



Regulatory Impact Statement

Retirement Villages Regulation 2017 – June 2017



Finance,
Services &
Innovation

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Executive summary

The *Retirement Villages Act 1999* (the Act) is supported by the Retirement Villages Regulation 2009 (the 2009 Regulation), which is scheduled for automatic repeal on 1 September 2017 under the *Subordinate Legislation Act 1989*.

The Act and 2009 Regulation set out the rights and obligations of residents and village operators, covering approximately 55,000 residents living in over 600 villages. The Act provides consumer protection by mandating certain disclosure and contractual requirements, rules around village management (including budgets and village rules) as well as providing a system for the resolution of disputes.

It is proposed that the Retirement Villages Regulation 2017 (the proposed Regulation) be made, retaining a number of existing provisions, while making amendments to reduce excessive administrative requirements for operators and improving protection for both prospective and current residents.

The main changes to the Regulation are:

- clarifying that re-painting of external surfaces once every 10 years is capital maintenance
- requiring copies of a village's insurance policy documents be available to residents
- a new 'average resident comparison figure' in the Disclosure Statement to facilitate more effective comparison between villages
- reducing the maximum amount payable for an operator's legal and other expenses in preparing a village contract to \$50
- adding new matters for which village rules can be created, including smoking in communal areas;
- requiring clearer information in annual budgets on head office expenses
- lowering the maximum amount allocated for contingencies to \$1
- extending the list of items that cannot be financed by recurrent charges
- simplifying the process allowing residents to hold office on a residents committee for longer than three years, and
- allowing service of documents by electronic means.

This Regulatory Impact Statement (RIS) sets out the rationale and objectives of the proposed Regulation. It includes alternative options and an assessment of the costs and benefits of each of these. The proposed Regulation is the option which provides the greatest net public benefit.

Consultation process

Making a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the proposed Regulation, whether or not it is addressed in this RIS. Matters covered by the principal Act – *Retirement Villages Act 1999* – are not the subject of the consultation process.

To assist you in making a submission an optional online submission form will be available on our website at www.fairtrading.nsw.gov.au. However, this form is not compulsory and submissions can be in any written format.

Submissions can be made by email with any documents that are provided to be produced in an 'accessible' format. Accessibility is about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>.

Please forward submissions by:

Email to: rvregulation2017@finance.nsw.gov.au

Mail to: Retirement Villages Regulation 2017

Better Regulation Division, Department of Finance, Services and Innovation

McKell Building

2-24 Rawson Place

SYDNEY NSW 2000

The closing date for submissions is close of business Thursday, 20 July 2017.

We invite you to read this paper and provide comments. You can download the RIS and the proposed Regulation from www.fairtrading.nsw.gov.au. Printed copies can be requested from NSW Fair Trading by phone on (02) 9895 0791.

Important note: release of submissions

All submissions will be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with your reasons. Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*). It is also a

statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

Identified stakeholders

The RIS has been provided directly to some stakeholder organisations. A list of these stakeholders is provided at Appendix 4.

Evaluation of submissions

All submissions will be considered and assessed. The proposed Regulation will be amended, if necessary, to address issues identified in the consultation process. If further information is required, targeted consultation will be held before the Regulation is finalised.

Commencement of the Regulation

After the Minister for Innovation and Better Regulation has finalised the Regulation, it will be submitted to the Governor for approval.

Once approved by the Governor, the Regulation will be published on the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au and in the NSW Government Gazette. Information on how to access the Gazette is available on the NSW Parliamentary Counsel's website.

It is proposed the Regulation will commence on **1 September 2017**.

Need for government action

Government action is deemed necessary at this point in time as the 2009 Regulation is due for automatic repeal on 1 September 2017. The proposed Regulation is a necessary and detailed component of the retirement village regulatory framework in NSW, and the Act cannot function as intended without the supporting Regulation.

Objective and rationale of the Regulation

Objective

The primary objective of the Regulation is to provide the legislative support and administrative detail for the operation of the Act. The objects of the Act are to:

- set out particular rights and obligations of residents and operators of retirement villages;
- facilitate the disclosure of information to prospective residents
- require contracts between residents and operators to contain full details of the rights and obligations of the parties
- facilitate resident input, where desired by residents, into the management of retirement villages
- establish appropriate mechanisms for the resolution of certain disputes between residents and operators, and
- encourage the retirement village industry to adopt best practice management standards.

The objectives of the proposed Regulation are to:

- ensure retirement village residents and operators are aware of their rights and obligations
- support harmonious living and facilitate resident participation in village life
- improve the disclosure of key financial and other information for prospective and current residents, and
- reducing administrative burden.

Rationale

The Regulation is necessary as it provides the legislative support and administrative detail necessary for the effective operation of the Act. Without the Regulation, the Act could not be effectively administered or enforced.

It is necessary to remake the Regulation at this time because:

- under the sun-setting provisions contained in the *Subordinate Legislation Act 1989*, the current Regulation will be automatically repealed on 1 September 2017 if it is not re-made,
- without the supporting Regulation, the Act cannot operate effectively or be enforced or administered, and
- updates are required to deliver better outcomes for residents and operators.

Options for achieving objectives

The primary objective of the proposed Regulation is to provide operational and administrative detail to support the operation of the Act. There are 3 options for achieving the objectives:

Option 1: Maintain the status quo

Do not make the proposed Regulation, and instead remake the Regulation to be identical to the existing Regulation.

Option 2: Make the proposed Regulation

The provisions of the Regulation will provide updated legislative support and administrative detail for the Act.

Option 3: Take no action

Allow the existing Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make any replacement Regulation.

Impact assessment of options

Assessment of option 1

Maintain the status quo – do not make the proposed Regulation and instead remake the Regulation to be identical to the 2009 Regulation.

Option 1 - Costs

The costs of this option on industry, the community and the NSW Government will remain substantially the same. However, the current issues faced by residents with the 2009 Regulation would not be resolved and there would be an opportunity cost for the community in terms of the lost additional consumer protection that is included in the proposed Regulation.

Industry costs would be the missed opportunity for savings as a result of the red tape reduction measures in the proposed Regulation. The overall cost impact of option 1 on industry has been assessed as low.

Consumer costs would be limited by remaking the 2009 Regulation as is. However, complaints received by Fair Trading since the commencement of the Regulation suggests that there are issues within the Regulation that need to be addressed. These issues relate, but are not limited to:

- financial transparency
- unclear fees and charges
- over prescriptive and unnecessary regulatory requirements, and
- ineffective mechanisms ensuring both operators' and residents' rights and obligations are clear.

Maintaining the status quo would not help to resolve these existing issues and they would continue to impact sections of the retirement village resident population. For this reason, the overall cost impact of option 1 on consumers has been assessed as medium.

Government costs would continue to be the same under option 1. NSW Fair Trading, through its administration of the Act and Regulation, would incur similar administrative and financial costs if the 2009 Regulation was remade without amendment. The measures of the proposed Regulation aimed at reducing disputes and providing greater clarity and certainty to residents and operators would not be realised under this option. Therefore, there is an opportunity cost for government in relation to proceeding with option 1. The overall cost impact on government of this option has been assessed as low.

Option 1 - Benefits

Renewing the 2009 Regulation in its current form would achieve the objectives of the Act. As its provisions are already familiar to industry, residents and Government, no changes would be required to existing practices and procedures, saving time and money.

Industry benefits under option 1 are moderate. Residents would still be required to comply with the requirements of the 2009 Regulation and operators would have access to the dispute resolution mechanisms available to them. The primary benefit of option 1 for industry is the savings achieved because of the absence of any costs associated with transitioning to the new requirements of the proposed Regulation, including costs associated with ensuring compliance. As the proposed Regulation introduces new and enhanced provisions designed to improve consumer protection in the industry, proceeding with option 1 would remove any new regulatory impact of these requirements from the industry. The overall benefits for industry of option 1 have been assessed as medium.

Consumer benefits of option 1 relate primarily to the time and effort saved in not having to adapt to any new legislation or requirements. Consumers would continue to benefit from the consumer protection mechanisms of the 2009 Regulation and remaking the Regulation as is would still provide the necessary administrative mechanisms for implementing the Act. However, this option would see a continuation of an out-dated regulatory framework which has not kept pace with current standards or approaches. While there are some benefits for consumers, the overall benefits have been assessed as low.

Government benefits would be focused on the administrative savings that could be achieved through the continuation of the status quo. Proceeding with option 1 would mean guidance and advice material provided by Fair Trading would not need to be updated; there would be no requirement to publicise any legislative changes; and Fair Trading staff would not need to be re-trained on the new legislation. However, option 1 would not improve the current issues. For this reason the overall benefit to government has been assessed as low.

Option 1 – Conclusion

Option 1 would still allow the Act's objectives to be achieved, but it would not do so in the most effective and beneficial way given the potential for improvements. Remaking the 2009 Regulation in its current form would not impose any new costs on industry or consumers, but it would not result in any significant benefits or improvements in the sector. There is also a high opportunity cost associated with this option because the changes in the proposed Regulation would not be achieved, impacting industry, consumers and government alike. For these reasons, **option 1 is not the preferred option.**

Assessment of option 2

Make the proposed Regulation - the provisions of the proposed Regulation will provide updated legislative support and administrative detail for the Act.

Option 2 - Costs

Industry costs of option 2 would be varied, largely depending on an individual operator's current business practices, business structure and the resources available to implement necessary changes arising from the proposed Regulation. Option 2 will impose some direct costs on industry, but these are not new costs, rather they are existing costs currently paid for by residents. The approach taken in the proposed Regulation reinforces the intent of the legislation and aims to improve fairness, consumer protection and clarity by more appropriately assigning liability for certain costs and charges in the retirement village regulatory framework.

The following have been identified as potential costs for industry under option 2:

- some additional up-front administration costs associated with the new annual budget requirements, where a village's annual budget includes costs associated with an operator's head office or management fees;
- no real increase in land tax, however some operators may have to restructure the source of their funding as a result of the proposed limitations on the matters that can be funded through recurrent charges;
- where a workers compensation claim is made by an employee of the operator, any subsequent increase in the operator's insurance premium will no longer be recoverable through recurrent charges, meaning the operator will need a different source of funding for any increase;
- a marginal increase in costs associated with legal fees incurred in the preparation of a village contract, with the maximum amount payable by a resident reduced to \$50;
- in cases where an operator is unable to keep spending within the approved budget, additional costs may be incurred by the operator as a result of a lower amount that can be allowed for contingencies; and
- administrative costs associated with updating the various notices and forms required by the proposed Regulation.

The overall cost impact of option 2 on industry has been assessed as medium.

Consumer costs associated with making the proposed Regulation primarily relate to the time involved in familiarising themselves with the new requirements. There may also be other consumer costs associated with the proposed addition to the definition of capital maintenance, with residents responsible for the cost of external painting of the village once every 10 years. However, this is off-set through the additional

clarity provided by the clause and the limitation on the frequency at which the external painting can be done. The overall cost impact of option 2 on consumers has been assessed as low.

Government costs will not change significantly as a result of option 2. The government incurs costs in administering the legislation, arising mostly from responding to complaints and disputes between residents and operators, as well as carrying out compliance checks on operators and providing education material. The proposed Regulation does not impose any new costs for Fair Trading and the overall cost impact of option 2 on government has been assessed as low.

Option 2 - Benefits

Making the proposed Regulation will result in a range of improvements for industry, consumers and government.

Industry benefits include measures that remove unnecessary regulation in areas where the potential consumer detriment is low. This includes the simplification of the information required in a notice of variation of recurrent charges and the removal of the requirement for a safety inspection report to be posted on a notice board in the village. The proposed Regulation also removes the current minimum public liability insurance amount, instead allowing operators to freely determine the most appropriate amount of cover in line with the size of the village and their individual business needs. Operators will further benefit from greater clarity about what constitutes capital maintenance, through a reduction in disputes and time at the Tribunal where disagreements arise. The overall benefits for industry have therefore been assessed as medium.

