



# Retirement Villages Act

## New Act's effect on existing contracts



### QUICK TIP

*It may help if operators identify in writing to existing residents those terms of their contracts overridden by the new laws.*

The *Retirement Villages Act 1999* commenced fully on 1 July 2000. There has been some uncertainty about the application of the *Act* to existing contractual arrangements. This factsheet explains the effect of the new laws on existing contracts between residents and operators.

### Do the new laws apply to contracts entered into before 1 July 2000?

Yes, other than a few exceptions discussed on the next page. The new laws apply to all current residents and operators, regardless of when the contract between them was signed (ie. before or after 1 July 2000). It does not matter that the contract may have been signed by a company or organisation that is no longer the village operator.

### What about residents who left or passed away prior to 1 July 2000?

The new laws apply also to a former resident (or his or her estate) who vacated prior to 1 July 2000 and is still waiting for a refund or to sell the premises, including those who have moved to a hostel or nursing home run by the same operator. This is important when determining such matters as the timing of refunds and liability for the payment of ongoing fees and charges.

### What happens if an existing contract conflicts with the new laws?

The new laws are quite different to the old laws. As a result, most existing contracts will contain at least some terms that conflict with the new laws. This does not mean that whole contracts in place are null and void, and that new contracts must be entered into.

What it means is that where there is a conflict between what a contract says and what the new laws say, the provisions of the *Act* or *Regulations* prevail over the contract.

Importantly, the new laws only override those contract terms that conflict with the *Act* or *Regulations*. Such terms are now simply void and unenforceable. Contract terms that do not conflict with the new laws have not been affected in any way.

### Do the new laws mean that existing contracts have to be changed?

No. There is no need for existing contracts to be amended or replaced because of the introduction of the new laws. The rights and obligations provided under the *Act* apply without the need for them to be written into existing contracts.

### What if an operator wants to amend or replace existing contracts?

Existing contracts can be amended or replaced altogether with a new contract only if both parties agree. However, the new laws contain provisions designed to ensure that residents are not pressured into signing away any existing rights.

If an operator proposes to change a contract each resident involved must first obtain advice from a lawyer of their choosing. The reasonable costs in obtaining this advice must be paid by the operator, within 28 days of receiving a copy of the account.

A contract can only be amended or replaced if a resident provides the operator with a certificate from their lawyer. The certificate must state that the operator's proposal was explained to the resident who appeared to understand and agree with it.



## IMPORTANT

*Both the Code of Practice and Retirement Villages Act 1989 have been repealed following the introduction of the new Act.*

Unlike the bulk of the new laws these provisions started earlier on 31 March 2000. Any contract amendments or new contracts entered into by existing residents after this date, without the necessary certificate, are void and of no effect.

### Do any of the new laws not apply to existing contracts?

There are a small number of provisions that logically cannot apply to contracts entered into before 1 July 2000. For example, disclosure statements do not have to be given to residents already living in the village.

Importantly, there are 2 specific reforms that do not apply to contracts entered into before 1 July 2000.

Specifically:

- section 158, which ensures departure fees for new residents will not continue to accrue once they vacate the village; and
- section 164, which prohibits contracts entered into after 1 July 2000, from requiring the resident to refurbish, or pay the cost of refurbishment.


### What if it is unclear whether the new laws override a contract term?

Disputes could arise as to whether or not a term of an existing contract conflicts with the new laws. In such situations it is important to carefully read the relevant parts of the legislation and contract. It may also help to obtain independent advice.

If the dispute cannot be resolved an application may be made, under section 128(1)(b), to the Consumer, Trader and Tenancy Tribunal (CTTT) for an order to vary or set aside the contract term. Application forms for the Tribunal are available from any Fair Trading Centre.

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