

Western Australia

Retirement Villages Amendment Act 2012

As at 05 Nov 2012

No. 36 of 2012

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Retirement Villages Amendment Act 2012

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Western Australia

Retirement Villages Amendment Act 2012

No. 36 of 2012

An Act to amend the *Retirement Villages Act 1992*.

[Assented to 5 November 2012]

The Parliament of Western Australia enacts as follows:

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1. Short title

This is the *Retirement Villages Amendment Act 2012*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Act amended

This Act amends the *Retirement Villages Act 1992*.

4. Section 3 amended

- (1) In section 3(1) insert in alphabetical order:

levy means a single amount that the residents of a retirement village are required to pay to recover an unforeseen operating expense of the retirement village not provided for in the recurrent charges;

- (2) In section 3(1) in the definition of *premium* delete paragraph (b) and insert:

(b) a levy or recurrent charges;

- (3) In section 3(1) in the definition of *service contract* delete paragraph (g) and insert:

(g) recreation services or amenities or entertainment services or amenities; or

- (4) In section 3(1) in the definition of *service contract* after each of paragraphs (a) to (f) insert:

or

5. Section 6 amended

- (1) In section 6(1) delete “subsection (2),” and insert:

subsection (2) and without affecting the operation of sections 23(4) and 24(6),

- (2) In section 6(2) delete “A” and insert:

Unless this Act provides that this subsection does not have effect in relation to the provision concerned, a

6. Section 11 amended

- (1) At the beginning of section 11 insert:

- (1) In this section —

statutory manager means a person appointed under section 75B and includes an agent of, or a person employed or engaged by, a statutory manager who is assisting the statutory manager in the performance of the functions of the statutory manager under this Act.

- (2) In section 11:

- (a) delete “No” and insert:

- (2) No

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- (b) after “of the Department” insert:

or a statutory manager
- (c) delete “or the officer” and insert:

the officer or the statutory manager
- (d) delete “Commissioner or the Department under this Act but” and insert:

Commissioner, the Department or the statutory manager under this Act but, except as stated in subsection (3),

(3) At the end of section 11 insert:

- (3) The Crown is relieved of any liability that it might otherwise have had for any act or omission, as described in subsection (2), by a statutory manager.

7. Section 13 amended

(1) In section 13(2) delete “5 working days” and insert:

10 working days

(2) After section 13(3) insert:

- (4A) A person must not demand or receive any fee or charge for any information or document given under subsection (2) or (3).

Penalty: a fine of \$5 000.

8. Section 14A inserted

After section 13 insert:

14A. Residence contracts to comply with prescribed requirements

- (1) The regulations may provide for provisions or matters that must be included, or provisions or matters that must not be included, in residence contracts or in residence contracts of a specified kind.
- (2) A person must not enter into a residence contract with a prospective resident unless the residence contract, otherwise than because of the operation of subsection (3) or (4), complies with any regulations made for the purposes of subsection (1).
Penalty: a fine of \$20 000.
- (3) If regulations made for the purposes of subsection (1) provide that residence contracts or residence contracts of a specified kind must contain a provision in the terms specified in those regulations, a residence contract to which those regulations apply that does not include a provision in the specified terms is to be taken to include that provision.
- (4) If regulations made for the purposes of subsection (1) provide that any provision or matter must not be included in residence contracts or residence contracts of a specified kind, a residence contract to which those regulations apply that includes any provision or matter contrary to those regulations is void to the extent of the provision or matter.
- (5) The regulations may provide that section 6(2) does not have effect in relation to any specified regulations, or any specified provisions of regulations, made for the purposes of subsection (1).

9. Section 14 amended

In section 14(1):

- (a) in paragraph (a) delete “5 working days” and insert:

7 working days

- (b) in paragraph (b) delete “10 working days” and insert:

17 working days

10. Section 18 amended

- (1) Delete section 18(1)(a) and insert:

- (a) the person by or on whose behalf the premium was paid —

- (i) enters into occupation of the residential premises; or
(ii) is entitled to enter into occupation of the residential premises and is no longer entitled to rescind the residence contract under section 14 because the applicable period referred to in that section has expired,

whichever occurs first; or

- (2) After section 18(1) insert:

(2A) If —

- (a) a premium is paid to an administering body and subsection (2) does not apply; and

- (b) the premium is not held in trust or invested as required by subsection (1),

the administering body is guilty of an offence.