Consumer benefits under option 2 include measures that will improve clarity for residents, reduce residents' liability for certain costs, make it easier for residents to determine office holder positions on the residents committee, and overall improve consumer protection in the retirement village industry.

Making the proposed Regulation will deliver direct cost savings for residents by lowering the amount an operator can charge an incoming resident for legal fees incurred when preparing the village contract. The new provisions dealing with matters that can be funded by recurrent charges will also deliver some savings for residents and provide clear rules for what residents must pay for in relation to the management of the village.

Residents will also benefit from changes to broaden what village rules can cover, resulting in the operator and residents more effectively managing the village and its communal areas.

The General Inquiry Document has been amended to make reference to the village rules, allowing prospective residents greater access to the rules of each individual village. Operators will also be required to provide greater detail about the village's insurance so residents are better able to understand the level of cover offered by the policy. This will ease some concerns of residents and give them greater oversight into this aspect of village management.

The proposed Regulation will also provide more clarity surrounding head office management and administration expenses, which will need to be itemised in the village's annual budget. In cases where these costs have been apportioned inappropriately, residents will be able to hold the operator accountable, ensuring they are only paying for services provided at their village.

It will also be easier to manage the residents committee. The proposed changes simplify the process allowing residents to hold office on a residents committee for longer than three years. These provisions will send the power back to residents to determine what is best for them and their village.

Overall, the benefits to consumers of option 2 have been assessed as high.

Government benefits of option 2 primarily relate to the savings achieved through a reduction in the number of disputes that result from greater clarity and transparency provided by the proposed Regulation. The overall benefits to government of option 2 have been assessed as medium.

Option 2 - Conclusion

Option 2 meets the regulatory objectives of the legislation and provides greater clarity around a number of matters which have been the subject of dispute. Residents will see numerous benefits from the proposed Regulation and while there will be some additional costs for industry, these costs are not expected to be significant and operators will be able to recover the costs from other revenue sources, such as the departure fee. The cost impacts of the proposed Regulation will not impact all operators in the industry and are partly offset by the red tape reduction measures in the proposed Regulation. Option 2 also closely aligns with the objectives of the Act, particularly the new provisions, which will encourage the retirement village industry to adopt best practice standards. For these reasons, **option 2 is the preferred option.**

Assessment of option 3

No action – Allow the existing Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make any replacement Regulation.

Option 3 - Costs

The Retirement Villages Regulation provides considerable legislative support to the Act. Without the Regulation in place the Act would not be able to achieve its intended aims.

Industry costs would be incurred if the Regulation is allowed to lapse. The Act would still be in force and operators would be able to continue running their business. However, the Regulation contains important forms, procedures, guidance and rules that assist operators in running their village. Without these provisions, there is likely to be an increase in disputes. This will lead to greater costs for operators due to the time and money spent dealing with problems and/or making an application to the Tribunal. The overall costs to industry of option 3 have been assessed as medium.

Consumer costs would be significant under option 3. The consumer protections for residents contained in the Regulation would disappear. Many residents may find retirement village living more stressful and difficult as a result. For example, there would be no general inquiry document, disclosure statement, standard contract or condition report – impacting residents' ability to compare villages and understand their obligations. Village management requirements, such as rules relating to budgeting would also be lost. This would make it difficult for residents to obtain information to ensure that their village is being run appropriately and in their interests. A lack of consumer protection would not align with the objectives of the Act and would have a substantial and unnecessary impact on residents. As such, the overall costs of option 3 on consumers have been assessed as high.

Government costs would increase under option 3. The number of complaints received by Fair Trading would likely increase, requiring additional staff resources to effectively deal with the increased number of complaints. There would also be additional matters before the Tribunal, which would increase administration costs for Government. Allowing the Regulation to lapse would also remove the ability for penalty notices to be issued by Fair Trading, meaning all breaches of the Act would need to be pursued through the courts, resulting in a substantial increase in compliance costs. For these reasons, the overall costs to government of this option have been assessed as high.

Option 3 - Benefits

Without the Regulation the Act would not be able to function as intended and there are therefore no significant benefits to this option.

Industry benefits would be minimal, but there would be some savings achieved as a result of the removal of the regulatory requirements imposed on operators in the Regulation. The overall benefit to operators of option 3 has been assessed as low.

Consumer benefits would be non-existent under this option. The loss of the consumer protection provisions of the Regulation would mean there is no benefit to consumers in allowing the Regulation to lapse. The overall benefit to consumers of option 3 has been assessed as low.

Government benefits would also be very minor and primarily relate to the savings achieved in time and resources in not having to remake the Regulation. However, these would be far outweighed by the costs associated with handling more complaints as detailed above. As such, the overall benefits to government of option 3 have been assessed as low.

Option 3 - Conclusion

This option does not achieve any of the Act's objectives and will significantly reduce consumer protection in the retirement village sector. Without the Regulation, many important aspects of the Act will not function effectively and there are few, if any real benefits associated with allowing the Regulation to lapse. For these reasons, **option 3 is not the preferred option.**

Regulation making powers

| Section in the Act | Regulation making power under the Act | The proposed Regulation | |
|---------------------------|---|-------------------------|---|
| | | Clause | Scope of clause |
| Part 1 Preliminary | | | |
| 4(1) | Expand or restrict the definition of what is capital maintenance. | 4 | Prescribes that capital maintenance includes repainting of external surfaces once every 10 years but not does include work to improve an item beyond its original position, or work to repair an item where it would be more cost effective to replace it. |
| 4(1) | Expand definition of what are "general services". | - | None prescribed. |
| 4(1) | Expand or restrict the definition of "item of capital". | 5 | Prescribes that an item of capital includes fixtures, fittings, furnishing and non-fixed items. |
| 4(1) | Add or exempt person or class of persons defined as "operator". | 6 | Prescribes the following as an operator of a retirement village: <ul style="list-style-type: none"> • The community, neighbourhood or precinct association of a retirement village that is subject to a community land scheme • The owners corporation of a retirement village that is subject to a strata scheme • The company that is the owner of a retirement village that is subject to a company title scheme. |
| 4(1) | Expand definition of what are "optional services". | 7 | Prescribes options services as meal provision, laundry services, home cleaning, and personal care services. |
| 4(1) | Add other right (e.g. form of contract) that gives rise to "residence right". | - | None prescribed. |
| 4(1) | Add person or class of persons defined as a "resident". | 8 | Prescribes that a person is a resident if they: <ul style="list-style-type: none"> • Were the spouse or partner of a resident immediately before the resident died or vacated the premises • Occupied the premises with that resident • Continue to occupy the premises. This does not apply if the other resident has died and that resident's will contains direct or indirect terms that require the person to vacate the premises. |
| 4(1) | Add kind of contract for definition of "village contract". | - | None prescribed. |

| Section in the Act | Regulation making power under the Act | The proposed Regulation | |
|---|--|-------------------------|--|
| | | Clause | Scope of clause |
| 5(1)(b) | Expand meaning of "retirement village". | - | None prescribed. |
| 5(3)(i) | Add place that can be excluded from the definition of "retirement village". | 9 | Prescribes that a retirement village does not include a facility within the meaning of the <i>Community Welfare Act 1987</i> . |
| 6(2)(d) | Add other payment for the purposes of "ingoing contribution". | - | None prescribed. |
| Part 2 Application of the Act | | | |
| 11(4) | Add modifications to the application of the Act. | - | None prescribed. |
| Part 3 Representations and information about retirement villages | | | |
| 17(5A) | Prohibit type of representation for promotional material. | 10 | Prohibits the following representations in promotional material: <ul style="list-style-type: none"> • That a person is likely to obtain capital gain when vacating the retirement village • Any estimation of possible changes to future recurrent charges except where the contract provides for recurrent charges to be varied by a fixed formula • Any estimation of the future size of the retirement village except in case of construction where development is underway and there is a completion date, • Future village ownership of the village, except if a contract to transfer village ownership has been entered into • That the retirement village is an approved provider of residential care • That residents of the retirement village have priority access to resident care. |
| 18(2)(a) & (b) | Prescribe the form and information of the "general inquiry document". | 11(1) | Prescribes that the general inquiry document must be in the form and contain the information found in Part 1 of Schedule 1. |
| 18(3A)(a) & (b) | Prescribe the form and information of the "disclosure statement". | 11(2) | Prescribes that the disclosure statement must be in the form and contain the information found in Part 2 of Schedule 1. |
| 18(3B) | Prescribe difference forms for, or information in, general inquiry documents, disclosure statements in respect of different classes of such documents. | - | None prescribed. |

| Section in the Act | Regulation making power under the Act | The proposed Regulation | |
|--|---|-------------------------|---|
| | | Clause | Scope of clause |
| 20(1)(k) | Add to the list of documents required to be available to residents. | 12 | <p>Prescribes additional documents which must be made available to residents where:</p> <ul style="list-style-type: none"> • Operator and a Residents Committee were parties to any court or tribunal proceedings in previous 5 years: decisions or orders made and reasons given • Waiting list and waiting list fee exist: the operator's written waiting list policy • Retirement village is subject to a company title scheme: its constitution and the replaceable rules set out in the <i>Commonwealth Corporations Act 2001</i> • Village is subject to a community land scheme: the management statement of the scheme, any management agreement relating to the village, and the minutes of the most recent annual general meeting • Village is subject to a strata scheme: the by-laws of the scheme, the management agreement, and the minutes of the most recent annual general meeting • All other documents referred to in the disclosure statement under the heading 'Village Contracts' • Certificates of currency and policy documents for the retirement village's required insurance • Most recent safety inspection report for the retirement village • A detailed list of all currently available premises in the retirement village. |
| Part 4 Entry into retirement villages | | | |
| 21(1)(a) | Prescribe amount other than \$200 as maximum waiting list fee. | - | None prescribed. |
| 23(3)(e) | Expand manner in which trust account monies must be held. | - | None prescribed. |
| Part 5 Village contracts | | | |
| 24(4)(b) | Prescribe the rate of interest payable on ongoing contributions that are not refunded within the statutory time period. | 27 | Prescribes the rate of interest as the rate prescribed under section 101 of the <i>Civil Procedure Act 2005</i> . |
| 31(3) | Prescribe a maximum amount payable for legal and other | 14 | Sets the maximum amount payable for the preparation of a village contract as \$50. |

| Section in the Act | Regulation making power under the Act | The proposed Regulation | |
|--------------------|---|-------------------------|--|
| | | Clause | Scope of clause |
| | expenses in the preparation of a village contract. | | |
| 38(2) | Prescribe the form and method of completion of the condition report. | 15(2) | Prescribes that the condition report must be in the form found in Part 3 of Schedule 1. |
| 38(2A) | Prescribe the time in which the condition report must be completed and provided to a prospective resident. | 15(8) | Prescribes that the condition report must be completed and provided to the prospective resident at least 14 days before entering into the contract, or if the premises are still being constructed, 14 days before the resident occupies the premises. |
| 41A(7)(b) | Add types of renovations or the addition or alteration of fixtures for which consent of the operator is not required. | 45 | Prescribes that without the consent of the operator, a resident may make renovations to, add, remove or alter any fixtures or fittings in a premise owned by the resident under a community land, company title, or strata scheme. |
| 42(1) | Prescribe matters to be included or excluded from village contracts. | 16 | Prescribes that matter that is to be excluded from a village contract is set out in Schedule 3. |
| 43(1) | Prescribe the standard form of village contract. | 17 | Prescribes that the standard form of village contract is set out in Schedule 2. |
| 43(2)(a) | Prescribe more than one standard form of village contract or the addition or omission of clauses in standard forms for use in different classes of contracts. | Schedule 2 | Schedule 2 contains sections that are to be included or excluded depending on the residence type, including for registered or non-registered interest holders. |
| 43(2)(b) | Prescribe the addition, omission or variation of clauses contained in the village contract. | - | None prescribed. |
| 43(8)(b) | Prescribe the rate of interest payable on ongoing contributions paid by instalments. | 27 | Prescribes the rate of interest as the rate prescribed under section 101 of the <i>Civil Procedure Act 2005</i> . |
| 44B(1)(d) | Add other amounts payable by a resident if contract is terminated during the settling-in period. | 46(1) | Prescribes that if a contract is terminated in the settling-in period, former occupants are liable for the reasonable costs for adding, removing or altering any fixtures or fittings, or making any renovations, to the unit at the resident's request. |
| 44B(4) | Prescribe the maximum administration fee payable for termination during the settling-in period. | 46(2) | Sets the maximum administration fee for terminating a contract during the settling-in period at \$200. |
| 44C(d) | Add other amounts refundable by operator when contract terminated during the settling-in period. | - | None prescribed. |

