

# Residential Services (Accreditation) Regulation 2018

Explanatory notes for Subordinate Legislation 2018 No. 137

made under the

*Residential Services (Accreditation) Act 2002*

## General Outline

### Short title

*Residential Services (Accreditation) Regulation 2018*

### Authorising law

Sections 4, 28, 42, 43, 44, 69, 75, 77 and 184 of the *Residential Services (Accreditation) Act 2002*.

### Policy objectives and the reasons for them

Residential services are privately-owned boarding houses, aged rental complexes and supported accommodation, and house some of Queensland's most vulnerable people. Most residents have limited income and many experience disadvantages including intellectual or psychiatric impairments, drug and alcohol issues, problems associated with ageing, social and economic disadvantage and social isolation.

The object of the *Residential Services (Accreditation) Act 2002* (RSA Act) is to regulate residential services to protect the health, safety and basic freedoms of residents, encourage service providers to continually improve the way they conduct residential services and to support fair trading in the residential services industry.

This is achieved by a registration system, under which a residential service is registered only if the service provider and associates are suitable, and the premises in which the service is conducted are safe and otherwise suitable. Additionally, residential services are subject to an accreditation system. The three levels of accreditation (all services must be accredited at level 1, and services may be accredited at more than one level) are:

- Level 1: services providing accommodation where a bedroom is provided for a resident who shares communal facilities such as toilets and kitchens with other residents;
- Level 2: services providing accommodation (as per Level 1) with the provision of food services; and
- Level 3: services providing accommodation (as per Level 1) with the provision of personal care services.

The RSA Act provides authority for a regulation to prescribe accreditation standards, provided those standards are consistent with the matters stated in the RSA Act. Consequently, when the RSA Act came into force, accreditation standards were set out in the *Residential Services (Accreditation) Regulation 2002* (2002 Regulation) to ensure a residential service provides services appropriate to its accreditation.

Under section 54 of the *Statutory Instruments Act 1992*, regulations automatically expire 10 years after they are made. Unless this time for expiry is extended, such regulations must be remade or will expire. Extensions to the expiry of the 2002 Regulation have been obtained to allow time for a review of the RSA Act to be completed and the 2002 Regulation to be replaced. As the passage of amendments to the RSA Act in the *Housing Legislation (Building Better Futures) Amendment Act 2017* (HLA Act) has concluded the review of the RSA Act, the 2002 Regulation must be remade before its expiry on 31 August 2018.

The policy objectives of the *Residential Services (Accreditation) Regulation 2018* (2018 Regulation) is to continue to provide the detail contained in the 2002 Regulation to complement the RSA Act, including a clear set of standards to enable service providers to effectively achieve and comply with accreditation. Complying with the standards is important, and the department monitors compliance with these standards and makes recommendations to the chief executive regarding accreditation decisions made under the RSA Act.

As well as enabling the existing regulatory regime to continue, the 2018 Regulation takes into account feedback from the residential services sector in 2016 and the outcomes of a targeted investigation into illegal boarding houses and rooming accommodation in 2016–17. These processes revealed opportunities to amend the 2002 Regulation to reduce duplication and group standards more logically. For example, the standards relating to the residential services' living environment, business standards and human resource management are now grouped together. The Department of Housing and Public Works (the department) in performing its registration, accreditation and compliance functions, has also identified the need to clarify aspects of the 2002 Regulation and how accreditation standards can be met, to improve compliance.

In developing the 2018 Regulation, the department has considered coronial reports into two deaths in level 3 services in 2009. The *Coroners Act 2003* requires that deaths of people with a disability in level 3 residential services be reported to the Coroner. These reports recommended changes which led to the release of a Guideline for Medication Assistance for level 3 services in 2016, and other recommendations which will be addressed by the 2018 Regulation including requirements for planning and training for emergencies and for residential services which provide personal care services, in first aid and cardiopulmonary resuscitation.

In summary, the policy objectives of the 2002 Regulation continue to be relevant and significant changes are not required, however the 2018 Regulation improvements include:

- updating and clarifying some accreditation standards and how these standards can be met to improve compliance and to ensure resident choices about access to external professional case workers is respected;

- removing unnecessary duplication of some accreditation standards such as those relating to record keeping, to reduce the regulatory burden on service providers;
- addressing issues relating to care of residents by introducing criteria regarding level 3 residential service training in first aid and cardiopulmonary resuscitation, in line with coronial recommendations; and
- introducing a serious incident and accident register to ensure service providers are managing such matters to better protect residents, in line with coronial recommendations.