Penalty: a fine of \$20 000

- (3) In section 18(3) in the Penalty before “\$5 000” insert:

a fine of

- (4) Delete section 18(5) and insert:

- (5) If —

- (a) a question affecting entitlement to or disposition of the premium is required by subsection (4) to be determined by reference to the residence contract and the administering body fails to act in accordance with that requirement; or
- (b) interest and accretions arising from investment of the premium are required by subsection (4)(a) to be paid to the prospective resident and that interest and those accretions are not paid accordingly,

the administering body is guilty of an offence.

Penalty: a fine of \$20 000.

11. Sections 23 to 25 inserted

At the end of Part 3 insert:

23. Recurrent charges payable by former residents

(1) In this section —

former resident means a former resident of a retirement village who has permanently vacated residential premises in the retirement village and who does not have an interest in the retirement village as a tenant in common or as an owner of a lot under the *Strata Titles Act 1985* in relation to the residential premises in the retirement village that he or she formerly occupied;

permanently vacated, in relation to a former resident and residential premises in a retirement village, means that —

- (a) if required by the residence contract — the administering body has been given notice of the former resident's intention to vacate the residential premises; and
- (b) the goods and belongings of the former resident have been removed from the residential premises; and
- (c) the former resident has ceased to reside in the residential premises; and
- (d) the right to exclusively occupy the residential premises has been given up by the former resident (or, if the former resident is deceased, by the estate of the former resident) by returning the keys to the residential premises to the administering body;

recurrent charges, except in subsection (6), means recurrent charges —

- (a) that are payable in respect of the residential premises in a retirement village that a former resident formerly occupied; and
 - (b) that arise —
 - (i) after those premises have been permanently vacated by the former resident; and
 - (ii) on or after the commencement of the *Retirement Villages Amendment Act 2012* section 11.
- (2) This section applies to a former resident of residential premises in a retirement village, whether that former resident permanently vacated those premises before or after the commencement of the *Retirement Villages Amendment Act 2012* section 11.
- (3) Subject to subsection (4), a former resident's liability to pay recurrent charges —
- (a) begins when the residential premises have been permanently vacated by the former resident; and
 - (b) ceases in accordance with the regulations.
- (4) If a former resident's residence contract provides for the former resident's liability to pay recurrent charges to cease at a time that would occur before the time provided for in regulations made for the purposes of subsection (3)(b), that liability ceases in accordance with that contract.

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- (5) The administering body of a retirement village must pay recurrent charges, at the time when a former resident would have been required to pay those charges if the former resident were still liable to pay them, that are payable in respect of the period that —
- (a) begins when the former resident's liability to pay the recurrent charges ceases in accordance with regulations made for the purposes of subsection (3) or with the residence contract referred to in subsection (4), as the case requires; and
 - (b) ceases when a new resident of the residential premises becomes liable to pay the recurrent charges.
- (6) The administering body must not seek to recover from the residents of the retirement village, by increasing the recurrent charges payable by them or by demanding or receiving from them any additional fee or charge, any amount payable by the administering body under subsection (5).
- Penalty: a fine of \$20 000.
- (7) Section 6(2) does not have effect in relation to this section.

24. Recurrent charges may be deducted from premium repayable to former resident

- (1) In this section —
- former resident* has the meaning given in section 23(1);
- recurrent charges* means recurrent charges —
- (a) that are payable in respect of the residential premises in a retirement village that a former resident formerly occupied; and

- (b) that arise —
 - (i) after those premises have been permanently vacated by the former resident; and
 - (ii) on or after the commencement of the *Retirement Villages Amendment Act 2012* section 11.
- (2) If a premium is repayable in whole or in part to a former resident, the former resident may elect, by notice in writing given to the administering body of the retirement village, to pay any recurrent charges for which he or she is liable (including any interest payable in respect of those charges under subsection (4)) by their deduction from the amount of premium repayable.
- (3) A former resident who elects to pay recurrent charges under subsection (2) may give the notice to the administering body at any time after the former resident has permanently vacated the residential premises that he or she formerly occupied.
- (4) Subject to subsection (6) and to any regulations made for the purposes of this subsection, a former resident who elects to pay recurrent charges under subsection (2) is liable to pay interest to the administering body in respect of those charges if the effect of that election is to defer the payment of the charges.
- (5) Interest is payable —
 - (a) from the time the recurrent charges would, apart from subsection (2), be payable by the former resident until their deduction from the premium repayable to the former resident; and
 - (b) at the rate determined in the prescribed manner.

