

Retirement Villages (Miscellaneous) Amendment Act 2024

The Parliament of South Australia has passed the *Retirement Villages (Miscellaneous) Amendment Act 2024* (the Amendment Act) and it will commence on a date to be set by proclamation.

The Amendment Act will increase consumer protection, improve village administration, strengthen the standards applying to retirement village operators and village staff, and strengthen the powers and functions of the Retirement Villages Registrar.

Current residents will still be bound by their residence contract. In all cases, if a resident has more favourable conditions within their existing contract, the more favourable conditions will continue to apply.

The table below describes how the changes will apply to residents and prospective residents of retirement villages.

Clause (from Amdt Act)	Section of RV Act	Amendment	Prospective resident	Current resident	Notes
Before entering a village					
14	20	Residence contracts Requires additional mandatory information be included in residence contracts, including whether alterations are permitted, remarketing fees, how exit fees are calculated, responsibilities for reinstatement and renovation and fixtures, fittings and furnishings.	✓	✗	For residents who entered into a residence contract before the commencement of the new laws, their existing contract will continue to apply. It is generally not appropriate for legislative reforms to alter contracts that were lawfully entered into at the time.
14	21	Disclosure statements	✓	✗	For residents who entered into a residence contract before the commencement of the

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		Provides that additional mandatory information must be included in disclosure statements, including all fees and charges the person will be responsible for, worked calculations of their exit entitlement at the two, five and ten year mark, embedded networks, and village composition.			new laws, the disclosure statement they received when entering the contract will continue to apply. A current resident may request a statement from the operator at any time of the exit entitlement that would apply if they were to cease to reside at the retirement village (section 42).
15	22	Waiver of section 22 disclosure period Provides that a prospective resident may waive the 10 business day disclosure period if certain conditions are met	✓	✗	This provision is not applicable to current residents as they are already residents of the village.
16	23	Premises condition report Provides that the operator must provide a premises condition report to a prospective resident prior to them entering occupation. The report must then be completed by the resident and returned to the operator within 10 business days after entering occupation	✓	✗	This provision is not applicable to current residents as it regulates the process for ascertaining the condition of the premises at the time a resident initially enters occupation.
17	24	Timely repayment if contract rescinded Provides that if a prospective resident rescinds a contract under section 24, the operator must take reasonable steps to repay within 10 business days.	✓	✗	This provision is not applicable to current residents as the cooling off period will already have passed.

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19	25A	Residence contract holding deposit Regulates the rights and responsibilities relating to residence contract holding deposits.	✓	✗	This provision is not applicable to current residents as they have already entered into a residence contract with the operator.
35	44	Termination during settling -in Provides that if a resident elects to terminate during their settling-in period, the resident is only liable to pay fair market rent, remarketing and in exceptional circumstances, a refurbishment fee. If the resident has made approved alterations to the residence during the settling-in period subject to an agreement that they will return the residence to its original condition upon exit, and they have failed to do so, they will also be responsible for the cost to reinstate the residence.	✓	✓	This provision will apply to all prospective residents and any current residents who have only recently signed a residence contract and elect to terminate during their settling in period.
Living in a village					
25	31A	Recurrent charges Provides that an operator may not increase recurrent charges by more than what is specified in the contract (or a fixed formula in the contract) or by CPI unless the majority of residents agree or by order of SACAT.	✓	✓	This provision will apply to both current and prospective residents.
27	33	Convening meetings of residents	✓	✓	This provision will apply to both current and prospective residents.

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		Provides that audited statements from the previous year must be clearly comparable with estimates for the current year and clarifies that the statement must be accompanied by a description but not monetary value of each item relating to management expenditure.			
29	36	Consultation with new operator Clarifies the consultation process with residents if there is a change of operator.	✓	✓	This provision will apply to both current and prospective residents.
31	39	Mandatory consultation with residents re annual budget Provides that recurrent charges and any potential increase must be discussed at the budget meetings held before the annual meeting and that the operator can provide unaudited accounts for the purpose of the meeting.	✓	✓	This provision will apply to both current and prospective residents.
32	41	Residence rules Provides that if a residence rule, or a provision of a residence rule, is harsh, oppressive, unconscionable or unjust, it is void. Upon application by a resident, SACAT may order that the rule is void or modify the rule.	✓	✓	This provision will apply to both current and prospective residents.

