

South Australia



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ELIZABETHAE II REGINAE
A.D. 2001

RETIREMENT VILLAGES (MISCELLANEOUS) AMENDMENT ACT 2001

No. 59 of 2001

[Assented to 22 November 2001]

An Act to amend the Retirement Villages Act 1987 and to make a related amendment to the Residential Tenancies Act 1995.

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The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Retirement Villages (Miscellaneous) Amendment Act 2001*.
- (2) The *Retirement Villages Act 1987* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 3—Interpretation

3. Section 3 of the principal Act is amended—

- (a) by striking out the definitions of "the Commission" and "the Commissioner";
- (d) by inserting after its present contents (as amended and now to be designated as subsection (1)) the following subsection:

(2) For the purposes of this Act, a person will be taken to cease to reside in a retirement village, or to have left a retirement village, when the person vacates his or her unit and indicates to the administering authority (either expressly or by his or her actions) that he or she does not intend to continue to reside in the retirement village.

Repeal of s. 5

4. Section 5 of the principal Act is repealed.

Amendment of s. 6—Creation of residence rights

5. Section 6 of the principal Act is amended—

- (a) by inserting in subsection (3) "unless the resident elects to rely on the contractual term rather than the statement (and then the contractual term will prevail to the extent of any inconsistency)" after "contractual term";
- (b) by striking out from subsection (3a) "the Commissioner" and substituting "the Minister".

Amendment of s. 8—Premiums

6. Section 8 of the principal Act is amended by striking out from subsection (2) "The Commissioner" and substituting "The Minister".

Amendment of s. 9A—Arrangements if resident is absent or leaves

7. Section 9A of the principal Act is amended—

- (a) by striking out from subsection (2) "in circumstances in which there is no reasonable prospect of the resident returning to reside in the retirement village";
- (b) by striking out paragraph (b) of subsection (2) and substituting the following paragraph:

(b) the administering authority must assume responsibility for the payment of any maintenance or other recurrent charges in respect of the unit occupied by the resident before he or she left the retirement village, or otherwise payable by the resident in connection with the retirement village (other than with

respect to any amount attributable to a charge accrued before the resident left the retirement village).;

(c) by inserting after subsection (2) the following subsections:

(2a) If—

(a) an administering authority must assume responsibility for maintenance or other recurrent charges on account of a resident ceasing to reside in a retirement village; and

(b) the resident is entitled to the repayment (in whole or in part) of a premium,

then the administering authority is entitled, subject to subsection (2b), to recover from the resident an amount equal to the amount paid by the administering authority for maintenance or other recurrent charges that would otherwise have been payable by the resident over the prescribed period.

(2b) An amount recoverable under subsection (2a)—

(a) cannot exceed the amount of premium repayable to the resident (and if it would exceed that amount, the amount recoverable under subsection (2a) must be reduced so as to equal the amount of premium repayable to the resident); and

(b) cannot be recovered until the premium is due to be repaid to the resident (and may then be recovered as a deduction from the premium repayable to the resident).

(2c) For the purposes of subsection (2a), the **prescribed period**, in relation to a resident who has ceased to reside in a retirement village, is—

(a) unless paragraph (b) applies—the period of six months from the date on which the resident ceased to reside in the retirement village; or

(b) if the Tribunal has, on the application of the administering authority, determined that the prescribed period for the purposes of that subsection should in the circumstances of the particular case be longer than six months—the period determined by the Tribunal,

subject to the qualification that the prescribed period will in any event come to an end when the unit occupied by the resident before he or she left the retirement village is resold or relicensed, or otherwise taken over or occupied by another resident.

(2d) The Tribunal should not make a determination extending the prescribed period under subsection (2c) unless the Tribunal is satisfied that in the circumstances of the particular case it would be harsh and unreasonable to limit the prescribed period to six months.

(2e) If—

- (a) a resident is liable to pay any amount in respect of any other charges that may accrue after he or she has ceased to reside in a retirement village; and
- (b) the resident is entitled to the repayment (in whole or in part) of a premium,

then the administering authority is not entitled to recover any such amount until the premium is due to be repaid to the resident (and the amount may then be recovered as a deduction from the premium repayable to the resident).

(2f) If an administering authority does not make one or more payments for which the administering authority must assume responsibility under subsection (2)(b) at the same time as the resident would have been required to make the payments if he or she had remained in the retirement village, the administering authority—

- (a) must keep a record of the outstanding payments, and identify them in any relevant financial statements prepared for the purposes of this Act (while those payments remain outstanding); and
- (b) must not attempt to recover the outstanding payments by increasing the maintenance or other recurrent charges payable by other residents.

Amendment of s. 10—Meetings of residents

8. Section 10 of the principal Act is amended—

- (a) by striking out from subsection (5)(a)(i) "a statement" and substituting "an audited statement";
- (b) by striking out from subsection (6)(b)(i) "a balance sheet" and substituting "an audited balance sheet";
- (c) by striking out from subsection (6)(b)(ii) "a balance sheet" and substituting "an audited balance sheet";
- (d) by inserting after subsection (12) the following subsection:

(13) An audit required under this section must be conducted by a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

Insertion of s. 10AAA

9. The following section is inserted after section 10 of the principal Act:

Interim financial reports

10AAA. (1) An administering authority must, on the request of a resident or a residents' committee, provide an interim financial report that incorporates—

- (a) a statement of income received from residents, and expenditure of that income, for the relevant accounting period; and
- (b) a statement of estimates of income from residents, and expenditure of that income, for the balance of the financial year; and

- (c) a statement of income (from any source), and expenditure, for the relevant accounting period in respect of any contingency, sinking or other reserve fund or account established for the purpose of capital replacement or improvements, irregular long-term maintenance, or other similar items; and
- (d) a statement of estimates of income (from any source), and expenditure, for the balance of the financial year in respect of any fund or account referred to in paragraph (c); and
- (e) such other information as the regulations may require.

