

TASMANIA

**RETIREMENT VILLAGES AMENDMENT BILL
2023**

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**RETIREMENT VILLAGES AMENDMENT BILL
2023**

*(Brought in by the Minister for Workplace Safety and
Consumer Affairs, the Honourable Elise Nicole Archer)*

A BILL FOR

**An Act to amend the *Retirement Villages Act 2004* and the
*Tasmanian Civil and Administrative Tribunal Act 2020***

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Retirement Villages
Amendment Act 2023*.

2. Commencement

This Act commences on a day to be proclaimed.

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**PART 2 – RETIREMENT VILLAGES ACT 2004
AMENDED**

3. Principal Act

In this Part, the *Retirement Villages Act 2004** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by inserting after the definition of *tenant* the following definition:

Tribunal means the Tasmanian Civil and Administrative Tribunal;

5. Section 14 amended (Meetings of residents and tenants)

Section 14 of the Principal Act is amended by omitting subsections (10) and (11) and substituting the following subsections:

(10) The operator of a retirement village must ensure that accurate minutes are kept of any meeting of residents and tenants convened by the operator.

(11) The operator of a retirement village must –

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- (a) make any minutes kept under subsection (10) available for inspection by residents of the retirement village; and
- (b) arrange for the minutes to be adopted at the following meeting of residents and tenants convened by the operator.

6. Sections 14A, 14B and 14C inserted

After section 14 of the Principal Act, the following sections are inserted in Part 2:

14A. Increase in recurrent charges

- (1) In this section –

CPI figure for Hobart means the Consumer Price Index: All Groups Index Number for Hobart published by the Australian Statistician under the authority of the *Census and Statistics Act 1905* of the Commonwealth.

- (2) The operator of a retirement village may not increase recurrent charges payable by the residents of that retirement village unless –
- (a) the operator submits, to a meeting of residents and tenants of that retirement village convened under section 14, a written

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explanation that demonstrates that the increase in recurrent charges is reasonable in the circumstances, having regard to the accounts for the previous financial year and the estimates for the current financial year; and

- (b) in a case where the increase in recurrent charges exceeds the CPI increase amount for those recurrent charges –
 - (i) the increase is authorised at the meeting by a resolution of a majority of the residents and tenants voting, either personally or by proxy, and entitled to vote at the meeting; or
 - (ii) the increase in excess of the CPI increase amount is attributable to any one or more of the following:
 - (A) an increase in rates, taxes or charges payable under an Act in respect of the land in the retirement village;
 - (B) an increase in the salaries or wages

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payable to the manager of the retirement village or a person employed in connection with the retirement village as a consequence of a change in award, registered agreement or other industrial instrument;

(C) an increase in insurance premiums, or insurance excesses paid, in relation to the retirement village or its use;

(D) any other prescribed reason.

(3) For the purposes of this section, the *CPI increase amount* for recurrent charges is the amount of increase in the recurrent charges that would result from the recurrent charges being increased by the percentage change between –

(a) the average of the CPI figures for Hobart in respect of the 4 quarters

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immediately preceding the
meeting; and

- (b) the average of the CPI figures for Hobart in respect of the 4 quarters immediately preceding the 4 quarters referred to in paragraph (a).
- (4) The operator of a retirement village must not increase, or attempt to increase, recurrent charges payable by a resident of the retirement village unless –
 - (a) that increase is in accordance with this section; or
 - (b) the Tribunal has ordered that the increase take effect under section 14B.

Penalty: Fine not exceeding 200 penalty
units.

- (5) Any increase in a recurrent charge by the operator of a retirement village that does not comply with this section is void and is not payable by the residents of the retirement village unless the Tribunal has ordered that the increase take effect under section 14B.

14B. Tribunal may order increase in recurrent charges in certain circumstances

- (1) The operator of a retirement village may make an application to the Tribunal for

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an order in respect of a proposed increase in recurrent charges payable by the residents of a retirement village if –

- (a) the proposed increase may only occur if authorised by a resolution under section 14A(2)(b); and
 - (b) the proposed increase is put to a meeting of residents and tenants and the meeting does not pass a resolution authorising the increase.
- (2) An application to the Tribunal under subsection (1) must be made within 28 days after the operator of the retirement village becomes aware that the meeting referred to in subsection (1)(b) did not pass a resolution authorising the proposed increase.
- (3) The operator of a retirement village must, as soon as reasonably practicable after making an application for an order under subsection (1), give each resident and tenant of that retirement village written notice of the making of that application.
- (4) The Tribunal may, on application made under subsection (1) –
- (a) order that the proposed increase is to take effect, with or without modification, from a date specified in the order; or

