

Housing Legislation (Building Better Futures) Amendment Bill 2017

Resupplied Explanatory Notes

**For amendments to be moved during consideration in detail by
The Honourable Mick de Brenni MP
Minister for Housing and Public Works and
Minister for Sport**

Short title

The short title of the Bill is the Housing Legislation (Building Better Futures) Amendment Bill 2017.

Objectives of the amendments and reasons for them

The amendments to be moved during consideration in detail will meet the following objectives:

1. Address certain issues which were identified during, and in recommendations of, the Public Works and Utilities Committee inquiry into the Bill.
2. Reduce the minimum wait period for entering a residential park site agreement to 7 days where the buyer obtains legal advice and signs a waiver.
3. Ensure people selling their manufactured homes are not required to pay the buyer's expenses when the buyer uses their cooling-off period.
4. Introduce timeframes for the chief executive to make decisions related to transition, closure and redevelopment plans under the *Retirement Villages Act 1999*.
5. Exempt retirement village operators from preparing a transition plan where a contract for the sale of a village was in place before the new provisions for change of operator commenced.
6. Require retirement village operators to pay for any valuation costs where the exit entitlement is payable before the right to reside in a retirement village is sold, consistent with other parts of the *Retirement Villages Act 1999*.
7. Clarify the intent of the Bill to ensure retirement village operators are responsible for proportional maintenance reserve fund contributions for both complete (but unsold) and incomplete units, as well as for general services charge contributions for these accommodation units.
8. Improve the operability of the transitional provisions for redevelopment of a retirement village.
9. Improve the clarity and consistency of the Bill and correct minor drafting errors.

10. Ensure that residents are sufficiently informed and able to make representations to the chief executive where a village closure or redevelopment is proposed in a retirement village, and a plan is provided to the chief executive for approval.
11. Improve protection against misleading or deceptive conduct for residents living in retirement villages.
12. Provide for a review of the new requirement for operators to pay former residents their exit entitlement 18 months after the resident leaves a village.

Achievement of policy objectives

The objectives are achieved by making the following amendments.

Manufactured Homes (Residential Parks) Act 2003

- Amending clause 19 to reduce the minimum time period for entering a site agreement where a prospective home owner obtains legal advice and signs a waiver, to 7 days from receipt of the site agreement.
- Amending clause 20 to correct a drafting error. This is to ensure the heading of the section is correct.
- Amending clause 22 to require a home owner who is terminating a site agreement during the cooling off period, to notify a financier with an interest in the home, of the termination.
- Inserting new subsections in clause 23 to complement new amendments regarding financiers and to clarify that a park owner in a residential park is only required to pay "reasonable expenses" for a sale terminated during the cooling-off period where the park owner has not complied with their precontractual disclosure obligations.
- Amending clause 32 to provide clarification, to insert new amendments regarding financiers for buyers terminating assignment agreements and to ensure that a person selling a manufactured home is not obligated to pay a buyer's expenses where the buyer terminates the agreement during the cooling-off period.
- Inserting a new clause 55A after clause 55 to update the reference to section 45(2) which has been replaced by section 45A.
- Amending transitional provisions to reflect updated amendments in the Bill.
- Amendments to the dictionary to include amendments and new definitions.

Residential Services (Accreditation) Act 2002

- Making minor amendments to clauses 60, 69, 72, 76, 77, 78 and to correct typographical errors in the Bill.

Retirement Villages Act 1999

- Amending clause 99 to require the chief executive, when considering a closure plan, to consult with residents of the retirement village about the proposed closure plan, and to have regard to submissions made by the residents to the chief executive.
- Amending clause 99 to require the chief executive to make a decision on a retirement village closure plan within 90 days.

- Amending clause 101 to require the chief executive to make a decision on a retirement village transition plan within 90 days.
- Amending clause 114 to remove a requirement for the cost of a valuation of the resident's right to reside to be shared by the operator and former resident.
- Amending clause 120 to clarify that a retirement village operator or representative of an operator must not, in relation to the operation of a retirement village, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
- Amending clause 130 to reflect that the maintenance reserve fund will be separated from the general services charge.
- Amending clause 131 to reflect that the maintenance reserve fund will be separated from the general services charge.
- Amending clause 138 to require the chief executive, when considering a redevelopment plan, to consult with residents of the retirement village about the proposed redevelopment plan, and to have regard to submissions made by the residents to the chief executive.
- Amending clause 138 to require the chief executive to make a decision on a retirement village redevelopment plan within 90 days.
- Inserting a new clause after clause 147 to require a review of the new provisions in section 63(1)(c) for operators to pay residents their exit entitlement 18 months after the resident leaves a retirement village. This review will commence within two years of commencement of the new provisions.
- Amending clause 150 to clarify that a redevelopment plan is not required if every resident in a village was given the requisite written notice about the redevelopment in a public information document or the documents mentioned in section 84(1) before becoming a resident.
- Inserting a new transitional provision at clause 150 to clarify that retirement village transition plan requirements do not apply if a contract for transfer of control of a retirement village was executed before the provision commences.

