

2013

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Justice and Community Safety Legislation Amendment Bill 2013

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(Attorney-General)

Justice and Community Safety Legislation Amendment Bill 2013

A Bill for

An Act to amend legislation about justice and community safety

The Legislative Assembly for the Australian Capital Territory enacts as follows:

J2012-628

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 **1 Name of Act**

2 This Act is the *Justice and Community Safety Legislation*
3 *Amendment Act 2013*.

4 **2 Commencement**

5 This Act commences on the later of—

6 (a) the day after this Act's notification day; and

7 (b) the commencement of the *Retirement Villages Act 2012*,
8 section 3.

9 *Note* The naming and commencement provisions automatically commence on
10 the notification day (see [Legislation Act](#), s 75 (1)).

11 **3 Legislation amended—sch 1**

12 This Act amends the legislation mentioned in schedule 1.

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 ACT Civil and Administrative Tribunal Regulation 2009

[1.1] New section 10

insert

10 Use of trust amounts for retirement villages—Act, s 115C (2) (c)

(1) The following purposes are prescribed:

(a) providing advisory and advocacy services to residents and prospective residents of retirement villages;

(b) reimbursing the Territory for the cost of administering the *Retirement Villages Act 2012*.

(2) In this section:

resident, of a retirement village—see the *Retirement Villages Act 2012*, dictionary.

retirement village—see the *Retirement Villages Act 2012*, section 10.

Part 1.2 Civil Law (Property) Act 2006

[1.2] New section 402 (4) (a) (iii)

insert

(iii) a residence contract under the *Retirement Villages Act 2012*; or

1 **[1.3] New section 436 (1) (a) (iii)**

2 *insert*

3 (iii) a residence contract under the *Retirement Villages*
4 *Act 2012*; or

5 **Part 1.3 Civil Law (Sale of Residential**
6 **Property) Act 2003**

7 **[1.4] Section 8 (2) (c)**

8 *substitute*

9 (c) a retirement village; or

10 (ca) an interest in a retirement village that is not—

11 (i) a unit; or

12 (ii) a lot in a community title scheme under the *Community*
13 *Title Act 2001*; or

14 **[1.5] Section 20, definition of *premises*, new paragraph (ea)**

15 *insert*

16 (ea) an interest in a retirement village that is not—

17 (i) a unit; or

18 (ii) a lot in a community title scheme under the *Community*
19 *Title Act 2001*;

20 **[1.6] Section 20, definition of *retirement village***

21 *omit*

1 **[1.7] Dictionary, definition of *retirement village***

2 *substitute*

3 *retirement village*—see the *Retirement Villages Act 2012*,
4 section 10.

5 **Part 1.4 Fair Trading (Australian**
6 **Consumer Law) Act 1992**

7 **[1.8] Dictionary, definition of *fair trading legislation*, new**
8 **paragraph (ga)**

9 *insert*

10 (ga) the *Retirement Villages Act 2012*; or

11 **Part 1.5 Land Titles Act 1925**

12 **[1.9] Section 139 (1), except examples and note**

13 *substitute*

14 (1) The Minister may determine fees, charges or other amounts for the
15 following Acts or in relation to the exercise of a function of the
16 registrar-general relating to the register that is not expressly
17 provided for in any of the following Acts:

- 18 (a) this Act;
19 (b) the *Community Title Act 2001*;
20 (c) the *Districts Act 2002*;
21 (d) the *Land Titles (Unit Titles) Act 1970*;
22 (e) the *Retirement Villages Act 2012*.

1 **[1.10] Section 140 (1)**

2 *substitute*

3 (1) The registrar-general may approve forms for the following Acts:

4 (a) this Act;

5 (b) the *Community Title Act 2001*;

6 (c) the *Land Titles (Unit Titles) Act 1970*;

7 (d) the *Retirement Villages Act 2012*.

