
Retirement Villages Amendment Act 2023

Fact Sheet

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This fact sheet contains an overview of the changes implemented by the Retirement Villages Amendment Act 2023 (the Act). Please note this fact sheet is not a substitute for legal or other expert advice.

What has changed?

The Act brings changes for operators, residents and tenants of retirement villages, to enhance transparency and accountability. The areas of change include:

- increasing recurrent charges; and
- the imposition of levies on retirement village residents.

The Act also introduces a new requirement that the operator must ensure accurate minutes are kept of any meeting of residents and tenants convened by the operator. The operator must:

- ensure that these minutes are available for inspection by residents of the retirement village; and
- arrange for the minutes to be adopted at the following meeting of residents and tenants convened by the operator.

Increasing a recurrent charge

- An operator may not increase recurrent charges without submitting a written explanation to an annual general meeting convened between residents and the operator. The written explanation should demonstrate 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.
- The Act restricts recurrent charge increases that are above the rate of the Consumer Price Index (CPI) increase amount (worked out in accordance with a formula in the Act), except in the following circumstances:
 - when authorised by a resolution passed by at least 65% of the residents and tenants voting in person or by proxy and who are entitled to vote at that meeting; or
 - where the increase in excess of the CPI is attributable to one or more of the following:
 - an increase in rates, taxes or charges payable under an Act in respect of the retirement village land;
 - an increase in salaries or wages payable under an award, agreement or other industrial instrument; an increase in insurance premiums or insurance excesses paid, in relation to the retirement village or its use; or
 - any other prescribed reason.
- If the recurrent charge increase does not fit within one of the circumstances listed above, the operator may apply to the Tasmanian Civil and Administrative Tribunal (TASCAT) for an order in respect of the proposed increase.
- TASCAT may order a proposed recurrent charge increase in whole or in part, or order that the proposed recurrent charge is not to take effect.
 - The operator of a retirement village must, as soon as reasonably practicable after making an application, give each resident and tenant of the retirement village a

written notice of the making of that application. A person whose interests are affected may apply to TASCAT to be made a party to proceedings.

- In determining an application, TASCAT may consider a range of factors, including:
 - the general market level of recurrent charges paid at similar retirement villages in the same or a similar locality as the village;
 - the level and cost of services and facilities provided for in estimates of expenditure for the current financial year;
 - any proposed amendments (including additions) to the services and facilities to which the residents have consented or are considered necessary; and
 - the frequency and amount of past amendments of the recurrent charges.
- Any increase in a recurrent charge by the operator that does not comply with section 14A of the Act is void and not payable by the residents, unless TASCAT has ordered the increased charge to take effect under section 14B of the Act.

Imposing a levy

- The Act also changes the circumstances in which levies can be imposed. A levy that is not authorised by the village rules or residence contract may not be imposed on the residents of a retirement village unless:
 - the residents and tenants have authorised the imposition of the levy by a special resolution; or
 - a levy for a purpose not authorised by the village rules or a residence contract has not been imposed in the previous 12 months and the expenditure which the levy is intended to cover is payable because of the requirements of an Act or the order of a court or tribunal.
- An operator must not impose, or attempt to impose, a levy on a resident that is contrary to section 14C of the Act. An imposition of a levy by the operator that is contrary to the requirements of section 14C of the Act is void and not payable by the residents.

General

All other provisions of the *Retirement Villages Act 2004* continue to apply, including Part 5 which provides for dispute resolution by the Director of Consumer Affairs and Fair Trading.

The maximum penalty for non-compliance by an operator with requirements relating to recurrent charges and levies remains a fine of 200 penalty units.

What you need to do?

Operators should ensure that they implement the procedural changes regarding increasing recurrent charges and imposing a levy.

Further information

Should you require further information, you can contact us:

- By phone: 1300 654 499; or
- By email: cbos.info@justice.tas.gov.au