| Section in the Act | Regulation making power under the Act | The proposed Regulation | |
|---|--|-------------------------|---|
| | | Clause | Scope of clause |
| 44E(f) | Prohibit other amounts payable by resident upon termination during the settling-in period. | - | None prescribed. |
| Part 6 General management of retirement villages | | | |
| 46(2)(i) | Add other matter which village rules can relate to. | 18 | Allows for village rules to relate to: <ul style="list-style-type: none"> • Security in the retirement village • The external appearance of residents' premises • Speed limits within the village • Smoking, the use of motorised wheelchairs or other restrictions on communal area use. |
| 48 | Prescribe model village rules. | - | None prescribed. |
| 58A(2)(e) | Add actions operator is required to undertake to ensure the village generally is reasonably safe. | - | None prescribed. |
| 58A(3) | Prescribe the form of written safety and emergency procedures, conduct of safety inspections, manner and form of safety inspections and period that the safety inspection report is to remain on the notice board. | - | None prescribed. |
| 67(2)(g) | Add circumstances where the operator is permitted to enter a resident's premises. | - | None prescribed. |
| 70(5) | Limit powers and abilities of residents committee. | - | None prescribed. |
| 70A(1) | Provide exemption from the 3-year time limit on holding the same office on a residents committee. | 47(1) | Permits a person to hold the same office for more than 3 years if: <ul style="list-style-type: none"> • The person is the only person standing for election, or • The residents consent, by special resolution, to the person standing for office. |
| 71(1) | Prescribe election, function and procedure of residents committees and sub-committees. | - | None prescribed. |
| 71(2) | Prescribe model rules that may be adopted by residents committees. | - | None prescribed. |
| 72A(6) | Prescribe matters that must be included in the agenda for an annual general meeting. | 31 | Prescribes that the following items must be included in the agenda for an annual meeting: <ul style="list-style-type: none"> • A report on any variation in expenditure from the approved budget in the previous financial year • The future plans for the village |

| Section in the Act | Regulation making power under the Act | The proposed Regulation | |
|---|---|-------------------------|---|
| | | Clause | Scope of clause |
| | | | <ul style="list-style-type: none"> • The management of the village • Safety issues • Proposed maintenance plans • Changes to the proposed budget that do not require residents' consent • Proposals to undertake capital works that have not been notified in the annual budget • Proposed changes to the level of service provided to residents • Time for questions. |
| 72B(3)(b) | Exclude matters for which the operator is not required to provide an answer at an annual general meeting. | 32 | Excludes the following information from having to be provided: <ul style="list-style-type: none"> • Personal affairs of the operator, employees or contractors • Any matter unrelated to the operation of the village • Any matter in relation to individual sales or contracts that are not in the public domain. |
| 74(1)(c) | Add other matters for which residents have a right to meet and vote. | - | None prescribed. |
| 77(2) | Prescribe form and manner of proxy appointments. | 33(1) | Prescribes that the proxy appointment form is set out in Part 4 of Schedule 1. |
| 78(1) | Prescribe maximum number of proxy appointments that can be held by any one resident. | - | None prescribed. |
| Part 7 Financial management of retirement villages | | | |
| 92(1)(c) | Prescribe item of capital class that is not an item of capital for the purpose of the definition. | - | None prescribed. |
| 92(2)(k) | Add to definition of urgent maintenance or replacement of an item of capital. | - | None prescribed. |
| 97(3)(e) | Add other situations which cannot be funded from the capital works fund or recurrent charges. | - | None prescribed. |
| 99(3) | Prescribe where a capital works fund account must be held, other than an authorised deposit-taking institution. | 28(1) | Prescribes that if the operators is a property trust of corporation, a capital works fund may be held in any fund administered by the property trust or corporation |
| 99(5)(c) | Add other circumstances for which the operator is permitted to use money from the capital works fund. | 27(2) | Prescribes that operators may use the capital works fund for any purpose if residents consent, and the use of the money does not involve |

| Section in the Act | Regulation making power under the Act | The proposed Regulation | |
|--------------------|--|-------------------------|--|
| | | Clause | Scope of clause |
| | | | funding matters specified in section 97 (3) of the Act. |
| 100(3) | Prescribe a minimum amount of public liability insurance. | - | None prescribed. |
| 101(1) | Prescribe situations in which the operator is permitted to sell or pass onto a resident an item of capital. | - | None prescribed. |
| 105(2)(c) | Add other information to be specified in a notice to vary recurrent charges by fixed formula. | 22 | Adds the following information to the notice of variation: <ul style="list-style-type: none"> • The fixed formula and a demonstration of how the new charges have been calculated • An opening statement describing what the notice is about. |
| 105A(4)(c) | Add other information to be specified in a notice to vary recurrent charges other than fixed formula – not exceeding the CPI. | 23 | Adds the following information to the notice of variation: <ul style="list-style-type: none"> • An opening statement describing what the notice is about • Advice to contact Fair Trading for more information. |
| 106 (2)(e) | Add other information to be specified in a notice to vary recurrent charges other than fixed formula – exceeding the CPI. | 24 | Adds the following information to the notice of variation: <ul style="list-style-type: none"> • An opening statement describing what the notice is about • Advice to contact Fair Trading for more information. |
| 107(6)(a) | Prescribe a time period in which the operator is required to give residents requested information regarding variation above CPI. | 25(1) | Sets a time limit of 7 days to provide requested information. |
| 107(6)(b) | Prescribe the information that the operator is not required to give, despite a resident's request. | 25(2) | Excludes the following information from having to be provided: <ul style="list-style-type: none"> • Personal affairs of the operator, employees or contractors • Information unrelated to operation of the village • Information related to individual sales or contracts that are not publicly known • Information that would result in a breach of national privacy principles if the operator is subject to those principles. |
| 112(1) | Prescribe other time before commencement of financial year in which a proposed annual budget must be supplied. | - | None prescribed. |

| Section in the Act | Regulation making power under the Act | The proposed Regulation | |
|--------------------|--|-------------------------|---|
| | | Clause | Scope of clause |
| 112(3)(a) | Prescribe matters that must be dealt with in a proposed annual budget. | 19 | <p>Prescribes the following matters to be included in an annual budget:</p> <ul style="list-style-type: none"> • The amount of recurrent charges payable and the method of calculating this amount • Total expected income from recurrent charges for the year • Effect of any expected deficit or surplus • All proposed categories of expenditure • All proposed expenditure on each of these categories • If any expenditure is part of expenditure relating to one or more village – the calculation used to apportion this amount. • If any residents pay significantly higher recurrent charges – the calculation used to apportion this between categories of residents concerned • Total proposed expenditure for the year • Expected surplus or deficit for the year. <p>If the budget includes any costs associated with the operator’s head office, management or administration fees:</p> <ul style="list-style-type: none"> • Itemisation of these fees • If the operator operates multiple retirement villages – details of apportioned costs between village. |
| 112(3)(b) | Prescribe matters that must not be financed by way of recurrent charges. | 26 | <p>Excludes the following matters from being financed by recurrent charges:</p> <ul style="list-style-type: none"> • Industrial or professional association membership fees • Overseas travel • Marketing costs for vacant units • Payroll tax • Land tax • Gifts or donations • Head office or management fees, unless the fees provide services to residents and are included in the annual budget. • Any experience premium component associated with Workers Compensation • If the village is subject to a strata scheme – any works required to be carried out by the owners corporation, and any levies payable by the operator under the <i>Strata Schemes Management Act 2015</i> • If the village is subject to a community land scheme – works required to be carried out |

| Section in the Act | Regulation making power under the Act | The proposed Regulation | |
|--------------------|---|-------------------------|---|
| | | Clause | Scope of clause |
| | | | by the relevant community association, and levies payable by the operator under the <i>Community Land Management Act 1989</i> . |
| 112(3)(c) | Prescribe the form that the budget is to take. | - | None prescribed. |
| 112(4)(e) | Add other information that is to be contained in a notice accompanying the proposed annual budget. | 20 | <p>Prescribes statements containing the following information to be included in a notice:</p> <ul style="list-style-type: none"> Operator must provide information reasonably requested by the Residents Committee within 7 days Operator must not expend recurrent charge income other than as approved in the budget, except for minor variations or a variation that does not reduce the level of services or exceed total expenditure. <p>If recurrent charges have been increased since the previous budget:</p> <ul style="list-style-type: none"> Operator must provide each resident with a copy of the proposed budget at least 60 days before the start of the financial year Residents must advise the operator whether they consent to the proposed budget If the operator is not advised, residents are taken to have refused consent. <p>If recurrent charges have not increased since the previous budget or have increased by less than the increase in the CPI:</p> <ul style="list-style-type: none"> Residents are taken to have consented to the proposed budget. |
| 112(7) | Prescribe other maximum annual dollar amount of recurrent charges for which residents may agree to not receive an annual budget. | - | None prescribed. |
| 112(9)(b) | Prescribe other maximum annual dollar amount of recurrent charges for when consent of the residents to not receive an annual budget lapses. | - | None prescribed. |
| 115(2)(i) | Add other order that can be made by the Tribunal for the determination of expenditure. | - | None prescribed. |
| 115A | Limit the amount a proposed budget may allocate for contingencies. | 21 | Limits the amount allocated for contingencies to \$1. |

| Section in the Act | Regulation making power under the Act | The proposed Regulation | |
|--------------------|---|-------------------------|---|
| | | Clause | Scope of clause |
| 118(3) | Prescribe other time period for when the operator must provide residents with a copy of the quarterly accounts. | - | None prescribed. |
| 119(1) | Prescribe other time period for when operator must provide residents with audited accounts after the end of the financial year. | - | None prescribed. |
| 119(2)(c) | Add particulars which must be included in the audited accounts. | - | None prescribed. |
| 119(7)(a) | Prescribe way in which copy of audited accounts must be displayed on common property. | 29 | Prescribes that audited accounts must be displayed on a notice board in a common area for at least 1 month, starting no later than 4 months after the end of the relevant financial year. |
| 119A(1)(a) | Prescribe other maximum annual dollar amount of recurrent charges for which no audit is required. | - | None prescribed. |
| 119A(5)(a) | Prescribe other maximum annual dollar amount of recurrent charges for when consent of the residents to not have the accounts audited lapses. | - | None prescribed. |
| 119B(1) (a) | Prescribe other maximum annual dollar amount of recurrent charges for when operator is not required to give residents a copy of the quarterly accounts. | - | None prescribed. |
| 119B(3)(a) | Prescribe other maximum annual dollar amount of recurrent charges for when consent of the residents to not receive a copy of the quarterly accounts lapses. | - | None prescribed. |
| 120C(3)(a) | Prescribe circumstances where the operator can increase recurrent charges for the purpose of making good a deficit. | - | None prescribed. |
| 120C(3)(b) | Prescribe circumstances where the operator can use recurrent charges already collected for making good a deficit. | - | None prescribed. |
| 120C(3)(c) | Prescribe circumstances where the operator can carry forward a | 30(1) | Allows a deficit to be carried forward where it is caused by: |