- (6) If —
- (a) the administering body and the former resident agree to a rate of interest that is lower than the rate referred to in subsection (5)(b); or
 - (b) the former resident's residence contract specifies a rate of interest for the purposes of this section that is lower than the rate referred to in subsection (5)(b),
- interest is payable by the former resident at that lower rate.
- (7) If the effect of the election under subsection (2) is to defer the payment by a former resident of any recurrent charges, the administering body —
- (a) must pay the recurrent charges at the time when the former resident would have been required to pay those charges apart from subsection (2); and
 - (b) may deduct the amount paid from the premium that is repayable to the former resident.
- (8) A former resident is to be taken to have paid any recurrent charges in respect of which a deduction is made from the premium that is repayable to the former resident.
- (9) If a former resident elects to pay any recurrent charges under subsection (2), the administering body must not demand or receive payment of those charges otherwise than in accordance with that election.
- Penalty: a fine of \$20 000.
- (10) Section 6(2) does not have effect in relation to this section.

25. Administering body not to require payment in respect of prescribed matters

- (1) The administering body of a retirement village must not demand or receive payment from a resident or former resident in respect of any matter prescribed for the purposes of this section.

Penalty: a fine of \$20 000.

- (2) Section 6(2) does not have effect in relation to this section.

12. Section 52 amended

After section 52(2) insert:

- (3) Subsection (1)(b) does not apply to —
- (a) an order made under section 55(3) or 57A(4) or Part 5A; or
 - (b) if the order is made in relation to a residence contract — an order made under section 56(4).

13. Section 55 inserted

After section 54 insert:

55. Applications to SAT in relation to residence contracts

- (1) If a dispute arises between the parties to a residence contract as to the residence contract's compliance with a requirement of regulations made for the purposes of section 14A(1) —
- (a) either party to the residence contract; or

- (b) if the dispute has been brought to the attention of the Commissioner — the Commissioner, may make an application in relation to the matter to the State Administrative Tribunal.
- (2) If the State Administrative Tribunal is of the opinion that an order, if made under subsection (3), may be relevant to other residence contracts (including residence contracts that relate to another retirement village), the State Administrative Tribunal —
 - (a) may order the administering body of a retirement village or other person to provide the State Administrative Tribunal with specified information or documents in relation to any residence contract; and
 - (b) on its own initiative or at the request of the administering body or other person — may order that the administering body or other person be joined as a party to the proceeding under this section.
- (3) The State Administrative Tribunal may, on an application made under this section, order —
 - (a) the variation or cancellation of any of the terms of the residence contract, as specified in the order;
 - (b) specific performance of the residence contract;
 - (c) the payment of a sum of money,and may make such other orders as the State Administrative Tribunal considers appropriate and may declare that the order applies to any residence contracts specified in the order, and the order is to have effect accordingly.
- (4) Subsection (2) does not limit the *State Administrative Tribunal Act 2004* section 35 or 38.

14. Section 56 amended

- (1) Before section 56(1) insert:
 - (1A) A reference in this section to a service contract includes a reference to a residence contract but only to the extent that the residence contract provides for the provision to a resident of a service or amenity that may be provided to the resident under a service contract.
- (2) Delete section 56(3) and insert:
 - (3) If the State Administrative Tribunal is of the opinion that an order, if made under subsection (4), may be relevant to other service contracts (including service contracts that relate to another retirement village), the State Administrative Tribunal —
 - (a) may order the administering body of a retirement village or other person to provide the State Administrative Tribunal with specified information or documents in relation to any service contract; and
 - (b) on its own initiative or at the request of the administering body or other person — may order that the administering body or other person be joined as a party to the proceeding under this section.
- (3) Before section 56(4)(a) insert:
 - (aa) the variation or cancellation of any of the terms of the service contract, as specified in the order;

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- (4) After section 56(4) insert:
- (5) Subsection (3) does not limit the *State Administrative Tribunal Act 2004* section 35 or 38.