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- (b) order that the proposed increase is not to take effect.
- (5) In determining an application made under subsection (1), the Tribunal may have regard to the following:
- (a) the general market level of recurrent charges paid at similar retirement villages in the same or a similar locality as the retirement village;
 - (b) the level and cost of services and facilities provided for in estimates of expenditure for the current financial year;
 - (c) any proposed amendments (including additions) to the services and facilities to which the residents have consented or are considered necessary by the applicant;
 - (d) the cost of general services required to be provided by the operator, including where the increase in the cost of general services is greater than the CPI increase amount for those services, as calculated in accordance with section 14A;
 - (e) the frequency and amount of past amendments of the recurrent charges;

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- (f) previous agreement or support given by residents to future increases in recurrent charges necessitated by improvements made to the retirement village;
 - (g) if the retirement village is subject to a strata scheme, the amounts of levies and other contributions payable by the residents under the *Strata Titles Act 1998*;
 - (h) any other matter that the Tribunal considers relevant.
- (6) Subject to subsection (7), the provisions of the *Tasmanian Civil and Administrative Tribunal Act 2020* apply in relation to an application made to the Tribunal under this section.
- (7) Clauses 4, 5, 8, 9, 12 and 13 of Part 8 of Schedule 2 to the *Tasmanian Civil and Administrative Tribunal Act 2020* do not apply in respect of proceedings relating to an application under this section.
- (8) For the avoidance of doubt, the making of an order by the Tribunal under this section is within the original jurisdiction of the Tribunal.

14C. Imposition of levies

- (1) This section applies in respect of the imposition of a levy on the residents of a retirement village for a purpose not

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authorised by the village rules or the residence contract.

- (2) A levy to which this section applies may not be imposed on the residents of a retirement village unless –
- (a) the residents and tenants have authorised the imposition of the levy by a special resolution; or
 - (b) a levy for a purpose not authorised by the village rules or the residence contract has not been imposed on the residents of the retirement village in the immediately preceding 12 months and the expenditure which the levy is intended to cover is payable either because of the requirements of an Act or the order of a court or tribunal.
- (3) The operator of a retirement village must not impose, or attempt to impose, a levy on a resident of the retirement village if the imposition of that levy is contrary to this section.

Penalty: Fine not exceeding 200 penalty units.

- (4) The imposition of a levy on the residents of a retirement village is void and is not payable by the residents of the retirement village if the imposition of that levy is contrary to this section.

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7. Section 17 amended (Meeting with new operator)

Section 17(1)(a) of the Principal Act is amended by omitting “section 14(10)” and substituting “section 14A”.

8. Schedule 2 substituted

Schedule 2 to the Principal Act is repealed and the following Schedule is substituted:

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**SCHEDULE 2 – NOTICE TO PROSPECTIVE
RESIDENT OF RETIREMENT VILLAGE**

Section 6(3)(b)

To: *(name)*of *(address)*
.....

THIS NOTICE SETS OUT VARIOUS LEGAL RIGHTS YOU HAVE IF YOU
ENTER INTO A CONTRACT TO BECOME A RESIDENT OF THE *(name)*
..... RETIREMENT VILLAGE AT *(address)*
.....

NOTE: The operator of the village is *(name, in block letters)*
....., of *(address)*
.....

1. “COOLING-OFF” RIGHTS. Once you have signed the contract you have the right to rescind (i.e. cancel) the contract. If you receive this notice before you enter into the contract, you may rescind the contract within 5 business days after you have received the notice. To rescind a contract, you must give notice in writing to the abovementioned operator. This notice should state that you have decided to rescind the contract, and it must be delivered personally or posted. If you rescind a contract, you are entitled to a refund of any money paid by you under the contract. Before deciding to enter into a contract or to rescind a contract, you should read and consider carefully the rest of this notice and the documents you received with this notice, including the check list of questions relating to retirement villages generally and the rules binding all persons residing at the abovementioned retirement village (“the village rules”).
2. RIGHTS UNDER THE *RETIREMENT VILLAGES ACT 2004*. The *Retirement Villages Act 2004* (the Act) sets out various rights you have if you enter into a residence contract, and these rights cannot be excluded by contract. Some of these statutory rights are briefly described below.