Alternative ways of achieving policy objectives

There is no alternative way to achieve the policy objectives.

Estimated cost for government implementation

There are no additional anticipated financial costs for government arising from the amendments to be moved during consideration in detail.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles.

Consultation

The amendments to be moved during consideration in detail are in response to recommendations 2, 3, 11, and 17 of the report of the Public Works and Utilities Committee (Report No. 48, 55th Parliament).

The amendments have been informed by community, industry and government stakeholder feedback on the Bill, including through submissions to the Committee and at the public hearings of the Committee on 11 September 2017, 12 September 2017 and 13 September 2017. Consultation has been undertaken with the Department of the Premier and Cabinet.

Notes on provisions

Amendment of Manufactured Homes (Residential Parks) Act 2003

Amendment 1 adds section 147A to the list of provisions which commence on assent.

Amendment 2 amends clause 19 to improve the precontractual disclosure process in the Bill. Under the amended section a home owner can reduce the minimum period before entering into a site agreement for both the 'initial disclosure documents' and 'supplementary disclosure documents' down to 7 days where the home owner has received legal advice and signs a waiver. The section previously only allowed the 'initial disclosure documents' to be waived down to 14 days. The intent of the change is to more strongly incentivise prospective home owners to seek legal advice before entering into a site agreement while also maintaining a mandatory wait period that ensures people are taking the time to understand the agreements they are signing before moving into a residential park.

The change also more closely aligns the timeframes for entering into a new site agreement and an assignment agreement under section 48B, reducing complexity.

Amendment 3 also amends clause 19 to remove the 'initial disclosure' from the heading of section 29A as the section now allows for both the initial and supplementary disclosure periods to be waived.

Amendments 4 and 5 amend clause 19 to allow the disclosure periods in section 29 for both the initial disclosure documents and supplementary disclosure documents to be waived down to 7 days where the home owner has received legal advice and has signed a waiver. These changes reflect those made in amendment 2.

Amendment 6 amends clause 20 to clarify that the amendment only replaces the phrase 'a site agreement' in the body of the section and does not also replace the word 'agreement' in the section heading.

Amendment 7 amends clause 20 section 30 to insert the words 'a site' before 'agreement'.

Amendment 8 amends clause 22 section 33 to insert new section 33(2). If the home owner, within the cooling-off period, terminates the site agreement they must give a signed notice of the termination to the person they have granted a security interest in the manufactured home to, as well as the park owner as currently required.

Amendment 9 amends clause 23 to insert new provisions into section 34 to reflect the requirement that if a home owner has granted a financier a security interest in the home, and they have been given a notice of termination as required by section 33(2) or if the financier knows about the termination, the financier must give the park owner a notice stating the amount owing under the security interest within 7 days.

Amendment 10 also amends clause 23 and inserts a consequential renumbering amendment.

Amendment 11 also amends clause 23 and replaces the reference to the *Personal Property Securities Act 2009* (Cwlth) with the 'financier under a security interest in the home'. A full definition of security interest is now contained in the dictionary. This amendment also inserts a new section 5A to include that the amount owing under the security interest is, if the financier has given the park owner a notice stating the amount owing under the security interest, that amount. This ensures that a park owner can comply with their obligation to appropriately pay the refunds required when a buyer terminates the agreement during the cooling-off period.

Under this amendment, the definition of *refundable amount* has been altered to clarify that when a home owner exercises the right during the cooling-off period to terminate the site (and sale) agreement, they are only entitled to be paid expenses reasonably incurred where the park owner did not give the home owner the disclosure documents for the site as required in section 29. This change is necessary as a consequence of the introduction of a 7-day no-fault cooling off period under section 33.

The amendment also includes the description of what the 'refund period' means to ensure consistency with the new security interest notification requirements.