| Section in the Act | Regulation making power under the Act | The proposed Regulation | |
|---|---|-------------------------|---|
| | | Clause | Scope of clause |
| | deficit to a subsequent financial year. | | <ul style="list-style-type: none"> Maintenance of an item of capital in situations set out in section 98 (2)(a)-(k) of the Act An increase in the cost of utilities, statutory charges, wages and salaries under an award or industrial agreement, workers compensation premium, or public liability insurance. |
| Part 8 Disputes | | | |
| 122(2) | Prescribe the process by which 2 or more residents may nominate a representative for dispute resolution at the Tribunal. | 38 | Prescribes that a resident can be nominated as a representative for 2 or more if each resident signs a statement to this effect and the nominated resident provides written confirmation. |
| 128(1)(l) | Add other orders that the Tribunal is able to make to resolve a dispute. | 37 | Allows the Tribunal to make orders in determining an application involving 2 or more residents as parties, or an application made by an operator where 2 or more residents are the other parties. |
| Part 9 Termination of residence contract | | | |
| 131(2) | Prescribe form of, and time within which, notice of intention to seek termination of residence contract through the Tribunal must be given to resident. | 48 | Prescribes that a termination notice must follow the form set out in Part 5 of Schedule 1. |
| 147(1)(b) | Prescribe process which allows the operator to sell or dispose of uncollected goods. | 40 - 44 | Prescribes when and how an operator can remove, store, deliver, sell and dispose of uncollected goods. |
| Part 10 Matters relating to vacation of premises | | | |
| 155(3) | Prescribe the rate of interest payable on recurrent charges liable after the resident permanently vacates the premises. | 27 | Prescribes the rate of interest as the rate prescribed under section 101 of the <i>Civil Procedure Act 2005</i> . |
| 156(1)(b) | Declare other money payable that is a "departure fee". | - | None prescribed. |
| 170(4) | Prescribe other costs which may be included or excluded as "costs of sale". | - | None prescribed. |
| 180(4)(b) | Prescribe rate of interest payable by operator on unpaid amounts owing to a resident following termination. | 27 | Prescribes the rate of interest as the rate prescribed under section 101 of the <i>Civil Procedure Act 2005</i> . |
| 180(5)(b) | Prescribe rate of interest payable by operator on difference in | 27 | Prescribes the rate of interest as the rate prescribed under section 101 of the <i>Civil Procedure Act 2005</i> . |

| Section in the Act | Regulation making power under the Act | The proposed Regulation | |
|--|---|-------------------------|--|
| | | Clause | Scope of clause |
| | amount owed to resident after re-calculation by the Tribunal. | | |
| 181(7)(b) | Prescribe the rate of interest payable by operator on unpaid amount owing to non-registered interest holder after termination. | 27 | Prescribes the rate of interest as the rate prescribed under section 101 of the <i>Civil Procedure Act 2005</i> . |
| 181(8)(b) | Prescribe the rate of interest payable by operator on unpaid amount that can be ordered by the Tribunal. | - | None prescribed. |
| Part 10A Protection of ingoing contributions paid by residents other than registered interest holders | | | |
| 182A(1)(b) | Prescribe a refund amount that allows Part 10A (protection of ingoing contributions) to apply. | 49 | Sets the refund amount at \$10,000. |
| Part 11 Enforcement | | | |
| 184(6) | Prescribe penalty notice offences, penalty amounts and different amount of penalty for different offences or classes of offences. | 50 | Prescribes offences listed in Column 1 of Schedule 5 and penalties in Column 2 of Schedule 5. |
| Part 13 Miscellaneous | | | |
| 200(e) | Add situations where information obtained under the Act can be disclosed. | - | None prescribed. |
| 201(1)(c) | Add other manner in which a document may be served on a resident. | 51 | Allows for documents (other than termination notices) to be given to a resident by: <ul style="list-style-type: none"> Leaving it in a mailbox Sending by email, if the person has consented to email use Delivering it to the residential site and leaving it with a person aged 16 years or over If the person is a protected person or has a guardian – giving it to both the NSW Trustee and the guardian. |
| 201(2)(c) | Add other manner in which a document may be served on the operator. | 51 | Allows for documents (other than termination notices) to be given to an operator by: <ul style="list-style-type: none"> Leaving it in a mailbox Sending by email, if the person has consented to email use Giving it personally to an employee If an operator has appointed a receiver or administrator – giving it to the receiver or administrator. |
| 203(1) | General regulation making power. | | |

| Section in the Act | Regulation making power under the Act | The proposed Regulation | |
|--------------------|---|-------------------------|--|
| | | Clause | Scope of clause |
| 203(2)(a) | Prescribe manner in which, and time within which an application may be made to the Tribunal. | 34 | Prescribes that the time during which an application can be made to the Tribunal is found in Schedule 4. |
| 203(2)(b) | Make provision about applications to the Tribunal by the Residents Committee on behalf of one or more residents of the village. | 35 | Allows Residents Committee to apply to the Tribunal for any order, on behalf of residents if they consent by vote. Residents who do not want to engage in proceedings may notify the Committee in writing before the application. |
| 203(2)(c) | Make provision about the other party or parties to applications to the Tribunal made by the operator. | 36 | Permits the Tribunal to order that one more residents, or all the residents, are the other party or parties to an application made by the operator. |
| 203(3) | Provision to create offence punishable by a penalty not exceeding 50 penalty units. | - | None prescribed. |
| 203(4) | Exempt specified village contracts or a specified class of village contracts from any provision of the Act. | - | None prescribed. |
| Schedule 1 | | | |
| 3(1)(b) & 5 | Prescribe method for conducting a written ballot. | 52 | Prescribes that provisions for ballots are found in Schedule 6. |
| 3(2) | Prescribe that a vote in relation to a particular measure or action be taken by special resolution. | - | None prescribed. |
| 4(2) | Prescribe process around election of representatives to residents committee. | - | None prescribed. |
| Schedule 4 | | | |
| 1(1) | Contain provisions of a savings or transitional nature consequent to the enactment of the Retirement Villages Amendment Act 2004 and 2008. | - | None prescribed. |
| 20(5) | Prescribe expenditure or circumstances resulting in an outstanding deficit in respect of which the operator is prevented from making a proposal that the residents make additional payments or fund the deficit from any surplus. | 30(2) | Prevents operators from proposing residents make additional payments or use any surplus except where the deficit resulted from residents' request for an additional item of capital or service. |
| 21(1) | Prescribe a later date than 23 November 2011 for which an | - | None prescribed. |

| Section in the Act | Regulation making power under the Act | The proposed Regulation | |
|--------------------|---|-------------------------|------------------|
| | | Clause | Scope of clause |
| | operator can apply to the Tribunal regarding an outstanding deficit. | | |
| 21(2) | Prescribe matters to be considered by the Tribunal in determining "making good a deficit". | - | None prescribed. |
| 21(3) | Prescribe later date than 23 November 2011 for which operator is fully liable for payment of deficit. | - | None prescribed. |

Table 1.0: Regulation making powers of the Act and scope of the proposed Regulation

Discussion of the proposed regulation

Submissions are welcome on any aspect of the proposed Regulation or any other relevant issue, regardless of whether or not it is raised in this Regulatory Impact Statement. However, the following discussion points provide greater context for some provisions in the proposed Regulation and explore some regulatory options for these provisions. A comparison of the current Regulation and the provisions of the proposed Regulation is provided in Appendix 2.

Definitions

Definition of “capital maintenance” (clause 4)

Clause 4 of the proposed Regulation sets out additional works that fall within the definition of capital maintenance under section 4(1) of the Act. The definition of capital maintenance in the proposed Regulation also helps to inform the definition of capital replacement in the Act. These two concepts (and how they are defined) are a common area of dispute between operators and residents. This is because the Act sets out rules for how each can be funded. Under the Act, maintenance can be funded by residents through recurrent charges or the capital works fund (if one exists), while most capital replacement costs must be fully covered by the operator.

The definitions of ‘capital maintenance’ and ‘capital replacement’ in the Act are intentionally broad and focus on the reason for carrying out the work, rather than listing specific types of work. This approach provides flexibility and allows a range of different works to be captured by the definitions. However, it can also result in disputes between residents and the operator where there is disagreement over whether a particular work is maintenance or replacement.

The existing exclusions from the definition of capital maintenance in the 2009 Regulation are retained in the proposed Regulation. That is, capital maintenance does not include:

- work done to substantially improve an item of capital beyond its original condition; or
- work done to maintain or repair an item of capital where it would have been more cost effective to replace it.

Under the proposed Regulation, the definition of capital maintenance also now includes the repainting of external surfaces once every ten years. This provides greater certainty and clarity for residents and operators while also placing a reasonable restriction on how often the work can be carried out as maintenance.

The issue of whether external painting is maintenance or replacement is a common cause of disputes in the industry. It is also a major concern for residents because of the high costs that are often involved in carrying out such work across the village. This clause:

- removes any uncertainty around repainting of external surfaces

- provides operators with an incentive to better plan for future maintenance, and
- gives residents a clear time period in which this type of maintenance work can be recovered through recurrent charges or from the capital works fund.

Residents will also benefit from this clause by not having to fund external repainting work that is carried out more frequently than once every ten years.

- 1. Should the repainting of external surfaces be defined as capital maintenance? Why/why not?**
- 2. Are there other types of work that should be included or excluded from the definition of capital maintenance?**

Definition of “optional services” (clause 7)

Clause 7 of the proposed Regulation sets out additional services that fall within the definition of optional services under section 4(1) of the Act. Optional services, also known as personal services, are voluntary services made available by, or on behalf of, the operator of a retirement village to individual residents. The proposed Regulation adds personal care services such as hairdressing, shopping assistance or pharmaceutical services to the list of existing optional services (meals, laundry and cleaning). This change will provide greater certainty for both operators and residents by clarifying and expanding the list of offerings that are provided as an optional service.

- 3. Are there any other common optional services that should be included in this clause?**

Information about retirement villages

Disclosure statement (clause 11 and Part 2, Schedule 1)

Standard table of fees and charges

NSW Fair Trading is currently developing an online calculator to assist prospective retirement village residents and their families better understand the costs of living in a village. The online calculator will contain a series of questions related to a village contract and apply various assumptions to help generate easy-to-understand cost estimates. Similar calculators have been used successfully to help improve consumer awareness about fees and charges in other sectors, for example the Australian Taxation Office’s online personal income tax calculator.

To help prospective residents use the online calculator, a standard table of fees and charges has been added to the end of the Disclosure Statement. This table lists (on a single page) all of the fees and charges that will be needed to use the calculator, making it easier for prospective residents to use the calculator by avoiding the need to find the relevant figures in the disclosure statement and/or contract. The standard table will also improve visibility around fees and charges, while also minimising the risk

that prospective residents misinterpret the information contained in the contract and disclosure statement when using the online calculator.

This change has been assessed as having no cost impact on industry as the fees and charges are already known to the operator and this change merely requires them to be listed on the same page.

4. Is the proposed standard table of fees and charges easy to understand?

Average resident comparison figure

Clause 11 of the 2009 Regulation prescribes that the General Inquiry Document and Disclosure Statement must be in the form, and contain the information, set out in Schedule 1. This clause has been amended by the proposed Regulation to include a definition of 'average resident comparison figure', which must now be included in the Disclosure Statement.