(You can buy a copy of the Act from the Government Printer or access it by means of the Internet at www.thelaw.tas.gov.au).

Sections 6 and 8 – The right to stay

As a resident at a retirement village, you have a right of occupation of premises that will continue during your lifetime unless that right is terminated in accordance with the Act. The termination may be by agreement between you and the operator or, in certain circumstances, by the operator or by you acting alone. The Act offers some protection for your right of occupation of your premises. However, if the operator of the retirement village becomes insolvent, your right of occupation may be terminated by a mortgagee under a mortgage that was in existence at the date on which the Act came into effect.

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Sections 9 and 10 – Ingoing contributions and service contracts

You will be able to enforce your rights under a service contract, or for repayment of your ingoing contribution (i.e. the lump sum paid on entry into the retirement village), against the operator or the owner of the land used for the village.

Section 14 – Accounts information to be provided at annual general meeting

The operator of the retirement village must hold an annual general meeting of residents and tenants before 30 November in each year. At that meeting it must present accounts showing recurrent charges, and how the amount of those charges was spent, for the previous year, and estimates of income from recurrent charges for the next year. Residents and tenants must have a reasonable opportunity to put questions.

Section 14C – Imposition of levies

A levy can be imposed in limited circumstances, such as where agreed to by a special resolution, as defined in section 3 of the Act, or where necessary due to the requirements of an Act or a court order or similar.

Section 19(1) – Copies of village rules and other documents

You will be entitled to receive, on reasonable request, a copy of your contract, a copy of the village rules and a statement of the amount to which you will be entitled if you cease to reside at the retirement village. If the village rules are altered, an amended copy of the rules will be given to you.

Sections 28 and 33 – Unreasonable village rules

An unreasonable village rule may be void, i.e. of no effect. A dispute as to whether a rule is unreasonable may be taken to the Director of Consumer Affairs and Fair Trading.

Section 28 – Disputes

If a dispute arises between you and the operator of the retirement village, either party will be entitled to apply to the Director of Consumer Affairs and Fair Trading for resolution of the matter. However, you must first follow the procedures for resolving disputes that are provided in the village rules before you make an application to the Director.

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3. **RIGHTS UNDER THE CONTRACT.** If you enter into a contract to become a resident of a retirement village, you will have various rights and duties under that contract in addition to the rights referred to above. You should read such a contract carefully and seek advice if you are uncertain as to the meaning or effect of any terms. You should also be certain that you understand the rights and liabilities that are set out in the documents that you received with this notice.

IF YOU ARE UNCERTAIN AS TO ANY OF THE MATTERS SET OUT ABOVE, YOUR RIGHTS AND DUTIES UNDER THE CONTRACT OR THE PROVISIONS OF THE *RETIREMENT VILLAGES ACT 2004*, YOU SHOULD SEEK INDEPENDENT ADVICE FROM AN AUSTRALIAN LEGAL PRACTITIONER OR OTHER INDEPENDENT SOURCE.

IF, AFTER YOU BECOME A RESIDENT OF A RETIREMENT VILLAGE, YOU BELIEVE THAT ANY OF YOUR RIGHTS HAS BEEN INFRINGED, YOU SHOULD FIRST APPROACH THE OPERATOR AND, IF YOU ARE STILL NOT SATISFIED, YOU SHOULD SEEK INDEPENDENT ADVICE OR APPLY TO THE DIRECTOR OF CONSUMER AFFAIRS AND FAIR TRADING IN ACCORDANCE WITH THE *RETIREMENT VILLAGES ACT 2004*.

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**PART 3 – TASMANIAN CIVIL AND
ADMINISTRATIVE TRIBUNAL ACT 2020 AMENDED**

9. Principal Act

In this Part, the *Tasmanian Civil and Administrative Tribunal Act 2020** is referred to as the Principal Act.

10. Schedule 1 amended (Relevant Acts)

Schedule 1 to the Principal Act is amended by inserting after item 32 the following item:

32A. The *Retirement Villages Act 2004*.

11. Schedule 2 amended (General Division)

Schedule 2 to the Principal Act is amended as follows:

(a) by inserting the following paragraph after paragraph (z) in clause 1(1) of Part 3:

(za) the *Retirement Villages Act 2004*;

(b) by inserting the following paragraph after paragraph (r) in clause 3 of Part 8:

(ra) the *Retirement Villages Act 2004*;

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Part 4 – Repeal of Act

PART 4 – REPEAL OF ACT

12. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.