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34	43A	Village safety Provides that the operator must ensure that the common areas of a village are reasonably safe.	✓	✓	Both current and prospective residents will benefit from the protections introduced by this amendment.
34	43B	Prescribed alterations Provides that a resident may, by notice in writing to the operator, request approval to make an alteration of a prescribed kind (e.g. a functional aid prescribed by a health practitioner) to their residence and that for these types of alterations, an operator may only refuse the request if reasonable grounds exist for the refusal.	✓	✓	This provision will apply to both current and prospective residents.
36 & 37	45 & 46	Dispute resolution Provides that an operator must follow their dispute resolution policy (unless otherwise agreed) and broadens the jurisdiction of SACAT to adjudicate a wider range of disputes.	✓	✓	These provisions will apply to both current and prospective residents.
38	57C	Duty to insure Provides that retirement village operators must ensure that adequate insurance is maintained.	✓	✓	Both current and prospective residents will benefit from the protections introduced by this amendment.

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38, 39, 40 and 41	57D, 58, 59 and 59A	<p>Termination of a retirement village scheme (or part of)</p> <p>Updates the provisions relating to terminating a retirement village to ensure that the regulator and residents are notified early in the process and residents supported to obtain legal advice early in the process.</p> <p>Provision is made for an alternative administrative pathway for partial terminations where at least 90% of residents agree.</p>	✓	✓	Both current and prospective residents will benefit from the protections introduced by these amendments.
42	60	<p>Disqualified persons</p> <p>Expands the offences that disqualify a person from being an operator, village manager or senior manager.</p>	✓	✓	Both current and prospective residents will benefit from the protections introduced by these amendments.
43 & 44	63 & 63A	<p>Code of conduct and training</p> <p>Expands the application of codes of conduct to staff within a retirement village (in addition to operators and residents) and requires operators and staff to undertake training on any codes of conduct applicable to them.</p>	✓	✓	Both current and prospective residents will benefit from the protections introduced by these amendments.

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Exiting a village					
20	27	<p>Payment of exit entitlements</p> <p>Reduces the statutory repayment period for the repayment of exit entitlements to 12 months (plus 30 business days for refurbishment).</p>	✓	✓	The statutory repayment period will apply to all retirement village residents once the amendment commences.
21	28	<p>Cap on capital fund contributions</p> <p>Caps the payment of capital fund contributions payable on exit to a maximum of 12.5% of the current market value of the residence. For contracts entered into after the commencement of the new laws, a 1% of current market value per year (or part of) cap up to 12.5% also applies.</p>	✓	✓	<p>The 12.5% cap applies to all retirement village residence contracts.</p> <p>An additional 1% per annum (or part thereof) maximum cap applies to contracts entered into after the commencement of the new laws.</p> <p>This clause establishes a maximum cap on the payment of capital fund contributions payable on exit. If an existing resident has more favourable terms in their contract which will result in a lesser charge, the lesser charge will apply.</p>
24	31	<p>Remarketing</p> <p>Requires that all residence contracts must clearly state any fee or charge in relation to remarketing.</p> <p>For existing contracts that do not specify this, the operator is prohibited from charging more than the reasonable costs incurred in remarketing the residence.</p>	✓	✓	The changes to section 31 of the Act relating to remarketing apply to both current and prospective residents. Where an existing contract does not specify a fee or charge, the changes make clear that the operator may only recover the reasonable costs incurred in remarketing the residence.

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Powers and functions of the regulator and Minister					
9	12	Retirement villages register Additional information may be included on the register.	✓	✓	The expanded register will be online and publicly available to all retirement village residents and prospective residents.
Various		Enforcement Expanded capacity to prosecute non-compliance, including increased offence provisions, written undertakings and additional powers to expiate (various provisions).	✓	✓	Both current and prospective residents will benefit from the protections introduced by these amendments.

For more information

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