8 **Part 1.6 Residential Tenancies Act 1997**

9 **[1.11] Section 4 (a)**

10 *omit*

11 **Part 1.7 Retirement Villages Act 2012**

12 **[1.12] Section 7 (1), definition of *operator*, paragraph (b) (iii),**
13 **except note**

14 *substitute*

15 (iii) a person mentioned in section 15A (1) (d) (Application to
16 residents and operators of former retirement villages);
17 and

18 (iv) any other person prescribed by regulation; but

1 **[1.13] New section 7 (3)**

2 *after the note, insert*

3 (3) In this section:

4 *body corporate*, of a community title scheme—see the *Community*
5 *Title Act 2001*, dictionary.

6 **[1.14] Section 8 (1), definition of *residence right***

7 *omit everything before paragraph (a) (i), substitute*

8 *residence right*, in relation to residential premises in a retirement
9 village, means—

10 (a) a person's right to occupy the residential premises under a
11 contract—

12 **[1.15] Section 9**

13 *omit*

14 in relation to the residence

15 *substitute*

16 in relation to the residential premises

17 **[1.16] Section 14 heading**

18 *substitute*

19 **14 Meaning of *permanently vacated* residential premises**

1 **[1.17] Section 14 (1) (d)**

2 *omit*

3 section 8 (2)

4 *substitute*

5 section 8 (3)

6 **[1.18] Section 14 (2)**

7 *omit*

8 residence

9 *substitute*

10 residential premises

11 **[1.19] New section 15A**

12 *in part 2, insert*

13 **15A Application to residents and operators of former**
14 **retirement villages**

15 (1) This Act applies to the following people in relation to the
16 occupation of a former retirement village even though the former
17 retirement village is no longer a retirement village:

18 (a) a retired person who continues to occupy residential premises
19 in a former retirement village that was a retirement village
20 when the retired person took up residence in the premises;

21 (b) a retired person who has a right to occupy residential premises
22 in a former retirement village that was a retirement village
23 when the right was obtained;

1 (c) a former resident of a former retirement village who continues
2 to have rights or liabilities under the contract, agreement or
3 arrangement under which the resident occupied (or had the
4 right to occupy) the residential premises in the former
5 retirement village when it was a retirement village;

6 (d) the person who is the other party to the contract, agreement or
7 arrangement under which the retired person occupies or
8 occupied (or has or had the right to occupy) the residential
9 premises in the former retirement village.

10 *Note* **Operator** includes a person mentioned in s (1) (d) (see s 7).

11 **Resident** includes a person mentioned in s (1) (a), (b) or (c) (see dict).

12 (2) However, this Act does not apply in relation to a place mentioned in
13 section 10 (1) (Meaning of *retirement village*), definition of
14 ***retirement village***, paragraph (b).

15 (3) In this section:

16 ***former retirement village*** means a complex that was previously, but
17 is no longer, a retirement village.

18 **[1.20] Section 20 (1), note**

19 *omit*

20 section 25

21 *substitute*

22 s 24

23 **[1.21] Section 21 (2) (c) (i)**

24 *omit*

25 and

26 *substitute*

27 or

1 **[1.22] Section 22 (6)**

2 *omit*

3 subsection (4)

4 *substitute*

5 subsection (5)

6 **[1.23] Section 32, definition of *trustee*, paragraph (d)**

7 *omit*

8 section 601RAB

9 *substitute*

10 section 601RAA

11 **[1.24] Section 37 (3)**

12 *omit*

13 residence

14 *substitute*

15 residential premises

16 **[1.25] Section 42 (1), new notes**

17 *insert*

18 *Note 2* If a form is approved under the [Land Titles Act 1925](#), s 140 for a notice,
19 the form must be used.

20 *Note 3* A fee may be determined under the [Land Titles Act 1925](#), s 139 for this
21 provision.

1 **[1.26] Section 58 (1)**

2 *substitute*

3 (1) This section applies if a resident of a retirement village gives a
4 rescission notice in relation to a village contract that is not a
5 residence contract or a service contract.