15. Section 57A inserted

After section 56 insert:

57A. Disputes in relation to recurrent charges or levy payable by residents

- (1) This section applies if a dispute arises between the residents of a retirement village and the administering body of the retirement village regarding an increase in recurrent charges or the imposition of a levy.
- (2) If the residents pass a special resolution that authorises the application to be made, the residents may make an application in relation to the matter in dispute to the State Administrative Tribunal.
- (3) In subsection (2) —
special resolution means a resolution passed at a meeting of the residents of a retirement village that is held in accordance with the requirements in an applicable code for passing a special resolution.
- (4) The State Administrative Tribunal may, on an application made under this section, make such orders as the State Administrative Tribunal considers appropriate.
- (5) Nothing in this section limits the matters in relation to which an application may be made under section 56.
- (6) Section 6(2) does not have effect in relation to this section.

16. Part 5A inserted

After section 74 insert:

Part 5A — Statutory manager**75A. Terms used**

In this Part —

assets, of the administering body of a retirement village, means —

- (a) if the owner of land in the retirement village is the sole administering body of the retirement village — that land and any other property held for the purposes of the retirement village by the owner; or
- (b) if the owner of land in the retirement village is not the sole administering body of the retirement village — the land and property of the owner referred to in paragraph (a) and any other property held for the purposes of the retirement village by an administering body other than the owner;

functions, of the administering body of a retirement village, means the powers and duties that the administering body exercises and performs in the administration of the retirement village under this Act or another written law;

property includes money, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit;

statutory manager means a person appointed under section 75B.

75B. SAT may appoint statutory manager on application of Commissioner

- (1) The State Administrative Tribunal may, on application by the Commissioner under this section, make an order appointing one or more persons specified in the application to perform —
 - (a) all the functions of the administering body of a retirement village; or
 - (b) specified functions of the administering body of a retirement village; or
 - (c) all the functions other than specified functions of the administering body of a retirement village,and may make such other orders as the State Administrative Tribunal thinks fit.
- (2) An application under this section is to be accompanied by —
 - (a) a copy of the consent given under section 75C(1) by each person to be appointed; and
 - (b) the Commissioner's recommendations as to the statutory manager's terms and conditions to be dealt with in the order under section 75E.
- (3) The Commissioner must give a copy of the application to the administering body.
- (4) For the purposes of the *State Administrative Tribunal Act 2004* section 36, the administering body is a party to the proceeding on an application under this section.
- (5) The State Administrative Tribunal may make an order appointing a statutory manager only if the State Administrative Tribunal is satisfied that —
 - (a) the wellbeing or financial interests of the residents of the retirement village may be at

- risk if the administering body continued to perform all the functions of the administering body of the retirement village; or
- (b) the administering body has contravened, or is contravening, an order made by the State Administrative Tribunal or a court in relation to the administering body or the retirement village; or
 - (c) the administering body has contravened, or is contravening, section 18 or another provision of this Act, or a provision of the regulations, prescribed for the purposes of this subsection.
- (6) Without limiting the matters to which the State Administrative Tribunal may have regard for the purposes of subsection (5)(a), for those purposes the State Administrative Tribunal must have regard to any prescribed provisions of any applicable code.
 - (7) If 2 or more persons are appointed under subsection (1), a function of the administering body to be performed by the statutory manager under this Part may be performed by any one of them, or by any 2 or more of them together, except to the extent that the order appointing them provides otherwise.
 - (8) Unless sooner revoked, an order under this section has effect for the period specified in the order.
 - (9) The State Administrative Tribunal is not to require the Commissioner, as a condition of granting an application under this section, to give an undertaking as to damages.

75C. Proposed statutory manager must consent to appointment

- (1) The Commissioner is not to make an application for an order under section 75B appointing a person to be a

statutory manager unless the person has given the Commissioner written consent to the application.

- (2) The order appointing a person to be a statutory manager does not have effect unless the person has given the Commissioner written consent under subsection (1) and has not withdrawn that consent as at the time of the appointment.

75D. Variation and revocation of orders

- (1) In this section —

other persons means —

- (a) if an application is made under this section by the Commissioner — the administering body of the retirement village and the statutory manager;
 - (b) if an application is made under this section by the administering body of the retirement village — the Commissioner and the statutory manager;
 - (c) if an application is made under this section by the statutory manager — the Commissioner and the administering body of the retirement village.
- (2) The State Administrative Tribunal may, on application by the Commissioner, the administering body of the retirement village or the statutory manager under this section, vary or revoke an order appointing a statutory manager under section 75B.
 - (3) The applicant must give a copy of the application to the other persons.
 - (4) The State Administrative Tribunal may give any directions it considers necessary or expedient for the purposes of this section.

- (5) For the purposes of the *State Administrative Tribunal Act 2004* section 36, the other persons are parties to the proceeding on an application under this section.

75E. Matters to be dealt with in order appointing a statutory manager

- (1) An order under section 75B appointing a statutory manager is to —
- (a) set out the terms and conditions that the State Administrative Tribunal considers appropriate to the appointment, including terms and conditions as to the remuneration and expenses payable to the statutory manager; and
 - (b) specify the assets of the administering body of the retirement village that are to be under the control of the statutory manager; and
 - (c) specify the assets of the administering body of the retirement village that may be applied for the purpose of providing funds for —
 - (i) the performance by the statutory manager of the functions of the administering body conferred on the statutory manager under section 75B(1); and
 - (ii) the payment of the remuneration and expenses of the statutory manager.
- (2) The State Administrative Tribunal may give any directions it considers necessary or expedient for the purposes of this section.
- (3) Without limiting section 11, neither the Crown, the Minister nor the Commissioner is liable for the remuneration of a statutory manager or any expenses incurred by a statutory manager in performing any functions of the administering body of a retirement village.

75F. Other matters arising from appointment of statutory manager

- (1) In this section —
appointed means appointed by an order under section 75B.
- (2) The administering body of a retirement village must not, during the period of a statutory manager's appointment, perform any of the administering body's functions that the statutory manager is appointed to perform.
Penalty: a fine of \$20 000.
- (3) Subject to any terms and conditions to which the appointment is subject, a statutory manager must perform any function of the administering body that the statutory manager is appointed to perform in accordance with any residence contract, service contract or other contract, agreement or arrangement —
 - (a) to which the administering body is a party; and
 - (b) that relates to the performance of that function.
- (4) Any act or thing done, in good faith, by or with the consent of a statutory manager in the performance of any function of the administering body that the statutory manager is appointed to perform is valid and effectual for the purposes of this Act.
- (5) A statutory manager must, in accordance with the regulations, provide the prescribed persons with the prescribed written information about the performance of any function of the administering body that the statutory manager is appointed to perform.

75G. Appointment of both statutory manager and external administrator

- (1) In this section —
external administration means external administration under the *Corporations Act 2001* (Commonwealth) Chapter 5;
external administrator means a person appointed under the *Corporations Act 2001* (Commonwealth) for the purposes of the external administration of the administering body of a retirement village.
- (2) This section applies if the administering body of a retirement village is the subject of both —
 - (a) the appointment by an order under section 75B of a statutory manager; and
 - (b) the appointment of an external administrator.
- (3) The statutory manager is under a duty to tell the external administrator of the appointment of the statutory manager, whether the appointment precedes, follows or happens at the same time as the appointment of the external administrator.
- (4) The appointment of the statutory manager continues to have effect while the administering body is subject to external administration, but the statutory manager may perform any function that the statutory manager is appointed by an order under section 75B to perform —
 - (a) only if authorised in writing by the external administrator to do so; and
 - (b) subject to any condition or limitation specified in that authorisation.

75H. Administering body to cooperate with statutory manager

- (1) In this section —
records includes documents and information;
relevant means relevant to the performance of a function referred to in subsection (2).
- (2) This section applies if a statutory manager is appointed by an order under section 75B to perform any function of the administering body of a retirement village.
- (3) The administering body of a retirement village must cooperate with the statutory manager to the extent reasonably required by the statutory manager to perform a function referred to in subsection (2).
Penalty: a fine of \$20 000.
- (4) Without limiting subsection (3), that subsection requires the administering body —
 - (a) to answer, orally or in writing, relevant questions asked by the statutory manager; and
 - (b) to produce to the statutory manager relevant documents in the administering body's custody or under the administering body's control; and
 - (c) to give the statutory manager access to relevant records stored electronically, including any translation, code, password or other information necessary to gain access to, or to interpret and understand, those records; and
 - (d) to give the statutory manager any other relevant assistance the statutory manager reasonably requires.
- (5) The administering body must not hinder or obstruct the statutory manager in the performance of a function referred to in subsection (2).
Penalty: a fine of \$20 000.

75I. State Administrative Tribunal may require reports and recommendations from statutory manager

- (1) The State Administrative Tribunal may, on its own initiative or on application by the Commissioner under this section, make an order directing a statutory manager to prepare a report and make recommendations concerning the retirement village in respect of which the statutory manager is appointed.
- (2) An order under subsection (1) is to specify the matters that are to be the subject of the statutory manager's report and recommendations and the period within which the report and recommendations are to be prepared.
- (3) The statutory manager must provide a copy of the report and recommendations to the State Administrative Tribunal and the Commissioner and to any other person the State Administrative Tribunal specifies in the order under subsection (1).

17. Sections 76 to 77C inserted

After section 75 insert:

76. Persons who are not to be involved in administration of retirement villages

- (1) Subject to section 77A, this section applies to these persons —
 - (a) a person who is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws;
 - (b) a person who has been convicted, within or outside Western Australia, of —
 - (i) an offence involving violence to another person punishable on conviction by

- imprisonment for not less than 3 months; or
 - (ii) an offence involving fraud or dishonesty punishable on conviction by imprisonment for not less than 3 months; or
 - (iii) an offence under *The Criminal Code* Chapter XXXI or an offence that, if committed in Western Australia, would constitute such an offence; or
 - (iv) a prescribed offence;
 - (c) a person who is disqualified from managing corporations under the *Corporations Act 2001* (Commonwealth) Part 2D.6;
 - (d) a person who was a director of, or concerned in the management of, a corporation, as defined in the *Corporations Act 2001* (Commonwealth) section 57A, when it was wound up otherwise than voluntarily;
 - (e) a person prescribed as a person to whom this section applies.
- (2) A person to whom this section applies must not —
- (a) be the administering body of a retirement village; or
 - (b) be in any way, whether directly or indirectly, concerned in the administration of a retirement village.

Penalty: a fine of \$20 000.

- (3) In any proceeding taken for an offence against subsection (2), it is a defence to prove that, at the time the offence occurred, the accused held a current exemption certificate granted under section 77C.

- (4) A person must not employ or engage a person to whom this section applies if the person's employment or engagement is or is to be in any way, whether directly or indirectly, concerned in the administration of a retirement village.

Penalty: a fine of \$20 000.

- (5) In any proceeding taken for an offence against subsection (4), it is a defence to prove that, at the time the offence occurred, the person employed or engaged held a current exemption certificate granted under section 77C.

77A. Limitation of period for which section 76 applies to certain persons

- (1) Section 76 applies to a person referred to in subsection (1)(b) of that section, in relation to the person's conviction of an offence, only for the period of 5 years —
- (a) from the time of the person's conviction; or
 - (b) if the conviction results in a term of imprisonment, from the time of the person's release from custody.
- (2) Section 76 applies to a person referred to in subsection (1)(c) of that section, in relation to the person's disqualification from managing corporations, only for the period of 5 years from the time of that disqualification.
- (3) Section 76 applies to a person referred to in subsection (1)(d) of that section, in relation to the winding up of a corporation, only for the period of 5 years from the time of that winding up.

77B. Offences by persons involved in administration of retirement village

(1) In this section —

relevant information, in relation to a person, means information as to the application of section 76 to the person.

(2) A person —

- (a) whose employment or engagement is in any way, whether directly or indirectly, concerned in the administration of a retirement village; and
- (b) who becomes a person to whom section 76 applies because of the occurrence, after that employment or engagement has commenced, of a bankruptcy, conviction, disqualification, winding up or other matter relevant to that section,

must give relevant information to the person by whom he or she is employed or engaged within 14 days after that occurrence.

Penalty: a fine of \$20 000.

(3) A person must not give relevant information that is false or misleading to a person who employs or engages, or who proposes to employ or engage, him or her if the employment or engagement is or is to be in any way, whether directly or indirectly, concerned in the administration of a retirement village.

