

An amended 2016 version of the 2015 Bill was tabled in Parliament on 14 April 2016. Second reading has taken place, debate adjourned. No information on whether there will be further amendments, when the Bill will be passed, when it will commence, or when draft regulations will be available.

If you have not had time to read the 46 pages of the Bill, the salient points include:

Retrospective Application

The Bill replaces the Retirement Villages Act 1987 and will apply to existing residence contracts and villages, and all future residence contracts and villages.

Definitions

- *Administering authority* will be replaced by *operator plus village land owner, senior manager and village manager* added.
- *Premium* will be replaced by *ingoing contribution plus exit entitlement, exit fee and capital fund* added.
- *Date of contract* will be removed, *enters into occupation* and *vacant possession* added.

Disclosure to prospective residents

A disclosure statement with prescribed details will have to be provided to a prospective resident 10 business days before they enter into a residence contract. The other statutory documents that are currently given to the resident before the contract will also need to be provided at the same time.

Premises Condition Report

- No longer included in documents to be provided to resident before entering into contract, but will be within 10 business days after enter into occupation.
- Date for repair or replacement has been deleted.

Cooling Off

- Changes from 15 business days to 10 business days
- Will commence on the day the resident signs the contract, not the date the last of the parties sign the contract, and not on the date the statutory documents are provided
- Can be waived by resident by written notice if they enter into occupation

Compulsory buy back

- 18 months after termination rather than 12 months if not previously remarketed
- Extension of 18 months possible in 'special circumstances'
- buy back at 'market value' determined by operator or independent valuer
- buy back includes ingoing contribution and capital gain less deductions

Occupation by resident during remarketing

- Will be permitted on notice to operator

Early repayment

If a resident chooses to pay a refundable accommodation deposit (**RAD**) to an aged care facility, does not have ready access to funds to make this payment or where personal circumstances would be seriously affected by such payment, operator will not pay the RAD, but will pay the daily accommodation payment (**DAP**) for the resident up to 85% of the resident's exit entitlement (recoverable from the resident when their exit entitlement is repaid, but no interest).

New residences

Operator must assume responsibility for fees, charges or other monetary amounts in respect of newly constructed residences not yet subject to a residence contract.

Mandatory consultation with residents' committee in relation to annual budget

If there is a residents' committee, there must be at least 2 meetings between the committee and operator to discuss the budget, unless the committee advises in writing.

Administrators, receivers and managers

The Minister will be able to apply to the court for an administrator, receiver or manager to be appointed to be paid for by the residents out of recurrent fees.

Lease of land

Leasing a residence outside the scheme will be limited to new residences not previously occupied and residences where the previous occupant has been paid in full.

Powers of Investigation

- will be expanded, more offences added, fines included, and expiation fees included
- right to silence has been preserved, but not in all circumstances

Other changes

There are other changes such as no proxies but absentee votes, statutory charge extended beyond the ingoing contribution to the capital gain, depreciation cannot be passed onto residents, additional termination rights, surplus or deficit accounts and others.

Where to next?

There is still a long way to go before this Bill and its yet to be drafted regulations become law. Needless to say, if they do, in its present form there will be significant changes to the operation of retirement villages, both existing and new and to the contractual arrangements with residents, both existing and new.

We will keep you informed of developments and process of this important new legislation.

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