## **Achievement of policy objectives**

The 2018 Regulation will achieve the policy objectives of the RSA Act by providing for:

- services exempted from capture by the definition of ‘residential service’;
- prescribed building requirements;
- accreditation standards for residential services to help protect the health, safety and basic freedoms of residents, continual improvement by service providers and ensure fair trading;
- information about changes in the service which must be provided to the chief executive;
- what must be included in fire safety management plans for the service;
- records which must be made and kept by the service; and
- a schedule of fees payable for applications made under the RSA Act.

## **Consistency with policy objectives of authorising law**

The 2018 Regulation is consistent with the objectives of the RSA Act.

## **Inconsistency with policy objectives of other legislation**

The 2018 Regulation is consistent with the policy objectives of other legislation.

## **Alternative ways of achieving the policy objectives**

Alternatives, such as allowing the 2002 Regulation to expire were considered, however the policy objectives of protecting the health, safety and basic freedoms of residents, encouraging service providers to continually improve the way they conduct residential services and supporting fair trading in the residential services industry can only be achieved by making a regulation to provide for specific matters under the RSA Act.

## **Benefits and costs of implementation**

The 2018 Regulation will benefit both residents and service providers by providing clarity and promoting best practice for an industry which provides accommodation to vulnerable people who could, potentially, be homeless without this form of accommodation.

While the *Residential Services (Accreditation) Regulation 2002* has competition and compliance impacts which restrict entry into the market, overall, these are not considered to represent a significant barrier which is inappropriately restricting new service providers from establishing new residential services.

For existing residential services, accreditation standards and their other requirements set out in the 2002 Regulation were part of a new regulatory framework for a sector not previously subject to accreditation and service standards. Subsequently, the regulatory framework for residential services has matured and service providers are now familiar operating under an accreditation scheme.

The impacts and barriers presented by the 2018 Regulation are justified in terms of the overall benefit to vulnerable residents who use the services, to residential service providers who can operate under a reasonable regulatory framework, and to government, which benefits from an important unsubsidised accommodation option for vulnerable members of the community.

The schedule of fees in the 2018 Regulation has been retained at current levels. This will help ensure that cost recovery is balanced against the serious potential impacts on residents who would lose their accommodation; and on government, which would need to find alternative accommodation for those residents, if residential services become unviable due to higher fees.

The department, which is responsible for ensuring compliance with the 2018 Regulation, will take a pro-active role in ensuring service providers are aware of their obligations to help ensure positive outcomes for residents during the implementation process. This will include actions to support service providers' compliance with new obligations which commence on 1 December 2018.

The department provided its Preliminary Impact Assessment of the review of the 2002 Regulation to the Queensland Productivity Commission (the Commission) for its assessment about whether further analysis under the Queensland Government Guide to Better Regulation (the Guidelines) was required. The Commission advised that it considered the department's review:

- identified the continued need for regulatory action;
- evaluated whether the draft 2018 Regulation satisfies its objectives and regulatory best practice principles;
- considered competition impacts;
- considered the appropriateness of fees; and
- included consultation with stakeholders.

On this basis, the Commission advised that it considered the proposed remake would not benefit from further regulatory assessment under the Guidelines.

## **Consistency with fundamental legislative principles**

The 2018 Regulation is consistent with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

## **Consultation**

In July 2018, the department sought feedback from peak bodies and community advocates on a draft of the *Residential Services (Accreditation) Regulation 2018*. These stakeholders include the Association of Residents of Queensland Retirement Villages; Community Legal Centres Queensland; COTA; Law Right; Leading Age

Services Australia; Micah Projects; National Disability Services; National Seniors Australia; Property Council of Australia; Queensland Council of Social Services; Queensland Advocacy Incorporated; Queensland Alliance for Mental Health; Queensland Disability Network; Queensland Law Society; Supported Accommodation Providers Association; Tenants Queensland; and the Urban Development Institute of Australia.

The department also sought feedback about the appropriateness of fee levels, and whether the draft 2018 Regulation represented a significant barrier to the establishment of new residential services.