6 (1A) As soon as practicable (but not later than 1 month) after the
7 rescission notice is given, the operator of the retirement village must
8 repay all money paid by or on behalf of the resident under the
9 rescinded contract.

10 **[1.27] Section 68 (1)**

11 *substitute*

12 (1) If a standard form contract is prescribed for a village contract, a
13 village contract entered into after the day the form is prescribed is
14 void to the extent to which it is not in the same form as, or does not
15 have the same effect as, the standard form contract.

16 **[1.28] Section 68 (4) (a)**

17 *substitute*

18 (a) nothing in subsection (1) or (3) voids a person's residence right
19 in relation to residential premises in a retirement village to
20 which the village contract applies; and

21 **[1.29] Section 68 (4) (b) (ii)**

22 *substitute*

23 (ii) is not inconsistent with a term—

24 (A) in the standard form contract; or

25 (B) required to be included by a regulation made under
26 section 66 (Prescribed matters in village contracts).

1 **[1.30] Section 81 (2)**

2 *omit*

3 an existing

4 *substitute*

5 a

6 **[1.31] Section 82 heading**

7 *substitute*

8 **82 Villages without rules**

9 **[1.32] Section 82**

10 *omit*

11 an existing

12 *substitute*

13 a

14 **[1.33] Section 118, note, second paragraph**

15 *substitute*

16 Retirement villages may contain residential premises that are subject to
17 a company title scheme, a community title scheme or a units plan.
18 Resolutions of directors or members of the companies, and votes of
19 relevant bodies corporate for community title schemes and owners
20 corporations for unit titles have no relevance to decisions of residents
21 under this Act.

1 **[1.34] Section 122 (3) (a)**

2 *substitute*

3 (a) set the terms of the contract, taking into account the following:

4 (i) the terms of other residence contracts in force in the
5 village;

6 (ii) the terms in the standard form contract;

7 (iii) a term required to be included by a regulation made
8 under section 66 (Prescribed matters in village contracts);
9 and

10 **[1.35] Section 135**

11 *substitute*

12 **135 Definitions—div 7.2**

13 (1) In this division:

14 *capital item*, for which the operator of a retirement village is
15 responsible—

16 (a) means—

17 (i) a building or structure in the village; and

18 (ii) plant, machinery or equipment used in the village's
19 operation; and

20 (iii) any part of the village's infrastructure; and

21 (iv) any other item prescribed by regulation; but

22 (b) does not include a capital item that is—

23 (i) owned by a resident of the village; or

24 (ii) common property under a community title scheme or
25 units plan; or

1 (iii) prescribed by regulation.

2 *Note* Power to make a regulation in relation to a matter includes power to
3 make provision in relation to a class of matter (see [Legislation Act](#),
4 s 48 (2)).

5 ***capital maintenance***—

6 (a) means works carried out for repairing or maintaining a capital
7 item; and

8 (b) includes works prescribed by regulation as being capital
9 maintenance; but

10 (c) does not include works prescribed by regulation as not being
11 capital maintenance.

12 ***capital replacement***—

13 (a) means works carried out for replacing a capital item; but

14 (b) does not include capital maintenance.

15 (2) In this section:

16 ***common property***—

17 (a) under a community title scheme—see the [Community Title](#)
18 [Act 2001](#), section 18; and

19 (b) under a units plan—see the [Unit Titles Act 2001](#), section 13.

20 **[1.36] Section 151 (9)**

21 *omit*

1 **[1.37] Section 154 (5) (f)**

2 *omit*

3 or the *Unit Titles Act 2001*;

4 *substitute*

5 or the *Unit Titles (Management) Act 2011*;

6 **[1.38] Section 157 (1) (a) and (b)**

7 *substitute*

8 (a) are destroyed or cease to be usable as residential premises, or
9 become unsuitable for habitation, other than as a result of a
10 breach of the village contract for the residential premises; or

11 (b) are compulsorily appropriated or acquired by a Commonwealth
12 or Territory entity.

