



ANNO TRICESIMO NONO

ELIZABETHAE II REGINAE

A.D. 1990

No. 12 of 1990

An Act to amend the Retirement Villages Act, 1987.

[Assented to 12 April 1990]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Retirement Villages Act Amendment Act, 1990*.
- (2) The *Retirement Villages Act, 1987*, is referred to in this Act as "the principal Act".

Commencement

2. (1) Subject to subsection (2), this Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7 will be taken to have come into operation on 30 June, 1987.

Interpretation

3. Section 3 of the principal Act is amended by inserting after the definition of "the Commission" the following definition:
 "the Commissioner" means the Commissioner for Consumer Affairs:.

Substitution of s. 5

4. Section 5 of the principal Act is repealed and the following section is substituted:

Administration

5. The Commissioner is responsible, subject to the control and direction of the Minister, for the administration of this Act.

Creation of residence rights

5. Section 6 of the principal Act is amended—
 - (a) by striking out subsections (2), (3) and (4) and substituting the following subsections:
 - (2) Before a person enters into a residence contract, the administering authority must give that person—
 - (a) a statement in the prescribed form completed by the administering authority containing the information required by the regulations;

(b) a notice in the prescribed form of the person's rights under this section;

(c) a copy of the residence rules;

(d) a checklist in the form of schedule 2;

and

(e) any other prescribed documents.

(3) Where a person enters into a residence contract, the contract will be taken to include a warranty on the part of the administering authority of the correctness of the information contained in the statement under subsection (2) (a) (subject to any written alteration to the statement made by the administering authority with the consent of the resident on or before the signing of the contract by the administering authority), and that warranty prevails over any inconsistent contractual term.

(3a) An administering authority must not, without the approval of the Commissioner—

(a) make a representation to a prospective resident that is inconsistent with information contained in a statement given to the prospective resident under subsection (2) (a);

(b) give to a prospective resident a statement under subsection (2) (a) that contains information that is inconsistent with a representation made by the administering authority to the prospective resident.

(3b) For the purposes of subsection (3a), a representation made by an employee or agent of an administering authority will be taken to be a representation of the administering authority unless the administering authority proves that the person was not acting in the course of his or her employment or agency.

(4) A resident or prospective resident is entitled to rescind the residence contract—

(a) at any time within 15 business days after the date of the contract;

or

(b) if subsection (2) is not complied with—at any time before the expiration of 15 business days after the date on which the documents required under that subsection are given to the resident or prospective resident.;

and

(b) by inserting after subsection (5) the following subsection:

(6) If a provision of this section is not observed, the administering authority is guilty of an offence.

Penalty: Division 3 fine.

Premiums

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

Contractual rights of residents

7. Section 9 of the principal Act is amended by inserting after subsection (4) the following subsection:

(4a) The charge referred to above ranks in priority to any other mortgage, charge or encumbrance over the land to which the charge relates.

Lease of land in retirement village

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

Termination of retirement village scheme

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

Offences

10. Section 22 of the principal Act is amended—

(a) by striking out from subsection (2) "the Commission" twice occurring and substituting, in each case, "the Commissioner";

and

(b) by inserting after subsection (2) the following subsection:

(2a) In proceedings for an offence against this Act, a document apparently signed by the Commissioner that appears to be an authorization for the purposes of subsection (2) will be accepted, in the absence of proof to the contrary, as proof of such an authorization.

Regulations

11. Section 23 of the principal Act is amended—

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

(ba) provide that a residence contract or other document required under this Act must be printed or typewritten (apart from insertions or amendments) in type of a prescribed kind and size;;

and

(b) by striking out from paragraph (b) of subsection (3) "the Commission" and substituting "the Commissioner".

Revision of penalties

12. The principal Act is further amended in the manner set out in the schedule.

SCHEDULE

Provision Amended	How Amended
Section 4 (4)	Strike out "\$5 000" and substitute "Division 5 fine".
Section 7 (8)	Strike out "\$5 000" and substitute "Division 5 fine".
Section 8 (3)	Strike out "\$5 000" and substitute "Division 5 fine".
Section 8 (5)	Strike out "\$20 000" and substitute "Division 3 fine".
Section 10 (11)	Strike out "\$10 000" and substitute "Division 4 fine".
Section 12 (1)	Strike out "\$2 000" and substitute "Division 7 fine".
Section 12 (2)	Strike out "\$2 000" and substitute "Division 7 fine".
Section 14 (3)	Strike out "\$2 000" and substitute "Division 7 fine".
Section 15 (2)	Strike out "\$20 000" and substitute "Division 3 fine".
Section 16 (4)	Strike out "\$5 000" and substitute "Division 5 fine".
Section 18 (1)	Strike out "\$20 000" and substitute "Division 3 fine".
Section 23 (2) (c)	Strike out "\$2 000" and substitute "a Division 7 fine".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor