

## LEGISLATIVE COUNCIL

## RETIREMENT VILLAGES AMENDMENT BILL 2024

(Amendments and New Clause to be proposed in Committee by DAVID DAVIS)

1. Clause 2, line 18, omit "1 May" and insert "31 October".
2. Clause 6, lines 26 to 33 and page 6, lines 1 and 2, omit all words and expressions on these lines and insert—
  - "(a) made to meet the reasonable recurring costs of caring for the person in a place that is not the retirement village or a residential care facility, and includes a payment for the purposes of a residential rental agreement under Part 2 of the **Residential Tenancies Act 1997**; and".
3. Clause 6, page 6, line 22, omit "***maintenance***" and insert "***item maintenance and replacement***".
4. Clause 6, page 6, line 23, omit "38BL" and insert "38BK".
5. Clause 6, page 6, line 24, after "***maintenance***" insert "***and replacement***".
6. Clause 7, page 23, line 28, omit "adjusted" and insert "benchmark".
7. Clause 7, page 24, lines 1 to 5, omit all words and expressions on these lines.
8. Clause 34, page 101, line 20, after this line insert—
  - "(ia) the following details about those alternative accommodation arrangements—
    - (A) evidence that the arrangements have been entered into and of the terms of the arrangements; and
    - (B) evidence that the person making the request is liable to make payments for the right to occupy premises under the arrangements and of the amounts that the person is liable to pay;"
9. Clause 34, page 103, lines 6 to 24, omit all words and expressions on these lines.
10. Clause 34, page 103, lines 29 to 31 and page 104, line 1, omit all words and expressions on these lines and insert—
 

"made under section 32R must be made on the date that the person making the payment request delivers up vacant possession of the person's premises in the retirement village."
11. Clause 36, page 110, line 13, omit "adjusted" and insert "benchmark".
12. Clause 36, page 110, line 21, omit "adjusted" and insert "benchmark".
13. Clause 36, page 111, line 16, omit "adjusted" and insert "benchmark".

14. Clause 36, page 116, line 25, after "maintenance" insert "and replacement".
15. Clause 37, page 119, line 17, omit "maintenance" and insert "item maintenance and replacement".
16. Clause 37, page 119, line 18, omit "(if any)".
17. Clause 37, page 119, line 28, after "maintenance" insert "and replacement".
18. Clause 37, page 120, line 3, after "maintenance" insert "and replacement".
19. Clause 37, page 120, line 8, after "maintenance" insert "and replacement".
20. Clause 37 page 120, line 13, after "maintenance" insert "and replacement".
21. Clause 38, line 21 omit "reviewed" and insert "audited".
22. Clause 38, lines 22 to 33 and page 121, lines 1 to 20, omit all words and expressions on these lines and insert "qualified auditor and whose appointment has received the consent (or is taken to have received the consent) of the residents under subsection (3).
23. Clause 38, page 121, line 21, omit "(4)" and insert "(2)".
24. Clause 38, page 121, line 21, omit "or reviews".
25. Clause 38, page 121, line 23, omit "or review".
26. Clause 38, page 121, lines 24 to 35 and page 122, lines 1 and 2, omit all words and expressions on these lines and insert—

'(3) The operator of a retirement village must seek the consent of the residents of the village to the appointment of an independent person who is a qualified auditor as the auditor of the accounts of the village in the following way—

(a) the operator must give each resident written notice (a ***consent request notice***) stating the following—

- (i) the name of the person proposed for appointment;
- (ii) the qualifications of the person;
- (iii) the address of the person;
- (iv) the proposed period of appointment.

(b) if the audit fees are to be paid by the residents, the fees must be included in the consent request notice and itemised in the annual financial statements.

- (4) The consent must be sought each calendar year unless consent is given for a longer period of appointment, not exceeding 3 years.
- (5) Within 28 days after receiving a consent request notice, the residents of the retirement village must—
  - (a) meet, consider and vote on—

- (i) the proposed appointment of the person as the auditor; and
  - (ii) if the proposed period of appointment is more than one year, the proposed period; and
- (b) give the retirement village operator notice in writing (a ***consent response notice***) that the residents consent, or do not consent to—
  - (i) the appointment of the person as auditor; and
  - (ii) if the residents consent to the appointment but not the proposed period of appointment, the period of appointment to which the residents consent.
- (6) If the residents of a retirement village do not consent to the appointment of the person as the auditor—
  - (a) the residents, by notice in writing given to the operator, must propose a qualified auditor as an alternative person on whom the residents have agreed by a vote for appointment; and
  - (b) if the alternative person is appointed, the audit fees of the auditor must be paid by the residents as part of the annual financial statements.
- (7) A notice under subsection (6) may be given—
  - (a) in the consent response notice; or
  - (b) in a further notice in writing given to the operator, but only if—
    - (i) the intention to provide the further notice is indicated in the consent response notice; and
    - (ii) the further notice is provided within 30 days after the consent response notice is given to the operator.
- (8) The residents of a retirement village are taken to have consented to the appointment of the following person as auditor of the accounts of the village—
  - (a) the person proposed by the operator (but only for a period of 1 year if a longer period was proposed by the operator), if the residents do not advise the operator of the village of their decision as required by subsection (5)(b) or (6);
  - (b) the person proposed by the residents, if the operator of the village agrees to the appointment of an alternative person proposed by the residents under subsection (6).
- (9) In this section—
 

***qualified auditor*** means a person who is a member of, and who holds a current practising certificate from—

  - (a) CPA Australia; or
  - (b) the Institute of Public Accountants; or
  - (c) Chartered Accountants Australia and New Zealand."

27. Clause 44, page 127, lines 17 and 18, omit ", taking into account fair wear and tear to the premises".
28. Clause 44, page 128, lines 20 and 21, omit ", taking into account fair wear and tear to the premises".
29. Clause 45, lines 9 to 12, omit all words and expressions on these lines and insert—
  - '(1) In section 38(1) of the Principal Act—
    - (a) **insert** the following definition—
 

**"benchmark maintenance charge** means the benchmark maintenance charge determined and indexed in accordance with section 38AA;"
    - (b) **omit** the definition of **adjusted maintenance charge**;
    - (c) in the definition of **special levy**, for "owner or manager" **substitute** "proprietor or operator of a retirement village".
30. Clause 45, line 18, omit "adjusted" and insert "benchmark".
31. Clause 45, line 20, omit "adjusted" and insert "benchmark".
32. Clause 45, line 26, omit "adjusted" and insert "benchmark".
33. Clause 45, after line 32 insert—
  - '(ba) in paragraph (a), for "adjusted" **substitute** "benchmark";.
34. Clause 45, page 136, line 2, omit "'operator".' and insert "'operator";.
35. Clause 45, page 136, after line 2 insert—
  - '(d) in paragraph (c), for "adjusted" **substitute** "benchmark";.
36. Clause 45, page 136, line 6, omit "adjusted" and insert "benchmark".
37. Clause 45, page 136, line 18, omit "adjusted" and insert "benchmark".
38. Clause 45, page 136, after line 24 insert—
  - '(ab) for "adjusted" **substitute** "benchmark";.

#### NEW CLAUSE

39. Insert the following New Clause to follow clause 45—
  - '45A Section 38AA amended**
    - (1) In the heading to section 38AA of the Principal Act, for "**adjusted**" **substitute** "**benchmark**".
    - (2) In section 38AA(1) of the Principal Act, for "adjusted" **substitute** "benchmark".
    - (3) In section 38AA(2) of the Principal Act, for "adjusted" (wherever occurring) **substitute** "benchmark";.

40. Clause 49, page 143, line 1, omit "**Making good of deficit**" and insert "**Any deficit in accounts to be carried over**".
41. Clause 49, page 143, lines 2 to 27, omit all words and expressions on these lines and insert—

"Any deficit in the accounts for a financial year of a retirement village must be carried forward to the accounts for the next financial year."
42. Clause 49, page 145, after line 10 insert—

"(ba) that is located within a resident's premises; or".
43. Clause 49, page 148, line 12, omit "**certain**".
44. Clause 49, page 148, line lines 14 to 24, omit all words and expressions on these lines and insert—

"(1) The operator of a retirement village may fund the cost of capital maintenance and capital replacement in respect of which the operator is responsible from the capital item maintenance and replacement fund for the retirement village and maintenance charges.

(2) Subject to section 38BO, the operator of a retirement village must establish and maintain a capital item maintenance and replacement fund."
45. Clause 49, page 148, line 27, omit "maintenance" and insert "item maintenance and replacement".
46. Clause 49, page 148, after line 33 insert—

"(ca) upgrading the operator's assets;"
47. Clause 49, page 149, line 3, omit "**maintenance**" insert "**item maintenance and replacement**".
48. Clause 49, page 149, lines 4 to 13, omit all words and expressions on these lines and insert—

"(1) The operator of a retirement village who sets aside any maintenance charges paid by residents of the retirement village for the purpose of funding capital maintenance and replacement of items of capital for which the operator is responsible must pay the charges into the capital item maintenance and replacement fund in accordance with subsection (2)."
49. Clause 49, page 149, line 15, omit "maintenance" and insert "item maintenance and replacement".
50. Clause 49, page 149, line 18, after "maintenance" insert "and replacement".
51. Clause 49, page 149, line 24, after "maintenance" insert "and replacement".
52. Clause 49, page 149, line 28, omit "maintenance" and insert "item maintenance and replacement".

53. Clause 49, page 149, line 31, omit "maintenance" and insert "item maintenance and replacement".
54. Clause 49, page 149, line 33, after "maintenance" insert "and replacement".
55. Clause 49, page 149, line 34, after "maintenance" insert "and replacement".
56. Clause 49, page 150, line 2, omit "maintenance" and insert "item maintenance and replacement".
57. Clause 49, pages 150, lines 6 to 32 and page 151, lines 1 to 6, omit all words and expressions on these lines.
58. Clause 49, page 151, line 7, after "**maintenance**" insert "**and replacement**".
59. Clause 49, page 151, line 10, after "maintenance" (where twice occurring) insert "and replacement".
60. Clause 49, page 151, line 13, after "maintenance" insert "and replacement"
61. Clause 49, page 151, line 25, omit "estimate" and insert "estimated".
62. Clause 49, page 152, line 1, omit "**maintenance**" and insert "**item maintenance and replacement**".
63. Clause 49, page 152, line 2, after "**maintenance**" insert "**and replacement**".
64. Clause 49, page 152, line 4, omit "maintenance" and insert "item maintenance and replacement".
65. Clause 49, page 152, line 5, after "maintenance" insert "and replacement".
66. Clause 49, page 155, line 24, omit "adjusted" and insert "benchmark".
67. Clause 64, line 23, omit "adjusted" and insert "benchmark".
68. Clause 65, page 203, line 8, omit "adjusted" and insert "benchmark".
69. Clause 68, line 3, omit "1 May" and insert "31 October".