Penalty: a fine of \$20 000.

77C. Commissioner may grant exemption certificates

- (1) The Commissioner may grant an exemption certificate to a person to whom section 76 applies if —
 - (a) the person applies for the certificate in the form approved by the Commissioner and pays the prescribed fee; and
 - (b) satisfies the Commissioner that neither the wellbeing nor financial interests of the residents of a retirement village will be at risk if the person —
 - (i) is the administering body of the retirement village; or
 - (ii) is in any way, whether directly or indirectly, concerned in the administration of the retirement village, as the case requires.
- (2) An exemption certificate may be granted subject to any condition or limitation the Commissioner considers appropriate and specifies in the certificate, which may include a limitation on the period during which the certificate has effect.
- (3) The Commissioner may at any time revoke an exemption certificate by written notice given to the person granted the certificate.
- (4) An exemption certificate is cancelled by force of this subsection if the person granted the certificate becomes a person to whom section 76 applies because of the occurrence, after the person has been granted the certificate, of a bankruptcy, conviction, disqualification, winding up or other matter relevant to that section.
- (5) A person must return his or her exemption certificate to the Commissioner within 14 days after the certificate is

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revoked under subsection (3) or cancelled under subsection (4).

Penalty: a fine of \$20 000.

18. Section 80 amended

In section 80 delete “2 years” and insert:

3 years

19. Section 82 amended

In section 82(3) delete “\$500.” and insert:

\$5 000.

20. Schedule 1 Division 1 heading inserted

Before Schedule 1 clause 1 insert:

Division 1 — Provisions relating to commencement of Act

21. Schedule 1 Division 2 inserted

At the end of Schedule 1 insert:

Division 2 — Provisions relating to *Retirement Villages Amendment Act 2012*

4. Exemption certificate taken to have been granted to certain persons

- (1) In this clause —
commencement day means the day on which the *Retirement Villages Amendment Act 2012* section 17 comes into operation;

relevant information, in relation to a person, means information as to the application of section 76 to the person.

- (2) Subclause (3) applies to a person (a **relevant person**) who on the commencement day —
 - (a) is —
 - (i) the administering body of a retirement village; or
 - (ii) in any way, whether directly or indirectly, concerned in the administration of a retirement village;
 - and
 - (b) is a person to whom section 76 applies.
- (3) On the commencement day, an exemption certificate is to be taken to have been granted under section 77C to a relevant person that has effect, subject to subclause (4) and section 77C(3) and (4), for the period of 6 months from that day.
- (4) If —
 - (a) an exemption certificate is to be taken to have been granted to a relevant person; and
 - (b) the person makes an application under section 77C(1) during the period referred to in subclause (3),the exemption certificate —
 - (c) continues to have effect, whether or not the period referred to in subclause (3) expires, until the application is determined; and
 - (d) is cancelled by force of this subclause at the time of that determination.
- (5) A person who on the commencement day —
 - (a) is employed or engaged in any way that, whether directly or indirectly, is concerned in the administration of a retirement village; and

(b) is a person to whom section 76 applies,

must give relevant information to the person by whom he or she is employed or engaged within 14 days after the commencement day.

Penalty: a fine of \$20 000.

5. Transitional regulations

(1) In this clause —

amending Act means the *Retirement Villages Amendment Act 2012*;

commencement day means the day on which section 21 of the amending Act comes into operation;

Gazettal day means the day on which transitional regulations are published in the *Gazette*;

transitional matter means a matter of a transitional, savings or application nature;

transitional regulations means regulations under subclause (2).

(2) Regulations may prescribe anything necessary or convenient to be prescribed in relation to a transitional matter in connection with amendments made to this Act by the amending Act.

(3) Without limiting subclause (2), transitional regulations may modify the operation of section 6(2) in respect of any matter specified in the regulations.

(4) Transitional regulations can only be made before the end of the period of 12 months beginning on commencement day.

(5) If transitional regulations provide that a state of affairs is to be taken to have existed, or not to have existed, on and from a day (the **operative day**) that is earlier than Gazettal day, the regulations have effect according to their terms as long as the operative day is not earlier than the commencement day.

- (6) If transitional regulations contain a provision referred to in subclause (5), the provision does not operate so as —
- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before Gazettal day; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before Gazettal day.