Feedback included suggested improvements to provisions relating to residents' privacy and confidentiality, the prevention of abuse and neglect, right of access to external providers of professional services, and residents' independence and freedom of choice. This feedback has been reflected in the 2018 Regulation.

## **Notes on provisions**

### *Part 1 – Preliminary*

*Clause 1* sets out the title to the Regulation.

*Clause 2* provides for commencement of the provisions of the 2018 Regulation on 1 September 2018.

*Clause 3* inserts definitions for particular words used in the 2018 Regulation contained in the dictionary in schedule 2.

### *Part 2 – Residential services and prescribed building requirements*

*Clause 4* prescribes services that are not residential services. They include a service conducted mainly to provide accommodation to employees and contractors as specified and for an exemption from coverage by the RSA Act for retirement village schemes in specified circumstances. The exemption relates to retirement village schemes registered under the *Retirement Villages Act 1999* which are accredited by a recognised accreditation body within two years of the date of commencement of the 2018 Regulation. Failure to obtain accreditation by a recognised accreditation body within the specified time period and to remain accredited will result in the exemption not applying to the premises concerned.

*Clause 5* states that prescribed building requirements for the RSA Act are set out in MP 5.7 - Residential Services Building Standard of the Queensland Development Code.

### *Part 3 – Accreditation decisions*

*Clause 6* provides for additional matters which must be considered prior to making a level 1 accreditation decision. These matters are established as a set of standards relating to residents' needs and rights, residential service buildings and amenities and management and staffing of a residential service.

Privacy and confidentiality

Each resident's right to privacy, dignity and confidentiality in all aspects of his/her life is recognised and respected by the residential service provider and the residential service provider's associates and all the staff of the premises. This standard requires, further to the 2002 Regulation, that a resident's correspondence and other confidential information is only accessed or disclosed with the resident's consent.

Agreement for residency

Each service provider gives information to residents or prospective residents (or their representative) about the type of accommodation and services available and uses an individual resident agreement.

Prevention of abuse and neglect

The service provider recognises the right of residents to live in an environment free of verbal, emotional, sexual or physical abuse or neglect. The service acts to uphold the legal and human rights of residents. The standard in the 2002 Regulation has been supplemented to include freedom of financial abuse as a right and to ensure the service provider implements and complies with the policies and procedures.

Grievance mechanism

Residents and their representatives (including advocates) are free to raise, and have resolved, any complaint or dispute they may have regarding the residential service with either the service provider or a service provider's associate, or with external agencies.

Management of resident with complex or difficult behaviour

The needs of residents with challenging behaviours are managed effectively in a way that is respectful of their dignity.

Access to external providers of professional services

The resident is entitled to have full access to an external service provider by way of visits to or from the provider and they have the freedom to choose an independent external service provider without fear of retaliation. An 'external service provider' is outlined and includes an advocate, professional case worker or another provider of services from a health, disability, welfare agency or other relevant professional service. The 2002 Regulation has been supplemented in this way to reflect the introduction of the National Disability Insurance Scheme (NDIS) and new service providers including NDIS Support Co-ordination Providers and Registered NDIS Service Providers who may provide support to residents. Other service providers include, for example, mental health support workers and social workers or other external service providers.

Entitlement of residents to independence and freedom of choice

Each resident's right to independence and freedom of choice is recognised and respected as long as it does not unreasonably infringe upon the rights of others.

### Living environment

Building standards contained in the 2002 Regulation have been combined and now provide details of the requirement to ensure residents' living environment is safe, secure and comfortable.

### Security and emergencies

Every residential service must have a safety and emergency plan that includes procedures on how to deal with situations requiring immediate attention and remedial action. Service providers must ensure staff, associates and residents are aware of the plan and ensure emergency services have access to the registered premises at all times. The requirement to comply with this standard begins on 1 December 2018.

### Business management

The management of the business is outlined for the residential service. Standards in the 2002 Regulation that had similar requirements and obligations are included here. Service providers are also required to manage the service in a way that ensures residents are not interfering with the reasonable peace and quiet of the neighbourhood. The requirement to comply with dot point three (in relation to the reasonable peace and quiet of the neighbourhood) begins on 1 December 2018.

### Human resource management

The human resource and staffing requirements of a residential service are outlined. Standards in the 2002 Regulation that had similar requirements and obligations are included here.

