer, Trader and Tenancy Tribunal for an order approving the proposed amendment. The Tribunal may, in the case of an amendment that relates to further expenditure, approve the amendment only if there is an urgent need for the further expenditure and the expenditure was not reasonably foreseeable when the statement of approved expenditure was initially approved. **Schedule 1 [2]** is a consequential amendment.

Schedule 1 [4] and [5] will ensure that an assignable lease does not terminate when the resident dies or moves out but rather is assigned to the incoming resident.

Schedule 1 [6] and [7] make it clear that the extended meaning of *owner* for the purposes of Part 10 of the principal Act (which deals with the vacation of premises) will cover a resident (or former occupant) whose residence contract is subject to a registered long-term lease (ie a lease that has a term of at least 50 years or is for the life of the lessee) and which includes a provision that entitles the resident or former occupant to at least 50% of any capital gains in respect of the premises.

Schedule 1 [8] provides that the liability to pay recurrent charges for personal services provided by the operator of a retirement village (such as meals, cleaning and laundry services) ceases, in the case of a resident who has moved out or died, as from the date the resident moved out or as from the date on which the operator is notified of the resident's death. **Schedule 1 [9]** is a consequential amendment.

Schedule 1 [11] provides for the review of the principal Act (which is currently due to be undertaken as soon as possible after 3 December 2004) to be brought forward to as soon as possible after the date of assent to the proposed Act.

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Schedule 1 [12] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

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No. , 2004

A Bill for

An Act to amend the *Retirement Villages Act 1999* to make further provision with respect to the rights and obligations of residents of retirement villages; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Retirement Villages Amendment Act 2004*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Retirement Villages Act 1999 No 81

The *Retirement Villages Act 1999* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 8 “Permanent vacation” of residential premises

Insert “or is taken to be an owner because of section 150 (1) (b)” after “the operation of section 4 (2)” in section 8 (d).

[2] Section 116 Expenditure to be in accordance with statement of approved expenditure

Insert “or any amendment authorised under section 117” after “approved expenditure” in section 116 (3).

[3] Section 117

Omit the section. Insert instead:

117 Amendment of statement of approved expenditure

- (1) The operator may seek the consent of the residents to amend the statement of approved expenditure.
- (2) If the residents consent to the amendment, the operator is authorised to expend money in accordance with the amended statement of approved expenditure.
- (3) If the residents do not consent to the amendment, the operator may apply to the Tribunal for an order approving the amendment. If the Tribunal makes such an order, the operator is authorised to expend money in accordance with the amended statement of approved expenditure.
- (4) In the case of an amendment that relates to further expenditure, the Tribunal is not to make an order under subsection (3) unless the Tribunal is satisfied that:
 - (a) there is an urgent need for the further expenditure, and
 - (b) the further expenditure was not reasonably foreseeable when the statement of proposed expenditure was approved under section 116.

[4] Section 129 How and when residence right or contract is terminated	1 2
Insert after section 129 (1):	3
(1A) A residence right arising from a residence contract that is in the form of an assignable lease terminates on the assignment of the lease.	4 5 6
[5] Section 129 (2)	7
Insert “or premises that are subject to an assignable lease” after “other than premises owned by the resident”.	8 9
[6] Section 150 References to “owner” and sale of “residential premises”	10 11
Omit section 150 (1) (b). Insert instead:	12
(b) who does not own the premises but whose residence contract:	13 14
(i) is in the form of a registered long-term lease, and	15
(ii) includes a provision that entitles the resident or former occupant to at least 50% of any capital gains in respect of the premises.	16 17 18
[7] Section 150 (3)	19
Insert at the end of the section:	20
(3) For the purpose of subsection (1) (b), <i>registered long-term lease</i> means a lease registered under the <i>Real Property Act 1900</i> that:	21 22 23
(a) has a term of at least 50 years (inclusive of any option to renew), or	24 25
(b) is for the life of the lessee.	26
[8] Section 151 Recurrent charges in respect of personal services	27
Omit section 151 (1). Insert instead:	28
(1) A resident of a retirement village who is temporarily absent from the village for a period of at least 28 days is not liable to pay, in respect of the remainder of that period of absence, recurrent charges for personal services.	29 30 31 32

(1A)	In the case where the resident concerned has moved out or died, the liability to pay recurrent charges for personal services ceases as from the date the resident moved out or the date on which the operator is notified of the resident's death, as the case may be. However, any such liability does not cease in relation to services provided before that date.	1 2 3 4 5 6
[9]	Section 151 (3)	7
	Omit the subsection.	8
[10]	Section 174 Letting or subletting of premises	9
	Insert after section 174 (1):	10
	Note. As a consequence of section 8 (d), a resident or former occupant may retain possession of residential premises (ie they are not required to hand over the keys to the operator) in order to enable the premises to be let or sublet.	11 12 13 14
[11]	Section 208 Review of Act	15
	Omit section 208 (2) and (3). Insert instead:	16
	(2) The review is to be undertaken as soon as possible after the commencement of the <i>Retirement Villages Amendment Act 2004</i> .	17 18 19
	(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the commencement of the <i>Retirement Villages Amendment Act 2004</i> .	20 21 22 23
[12]	Schedule 4 Savings, transitional and other provisions	24
	Insert at the end of clause 1 (1):	25
	<i>Retirement Villages Amendment Act 2004</i>	26