The 'average resident comparison figure' is designed to help residents understand and compare the financial cost of living in different retirement villages. It adds up the total of the main charges a resident is likely to encounter when living at a particular village and expresses those charges as a single monthly figure. This figure does not represent the actual monthly cost a resident will face, rather it is an indicative number that a resident can use to see how much different villages are estimated to cost if they were to live there for seven years (or 84 months). Seven years is the average length of stay in a retirement village in NSW. Where a village has a higher average resident comparison figure than another, this indicates that the contract offered by that particular village is estimated to cost more, overall.

To obtain the average resident comparison figure, clause 11 requires the operator to calculate:

- the total recurrent charges paid over seven years (84 months);
- the departure fee payable, which would be calculated by ascertaining the '**new entry payment**' (by assuming the price of the premises varies in accordance with the 10 year historical average median house price in the greater Sydney or rest of NSW) and applying the departure fee percentage applicable after seven years.
- the capital gain share payable to the operator.

The total of the above costs is then divided by 84 months to provide the average resident comparison figure.

The average resident comparison figure will facilitate greater transparency for residents and better equip them to evaluate the costs of entering a retirement village. See below for examples of how the average resident comparison figure is designed to work.

| RETIREMENT VILLAGE 'A' | | RETIREMENT VILLAGE 'B' | |
|--|--|---|--|
| Location: | Greater Sydney | Location: | Greater Sydney |
| Entry Price: | \$380,000 | Entry Price: | \$390,000 |
| Recurrent charges: | \$103 p/week | Recurrent charges: | \$500 p/month |
| Capital gain share: | 50%/50% | Capital gain share: | 50%/50% |
| Departure fee structure: | | Departure fee structure: | |
| 4% - years 1 to 3 2% - each year thereafter up to a maximum of 32% - of the entry payment | | 6% - year 1 5% - year 2 4% - years 3 & 4 2% - years 5 to 9 – of the entry payment | |
| Average Resident Comparison Figure (ARCF) = | A - Total recurrent charges (TRC) + B - Capital gain payable to operator (CGO) + C - Departure fee payable to operator (DF) | | ÷ 84 months |
| Total recurrent charges (TRC): TRC = Monthly recurrent charge x 84 mths TRC = (\$103 x 4.35) x 84 mths TRC = \$448.05 x 84 mths | | Total recurrent charges (TRC): TRC = Monthly recurrent charge x 84 mths TRC = \$500 x 84 mths | |
| A | TRC = \$37,636.20 | A | TRC = \$42,000 |
| To calculate the capital gain payable to the operator and the departure fee, the new entry payment is required: New entry payment (NEP) = Entry payment (EP) + (EP x [capital gain % x 7 years]) | | | |
| <i>NEP = \$380,000 + (\$380,000 x [6.27%¹ x 7])</i> <i>NEP = \$380,000 + (\$380,000 x 43.89%)</i> <i>NEP = \$380,000 + \$166,782</i> NEP = \$546,782 | | <i>NEP = \$390,000 + (\$390,000 x [6.27% x 7])</i> <i>NEP = \$390,000 + (\$390,000 x 43.89%)</i> <i>NEP = \$390,000 + \$171,171</i> NEP = \$561,171 | |
| Capital gain payable to operator (CGO): CGO = % share x (EP x [capital gain % x 7 years]) CGO = 50% x \$166,782 | | Capital gain payable to operator (CGO): CGO = % share x (EP x [capital gain % x 7 years]) CGO = 50% x \$171,171 | |
| B | CGO = \$83,391 | B | CGO = \$85,585.50 |
| Departure fee (DF): | | Departure fee (DF): | |
| <i>DF structure over 7 yrs:</i> | <i>Year 4 – +2% = 14%</i> <i>Year 1 – 4%</i> <i>Year 2 – +4% = 8%</i> <i>Year 3 – +4% = 12%</i> | <i>DF structure over 7 yrs:</i> | <i>Year 4 – +4% = 19%</i> <i>Year 5 – +2% = 21%</i> <i>Year 6 – +2% = 23%</i> <i>Year 7 – +2% = 25%</i> |
| DF = 7 year DF % x Entry price DF = 20% x \$380,000 | | DF = 7 year DF % x Entry price DF = 25% x \$390,000 | |
| C | DF = \$76,000 | C | DF = \$97,500 |
| Average Resident Comparison Figure: ARCF = A + B + C / 84 mths ARCF = \$37,636.20 + \$83,391 + \$76,000 / 84 ARCF = \$197,027.20 / 84 mths | | Average Resident Comparison Figure: ARCF = A + B + C / 84 mths ARCF = \$42,000 + \$85,585.50 + \$97,500 / 84 ARCF = \$225085.50 / 84 mths | |
| ARCF = | \$2,346 p/month (rounded to nearest whole dollar) | ARCF = | \$2,680 p/month (rounded to the nearest whole dollar) |

¹ This is ABS's 10 year average median house price variation in the Established House Price Index for Sydney.

Based on the above example, this average resident comparison figure indicates that Retirement Village A is estimated to provide a cheaper offering as compared to Retirement Village B.

This cost figure is **indicative only** and is intended to increase awareness about the financial implications of different village contracts. It does not seek to calculate the actual outgoing payments made by a resident. This is because the calculation methodology makes an assumption about the rate at which the price of the property will grow over time. Should the actual rate differ from the assumed rate, the results will be different.

The benefit of the average resident comparison figure can be illustrated by the role of 'home loan comparison rates' used in the financial sector, which help consumers compare different financial product offerings. They also help consumers to be more aware of the real cost of financial products by reducing the rate to a single standardised percentage figure which factors in the interest rate plus any relevant fees and charges.

In proposing this new provision, it is understood that the financial matters specified in the contract (and used in determining the figure) may not be the only relevant considerations for prospective retirement village residents. Prospective residents will also need to think about what features each retirement village offers, and how important these are to them in making their decision about a particular village. For example, a resident may need special medical assistance, they may prefer a village's landscaping or culture, or have a preference for certain geographic locations. The average resident comparison figure does not attempt to incorporate or value these non-financial factors and focusses solely on the most significant financial matters specified in the village contract. It would be expected that operators would continue to refer to these other factors in their marketing material.

5. **Do you agree with the introduction of the 'average resident comparison figure'?**
6. **Will 'the average resident comparison figure' assist prospective village residents and their families to understand and compare the financial implications of village contracts?**

General inquiry document (Clause 11 and Part 1, Schedule 1)

Under the Act, a village operator must provide prospective residents with a general inquiry document. A general inquiry document:

- contains general information about the village, including a basic overview of the types of dwellings, services and facilities available and the costs involved.
- is intended to help prospective residents get a simple overview of the village and to help them compare villages.

Preliminary consultation on the Regulation remake indicated that residents would benefit from having more information on village rules. This would give a more holistic view of village life and aid them in

decision-making. For this reason, the proposed Regulation amends the general inquiry document to provide greater transparency around village rules by asking the following additional question:

Are there any village rules in force in the village? Yes/No

This is supported by the following additional statement in the ‘More information’ section:

If there are village rules in force in the village, a copy of the village rules can be requested from the operator of the village

This approach keeps the general inquiry document succinct while still achieving improved disclosure and transparency on village rules. The alternative option of requiring all of a village’s rules to be listed in the general inquiry document would significantly increase its length and the amount of detail, which goes against its intended purpose as an overview document.

- 7. Do you agree with the proposed changes to the general inquiry document aimed at improving disclosure around village rules?**
- 8. Should any other changes be made to the general inquiry document (i.e. deleted or added), keeping in mind its purpose?**

Copies of certain documents to be available – insurance (clause 12)

Clause 12 of the proposed Regulation sets out the documents that must be reasonably available to prospective residents for inspection. This clause remains largely unchanged from the 2009 Regulation with the exception of sub-clause (g) which:

- retains the requirement for operators to make available copies of the certificates of currency relating to the retirement village’s insurance,
- expands the requirement so that operators must make available policy documents showing the nature of the risk insured and the amount of the insurance.

This change will make it easier for residents to check specific details about what is covered by the village’s insurance policy. Compliance by operators will not be onerous given these documents are already held by the operator. Any costs associated with making them available is offset by the improved transparency introduced as a result.

- 9. Are there any reasons why a village’s insurance policy documents should not be made available by the operator?**
- 10. Should the Regulation require any other documents be made available by the operator?**

Display of safety inspection report (clause 13)

Under the Act, a retirement village operator must undertake a safety inspection at least once a year. Any findings of the inspection must be detailed in a 'safety inspection report'. This report must be made available to the residents committee (if there is one) and a copy must also be placed on the notice board in a communal area within the village. Clause 51 of the 2009 Regulation further requires that the safety inspection report be displayed on the notice board for at least one calendar month.

Clause 51 has been amended by the proposed Regulation to:

- remove the one calendar month time requirement,
- require that an operator provide any resident with a copy of the safety inspection report within seven days of a request being made by that resident.

This new requirement is not expected to impose significant additional costs on operators as the report is already required by the Act and any copies requested could be provided electronically. If hard copies of the report are provided, this would marginally increase operator costs. However, this is outweighed by the benefits for residents that result from a more effective way to access the village's safety inspection report.

11. Is it reasonable for the operator to provide a copy of the safety inspection report upon request? Why or why not?

Village Contracts and village rules

Amount payable for legal and other expenses (clause 14)

The Act provides for legal and other expenses incurred by the operator in preparing a village contract to be shared equally between the operator and resident. However, the Act also enables the Regulation to set a maximum amount payable by the resident. The current maximum set by the 2009 Regulation is \$200. The proposed Regulation reduces this maximum to \$50.

Prior to the 2009 Regulation, there was no maximum and residents were only required to pay half of the costs incurred by the operator (as per the requirements of the Act). Despite this, residents were still being charged large amounts for the preparation of their contract, with some charges in the thousands of dollars. As a result, the \$200 maximum was prescribed in the 2009 Regulation to protect residents from excessive legal expenses that are outside of their control and to also incentivise operators to keep their legal costs down. At the time, \$200 was considered to be a fair and reasonable approximation of the cost incurred by operators in preparing a retirement village contract.

The proposed Regulation reduces the maximum amount to \$50, which reflects the reduced legal workload due to the introduction of the standard contract requirements in 2013 (as set out in Schedule 2 of the Regulation). The standard contract covers matters such as residence rights, entry costs, the

settling-in period, recurrent charges, services and facilities, alterations and additions, repairs and maintenance, sharing of capital gains and departure fees. While additional terms can be added to the back of the standard contract, they are optional and not required under the retirement village laws.

The \$50 maximum set by the proposed Regulation recognises that while some costs may still be incurred when preparing a village contract, as a result of the standard contract these costs should be much lower. While operators may incur some costs where they use additional terms, this is unlikely to have a significant impact given most additional terms are generally standardised and used in more than one contract without change. As such, the operator only incurs a cost when the terms are first drafted or if they are amended later on. The \$50 maximum in the proposed Regulation will further incentivise operators to keep their legal costs down and ensure their operations are efficient.

12. Is \$50 a reasonable amount for residents to contribute towards legal fees incurred when preparing a village contract? Why or why not?

Condition report (clause 15 and Part 3, Schedule 1)

Clause 15 of the proposed Regulation prescribes the residential premises condition report that is used to record the condition of the premises when a resident moves in. The condition report is an important record that can be used in the event of a dispute when a resident leaves. Schedule 1 of the proposed Regulation includes a modernised condition report, similar to the report used in residential tenancies. The proposed changes are intended to make completing the report simpler for operators and residents by clearly outlining various rooms and features of a typical residential property.

13. Will the new condition report make it easier for residents and operators?

Village rules (clause 18)

The proposed Regulation adds some new matters for which village rules can be created, namely:

- speed limits,
- smoking,
- the use of motorised wheelchairs, and
- other restrictions on the use of communal areas.

This change is intended to provide more clarity for operators and residents around village rules. There are no cost impacts for operators or residents as a result of this change.

14. Do you agree with the new matters that have been included as village rules?

15. Should any other matters be included in Regulation to help clarify what village rules can relate to?

Financial Management

Matters that must be dealt with in proposed annual budget (clause 19)

Clause 19 of the proposed Regulation prescribes matters that a village operator must cover in a proposed annual budget. This allows residents to monitor expenditure and encourages greater accountability from operators by requiring transparency about what is included in the village budget.

The required budget items required by clause 19(1) of the proposed Regulation remains unchanged from that set out in clause 17(1) of the 2009 Regulation. However, clause 19(2), dealing with how an operator's head office or management or administration fees are to be broken down in the budget, has been amended to provide greater transparency for residents on how head office costs have been apportioned between villages.

Head office costs must now be "itemised" rather than "broken down" due to concerns raised by some residents about the difficulties they still encounter when trying to assess the appropriateness of head office expenses included in the village budget.

There is also a new requirement for operators to provide details of how the head office costs or fees have been apportioned between villages where they own two or more villages. This will give residents a better understanding of the methodology used by the operator to determine what each village pays towards the operator's head office expenses. It will also help residents verify that the amount they are contributing is proportionate to the actual services provided to their village and that they are not paying for matters for which they receive no benefit.

These changes introduce more disclosure on processes that operators would already have in place. Operators already employ methods to calculate the apportionment of their head office expenses and residents are already provided with a breakdown of head office costs. As such, the proposed Regulation does not introduce significant new obligations for operators - any costs associated with the changes are likely to be minor, relating primarily to administrative changes that may be needed to facilitate the provision of the required information to residents. For this reason the benefits of this change in the proposed Regulation are considered to outweigh the costs.

- 16. Are the new requirements around head office costs fair and reasonable? Why or why not?**
- 17. Should the Regulation prescribe any other matters that must be dealt with in a proposed annual budget?**

Notice accompanying proposed annual budget (clause 20)

Clause 20 of the proposed Regulation prescribes the information that must be included in the notice accompanying a proposed annual budget. This clause largely reflects the existing requirements.

However, it has been amended to require that, where a request is made for information on a proposed

item of expenditure in a budget, the operator must provide this information “within 7 days after the information is requested”. This is intended to provide some guidance around the timeframe for which information should be provided and it aligns to clause 25 of the proposed Regulation relating to variation of recurrent charges. Where residents are required to consent to the proposed budget, providing the necessary information in a timely fashion will also ensure the budget can be properly assessed and voted on within 30 days as required by section 107(2) of the Act.

- 18. Is this change to the notice accompanying a proposed annual budget appropriate?**
- 19. Should the notice accompanying the proposed annual budget include any other statements?**

Limit on contingencies in annual budget (clause 21)

Clause 21 of the proposed Regulation limits the amount a proposed annual budget can allocate for contingencies to \$1 (currently limited to \$100 under the 2009 Regulation).

Prior to the \$100 limit being introduced, it was initially proposed to limit contingencies to 4 percent or the Consumer Price Index increase, whichever is higher. However, this was not adopted and instead the limit was set at \$100. This position was taken primarily due to concerns raised by residents which suggested that a large contingency amount would not encourage operators to accurately forecast village expenditure, leading to poorer outcomes and in some cases higher recurrent charges. Concerns were also raised in relation to the ability for contingencies to be misused by operators to pay for goods and services that are ordinarily prohibited from being funded through recurrent charges.

It is questionable whether a \$100 contingency provides any benefit for residents or the operator. Regardless of the size of the village or the village budget, a contingency of \$100 is unlikely to provide sufficient flexibility in the budget to handle unexpected costs that may arise. However, it is noted that this limit has been in place since the commencement of the 2009 Regulation and it does not appear to have caused any major issues or impacts in the sector.

As most budget deficits are required to be met by the operator, the absence of a reasonable contingency provides operators with a strong incentive to carefully plan and forecast village expenditure, while also encouraging good financial management. This benefits residents through more certainty around recurrent charges as well as improved services and facilities that result from better and more efficient maintenance planning.

However, it is recognised that even with the best planning and financial management, costs can still increase for reasons outside of the operator’s control, or as a result of events that could not have possibly been foreseen, causing a budget deficit. For this reason, the retirement village laws provide mechanisms other than just budget contingencies to allow operators to manage unexpected costs. This includes the ability to:

- carry forward a deficit caused by:
 - the cost of urgent capital maintenance work, or
 - increases in certain costs outside of the operator's control, such as rates, taxes or insurance costs,
- seek the consent of residents to amend the approved budget, or
- vary proposed expenditure between items in the approved budget, so long this does not reduce services in the village or result in total expenditure exceeding the amount of the budget.

These provisions give operators some flexibility around how money from the budget is spent while ensuring increases beyond their control can still be recovered. This is reflected by the fact that the existing limit on contingencies of \$100 has not resulted in any major issues during the several years that it has been in place. This also indicates that operators are able to effectively manage the village budget (and any unexpected costs that may arise) even with the budget only allowing for a \$100 contingency. Regardless of the size of the village or village budget, a contingency of \$100 would not provide any real flexibility in the budget to handle unexpected costs that may arise – indicating operators are capable of managing budgets effectively without allowance for substantial contingencies.

For these reasons, the proposed Regulation reduces the amount that may be allocated for contingencies to \$1. While there is a strong rationale to completely remove contingencies, this cannot be achieved in the Regulation alone as section 115A of the Act would also need to be amended. This proposed change to the Regulation has been made to further reinforce the need for operators to accurately forecast expenditure funded by residents through recurrent charges. Further lowering the contingency limit is not expected to impose any additional costs for operators because the overall difference as compared to the 2009 Regulation is only \$99. It does not represent a significant amount in the context of a village's budget and the experience of the past several years indicates there is little need for contingencies given the other provisions in the legislation that allow the budget to be varied or for certain increases to be passed on.

20. Is lowering the amount that an annual budget may allocate for contingencies to \$1 appropriate? Why or why not?

Form of proposed annual budget

The model proposed annual budget currently provided in clause 18 and Schedule 4 of the 2009 Regulation has been removed. The majority of village operators are understood to prefer their own budget format. This indicates there is no market need for the model budget to be retained in the legislation as an optional document.

Feedback during preliminary consultation on the remake of the Regulation suggests that the model budget is used by some smaller operators and residents as a resource that outlines the specific items

that should be covered in a budget. For this reason, the model budget will instead be made available on the Fair Trading website as a resource for those who wish to use it.

21. Is there any reason why the model budget should not be removed from the Regulation?

Making good of deficit (clause 30)

Clause 30 of the proposed Regulation prescribes the circumstances in which an operator may carry forward a deficit to a subsequent financial year. These provisions reflect the current requirements (clause 33 of the 2009 Regulation). However, the reference to “workers compensation and public liability insurance” has been split into two separate sub-clauses (clauses 30(1)(b)(iv) and 30(1)(b)(v) of the proposed Regulation) to remove any ambiguity around whether the clause could be read to mean ‘workers compensation insurance’, when this is not the correct terminology. The clause now prescribes ‘workers compensation premium’ and ‘public liability insurance’ as separate sub-clauses.

While the clause allows an increase in workers compensation premiums, it prohibits any increase in the experience premium component which reflects the new requirements around matters that cannot be funded by way of recurrent charges (clause 26(h) of the proposed Regulation).

22. Are there any concerns with the separation of ‘workers compensation’ and ‘public liability insurance’ in this clause?

Minimum public liability insurance

The proposed Regulation no longer prescribes a minimum amount of public liability insurance, which the 2009 Regulation currently prescribes at \$10 million (clause 31). This change recognises that many operators have public liability insurance cover in excess of \$10 million, effectively making the clause redundant. Removing the minimum amount of cover from the Regulation does not remove the requirement to hold public liability insurance, which is prescribed in the Act. However, it does allow individual operators to determine the most appropriate level of cover for their village. Nonetheless, public liability insurance cover is generally only available in amounts between \$5 million and \$20 million. This effectively sets a minimum of \$5 million as this is the lowest amount of cover available in the market. Despite this, removing the minimum amount of public liability insurance cover from the Regulation is not expected to result in any significant change to the level of cover currently taken out by operators.

23. Is there any reason why the minimum public liability insurance cover amount should not be removed from the Regulation?

Recurrent charges

Notice of variation (clauses 22, 23 and 24)

Clauses 22, 23 and 24 of the proposed Regulation prescribe the information to be included on a notice of variation of recurrent charges where those charges are increased by:

- fixed formula (clause 22),
- no fixed formula and not exceeding the CPI (clause 23), and
- no fixed formula and greater than CPI (clause 24).

The notice required by these clauses has been simplified and no longer needs to include:

- the name and address of the resident. It is considered unnecessary to require this information as it is already likely to be included in the notice,
- the signature of the operator. The operator's signature adds little value to the notice and has been removed to reduce administrative burden for operators. This brings the notice of variation in line with the notice requirements of other legislation.

The specific requirements around font size and text formatting have also been removed from the notice of variation to reduce red tape for operators.

The notices covered by clauses 23 and 24 have also been shortened. They no longer require an extensive list of statements about the legislative requirements that apply to a proposed variation. Instead, the first line of the notice has been amended to make it clear whether residents' consent is required for the variation. A statement has also been added to direct residents to the Fair Trading website if they need more information about their rights under the retirement village laws in regards to the variation. This is shown below in the extracts from the proposed Regulation, with the new text emphasised underlined and in italics:

Clause 23 – Notice of variation – no fixed formula and not exceeding CPI

“This is a notice of a variation of recurrent charges (otherwise than in accordance with a fixed formula). *The increase in those charges does not require the consent of the residents* as the increase does not exceed the increase in the Consumer Price Index (CPI) since those charges were last increased.

For more information about your rights and responsibilities under the retirement village laws contact NSW Fair Trading by visiting www.fairtrading.nsw.gov.au or calling 13 32 20.”

Clause 24 – Notice of variation – no fixed formula and greater than CPI

This is a notice of a variation of recurrent charges (otherwise than in accordance with a fixed formula). The increase in recurrent charges does not take effect until at least 60 days after the date of this notice. The increase in those charges exceeds the increase in the Consumer Price Index (CPI) since those charges were last increased and requires the consent of the residents affected by the variation or an order of the Tribunal to take effect.

For more information about your rights and responsibilities under the retirement village laws contact NSW Fair Trading by visiting www.fairtrading.nsw.gov.au or calling 13 32 20.”

These changes to the notice of variation reduce red tape for operators while ensuring residents are provided with clearer, less complex information about the variation, with guidance around where to obtain more information in the event it is required.

24. Are the changes to the notice of variation requirements appropriate?

25. Is the information required in the notices of variation in clauses 23 and 24 sufficient?

Matters not to be financed by way of recurrent charges (clause 26)

Clause 26 prescribes a number of items that cannot be included in the proposed annual budget and funded by the residents through recurrent charges. The clause reflects the 2009 Regulation, with some changes made to the provisions concerning payroll tax and head office expenses. A number of new matters have also been added in the proposed Regulation. These amendments are discussed in further detail below.

Clause 26(d) - Payroll tax

The 2009 Regulation currently prohibits the funding of payroll tax through recurrent charges unless:

- the wages paid in the village are above the payroll tax threshold, or
- the residents consented to the financing of payroll tax before the 2009 Regulation commenced and continue to consent.

This clause has been amended in the proposed Regulation to make it clearer that only the wages in the individual village “for which the proposed annual budget relates” are to be used when determining whether the payroll tax threshold has been exceeded. There are no new costs imposed by this change as it simply provides greater clarity around the intent and meaning of an existing regulatory requirement.

26. Do you agree with the proposed change in clause 26(d) regarding payroll tax?

Clause 26(g) - Head office or management/administration fees

This clause prohibits the financing of the operator's head office or management of administration fees unless they are associated with providing services to residents of the village. It reflects the same requirement as clause 26(e) of the 2009 Regulation. Operators will be prohibited from using recurrent charges to fund head office expenses unless those expenses have been explained in the proposed annual budget in accordance with clause 19(2). That is, head office costs must be itemised in the budget to show which goods and services they relate to, the approximate cost of those goods and services, and the operator must provide details for how the head office expenses have been apportioned between villages where they own multiple villages.

This clause is not expected to impose any additional costs as the 2009 Regulation already prohibits recurrent charges from being used to finance head office costs that do not relate to the village. The new provision requiring compliance with clause 19(2) of the proposed Regulation also does not, in itself, impose any costs. However, if the operator did not comply with clause 19(2), any head office costs would not be able to be funded through recurrent charges. While this may impose a potential cost for operators, residents would benefit significantly from the improved transparency around head office costs in the proposed budget.

27. Is it reasonable to require head office expenses to be detailed in accordance with clause 19(2) of the Regulation where they are funded by recurrent charges?

Clause 26(e) - Land tax

Land tax cannot be financed by recurrent charges. Retirement villages are generally exempt from land tax except in cases where they are located on land that is not solely used as retirement village. In these circumstances, only a partial land tax exemption is provided by the NSW Office of State Revenue for the portion of the land used as a retirement village. As such, land tax has been included as an additional matter that cannot be financed by recurrent charges in order to:

- to protect residents, and
- make it clear that where an operator owns land for which land tax applies, this amount is not payable by residents because it does not concern the retirement village.

This change will not impact the majority of operators as their villages would already be exempt from land tax in full. For those operators who only receive a partial land tax exemption, there will be an increase in costs if they previously included land tax in the village budget (given they will no longer be able to do so). This is considered appropriate given any land tax payable cannot relate to the operation of the village, otherwise it would be exempt.

28. Should land tax be prohibited from being funded by recurrent charges?

Clause 26(f) - Gifts or donations

The proposed Regulation prohibits gifts or donations being funded by recurrent charges. This does not prevent the residents of a village collectively donating to a charity or other cause, it simply means any such activity needs to be arranged separately to the village budget. This provision provides further clarity for residents and reinforces the purpose of the budget by ensuring it remains focused on matters key to the operation of the village.

29. Is it necessary to include gifts and donations in clause 26?

Clause 26(h) - Experience component of Workers Compensation premium

Clause 26(h) of the proposed Regulation prohibits any increase in the experience premium component of an operator's total Workers Compensation premium from being financed by recurrent charges. This change only applies to medium and large operators that are 'experience-rated employers' for the purposes of Workers Compensation insurance².

The claims history of operators who are experience-rated employers can impact their workers compensation premium, with a good claims history resulting in a lower premium and a poor claims history resulting in a higher premium. This is calculated by comparing an individual operator's claims history with other businesses in NSW. Where the claims performance is better than the average, the premium is generally lower. This approach provides a financial incentive for operators to improve work health and safety practices so as to prevent injuries and claims to reduce their premium.

Where a claim is made on an experienced-rated operator's workers compensation policy, causing their premium to increase as a result, this amount will not be able to be financed by recurrent charges. Residents of a village do not have any control over the work health and safety practices of the operator, nor would they be able to ensure a safe workplace even if they wanted to. For this reason, it is not considered appropriate that residents fund any increase in the operator's workers compensation premium caused by a claim. Allowing such increases to be passed on to residents means the operator has no financial incentive to improve their work health and safety or return to work performance and this undermines the purpose of the experience-based workers compensation system.

Operators will still be able to fund the cost of workers compensation insurance through recurrent charges. Only the proportionate increase in the claims experience component will need to be funded from other sources. This protects residents from significant increases in recurrent charges because of a higher workers compensation premium that resulted from a claim which was outside of their control. This may impose additional costs on operators but the benefits for residents and employees of the operator

² Experienced-rated employer is defined in section 6.7 of the Workers Compensation Market Practice and Premium Guidelines.

are considered to outweigh these costs, particularly when the change will help to incentivise improved work health and safety practices.

30. Is it reasonable to prohibit any increase in the workers compensation experience premium component from being financed by way of recurrent charges?

Clauses 26(i) and 26(j) - Strata or community scheme levies and maintenance

Clauses 26(i) and 26(j) of the proposed Regulation relates to strata and community titled retirement villages. These clauses prohibit the use of recurrent charges for any work which is the responsibility of the owners corporation or community association, as well as any levies the operator is required to pay because they are also an owner in the strata or community scheme. This clause clarifies who is responsible for the maintenance and upkeep of common property and ensures residents are not required to pay additional strata or community levies as recurrent charges.

This change will increase costs for operators who currently include their strata or community levies in the village budget on the basis that a caretaker or other employee is living there. However, all owners in a strata or community scheme should contribute towards the overall costs of running the scheme in accordance with their unit entitlement. Allowing levies paid by the operator to also be funded through recurrent charges means the remaining owners (i.e. residents) are then required to pay more. This is not considered a fair and equitable outcome for residents of strata and community retirement villages and the benefits of this change for residents outweigh the costs.

31. Should an operator's strata costs be prohibited from being funded by recurrent charges?

Miscellaneous

Access to residential premises in village

The proposed Regulation no longer specifies that two days' notice is required before an operator can enter a residence to install or change the battery in a smoke alarm, which is currently specified in clause 52 of the 2009 Regulation. This requirement has been removed as it is understood that the majority of residents allow (or would allow) an operator to enter their premises for this reason without needing such significant prior notice. In cases where the resident does give their consent, section 67 of the Act allows the operator to enter the premises for the purposes of carrying out general maintenance after giving 7 days' notice to the resident, or to carry out urgent repairs. There are not expected to be any cost impacts as a result of this amendment.

32. Is there any reason why the notice requirement specific to smoke alarms should not be removed from the Regulation?

Service of documents generally (clause 51)

Clause 51 of the proposed Regulation broadens and modernises the manner in which an operator or resident may give notice under the Act or Regulation. The provisions concerning the service of documents to a protected person or operator in receivership have been retained in the same form as they are in the 2009 Regulation. However, the other methods in which notice can be served have been updated to reflect modern communication and standard approaches applied in other legislation with regards to the service of documents.

Under the proposed Regulation, a notice (other than a termination notice) may be served by:

- leaving it in a mailbox at the person's last known address;
- emailing it to the person, where the person has agreed to receive notices by email;
- delivering it to the residential site and leaving it with a person aged 16 years or older, in the case of notice being served on a resident; or
- giving it personally to an employee, in the case of notice being served on the operator.

The ability to serve notices by facsimile has been removed as this is no longer a commonly used form of communication and it is not considered necessary given the other additional ways to serve notice introduced in the proposed Regulation that provide greater flexibility for both residents and operators. There are no costs associated with this clause.

33. Are the methods for service of documents in the proposed Regulation appropriate? Why or why not?

Residents Committees

Membership of Residents Committee (clause 47)

In the 2009 Regulation, clause 53 states that a person can only hold the same office on the Residents Committee for more than three years if the village has fewer than 20 residents or an annual budget of less than \$50,000. This has been amended by clause 47 of the proposed Regulation to allow a person to hold the same office for more than three years where there are no other people standing for election or if the residents agree by special resolution. This reduces red tape and allows residents to freely determine, by way of a vote, whether it is appropriate for someone to hold the same office on the residents committee for more than three years. It also means there is no longer a need to retain the provision which allowed the Secretary to object to a person holding office for more than three years as this will be controlled by the residents.

The proposed Regulation also inserts a definition of 'office', being the office of chairperson, secretary or treasurer. This replaces the previous definition of 'hold the same office' and provides further clarity around the application of the clause to ordinary committee members as well as office holders. There are no costs expected to be imposed by this change.

35. Are the changes to the circumstances in which a person can hold the same office on the residents committee for more than 3 years reasonable?

Other changes

Various minor changes to the Regulation are outlined in the table below.

| Clause | Content | Action |
|---------|---|--|
| 5(1)(a) | Clause 5(1)(a) was a repealed clause. This has been deleted. | This clause has been deleted as it is no longer relevant. |
| 21 | This was a transitional clause applying to the first annual budget that applied after the Act was amended in 2010. | This clause has been deleted as it is no longer relevant. |
| 27 | This was a transitional clause applying to recurrent charge variations that applied after the Act was amended in 2010. | This clause has been deleted as it is no longer relevant. |
| 29 | This clause reiterated that only works which are capital maintenance can be financed from the capital works fund or recurrent charges. | This clause was not required as operators are already bound by sections 97 and 99 of the Act. It has been deleted as it was unnecessary duplication. |
| 34 | This was a transitional clause regarding capital replacement that applied after the Act was amended in 2010. | This clause has been deleted as it is no longer relevant. |
| 41 | This clause outlined that the Tribunal may make an order that alters a previous order. | This power already exists in the Civil and Administrative Tribunal Regulation 2013. It has been deleted as it was unnecessary duplication. |
| 54 | This clause refers to disputes between an operator and a resident. It allows for a resident to be nominated as the representative of two or more residents involved in a dispute. | As this clause relates to disputes, it has been moved to Part 6 (clause 38) so that it is located alongside similar clauses. |

Appendix 1 – Background information

Retirement villages are residential complexes predominately occupied by retired people aged 55 and over. The majority of residents are female and the average age of entry into a village is 75 years. Generally, the average length of stay in a retirement village is 7 years.

There are currently 654 registered retirement villages across NSW, providing housing for an estimated 50,000 residents. There are some villages with less than a dozen residents while other villages have up to 500 residents or more. Villages, particularly larger ones, may have a range of services and features including dining rooms, libraries and village transport. Villages are either privately owned and operated, or run by not-for-profit organisations like churches and charitable or community groups.

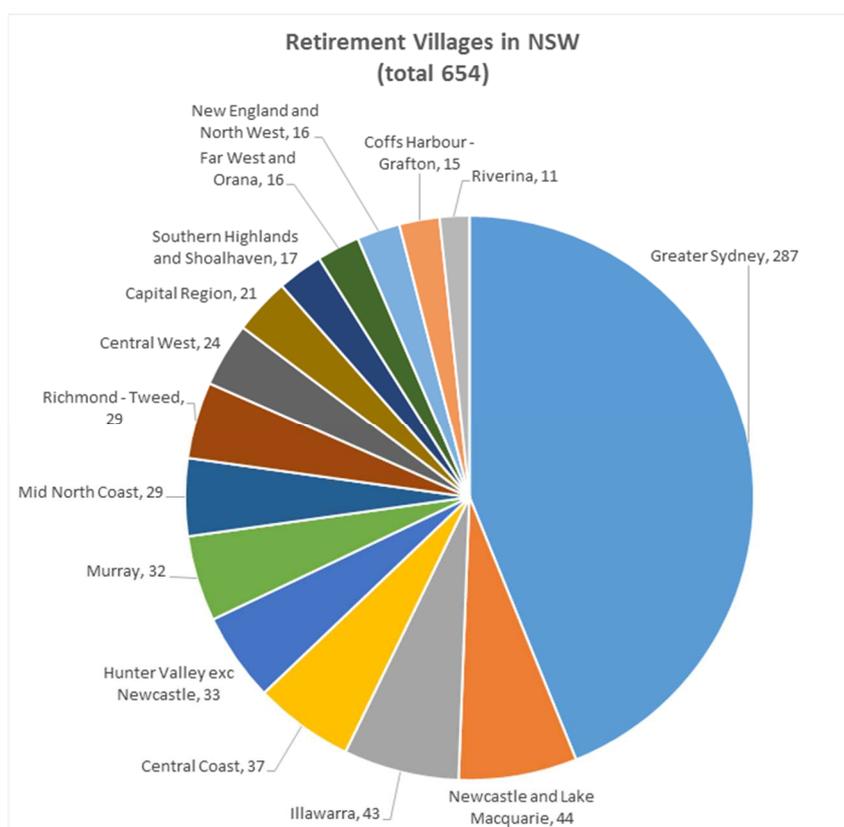


Fig 1.0 – Retirement Villages in NSW

In NSW, retirement villages are regulated by the *Retirement Villages Act 1999*. The last major amendments to the Act and the Regulation took effect on 1 March 2010 following a review of the legislation which began in 2004. A number of changes commenced in 2010, including the creation of a 90-day settling in period, and the ability of residents to alter fixtures in their premises with the operator's consent. The most recent reform to retirement village rules was the introduction of the standard village contract and general inquiry document in October 2013.

Appendix 2 – Summary of proposed changes

| Existing clause | Proposed change to clause | Reason for the change |
|--|--|--|
| 5 – Definition of capital maintenance | 4 – Capital maintenance definition to include repainting of external surfaces once every 10 years. | Provide greater clarity and certainty for operators and residents. |
| 7 – Definition of optional services | 7 – Optional services now include personal care services, including hairdressing, shopping assistance and pharmaceutical services. | Provide greater clarity and certainty for operators and residents. |
| 8 – Definition of resident | 8 – Whole clause has been amended to past tense. | Improves readability. |
| 9 – Definition of retirement village | 9 – Reference to <i>Disability Services Act 1993</i> has been removed. | The <i>Disability Services Act 1993</i> no longer exists. |
| 11 – General inquiry document and disclosure statement | 11 – Require operators to disclose the 'average resident comparison figure' on the disclosure statement. | Facilitates greater transparency for prospective residents who can evaluate and compare the costs of different villages more easily. |
| 12 – Copies of certain documents to be available | 12 – Policy documents relating to required village insurance must be made available in addition to certificates of currency. | Facilitates greater transparency. |
| 13 – Amount payable for legal and other expenses | 14 – Maximum amount payable by a resident reduced to \$50 from \$200. | No longer a rationale for legal costs due to standard contract. |
| 16 – Village rules | 18 – Rules can now be made about speed limits, smoking, use of motorised wheelchairs or restrictions on use of communal areas. | Provides clarity for operators and residents around the types of items that rules can be made and applied to. |
| 17(2) – Matters to be dealt with in proposed annual budget | 19(2) – Requirement for head office expenses to be itemised with details of how they are apportioned between villages to also be provided. | Provides greater transparency for residents to ensure they are able to verify the proposed village budget. |
| 19 – Notice accompanying proposed annual budget | 20 – Information requested by residents committee or individual resident now to be provided within 7 days. | Prescribed period will ensure residents receive information in a timely fashion. |
| 20 – Limit on contingencies in annual budget | 21 – Amount that can be allocated for contingencies has been reduced to \$1 from \$100. | Encourages good financial management and the careful forecasting of village expenditure. |
| 22 – Notice of variation – fixed formula | 22 – Notice no longer needs to require the name and address of resident, requirements around font size and text formatting, a demonstration of the formula, and signature of operator. | Red tape reduction. |

| | | |
|---|---|---|
| 23 – Notice of variation – no fixed formula and not exceeding CPI | 23 – Notice no longer needs to require the name and address of resident, requirements around font size and text formatting, a demonstration of the formula, signature of operator, and statements about increase and requirements of retirement village laws. | Red tape reduction – this information has been replaced with a succinct summary and statement directing residents to information on the Fair Trading website. |
| 24 – Notice of variation – no fixed formula and greater than CPI. | 24 – Notice no longer needs to require the name and address of resident, requirements around font size and text formatting, a demonstration of the formula, signature of operator, and statements about increase and requirements of retirement village laws. | Red tape reduction – this information has been replaced with a succinct summary and statement directing residents to information on the Fair Trading website. |
| 26 – Matters not to be financed by way of recurrent charges | <p>26 – Clarifies payroll tax can only be funded through recurrent charges where the wages of the individual village to which the budget relates exceeds the payroll tax threshold.</p> <p>Requires head office expenses to be detailed in the budget as per clause 19(2) in order to be funded by recurrent charges.</p> <p>The following items have been added:</p> <ul style="list-style-type: none"> • land tax • gifts or donations • any increase in the experience component of the operator's workers compensation premium • works which are the responsibility of the owners corporation or community association • levies payable by the operator as an owner in the strata or community scheme. | Ensures various charges are funded by the operator where there no rationale to support them being funded by recurrent charges. |
| 29 – Matters that cannot be funded from capital works fund or recurrent charges | N/A – Clause prescribing matters that cannot be funded from capital works fund or recurrent charges has been removed. | Repeats existing requirement and is not necessary. |
| 31 – Minimum public liability insurance | N/A – Clause prescribing minimum amount of public liability insurance has been removed. | Reduction of red tape – will allow operator to determine appropriate level of cover based on business needs. |
| 33 – Making good of deficit | 30 – Amended to split 'workers compensation and public liability | These two categories are not related and need to be dealt with separately. |

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| | insurance' into two separate sub-clauses. | |
| 41 – Additional orders of Tribunal | N/A – Clause allowing additional orders to be made by the Tribunal has been removed. | The ability for the Tribunal to make these orders already exists in the <i>Civil and Administrative Tribunal Act 2013</i> . |
| 51 – Display of safety inspection report | 13 – Amended to allow any resident to request a copy of the report instead of it being displayed on the noticeboard. | Red tape reduction for operators while still allowing interested residents the ability to access the report. |
| 52 – Access to residential premises in village | N/A – Clause allowing access to the residential premises to install or change the battery in a smoke alarm has been removed. | Operator already has ability to enter the residential premises to carry out general maintenance, or with the consent of the resident, a separate timeframe specific for smoke alarms is not necessary. |
| 53 – Membership of residents committee | 47 – Ability to hold office for more than 3 consecutive years has been streamlined and residents will be able to approve. | Reduction of red tape to remove unnecessary reference to size of the village and its budget. |
| 58 – Service of documents generally | 51 – Clause allows other methods of serving documents including removal of fax and addition of service by email where resident has agreed. | Clause has been modernised to account for new electronic methods. |
| Schedule 1, Part 1 – General Inquiry Document | Schedule 1, Part 1 – Question added about whether any village rules are in force in the village, with note informing prospective resident that a copy of the rules can be requested from operator. | Improves disclosure and awareness. |
| Schedule 1, Part 1A – Disclosure Statement | Schedule 1, Part 2 – Addition of standard table of fees and charges to end of DS. | Addition of table to help facilitate the use of the online RV calculator. |
| Schedule 1, Part 2 – Condition Report | Schedule 1, Part 3 – Condition report has been enhanced. | Modernises information contained in the report. |
| Schedule 2 – Standard contract | Schedule 2 – Consequential changes have been made in the contract to reflect any changes in the Regulation. | Allows for a smooth transition and consistency between standard contract and proposed Regulation. |
| Schedule 4 – Model proposed annual budget | Model budget has been removed from the Regulation. | Not a mandatory document - will be placed on the Fair Trading website as a resource. |

Appendix 3 – Summary of the Regulation

Clauses 1 and 2 provide the name and date of commencement of the Regulation.

Clauses 3, 4, 5, 6, 7, 8 and 9 provides references to definitions phrases used in the Regulation.

Clause 10 prescribes information not permitted to be included in promotional material.

Clause 11 prescribes the use of the general inquiry document and disclosure statement.

Clause 12 specifies which documents must be made available.

Clause 13 prescribes that the operator must make the safety inspection report available to residents.

Clause 14 prescribes the maximum amount payable for village contracts is \$50.

Clause 15 prescribes the use of the condition report.

Clause 16 defines which matters cannot be included in a village contract.

Clause 17 prescribes the use of the standard form of village contract.

Clause 18 prescribes the matters which village rules may relate to.

Clause 19 defines matters that must be deal with in a proposed annual budget.

Clause 20 contains the statements that must be included in the notice accompanying a proposed annual budget.

Clause 21 limits the amount allocated for contingencies in a proposed annual budget to \$1.

Clauses 22, 23 and 24 specifies the information that must be included with a notice of variation of recurrent charges.

Clause 25 sets a time limit of 7 days in which operators must provide information regarding recurrent charges, and establishes which information an operator is not required to provide.

Clause 26 prescribes which matters are not to be financed by recurrent charges, such as payroll tax, land tax and gifts.

Clause 27 prescribes the interest rate to be used for the payment of interest on a judgment debt.

Clause 28 prescribes that for a village owned by a trust or corporation, the capital works fund may be held in any fund administered by the trust or corporation. It also prescribes how operators can gain permission from residents to use the capital works fund for purposes other than those established in the Act.

Clause 29 prescribes that audited accounts must be displayed on the village notice board for one calendar month.

Clause 30 prescribes the circumstances in which an operator can carry a deficit forward to the next financial year.

Clause 31 defines the contents of the agenda of the annual meeting.

Clause 32 prescribes which matter the operator is not required to answer questions about at the annual meeting.

Clause 33 allows for residents to have proxies at the annual meeting.

Clause 34 prescribes the time in which an application can be made to the Tribunal under various sections of the Act.

Clause 35 allows the Residents Committee to apply to the tribunal on behalf of one or all residents.

Clauses 36 and 37 defines the powers of the Tribunal to determine the parties of an application to the Tribunal, and to make different orders for different residents.

Clause 38 prescribes that a resident can act as the representative of 2 or more residents in a dispute.

Clause 39 declares that additions made or fixtures installed by a former resident are now part of the premises and are not uncollected goods.

Clause 40 and 41 defines which uncollected goods can be disposed of and how the remaining goods should be stored.

Clause 42 prescribes the permitted costs for the collection of uncollected goods.

Clauses 43 and 44 prescribe the methods and record keeping of the disposal of uncollected goods.

Clause 45 prescribes that the operator's permission is not required for residents to renovate or alter fixtures in premises that the resident owns.

Clause 46 prescribes the costs that residents are liable for if the contract is terminated during the settling-in period.

Clause 47 defines the circumstances in which a person may hold the same office on the Residents Committee for more than 3 consecutive years.

Clause 48 defines the form and time frame required for a termination notice to be given.

Clause 49 prescribes the ingoing contribution amount protected under section 182A (1) (b) of the Act as \$10,000.

Clause 50 prescribes that penalty notice offences and penalties are found in Schedule 5.

Clause 51 prescribes the methods by which documents can be served.

Clause 52 prescribes that ballots must be conducted in accordance with Schedule 6.

Clause 53 prescribes that any matter that had effect under the appealed Regulation continues to have effect.

Schedule 1 sets out the forms prescribed by the Regulation:

- general inquiry document
- disclosure statement
- condition report
- proxy form
- contract termination form.

Schedule 2 sets out the standard village contract.

Schedule 3 establishes matter to be excluded from village contracts.

Schedule 4 sets out the time for making an application to Tribunal for various disputes.

Schedule 5 sets out penalty notice offences and their penalties.

Schedule 6 sets out methods for conducting ballots to gain residents' consent.

Appendix 4 – List of Stakeholders

Key stakeholders

The following key stakeholders have been provided with a copy of the proposed Regulation and this RIS:

- Aged and Community Services Association NSW & ACT Inc
- CHOICE
- Combined Pensioners and Superannuants Association of NSW Inc
- Council on the Ageing
- Department of Family and Community Services – Ageing, Disability and Home Care
- National Seniors Association
- NSW Civil and Administrative Tribunal
- NSW Law Society
- NSW Legal Aid Commission
- Retirement Living Council (Property Council of Australia)
- Retirement Village Residents Association Inc
- Seniors Rights Service
- State Insurance Regulatory Authority (SIRA)