Amendment 12 amends clause 32 to insert 'in the site agreement for the site' into new section 51A.

Amendment 13 amends clause 32 to remove section 51A(2) from the Bill and insert new subsection (2) which provides that a buyer wishing to terminate an assignment agreement must give a notice of termination to park owner, the seller and any person who has been granted a security interest in the home.

Amendment 14 also amends clause 32 to amend new section 51D(4) to insert the requirement that if a buyer has granted a person a security interest in the home (the financier) and they have been given a notice of termination as required by section 51A(2) or if the financier knows about the termination, the financier must give the seller a notice stating the amount owing under the security interest within 7 days.

Amendment 15 amends clause 32 to amend new section 51D(5) to remove '14 days after the ending of the sale agreement under subsection (2)' and to insert the term 'the refund period'.

Amendment 16 amends clause 32 to amend new section 51D(5)(a) to replace the reference to the *Personal Property Securities Act 2009* (Cwlth) with the 'financier under a security interest in the home'. A full definition of security interest is now contained in the dictionary.

Amendment 17 amends clause 32 to insert subsection 5A to new section 51D to include that the amount owing under the security interest is, if the financier has given the seller a notice stating the amount owing under the security interest, that amount. This ensures that a seller can comply with their obligation to pay a refund to a buyer terminating the agreement during the cooling-off period.

Amendment 18 amends clause 32 to omit section 51D(6)(b). This will change the meaning of 'refundable amount' for the section so that a seller will not be required to pay a buyer's expenses arising out of, or incidental to the assignment agreement where the buyer uses the cooling-off period under section 51A.

Amendment 19 amends clause 32 to amend new section 51D to include the description of what the 'refund period' means.

Amendment 20 inserts a new clause 55A to amend section 166 to update the reference to section 45(2) which has been renumbered to section 45A.

Amendment 21 amends clause 56 and is a consequential amendment to a transitional definition in section 176 to reflect the changes made to the precontractual disclosure process in amendment 2.

Amendment 22 amends clause 56 and is a consequential amendment to a transitional provision to reflect the changes made to the precontractual disclosure process in amendment 2.

Amendment 23 amends clause 57 and is a consequential amendment to reflect the changes to precontractual disclosure processes in sections 29 and 45.

Amendment 24 amends clause 58 and provides a new definition for 'default notice period' to reflect the changes made to the precontractual disclosure process in amendment 2. 'Default notice period' now applies to the 21 day period for the initial disclosure documents and the 14 day period for the supplementary disclosure documents.

Amendment 25 amends the dictionary at clause 58 to clarify that reference to 'disclosure documents' includes two copies of the site agreement for the site.

Amendment 26 amends the dictionary at clause 58 to make a consequential amendment to the definition of *initial disclosure documents* to refer to section 29(2)(a).

Amendment 27 amends the dictionary at clause 58 to include the definition of a 'security interest' which was previously contained in amended section 51D and section 34.

Amendment 28 amends the dictionary at clause 58 to include the definition 'supplementary disclosure documents' as described in section 29(2)(b).

Amendment of Residential Services (Accreditation) Act 2002

Amendments 29 to 35 make minor amendments to clauses 60, 69, 72, 76, 77 and 78 of the Bill to correct typographical errors in the drafting of the Bill.

Amendment 29 corrects a minor drafting error in the heading for clause 60 (Amendment to s 4 (Meaning of residential service)) of the Bill.

Amendment 30 corrects a minor drafting error in clause 69 (Amendment of s 41 (Meaning of accreditation decision)) of the Bill.

Amendment 31 corrects a minor drafting error in clause 72 (Amendment of s 70 (Death of sole service provider)) of the Bill.

Amendment 32 corrects a minor drafting error in clause 76 (Amendment of s 179 (Register of residential services)) of the Bill.

Amendment 33 corrects a minor drafting error in clause 76 (Amendment of s 179 (Register of residential services)) of the Bill.

Amendment 34 corrects a minor drafting error in clause 77 (Insertion of new s 180A) of the Bill.

Amendment 35 corrects a minor drafting error in clause 78 (Insertion of new pt 16) of the Bill.

Amendment of Retirement Villages Act 1999

Amendment 36 amends clause 99 section 40D to require the chief executive to give each resident of the retirement village notice that the scheme operator has submitted a proposed closure plan to the chief executive for approval.