*Clause 7* provides for additional matters that must be considered prior to making a level 2 accreditation decision. These matters are established as a set of standards relating to the provision of a food service.

### Food and nutrition

Residents are provided food and nutrition complying with the best practice guide for healthy eating in supported accommodation. The requirement to comply with the altered standard begins on 1 December 2018. Service providers can continue to comply with the standard in the 2002 Regulation until this time.

### Kitchens

Compliance with the Australian New Zealand Food Standards Code is ensured, including amendment No. 51 of that Code which introduced standard 3.2.3.

### Food handling and storage

Requirements about the delivery, storage, preparation and serving of food to residents are combined. This standard requires compliance with the relevant provisions detailed in the Australian New Zealand Food Standards Code, standard 3.2.2.

Clause 7(4) provides definitions for this section.

Clause 8 provides for additional matters which must be considered prior to making a level 3 accreditation decision. These matters are established as a set of standards relating to the provision of a personal care service.

Human resource management

The introduction of criteria relating to first aid and cardiopulmonary resuscitation qualifications will help ensure the safety of residents. Compliance with this standard begins on 1 December 2018.

Access to externally provided support services

Wherever possible, personal care services for residents should be delivered through agencies external to the residential service.

Financial and clerical support

Residents should have management of their own financial affairs as much as possible or have an external person or organisation involved in assisting with financial decisions. When residents require clerical support or assistance in managing their finances day to day, practices are accountable and transparent.

Assistance with medication

When residents request support to manage their medication, assistance is provided safely and correctly in accordance with medical directions and in line with the guideline for medication assistance provided by the department.

Health care

Residents have a choice of medical provider. Residents are encouraged and assisted where necessary to maintain their physical, dental and mental health.

Clothing

Residents are supported to ensure they have access to and wear clothing appropriate to the situation and climate.

Hygiene management

Residents' personal hygiene needs are met in a way consistent with individual need and respect for dignity and privacy.

Preservation of social networks

The residential service recognises the importance of preserving family relationships and informal social networks and supports these.

Choice and decision making

Residents participate in the decisions about the services they receive and are enabled to exercise choice and control over their lifestyle to the extent that they do not infringe on the rights of others.



#### *Part 4 – Miscellaneous*

*Clause 9* sets out additional matters including which changes to the residential service must be communicated to the chief executive. A registered service provider must notify the chief executive of the changes in the approved form within 30 days of becoming aware of them. The matters are:

- a change to the fire safety management plan for the registered premises in accordance with clause 10. This will enable a timely reassessment of the adequacy of the amended fire safety management plan;
- a change to a matter which was taken into account under section 22 of the RSA Act in deciding if the service provider or an associate was a suitable person. This will allow the chief executive to reassess if the service provider or associate are suitable persons for the purposes of the RSA Act; and
- a local government deciding that premises do not comply with the prescribed building requirements.

*Clause 10* prescribes requirements for section 75 of the RSA Act and provides a definition of a fire safety management plan for a building that is not a budget accommodation building. The 2002 Regulation has been supplemented in subsection 2(a) to note the resident numbers allowed to occupy the premises according to the room size requirements stated in the prescribed building requirements.

*Clause 11* prescribes requirements for section 77 of the RSA Act and sets out specific records which must be maintained by a service provider for a residential service and the time for which those records must be maintained. The records which must be maintained vary according to the type of services provided. This section requires that serious incidents in the service are recorded by the service provider. Compliance with this particular provision will commence on 1 December 2018.

*Clause 12* provides for fees and charges. These include:

- registration;
- accreditation;
- renewal of accreditation;
- applying for an amendment to accreditation;
- applying for a replacement accreditation certificate;
- register change of service provider;
- amendment of registration (change of premises);
- inspection of the register of undertakings;
- inspection of the register of residential services; and
- obtaining a certificate from the Chief Executive stating information shown on the register.

#### *Part 5 – Transitional provisions*

*Clause 13* provides a transitional provision for two years from commencement for retirement village schemes to obtain accreditation by a relevant accreditation body.

*Clause 14* provides transitional provisions for requirements which were not included in the 2002 Regulation to give service providers time to become compliant.

*Schedule 1 Fees*

Schedule 1 states the fees payable under the RSA Act.

*Schedule 2 Dictionary*

Schedule 2 inserts definitions for key terms used in the 2018 Regulation.