(2) The **relevant accounting period** that applies with respect to a request under subsection (1) is the period from the beginning of the financial year in which the request is made to the end of the last completed quarter for that financial year (as determined at the time of the making of the request).

(3) The administering authority must ensure that information provided under subsection (1) complies with any standard or principle prescribed by the regulations.

(4) An interim financial report must be provided within 21 days after the request is made.

(5) If a contravention of subsection (1), (3) or (4) occurs, the administering authority is guilty of an offence.

Maximum penalty: \$5 000.

(6) If—

- (a) a request is made under subsection (1); and
- (b) the administering authority, on receiving the request, indicates that a fee of, or not exceeding, a specified amount will be payable to cover the cost of preparing and providing the relevant report; and
- (c) the specified amount is reasonable in the circumstances,

then the administering authority may, in connection with providing the report under subsection (1), require the payment of an amount not exceeding the amount so specified.

(7) For the purposes of this section, a quarter of a financial year is any of the periods of three calendar months that together make up the financial year that applies in relation to the relevant retirement village.

Amendment of s. 14—Tribunal may resolve disputes

10. Section 14 of the principal Act is amended by striking out the penalty provision at the foot of subsection (10) and substituting the following provision:

Maximum penalty: \$10 000.

Amendment of s. 16—Lease of land in retirement village

11. Section 16 of the principal Act is amended by striking out from subsection (2) "the Commissioner" and substituting "the Minister".

Amendment of s. 17—Termination of retirement village scheme

12. Section 17 of the principal Act is amended by striking out from subsection (2) "The Commissioner" and substituting "The Minister".

Amendment of s. 18—Certain persons not to be involved in the administration of a retirement village

13. Section 18 of the principal Act is amended by striking out from subsection (2)(a) "*Companies (South Australia) Code*" and substituting "*Corporations Act 2001 of the Commonwealth*".

Amendment of s. 22—Offences

14. Section 22 of the principal Act is amended by striking out "the Commissioner" wherever occurring and substituting, in each case, "the Minister".

Insertion of s. 22A

15. The following section is inserted after section 22 of the principal Act:

Delegation

22A. (1) The Minister may delegate a power or function vested in or conferred on the Minister by or under this Act—

- (a) to a particular person or body; or
- (b) to the person for the time being holding or acting in a particular office or position.

(2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.

(3) A delegation—

- (a) may be absolute or conditional; and
- (b) does not derogate from the power of the delegator to act in a matter; and
- (c) is revocable at will by the delegator.

Amendment of s. 23—Regulations

16. Section 23 of the principal Act is amended—

(a) by inserting after paragraph (bb) of subsection (2) the following paragraph:

(bc) require the preparation, and the provision to residents (or prospective residents), of policies relating to matters prescribed by the regulations;;

(b) by striking out from subsection (3)(b) "the Commissioner" and substituting "the Minister".

Amendment of Schedule 1

17. Schedule 1 of the principal Act is amended—

(a) by striking out from subclause (1)(c) "the Commission" and substituting "the Corporate Affairs Commission";

- (b) by striking out from subclause (2) "the Commission" and substituting "the Australian Securities and Investments Commission".

Amendment of Schedule 3

18. Schedule 3 of the principal Act is amended by striking out the penalty provision at the foot of clause 5(2) and substituting the following provision:

Maximum penalty: \$2 500.

Amendment of Residential Tenancies Act 1995

19. The *Residential Tenancies Act 1995* is amended by striking out the penalty provision that appears at the foot of section 36(2) and substituting the following provision:

Maximum penalty: \$10 000.

Transitional provisions

20. (1) Subject to subsections (2) and (3), the amendments effected to section 9A of the principal Act by section 7(b) and (c) of this Act do not apply with respect to a resident who entered into the relevant residence contract before the commencement of this section (and section 9A(2)(b) of the principal Act, as in existence immediately before that commencement, will continue to apply).

(2) If, on 1 January 2004, a resident who entered into the relevant residence contract before the commencement of this section has ceased to reside in the retirement village and is paying (or is liable to pay) for maintenance or other recurrent charges in respect of the unit occupied by the resident before he or she left the retirement village, or otherwise in connection with the retirement village, then—

- (a) the administering authority must immediately assume responsibility for the payment of those charges (but not so as to assume responsibility for any charge accrued before 1 January 2004); and
- (b) section 9A of the principal Act, as amended by this Act, will apply with respect to the resident but subject to the qualification that the prescribed period under subsection (2a) of that section will be taken to be a period commencing on 1 January 2004 and ending—
 - (i) on 30 June 2004, or such later date as may be determined by the Tribunal in accordance with the provisions of section 9A of the principal Act; or
 - (ii) when the unit occupied by the resident before he or she left the retirement village is resold or relicensed,

whichever is the earlier.

(3) If, on or after 1 January 2004, a resident who entered into the relevant residence contract before the commencement of this section ceases to reside in the retirement village, then section 9A of the principal Act, as amended by this Act, will apply with respect to the resident.

(4) The Governor may, by regulation, make any other provision of a saving or transitional nature consequent on the enactment of this Act.