



New South Wales

Retirement Villages Amendment Bill 2018

Explanatory note

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

The following Bills are cognate with this Bill:

Building and Construction Industry Security of Payment Amendment Bill 2018

Fair Trading Legislation Amendment (Miscellaneous) Bill 2018

Protection of the Environment Operations Amendment (Asbestos Waste) Bill 2018

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Retirement Villages Act 1999* (the ***principal Act***) to give effect to some of the recommendations of the Inquiry into the NSW Retirement Village Sector concerning the following:
 - (i) emergency plans and safety inspections for retirement villages,
 - (ii) annual emergency evacuation exercises and the display of key safety information for retirement villages,
 - (iii) operators of retirement villages explaining certain village contract information to residents if requested,
 - (iv) rules of conduct for operators of retirement villages,
 - (v) asset management plans for retirement villages,
 - (vi) consent from residents of retirement villages to the appointment of auditors of accounts,

- (vii) the provision, sharing and publication of certain information about retirement villages,
- (viii) the mediation of disputes under the principal Act, and
- (b) to make related and consequential amendments to the principal Act, and
- (c) to make consequential amendments to the *Retirement Villages Regulation 2017*.

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 a day or days to be appointed by proclamation.

Schedule 1 Amendment of Retirement Villages Act 1999 No 81

Emergency plans and safety inspections

Schedule 1 [3] requires the operator of a retirement village to:

- (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
- (c) take reasonable steps to ensure that all residents and staff are familiar with the emergency plan.

Schedule 1 [4] requires the operator of a retirement village to:

- (a) undertake a safety inspection at least once each calendar year, and make a safety inspection report on the findings of any such inspection, and
- (b) 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.

Schedule 1 [5] makes it an offence for an operator not to ensure that an emergency plan is prepared. The maximum penalty for the offence will be 200 penalty units (\$22,000) in the case of a corporation or 100 penalty units (\$11,000) in any other case. **Schedule 1 [5]** also provides for what must be included in an emergency plan and how it must be prepared and maintained.

Schedule 1 [6] and [7] make consequential amendments.

Annual emergency evacuation exercises and display of key safety information

Schedule 1 [8] requires the operator of a retirement village to 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.

It will be an offence for an operator not to ensure these matters. The maximum penalty for the offence will be 200 penalty units (\$22,000) in the case of a corporation or 100 penalty units (\$11,000) in any other case.

A resident will also be able to apply to the Civil and Administrative Tribunal for certain orders to remedy non-compliance.

Meetings to explain village contract information to residents

Schedule 1 [9] requires the operator of a retirement village, if requested in writing by a resident, to:

- (a) meet with the resident at least once each calendar year to explain certain information about the resident's current village contract, and
- (b) provide a written summary at the meeting of the explanation of the resident's current village contract information.

The resident may nominate one or more persons to represent the resident at the meeting or attend the meeting. The operator may 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.

It will be an offence for an operator not to ensure that a meeting is held within 30 days of the request for the meeting being received by the operator. The maximum penalty for the offence will be 50 penalty units (\$5,500) in the case of a corporation or 20 penalty units (\$2,200) in any other case.

It will also be an offence for an operator to provide estimates for certain fees and charges that are not reasonable. The Secretary may, by written notice, require an operator to provide evidence of the reasonableness of an estimate. Again, a failure to comply with the notice will be an offence. The maximum penalty for the offence will be 200 penalty units (\$22,000) in the case of a corporation or 100 penalty units (\$11,000) in any other case.

A resident will also be able to apply to the Civil and Administrative Tribunal for certain orders to remedy non-compliance.

Rules of conduct for operators of retirement villages

Schedule 1 [10] enables the regulations to 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.

It will be an offence for an operator of a retirement village to contravene a provision of the rules of conduct that is identified by the rules as an offence provision. The maximum penalty for the offence will be 100 penalty units (\$11,000) in the case of a corporation or 50 penalty units (\$5,500) in any other case.

Asset management plans

Schedule 1 [11] requires the operator of a retirement village to ensure, in accordance with the regulations, 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.

It will be an offence for an operator not to ensure these matters. The maximum penalty for the offence will be 100 penalty units (\$11,000) in the case of a corporation or 50 penalty units (\$5,500) in any other case. **Schedule 1 [2]** makes a consequential amendment.

Consent for appointment of auditors

Schedule 1 [13] replaces section 118 of the principal Act with a new Subdivision that makes the following reforms with respect to the appointment of auditors of the accounts of retirement villages:

- (a) operators of retirement villages will be required to seek consent from the residents of the village for the appointment of an auditor each calendar year unless the residents consent to a longer appointment period (not exceeding 3 years),
- (b) the residents must propose an alternative auditor if they disagree with the auditor proposed by the operator,

- (c) the Civil and Administrative Tribunal will have jurisdiction to consent to an appointment if there is a disagreement between the operator and residents.

Schedule 1 [13] also increases the maximum penalty for an operator not ensuring that the accounts for the retirement village are audited each year from 50 penalty units (\$5,500) to 100 penalty units (\$11,000) in the case of a corporation or 50 penalty units (\$5,500) in any other case.

Schedule 1 [12], [14] and [15] make consequential amendments.

Provision, sharing and publication of information about retirement villages

Schedule 1 [1] requires the operator of a retirement village to make certain documents concerning the village also available for inspection by residents as well as prospective residents.

Schedule 1 [17] enables the regulations to make provision for or with respect to:

- (a) the provision of certain village information (called *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.

However, the regulations will not be permitted 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*.

Mediation of disputes

Schedule 1 [18] enables the regulations to make provision for the mediation of disputes arising under the principal Act.

Related amendments

Schedule 1 [16] enables the Secretary to issue guidelines to assist operators of retirement villages in complying with their obligations under certain provisions to be inserted in the principal Act by the proposed Act. It also allows the Civil and Administrative Tribunal to take the guidelines into account in determining whether or not the operator of a retirement village has complied with the provision to which the guidelines relate.

Schedule 1 [19] enables the regulations to create an offence for a corporation punishable by a penalty not exceeding 100 penalty units (\$11,000). Currently, regulations may provide for penalties not exceeding 50 penalty units (currently \$5,500) regardless of whether or not the offence is committed by a corporation.

Schedule 1 [20] enables the regulations to make provision for matters of a savings or transitional nature consequent on the enactment of any Act that amends the principal Act (including the proposed Act).

Schedule 2 Consequential amendment of Retirement Villages Regulation 2017

Schedule 2 makes consequential amendments to the *Retirement Villages Regulation 2017* concerning the prescription of penalty notice offences in respect of offences resulting from amendments made by Schedule 1.