



New South Wales

# Retirement Villages Amendment Bill 2020

## 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* as follows—

- (a) to enable the Secretary of the Department of Customer Service to make an order requiring an operator of a retirement village to pay a resident of the retirement village the amount that the resident will be entitled to once the resident's residential premises are sold (the *exit entitlement*) in circumstances where the resident has moved out or intends to move out, and the premises have not yet been sold,
- (b) to require an operator of a retirement village to pay part of the resident's exit entitlement directly to an aged care facility in which the resident resides or proposes to reside as payment for the accommodation in the facility, instead of paying the exit entitlement to the resident, in certain circumstances where the premises in the retirement village have not yet been sold,
- (c) to provide that a former resident of residential premises in a retirement village is not required to pay recurrent charges to the operator of the retirement village once 42 days have passed since the former resident permanently vacated the premises,
- (d) to make other minor and consequential amendments.

The Bill also makes a minor amendment to an uncommenced provision in the *Retirement Villages Amendment Act 2018* that relates to asset management plans prepared by operators of retirement villages.

## 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**

### Preliminary

**Schedule 1[13]** inserts proposed Part 10AA into the *Retirement Villages Act 1999*, comprising proposed sections 182AA–182AL. **Proposed section 182AA** sets out the definitions used in proposed Part 10AA.

### Exit entitlement orders

**Proposed section 182AB** provides that a former resident in a retirement village (the *former occupant*) may apply to the Secretary of the Department of Customer Service (the *Secretary*) for an order directing the operator of the retirement village (the *operator*) to pay the former occupant's exit entitlement in certain circumstances where the premises are not yet sold. An order is an *exit entitlement order*.

A former occupant may apply for an exit entitlement order only if an agreed valuation has been calculated. An *agreed valuation* means an estimate of the value of a former occupant's residential premises agreed to by the former occupant and the operator or determined by an independent valuer.

**Proposed section 182AI** provides that, if a former occupant and an operator cannot agree on an estimate of the value of the former occupant's premises, the value must be determined by an independent valuer.

**Proposed section 182AC** provides that the Secretary may make an exit entitlement order if satisfied that the operator has unreasonably delayed the sale of the residential premises. It is an offence for an operator to fail to comply with an exit entitlement order with a maximum penalty of \$11,000 for a corporation or \$5,500 for an individual.

**Proposed section 182AD** provides for the contents of an exit entitlement order.

**Proposed section 182AE** provides that the Secretary may, in certain circumstances and on application by an operator, approve a longer period before a former occupant is able to apply to the Secretary for an exit entitlement order.

### Payments to aged care facilities

**Proposed section 182AF** provides that a former occupant may request an operator to pay part of the former occupant's exit entitlement to the aged care facility in which the former occupant resides or proposes to reside in circumstances where the former occupant's premises at the retirement village are not yet sold.

**Proposed section 182AG** provides that an operator who is requested to make an accommodation payment on behalf of a former occupant must make the payment to the approved provider of the aged care facility in which the former occupant resides or proposes to reside. It is an offence for an operator to fail to make an accommodation payment with a maximum penalty of \$11,000 for a corporation or \$5,500 for an individual.

**Proposed section 182AH** provides that an operator who is requested to make an accommodation payment may apply to the Civil and Administrative Tribunal (the *Tribunal*) for an order to extend the time in which the payment is to be made or to exempt the operator from having to make the payment. The Tribunal may make an order only if satisfied that making the payment would impose a significant financial burden on the operator.

### **Other amendments for exit entitlement orders and aged care facility payments**

**Proposed section 182AJ** clarifies that payment by the operator of an accommodation payment, or of the whole or part of the exit entitlement, is taken to form part of the exit entitlement payable to the former occupant.

**Proposed section 182AK** provides that the Tribunal may, on application by a former occupant, order the operator to recalculate the amount of certain parts of an exit entitlement and pay an additional amount due to the former occupant as a result of the recalculation, if any.

**Proposed section 182AL** provides for the administrative review of certain decisions made by the Secretary under the *Administrative Decisions Review Act 1997*.

### **Miscellaneous**

**Schedule 1[2]** makes further provision for when a person who is a registered interest holder in relation to residential premises in a retirement village is taken to have permanently vacated the premises.

**Schedule 1[3] and [4]** provide for additional circumstances in which a former occupant's contractual right to occupy residential premises is terminated.

**Schedule 1[7]** provides that the liability of a former occupant who is a registered interest holder to pay certain recurrent charges that arise after the former occupant permanently vacates residential premises ceases no later than 42 days after the former occupant permanently vacates the premises. **Schedule 1[5], [6], [8] and [9]** make consequential amendments.

**Schedule 1[12]** increases the maximum penalty for an operator who fails to make a payment to a former occupant following the sale of residential premises, as required under section 180 of the Retirement Villages Act 1999, to \$11,000 for a corporation or \$5,500 for an individual.

**Schedule 1[14]** provides that the Secretary may issue guidelines for compliance with proposed Part 10AA and other related matters.

**Schedule 1[15]** inserts savings and transitional provisions.

**Schedule 1[1], [10] and [11]** make consequential amendments.

## **Schedule 2      Amendment of Retirement Villages Amendment Act 2018 No 77**

**Schedule 2** provides that the regulations may make provision for or with respect to the items of capital for which an asset management plan must be prepared by an operator.