13 **[1.39] Section 159 (5) (a) (i)**

14 *omit*

15 have

16 *substitute*

17 seek

18 **[1.40] Section 160 (1)**

19 *after*

20 budget

21 *insert*

22 for a financial year for the village

1 **[1.41] Section 162 (1)**

2 *omit*

3 have the residents' consent for

4 *substitute*

5 seek the residents' consent to

6 **[1.42] New section 162 (2A)**

7 *insert*

8 (2A) An operator of a retirement village is taken to have complied with
9 subsection (1) if the operator—

10 (a) provides a notice as required by section 159 (5) (a) (Proposed
11 annual budget); and

12 (b) includes a statement mentioned in section 159 (6).

13 **[1.43] Section 162 (8)**

14 *omit*

15 (5)

16 *substitute*

17 (6)

18 **[1.44] Section 166 (3), note**

19 *omit*

20 (2)

21 *substitute*

22 (3)

1 **[1.45] Section 168 (3) and note**

2 *substitute*

3 (3) The operator of a retirement village commits an offence if the
4 operator—

5 (a) fails to give, not later than the prescribed time after the end of
6 each quarter, a copy of the village's quarterly accounts for the
7 quarter to the residents committee for the village; or

8 (b) if there is no residents committee—fails to display, not later
9 than the prescribed time after the end of each quarter, a copy of
10 the village's quarterly accounts for the quarter on the common
11 property of the village in the way prescribed by regulation.

12 Maximum penalty: 20 penalty units.

13 *Note* *Fail* includes refuse (see [Legislation Act](#), dict, pt 1).

14 **[1.46] Section 169 (3) (b)**

15 *omit*

16 residents

17 *substitute*

18 occupants

19 **[1.47] Section 170 (2) (b) (i)**

20 *omit*

21 and (4)

22 *substitute*

23 , (4) and (5)

1 **[1.48] Section 177 (2)**

2 *substitute*

3 (2) The ACAT has, and may exercise, the same jurisdiction as the
4 Supreme Court, and all the powers and authority of the Supreme
5 Court, in a proceeding in which relief is sought in relation to a
6 contract between an operator of a retirement village and a resident
7 of the village.

8 **[1.49] Section 179**

9 *omit*

10 **[1.50] Section 184 (2)**

11 *substitute*

12 (2) The notice must be given within the time prescribed by regulation.

13 *Note 1* If a form is approved under s 263 for this provision, the form must be
14 used.

15 *Note 2* A fee may be determined under s 262 for this provision.

16 **[1.51] Section 185 (1) (a) (ii)**

17 *omit*

18 a residence

19 *substitute*

20 residential premises

21 **[1.52] Section 185 (1) (b)**

22 *substitute*

23 (b) compulsorily appropriated or acquired by a Commonwealth or
24 Territory entity.

1 **[1.53] Section 187 (4)**

2 *omit*

3 **[1.54] Section 207 heading**

4 *substitute*

5 **207 Meaning of *permanently vacated* residential premises—**
6 **pt 10**

7 **[1.55] New section 207 (1A)**

8 *insert*

9 (1A) This section applies in addition to section 14 (Meaning of
10 *permanently vacated* residential premises).

11 **[1.56] Section 235 (5)**

12 *omit*

13 (2)

14 *substitute*

15 (3)

16 **[1.57] Section 238 (5) and (6)**

17 *omit*

1 **[1.58] New section 238A**

2 *insert*

3 **238A Statements to former occupants who were not registered**
4 **interest holders**