Residents will be invited to provide feedback about the proposed closure plan in a format and timeframe determined by the chief executive. The chief executive must provide a copy of the closure plan to residents on request. Under this amendment the chief executive must have regard to any feedback provided by residents when making a decision.

Amendment 37 amends clause 99 new section 40D to insert a new subsection (4A) to require the chief executive to make a decision within 90 days of the later of: receiving an application for approval of a proposed closure plan for a retirement village; or receiving further information from the scheme operator as requested by the chief executive for the purpose of making the decision.

Amendment 38 amends clause 99 new section 40D to insert a new subsection (9) so that the consequence of the chief executive failing to decide an application for approval of a closure plan within the timeframes set out in subsection (4A) will be that the closure plan provided in the application is automatically approved.

Amendment 39 amends clause 101 new section 41F to insert a new subsection (1A) to require the chief executive to make a decision within 90 days of the later of: receiving for approval a proposed transition plan for a retirement village; or receiving further information from the scheme operator as requested by the chief executive for the purpose of making the decision. The amendment responds to the Committee's recommendation for a 90 day timeframe to apply to the transition plan approval process to ensure that a decision is made in a timely manner.

Amendment 40 amends clause 101 new section 41F to insert a new subsection (7) so that the consequence of the chief executive failing to make a decision on a proposed transition plan within the timeframes set out in subsection (1A) will be that the proposed transition plan is automatically approved.

Amendment 41 amends clause 114 new section 67A to remove new subsection (3) which proposed a new cost sharing method for valuations under this section. This amendment provides consistency with the allocation of valuation costs under sections 60 and 67 of the *Retirement Villages Act 1999*.

Amendment 42 amends clause 120 to extend the application of section 86(1) so that where a representative of a scheme operator engages in conduct that is, or is likely to, be misleading or deceptive, both the scheme operator and the representative will be taken to have committed an offence.

This amendment also ensures that a scheme operator or a representative will have committed an offence regardless of whether the misleading or deceptive conduct has been done knowingly.

Amendments 43 and 44 amend clause 130 section 104 to enable the existing requirements in section 104 of the *Retirement Villages Act 1999* to continue once the general services charge and maintenance reserve funds are separated.

Amendment 45 amends clause 131 section 105 to include the requirement for operators to continue to pay maintenance reserve fund contributions under certain circumstances. This allows the existing requirements in section 105 of the *Retirement Villages Act 1999* to continue once the general services charge and maintenance reserve funds are separated.

Amendment 46 amends clause 138 section 113F to require the chief executive to give each resident of the retirement village notice that the scheme operator has submitted a proposed redevelopment plan to the chief executive for approval.

Residents will be invited to provide feedback about the proposed redevelopment plan in a format and timeframe determined by the chief executive. The chief executive must provide a copy of the redevelopment plan to residents on request. Under this

amendment the chief executive must have regard to any feedback provided by residents when making a decision.

Amendment 47 amends clause 138 new section 113F to insert a new subsection (4A) to require the chief executive to make a decision within 90 days of the later of: receiving an application for approval of a proposed redevelopment plan for a retirement village; or receiving further information from the scheme operator as requested by the chief executive for the purpose of making the decision. The amendment responds to the Committee's recommendation for a 90-day timeframe to apply to the redevelopment plan approval process to ensure that a decision is made in a timely manner.

Amendment 48 amends clause 138 new section 113F to insert a new subsection (9) so that the consequence of the chief executive failing to decide an application for approval of a redevelopment plan within the timeframes set out in subsection (4A) will be that the redevelopment plan provided in the application is automatically approved.

Amendment 49 inserts a new section 225 which provides for the Minister to appoint up to four appropriately qualified people to conduct an independent statutory review of the 18-month timeframe for payment of a former resident's exit entitlements in section 63(1)(c) to determine the impact of the timeframe on residents, former residents, their families and retirement village operators. The review will start within two years after the commencement of the relevant provisions.

Amendment 50 amends the transitional provision at clause 150 section 237I to clarify that the new provisions relating to a running redevelopment of a retirement village will not apply if every resident of the village was given the requisite written notice about the redevelopment before they became a resident, and this notice was in a current public information document or in a document mentioned in section 84(1).

Amendment 51 inserts a new transitional provision at clause 150 section 237OA so that the requirements for a change of scheme operator at part 2 division 5 do not apply where a contract for the transfer of control of a retirement village was executed before the commencement of part 2 division 5.