- 5 (1) This section applies if the operator of a retirement village—
- 6 (a) refunds a former occupant's ingoing contribution under
7 section 238 (2); or
- 8 (b) makes another payment to a former occupant of residential
9 premises in the village under section 238 (4).
- 10 (2) At the same time as the payment is made, the operator must give the
11 former occupant a statement setting out the following and showing
12 how the amounts were calculated:
- 13 (a) the departure fee (if any) payable by the former occupant;
- 14 (b) accrued or outstanding recurrent charges (if any) payable by
15 the former occupant;
- 16 (c) any amount payable by the former occupant in relation to
17 repairs required to the residential premises under section 219
18 (Condition of premises on ending of residence contract);
- 19 (d) any other amount payable by the former occupant under a
20 village contract;
- 21 (e) in relation to the part of a refund mentioned in
22 section 238 (4)—the amount of the ingoing contribution of the
23 incoming resident of the premises;
- 24 (f) the amount of the payment to the former occupant.

1 (3) The operator of the village commits an offence if the operator does
2 not comply with subsection (2).

3 Maximum penalty: 10 penalty units.

4 (4) An offence against this section is a strict liability offence.

5 **[1.59] Section 260 (3)**

6 *omit*

7 **[1.60] Section 261 (4)**

8 *after*

9 contract

10 *insert*

11 , scheme

12 **[1.61] Section 263 (1), new note**

13 *insert*

14 *Note* *Commissioner for fair trading*—see the [Legislation Act](#), dict, pt 1.

15 **[1.62] Section 500, definition of *existing contract***

16 *substitute*

17 ***existing contract*** means an existing residence contract or an existing
18 service contract.

19 ***existing residence contract*** means any of the following:

20 (a) a residence contract under the repealed code;

21 (b) any other contract, agreement, scheme or arrangement, entered
22 into before the commencement day, under which a person
23 obtained the right to occupy residential premises in a complex
24 that was, at the time the right was obtained, a retirement village

1 within the meaning of this Act (even if it stopped being a
2 retirement village before the commencement of this Act).

3 *existing service contract* means a contract, agreement, scheme or
4 arrangement, entered into before the commencement day, under
5 which the operator (however described) of a retirement village
6 provided services to a resident of the village.

7 **[1.63] Section 501 heading**

8 *substitute*

9 **501 Existing residence contracts to be residence contracts**

10 **[1.64] Section 501**

11 *omit*

12 existing contract

13 *substitute*

14 existing residence contract

15 **[1.65] New section 501A**

16 *insert*

17 **501A Existing service contracts to be service contracts**

18 (1) This section applies if, immediately before the commencement day,
19 an existing service contract is in force.

20 (2) The existing service contract is, on the commencement day, taken to
21 be a service contract—

22 (a) in the same terms as the existing service contract; and

23 (b) subject to the same conditions as the existing service contract.

24 (3) This section is subject to section 502 and section 503.

1 **[1.66] Section 502 (1)**

2 *omit*

3 an agreement,

4 *substitute*

5 an existing contract or other agreement

6 **[1.67] Section 504 (4)**

7 *omit*

8 **[1.68] Dictionary, definition of *body corporate***

9 *omit*

10 **[1.69] Dictionary, definitions of *capital maintenance* and *capital***
11 ***replacement***

12 *substitute*

13 *capital maintenance*, for division 7.2 (Capital maintenance and
14 replacement)—see section 135.

15 *capital replacement*, for division 7.2 (Capital maintenance and
16 replacement)—see section 135.

17 **[1.70] Dictionary, definition of *common property***

18 *omit*

19 **[1.71] Dictionary, definition of *item of capital***

20 *omit*

1 **[1.72] Dictionary, definition of *permanently vacate***

2 *omit*

3 **[1.73] Dictionary, new definition of *permanently vacated***

4 *insert*

5 *permanently vacated*, residential premises—

6 (a) for this Act generally—see section 14; and

7 (b) for part 10 (Matters relating to vacation of premises)—
8 see section 207.

9 **[1.74] Dictionary, definition of *units plan***

10 *omit*

11 section 9

12 *substitute*

13 dictionary

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 14 February 2013.

2 Notification

Notified under the [Legislation Act](#) on 2013.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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